



New Hampshire Fish and Game Department

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August 30, 2021

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), with funding support from the Society for the Protection of New Hampshire's Forests (SPNHF), to acquire an interest in a conservation easement on 578 acres in Salisbury, New Hampshire from the Law Office of Ransmeier & Spellman, PC (Vendor Code 157133), who is acting as agent for SPNHF, for \$134,400. Effective upon Governor and Council approval through October 15, 2021. Funding is 100% Federal.

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

FY2022
\$134,400

EXPLANATION

NHFG is partnering with SPNHF to acquire a conservation easement on 578 acres on the western slope of Mount Kearsarge in Salisbury, NH. The easement will be co-held by NHFG and SPNHF to ensure the protection and appropriate management of important, unfragmented wildlife habitat for the benefit of a wide range of wild birds and mammals, as well as to ensure public access to the property for hunting and other wildlife associated recreation. The conservation easement offers an opportunity to add to an existing area of conservation land of nearly 10,000 acres and to enhance connectivity with the 3,600 acre Blackwater River Flood Control Area. The property is dominated by northern hardwood forests. It also contains a significant area of talus slope, which according to the NH Wildlife Action Plan is an uncommon habitat in the State. These rocky slopes provide habitat for forest dwelling bats, bobcats and several bird species. The purchase of an easement will contribute to the overall protection of the property and augment NHFG's Wildlife Management Area system to help achieve the goals of the W-108-L-1 statewide acquisition grant.

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

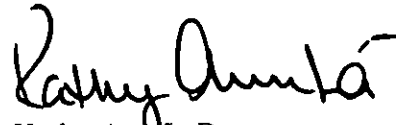
The total value of the easement is \$431,000, and the seller has agreed to a bargain sale of \$247,500. NHFG will use Wildlife Restoration grant funds to purchase \$134,400 of the easement value. The SPNHF will contribute \$113,100 of the easement value, in addition to covering all other the project costs associated with the acquisition.

The proposed approach for this conservation easement is for NHFG to be a co-holder with SPNHF, having equal rights to oversee and enforce the conditions of the easement. The future stewardship roles and responsibilities of each of the co-holders are defined in a cooperative agreement between NHFG and SPNHF that will be executed at closing and made part of the conservation easement as Exhibit D.

Respectfully submitted,



Scott R. Mason
Executive Director



Kathy Ann LaBonte
Chief, Business Division

Inter-Department Communication

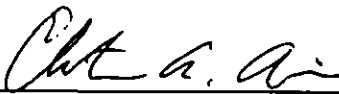
DATE: August 30, 2021

FROM: Christopher G. Aslin **AT (OFFICE)** Department of Justice
Senior Assistant Attorney General Environmental Protection Bureau

SUBJECT: Little Mountain - Childs Conservation Easement, Town of Salisbury

TO: Elizabeth McNaughten, Land Agent
Facilities & Land Division
Fish & Game Department

The Office of the Attorney General has reviewed the Conservation Easement Deed and supporting documents provided in connection with the above referenced easement acquisition and approves the acquisition for form and substance only. Please note that once approved by Governor and Council, and signed by all parties, the Conservation Easement Deed should be returned to this office for final review of execution before it is recorded in the appropriate county registry of deeds.



Christopher G. Aslin

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

USFW and AG approved FINAL 8.23.2021

CONSERVATION EASEMENT DEED

STARLING WINSTON CHILDS, II, of 283 Litchfield Road, Norfolk, County of Litchfield, State of Connecticut (hereinafter referred to as the "Grantor", which word where the context requires includes the plural and shall, unless the context clearly indicates otherwise, include the Grantor's executors, administrators, legal representatives, devisees, heirs, successors and assigns),

for consideration paid, with WARRANTY covenants, 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 and mailing address of 54 Portsmouth Street, City of Concord, County of Merrimack, State of New Hampshire, 03301-5400 ("SPNHF"), 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, and

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 ("NHFG" hereinafter referred to collectively with SPNHF as the "Grantee" which shall, unless the context clearly indicates otherwise, include the Grantee'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 "Property") with any improvements thereon, consisting of approximately 579 acres, more or less, located off West Salisbury Road (aka Mill Road) in the Town of Salisbury, Merrimack County, New Hampshire, more particularly bounded and described in Appendix "A" attached hereto and made a part hereof and shown on a survey plan entitled "Property Survey for Dalphond Brothers, Inc., Merrimack County, Salisbury, N.H., July 1976, Scale 1" = 200', Hirst Lot", Pike Industries,

Route 3, Tilton, Ronald J. Natoli R.L.S., said plan being recorded with the Merrimack County Registry of Deeds as Plan #7787 (herein referred to as the "Survey"), together with,

a **RIGHT OF ENFORCEMENT** in said Easement to the **Land and Community Heritage Investment Authority** with a principal place of business at 3 North Spring Street, Suite 100, City of Concord, County of Merrimack, State of New Hampshire 03301 (hereinafter referred to as "LCHIP" which shall, unless the context clearly indicates otherwise, include LCHIP's successors, assigns, and agents), and

Further granting to SPNHF, NHFG, and LCHIP the reasonable use of Grantor's legally deeded rights of way from West Salisbury Road (aka Mill Road) in the Town of Salisbury, as more particularly described in Exhibit A, Legal Description, along with any and all rights Grantor may have over the Wilder Pond Road for access to the Property by the public and for monitoring purposes.

In accordance with New Hampshire RSA 227-M:14, notwithstanding any other provision of law relating to the disposal of publicly-owned real estate, no deviation in the uses of any resource asset acquired using LCHIP's financial assistance to uses or purposes not consistent with the purposes of RSA 227-M shall be permitted. The sale, transfer, conveyance, or release of any resource asset from public trust is prohibited, in accordance with RSA 227-M, except as provided in RSA 227-M:13.

SPNHF and NHFG are co-holders of the Easement, with their respective obligations as Grantee set forth more particularly in the Stewardship Cooperative Agreement attached hereto as Appendix D and incorporated herein. Grantee, Grantor, and LCHIP may sometimes hereinafter be collectively referred to as the "Parties" or individually as a "Party".

The Property includes the following wildlife habitats, recreational, scenic, open space and forestry attributes protected by the terms of this Easement (hereinafter the "Conservation Attributes"):

Wildlife Habitat - The Property contains several different upland and wetland natural communities. Significant ecological areas include the riparian zone along the various small brooks, potential old growth areas, several vernal pools, and the rocky ridge communities. Wildlife species on the property include nearly all of the vertebrate and invertebrate fauna commonly found in central New Hampshire. Moose sign was common, as was sign of bear, bobcat, eastern coyote, porcupine, beaver, raccoon, and a number of other small mammals. According to the State's 2015 Wildlife Action Plan the Property contains approximately 575 ac. of Tier I (the highest quality habitat in the state), and 4 ac. of Tier II (the highest ranked wildlife habitat in the region).

Water Resources - The Property has over 2.5 miles of perennial and intermittent streams. The largest of the streams contain native brook trout in the larger pools. The Property also contains several forested wetlands, several identified vernal pools, and a portion of two open beaver meadows. All of the wetlands contain exceptional habitat for migratory waterfowl, moose, bear, and a host of aquatic vertebrates and invertebrates.

Scenic - Mt. Kearsarge is often the first significant mountain travelers see while driving north on I-89 or I-93 through Concord. The Property itself has several great overlooks; and the public can clearly see the property from the summit of Mt. Kearsarge.

Recreation – The Property includes productive hunting and fishing grounds and is well-suited to traditional outdoor recreational uses such as hunting, fishing, and hiking.

Conservation Priority - Mt. Kearsarge is one of the most popular mountains in the state, climbed by thousands of visitors each year and viewed by many more travelers. Expansion of the conservation lands on and around Mt. Kearsarge has always been a high priority for the Forest Society and state. The 579-acre Childs property is an important step towards the final linkage of the 9,000 acres of conserved land on and around Mt. Kearsarge and over 5,000 acres of conserved wetlands and riverine communities associated with the federally owned Blackwater River and the state's Leonard Wildlife Management Area.

Forest Resources - The Property represents a high quality, diverse, unfragmented forest that is managed by a licensed forester. The forest is comprised of many forest communities, but dominated by Hemlock-Beech-Oak-Pine Forest and Sugar Maple-Beech-Yellow Birch Forest. The Property's ridgeline contains rocky ridge natural communities, and some of the steeper slopes include more rare talus woodlands. Nearly 42.9 acres of possible old growth forest was identified, containing trees estimated to be in excess of 300 years old. These areas are identified as "Forest Reserves" in the Baseline Documentation Report.

The Conservation Attributes and present conditions of the Property are further described and set forth in a Baseline Documentation Report with the original on file with the Society for the Protection of New Hampshire Forests and a copy provided to the Grantor, the New Hampshire Fish and Game Department, and LCHIP.

1. PURPOSES

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

A. Protection of the natural habitat of species designated by the state as threatened, endangered or species of greatest conservation need that occur and may occur in the future on the Property; the protection of any known or potential exemplary natural communities that occur or may occur in the future on the Property, and the protection of rare or vulnerable forest and wetland communities that occur or may occur in the future on the Property; and

B. Conservation and protection of open spaces, particularly the conservation of the productive forest land of which the Property consists and of the wildlife habitat thereon including wetland, upland, and waterfowl/migratory bird habitat, and the long-term protection of the Property's capacity to produce economically valuable forestry products; and

C. Assurance that forestry activities conducted on the Property are performed in a manner

that maintains or enhances wildlife habitats, including habitat for neotropical migrant species; and

D. Enlargement and enhancement of a block of abutting and nearby conservation land that totals approximately 6,700 acres and includes but is not limited to the following conservation properties: the 859-acre Reiner Woodlands Conservancy Easement, the 4,872-acre Mount Kearsarge State Forest, and the 1,036-acre Kearsarge Wildlife Management Area; and

E. Protection of the quality of ground water, aquatic habitat, and surface water resources on and under the Property which are all within the watershed of the Blackwater River; and

F. Furtherance of the goals of the NH Wildlife Action Plan and the Wildlife Restoration Program administered by the Department of Interior, U.S. Fish and Wildlife Service (herein may also be referred to as the "Service"), including but not limited to the protection, management and enhancement of wild birds and mammals and their habitats; and

G. Protection of the Property for public pedestrian access including, but not limited to hunting, fishing, hiking, cross country skiing and nature observation. The above Purposes are consistent with the clearly delineated open space conservation goals and/or objectives as stated in the 2017 Master Plan of the Town of Salisbury, which states:

"OUR VISION... Salisbury fosters a high quality of life through preservation and enhancement of its rural character, historic heritage, and natural environment while meeting future service and infrastructure needs of its residents."

and as an action item

"We need to continue to be good stewards of our cultural heritage and natural environments. We will continue to work towards the preservation of open space and watersheds in connected networks. Our historic homes, the Village area, and scenic views should be preserved as part of the Town's heritage."

Lastly, as a recommendation

"Acquire important land or easements on important land within the Town through the Land Conservation Investment program (LCIP) or similar programs."

and with New Hampshire RSA Chapter 79-A which states:

"It is hereby declared to be in the public interest to encourage the preservation of open space, thus providing a healthful and attractive outdoor environment for work and recreation of the state's citizens, maintaining the character of the state's landscape, and conserving the land, water, forest, agricultural and wildlife resources;"

and with New Hampshire RSA 227-M, which states:

“The intent of the program is to conserve and preserve this state’s most important natural, cultural and historical resources through the acquisition of lands, and cultural and historical resources, or interests therein, of local, regional, and statewide significance, in partnership with the state’s municipalities and the private sector, for the primary purposes of protecting and ensuring the perpetual contribution of these resources to the state’s economy, environment and overall quality of life.”

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

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

2. **USE LIMITATIONS**

Subject to the reserved rights specified in Section 3 below, the Property shall be maintained in perpetuity as open space subject to the following use limitations:

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

i. **Description Forestry**

a. **Forestry**: For the purposes hereof, “Forestry” shall include the growing, stocking, cutting, and sale of forest trees of any size capable of producing timber or other forest products (including maple syrup), all as not detrimental to the Purposes of this Easement.

1. **Commercial Forestry**: For the purposes hereof, “Commercial Forestry” shall include all forestry and forest management activities performed for commercial or industrial purposes, including barter transactions, or wildlife habitat improvement that includes the commercial sale of forest products.

2. **Non-commercial Forestry**: For the purposes hereof, “Non-commercial Forestry” shall include non-commercial timber stand improvement activities, wildlife habitat improvement, and the small-scale cutting or harvesting of wood products for the domestic use of the Grantor, such as clearing trees to maintain the edge of a field, thinning the forest stand to maintain an existing view, or cutting up to twenty (20) cords of firewood per year for domestic consumption. Non-commercial Forestry shall not include activities conducted for the contemporaneous production of sale proceeds or other consideration.

ii. **Requirements for Forestry**:

a. Any and all Commercial and Non-commercial Forestry shall be carried out in accordance with all applicable local, state, and federal laws and regulations, and, to the extent reasonably practicable, in accordance with then-current, generally accepted best management practices for the sites, soils, and terrain of the Conservation Area which are recommended by the U.S. Department of Agriculture’s Natural Resources Conservation Service, the State of New Hampshire’s Department of Natural and Cultural Resources,

the University of New Hampshire's Cooperative Extension, or other governmental natural resource conservation and management agencies then active, and as may be articulated in publications by said entities as may be revised, updated, or superseded from time to time ("BMPs"). Forestry BMPs as of the execution of this Easement include but may not be limited to those contained in "Good Forestry in the Granite State: Recommended Voluntary Forest Management Practices for New Hampshire" and "New Hampshire Best Management Practices for Erosion Control on Timber Harvesting Operations" (NH Dept. of Resources & Economic Development, Division of Forests & Lands, & University of NH Cooperative Extension, dated, respectively, December 2010 and 2016).

No Commercial or Non-Commercial Forestry shall occur within areas of the Property identified as "Forest Reserves" without written permission from the State of New Hampshire, acting by and through the Fish and Game Department. Said "Forest Reserves" are identified and mapped in the Baseline Documentation Report on file with the Grantee and Grantor.

iii. Requirements for Commercial Forestry

- a. In addition to the requirements outlined in Section 2.A. above, Commercial Forestry shall be performed using silvicultural practices that enhance or maintain the value of timber while recognizing that the ecological, wildlife, aesthetic, or other non-timber values are important components of the forest. To the extent reasonably practicable, forestry shall meet the following goals:

The goals are:

- maintenance of soil productivity;
- protection of surficial geologic features such as, but not limited to, cliffs, talus slopes, and boulders;
- protection of water quality, wetlands, and riparian zones;
- maintenance or improvement of the overall quality of forest products;
- conservation of scenic quality and recreational access and trails;
- protection or enhancement of significant or fragile natural areas, exemplary natural communities, and threatened endangered and species of greatest conservation need, including their habitats;
- maintain habitat connectivity by minimizing construction of new roads, log landings, stream crossings and other activities that can impair wildlife movement;
- protection of significant historic and cultural features; and
- conservation or enhancement of native plant and animal species populations.

- b. Forest Management Plan Required. Any and all Commercial Forestry shall be performed in accordance with a written Forest Management Plan consistent with this Easement, prepared by a licensed professional forester, or by other qualified person approved in advance and in writing by the Grantee. Said Forest Management Plan shall have been prepared not more than ten (10) years prior to the date any commercial timber harvesting is expected to commence.

- c. Forest Management Plan Approval Process. The Grantor's licensed professional forester, or other qualified person approved in advance and in writing by the Grantee, shall draft a Forest Management Plan, prepared as outlined in Section 2.A.iii.d. herein.
- i. Prior to submitting the Forest Management Plan to Grantee for its final approval (see next paragraph), the Grantor shall submit a draft Forest Management 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.iii.a, the required content stated in Section 2.A.iii.d, and compliance with this Easement.
 - ii. After receiving the input from the Grantee, the Grantor shall submit the proposed Forest Management Plan to the Grantee for final approval at least sixty (60) days prior to forest management activities are proposed to be initiated.
 - iii. Within forty-five (45) days after Grantee's receipt of said Forest Management Plan, the Grantee shall approve or disapprove the Forest Management Plan with respect to its wildlife habitat impacts, consistency with the Purposes stated in Section 1, stewardship goals stated in Section 2.A.iii.a, the required content stated in Section 2.A.ii.d, 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 the Forest Management Plan within said period, Grantor may proceed with Commercial Forestry activities recognizing that the following paragraph applies.
- d. Forest Management Plan Content. Said Forest Management Plan shall include a statement of Grantor objectives, and shall specifically address:
- the accomplishment of those Purposes for which this Easement is granted;
 - the goals in Section 2.A.iii.a above;
 - the protection of the water quality and minimizing disturbance around and the crossing of ponds, streams and wetlands;
 - a map showing the Protected Property's boundaries, access roads, trails, and forest stand types;
 - a description of the Property's low-impact noncommercial recreational and educational uses and the boundary conditions;
 - a description and mapping of the Property's existing conditions and natural features including land cover, topography, soils, geology, wetlands, streams and ponds, and wildlife habitat features;
 - the identification of rare and threatened plant and wildlife species and species of greatest conservation need, and how management will enhance habitat for said plant or wildlife species or avoid detrimental impacts to said plant and wildlife species;
 - a description and mapping of any proposed structures as described in Section 2.C. below;
 - the proposed management prescriptions for wildlife habitat management, forestry, conservation, low-impact non-commercial recreation, and education; and
 - the proposed schedule of implementation of management prescriptions, including a schedule for boundary, road and trail maintenance.

- e. Forest Management Plan Updates. The Grantor shall submit an updated or revised Forest Management plan to the Grantee for approval if said Forest Management Plan is more than ten (10) years old or the Grantor proposes Commercial Forestry Activities that are not as described in the Forest Management Plan previously approved by the Grantee.
 - f. Forest Management Plan Approval Required. Prior to the Grantor conducting Commercial Forestry activities on the Property, the Grantor shall have a Forest Management Plan, or an updated or revised Forest Management Plan, that has been approved by the Grantee.
 - g. Forestry Compliance. The Grantor and Grantee acknowledge that the Forest Management Plan's purpose is to guide Commercial Forestry in compliance with this Easement and that the actual activities will determine compliance therewith.
 - h. Notification of Harvest. At least fifteen (15) days prior to any commercial timber harvest, the Grantee shall have received from the Grantor a written certification, signed by a licensed professional forester, or other qualified person approved in advance and in writing by the Grantee, that a commercial timber harvest will occur on the Property and that the proposed harvest is in compliance with the Forest Management Plan and the terms of this Easement.
 - i. Supervision of Harvest. Timber harvesting with respect to any Commercial Forestry shall be conducted in accordance with said Plan and be supervised by a licensed professional forester, or by other qualified person approved in advance and in writing by the Grantee.
 - j. Harvest in Visible Areas. In areas used by, or visible to the general public, such forestry shall be carried out, to the extent reasonably practicable, in accordance with the recommendations contained in "A Guide to Logging Aesthetics: Practical Tips for Loggers, Foresters, and Landowners" (Jones 1993), or similar successor publications.
- B. The Property shall not be subdivided and none of the individual tracts which together comprise the Property shall be conveyed separately from one another, except that a lease of any portion of the Property for a period of ten (10) years or less for any use permitted by this Easement shall not violate this provision.
- C. 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, or mobile home, shall be constructed, placed, or introduced onto the Property. However,
- i. 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; and
 - ii. unpaved pedestrian trails, informational kiosks and temporary wildlife blinds or tree stands may be constructed, placed, or introduced onto the Property only to the extent necessary to accomplish the low-impact noncommercial outdoor recreational or educational uses of the Property and provided that they are not detrimental to the Purposes of this Easement.

D. No removal, filling, or other disturbances of soil surface, nor any changes in topography, surficial geology, surface or subsurface water systems, wetlands, or natural habitat shall be allowed unless such activities:

- i. are commonly necessary in the accomplishment of forestry, conservation, habitat management, or low-impact noncommercial outdoor recreational uses of the Property; and
- ii. do not harm state or federally recognized threatened, endangered or species of greatest conservation need or exemplary natural communities, such determination of harm to be based upon information from the New Hampshire Natural Heritage Bureau or the agency then recognized by the State of New Hampshire as having responsibility for identification and/or conservation of such species and/or natural communities;
- iii. do not impact wetland vegetation, soils, hydrology, or habitat;
- iv. are not detrimental to the Purposes of this Easement.

E. No outdoor advertising structures shall be displayed on the Property except as desirable or necessary in the accomplishment of the forestry, conservation, or noncommercial outdoor recreational uses of the Property, and provided such structures are not detrimental to the Purposes of this Easement. No sign on the Property shall exceed twenty-four (24) square feet in size, and no sign shall be artificially illuminated.

F. 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 Sections 2.A., C., D., or E., above. No such rocks, minerals, gravel, sand, topsoil, or other similar materials shall be removed from the Property.

G. There shall be no dumping, injection, burning, or burial on the Property of man-made materials or materials then known to be environmentally hazardous or the dumping, injection, burning, or burial on the Property of natural materials, including but not limited to rocks, dirt, and stumps, that did not originate from the Property.

H. No rights-of-way or easements of ingress or egress in favor of any third party shall be created or developed into, on, over, or across the Property without the prior written approval of the Grantee, LCHIP, and the Regional Director of U.S. Fish and Wildlife Service except those of record as of the execution of this Easement and those specifically permitted in the provisions of this Easement.

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

J. Except as allowed in Section 3.A. below, the Grantor shall not operate or grant permission to operate motorized vehicles on the Property.

K. Pursuant to RSA 227-M:15, there is hereby conveyed to the public an affirmative right of pedestrian access to, on, and across the Property for hunting, fishing, and transitory, passive, outdoor educational or recreational purposes such as, but not limited to: hiking, wildlife and nature observation, and cross-county skiing, but specifically not conveying to the public an affirmative right of access for camping, biking, horseback riding, trapping, snowmobiling or

construction of trails or other improvements. Neither Grantee nor LCHIP shall be under any duty to supervise said public access or use.

The public's right of access conveyed hereby is subject to the following restrictions:

- i. Grantor reserves the right to post against public access to, on or across forestland during harvesting, establishment of plantations or other active forest management operations such as planting and thinning of trees, or the construction or maintenance of woods roads and trails.
- ii. Grantor reserves the right to temporarily restrict public access to all or portions of the Property during an emergency situation where public safety could be at risk.
- iii. Subject to the prior written approval of Grantee and LCHIP, which approval shall not be unreasonably withheld or delayed, Grantor reserves the right to limit or prohibit the public's right of access as necessary to halt problematic or abusive uses or behaviors where those uses or behaviors would have a detrimental impact on, or be inconsistent with, the Purposes described herein and/or when public safety would be at risk.
- iv. Grantor reserves the right to post signs on the Property communicating the restrictions or limitations contained in, or established under, this Section.
- v. Grantor reserves the right to limit or prohibit public access to, on or across, or use of, the Property for all uses, purposes, and activities not within the scope of the affirmative right of public access conveyed herein.
- vi. Nothing herein shall prohibit Grantor or Grantee from disallowing specific individuals or entities access under lawful court orders or injunctive relief.
- vii. Pursuant to NH RSA 227-M:15 III., no person or successor in title who has granted or sold rights of public access by virtue of this easement shall be liable to a user of that right of access for injuries suffered on that portion of the access unless those injuries are caused by the willful or wanton misconduct of the grantor or successor in title.

3. **RESERVED RIGHTS**

Subject to and notwithstanding the Affirmative Rights of the Grantee in Section 4:

A. **Motorized Vehicles.** The Grantor reserves the right to operate motorized vehicles for the purposes of maintenance and management of the Property or for emergency rescue operations only, including but not limited to forestry, conservation, habitat management, or for the control or removal of non-native or invasive species. All motorized vehicles shall be operated so as to minimize any detrimental impact on the Conservation Attributes or Purposes.

B. **Trails.** The Grantor shall have the right to maintain existing trails within and across the Property for permitted recreational uses. Grantor shall have the right to relocate existing trails or construct new trails in consultation with the Grantee and subject to the prior written approval of the Grantee. New or relocated trails shall comply with this Section 3 as applicable and shall be consistent with and not detrimental to the Purposes of this Easement and shall be constructed in conformance with best practices for trail building as recommended by the State of New Hampshire, Appalachian Mountain Club, or a similar trail-maintaining organization approved in advance by the Grantee. (For reference, see Appalachian Mountain Club, The Complete Guide to Trail Building and Maintenance, 4th edition; State of New Hampshire, Best Management

Practices for Erosion Control During Trail Maintenance and Construction, 2004; NH Fish and Game, Trails for People and Wildlife, 2019, or similar successor publications). At least thirty (30) days prior to undertaking any on-the-ground activities associated with the relocation or construction of trails, Grantor shall submit a written request for approval to the Grantee, which shall not be unreasonably withheld or delayed. All costs of such trail construction, maintenance or repair shall be borne by the Grantor.

C. Primitive Camping. Nothing contained herein shall be construed to limit the Grantor's right to camp or invite guests to camp on the Property with tents or similar, temporary, low-impact enclosures, but not with trailers, recreational vehicles, or other similar mobile structures, and all as not detrimental to the Conservation Attributes or in a manner inconsistent with the Purposes of this Easement. As part of this reserved right, the Grantor shall have the right construct one wooden tent platform and to have campfires associated with camping.

D. Governmental Approvals. Grantor shall carry out all activities and uses of the Property 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.

4. AFFIRMATIVE RIGHTS OF GRANTEE

- A. Access. The Grantee and LCHIP, and their agents and assigns, shall have reasonable access to the Property and all of its parts for such inspection as is necessary to determine compliance with and to enforce the terms of this Easement, to exercise the rights conveyed hereby, or to fulfill the responsibilities and carry out the duties assumed by acceptance of this Easement. The Grantee and LCHIP shall have the right to access the property over the Grantor's legal deeded rights of way in from West Salisbury Road (aka Mill Road) in the Town of Salisbury, Merrimack County, New Hampshire, and partially shown on a survey plan entitled "Plans of Proposed Access Roadway for Starling Childs, II in Salisbury, NH," C&S Engineering, Inc. Fox Pond Plaza, Loudon, New Hampshire, June 21, 1989, said plan being recorded in the Merrimack County Registry of Deeds as Plan #7787 and further described in the Easement Deeds recorded at the Merrimack Registry of Deeds in Book 1843, Page 1011, and over the Town of Salisbury's Map 214 Lot 4 as set forth in the Access Easement Deed of Cheryl O'Connor to Starling Winston Childs II dated December 9, 2019 and recorded with the Merrimack County Registry of Deeds at Book 3661, Page 2378.
- B. Signs. Grantee shall have the right to place, maintain, and replace signs on the Property follows:
- i. Signs to facilitate inspection of the Property and to identify the Property as conservation land protected by the Grantee, said signs to be located along the Property's boundaries with each sign not to exceed thirty (30) square inches in size.
 - ii. Signs identifying the Property as conservation land and/or recognizing funding entities who contributed to the conservation of the Property. Said signs shall be installed at a visible location on the Property mutually agreed upon by Grantor and Grantee. Grantee shall be responsible for ensuring that said sign(s) conform with applicable local, state, and federal regulations and shall bear the cost of installation.

5. **STEWARDSHIP RESPONSIBILITIES OF GRANTEE**

To comply with its obligations under this Easement, Grantee shall:

- A. Ensure annual monitoring inspection sufficient to confirm that the Property is being protected and maintained according to the terms of the Easement.
- B. Communicate with Grantor annually to ensure Grantor has an understanding and familiarity with their obligations under the terms of this Easement.
- C. Ensure a report summarizing the scope, scale, and findings of the annual monitoring inspection is submitted to NHFG on or before December 31st each year, or promptly upon discovery of any violation with the terms of this Easement. The annual monitoring report shall contain the following minimum components:
 - i. a date of inspection, method of inspection and description of the physical conditions and uses of the Property as observed.
- D. Promptly following the sale, conveyance or transfer of the Property, Grantee shall forthwith contact the successor Grantor and inform them of the Easement provisions and obligations.

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

- A. The Grantor agrees to notify the Grantee and LCHIP in writing at least ten (10) days prior to any transfer of title to the Property, and to provide Grantee with a copy of any recorded deeds conveying interest in the Property within thirty (30) days of recording.
- B. Neither Grantee nor LCHIP shall be under any obligation to maintain the Property or pay any taxes or assessments thereon. Grantee may, in its sole discretion, pay property taxes to avoid a tax sale of 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 only to the State of New Hampshire, the U.S. Government, or any subdivision of either of them, consistent with Section 170(c)(1) of the U.S. Internal Revenue Code of 1986, as amended, or to any qualified organization within the meaning of Section 170(h)(3) of said Code, which organization has among its purposes the conservation and preservation of land and water areas, agrees to and is capable of protecting the conservation purposes of this Easement, and has the resources to enforce the restrictions of this Easement (hereinafter "Qualified Holder"). Any such assignee or transferee shall have like power of assignment or transfer.

By virtue of the Wildlife Restoration Program Grant from the U.S. Fish and Wildlife Service for purchase of this Easement and the provisions set forth in the Notices of Grant Agreement attached hereto, 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.

8. **RESOLUTION OF DISAGREEMENTS**

- A. The Grantor and the Grantee desire that issues arising from time to time concerning uses or activities in light of the provisions of the Easement will first be addressed through candid and open communication between the Grantor and Grantee rather than unnecessarily formal or adversarial action. Therefore the Grantor and the Grantee agree that if either party becomes concerned whether any use or activity (which together for the purposes of this Section, "Resolution of Disagreements," shall be referred to as the "Activity") complies with the provisions of this Easement, wherever reasonably possible the concerned party shall notify the other party of the perceived or potential problem, and the parties shall explore the possibility of reaching an agreeable resolution by informal dialogue.
- B. If informal dialogue does not resolve a disagreement regarding the Activity, the Grantee may pursue its remedies in accordance with Section 9.
- C. If the Grantee believes that some action or inaction of the Grantor or a third party is causing irreparable harm or damage to the Property, the Grantee may seek a temporary restraining order, preliminary injunction or other form of equitable relief from any court of competent jurisdiction to cause the cessation of any such damage or harm, to enforce the terms of this Easement, to enjoin any violation by permanent injunction, and to require the restoration of the Property to its condition prior to any breach.

9. **BREACH OF EASEMENT – GRANTEE'S REMEDIES**

- A. If the Grantee determines that a breach of this Easement has occurred or is threatened, the Grantee shall notify the Grantor in writing of such breach and demand corrective action to cure the breach and, where the breach involves injury to the Property, to restore the portion of the Property so injured to its prior condition.
- B. The Grantor shall, within thirty (30) days after receipt of such notice or after otherwise learning of such breach, undertake those actions, including restoration, which are reasonably calculated to cure swiftly said breach and to repair any damage. The Grantor shall promptly notify the Grantee of its actions taken hereunder.
- C. If the Grantor fails to perform its obligations under the immediately preceding paragraph above, or fails to continue diligently to cure any breach until finally cured, the Grantee may undertake any actions that are reasonably necessary to repair any damage in the Grantor's name or to cure such breach, including an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury.
- D. If the Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation features of the Property, the Grantee may pursue its remedies under this Section, "Breach of Easement..." without prior notice to the Grantor or without waiting for the period provided for cure to expire.

- E. The Grantee shall be entitled to recover damages from the party directly or primarily responsible for violation of the provisions of this Easement or injury to any conservation features protected hereby, including, but not limited to, damages for the loss of scenic, aesthetic, or environmental attributes of the Property. Without limiting the Grantor's liability therefore, the Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.
- F. The Grantee's rights under this Section, "Breach of Easement...", apply equally in the event of either actual or threatened breach of this Easement, and are in addition to the provisions of the preceding Section, "Resolution of Disagreements," which section shall also apply to any disagreement that may arise with respect to activities undertaken in response to a notice of breach and the exercise of the Grantee's rights hereunder.
- G. The Grantor and the Grantee acknowledge and agree that should the Grantee determine, in its sole discretion, that the conservation features protected by this Easement are in immediate danger of irreparable harm, the Grantee may seek the injunctive relief described in the third paragraph of this Section, "Breach of Easement...", both prohibitive and mandatory, in addition to such other relief to which the Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The Grantee's remedies described in this Section, "Breach of Easement...", shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
- H. Provided that the Grantor is directly or primarily responsible for the breach, all reasonable costs incurred by the Grantee in enforcing the terms of this Easement against the Grantor, including, without limitation, staff and consultant costs, reasonable attorneys' fees and costs and expenses of suit, and any costs of restoration necessitated by the Grantor's breach of this Easement shall be borne by the Grantor; and provided further, however, that if the Grantor ultimately prevails in a judicial enforcement action each party shall bear its own costs. Notwithstanding the foregoing, if the Grantee initiates litigation against the Grantor to enforce this Conservation Easement, and if the court determines that the litigation was initiated without reasonable cause or in bad faith, then the court may require the Grantee to reimburse the Grantor's reasonable costs and reasonable attorney's fees in defending the action.
- I. Forbearance by the Grantee to exercise its rights under this Easement in the event of any breach of any term thereof by the Grantor shall not be deemed or construed to be a waiver by the Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of the Grantee's rights hereunder. No delay or omission by the Grantee in the exercise of any right or remedy upon any breach by the Grantor shall impair such right or remedy or be construed as a waiver. The Grantor hereby waives any defense of laches or estoppel.
- J. Nothing contained in this Easement shall be construed to entitle the Grantee to bring any action against the Grantor for any injury to or change in the Property resulting from causes beyond the Grantor's control, including, but not limited to, unauthorized actions by third parties, natural disasters such as fire, flood, storm, disease, infestation and earth movement, or from any prudent action taken by the Grantor under emergency conditions

to prevent, abate, or mitigate significant injury to the Property resulting from such causes. The Grantee and the Grantor reserve the right, separately or collectively, to pursue all legal and/or equitable remedies, as set forth in this Section," Breach of Easement..." against any third party responsible for any actions inconsistent with the provisions of this Easement.

10. **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.

11. **RIGHT OF ENFORCEMENT**

- A. If Grantee ceases to enforce the Easement conveyed hereby, or fails to enforce it within thirty (30) calendar days after receipt of written notice from LCHIP delivered to the Grantee 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 Grantee to enforce, and further requesting such enforcement, then LCHIP 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.
- B. In the event LCHIP exercises its rights of enforcement under this Easement it is entitled to recover any and all administrative and legal costs associated with any action related thereto from SPNHF, including, but not limited to, attorney and consultant fees, staff costs, and other reasonable expenses related to Grantee's failure to enforce the Easement. However, if LCHIP initiates litigation against the Grantee to enforce the terms of the Easement due to Grantee's failure to enforce, 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 LCHIP initiated litigation against the Grantee without reasonable cause or in bad faith, then the court may require LCHIP reimburse the Grantee's reasonable costs incurred in defending the action.
- C. The interest held by LCHIP are assignable or transferable to any "Qualified Holder" as defined in Section 7 "Benefits and Burdens" herein. Any such assignee or transferee shall have like power of assignment or transfer.
- D. LCHIP does not waive or forfeit the right to take action to ensure compliance with this Easement by any prior failure to act, and Grantee and Grantor hereby waive any defense of laches with respect to any delay or omission by LCHIP in acting enforce any restriction or to exercise any rights under this Easement, any such delay or omission shall not impair LCHIP's rights or remedies, or be construed as a waiver.

12. **NOTICES**

All notices, requests, or 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 by certified

mail, postage prepaid, return receipt requested to the appropriate address set forth above or at such other address as the Grantor, Grantee, or LCHIP may hereafter designate by notice given in accordance herewith. Notice shall be deemed to have been given when so delivered or so mailed.

13. **GOVERNING LAW, INTERPRETATION AND SEVERABILITY**

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 the Easement, especially in the case of any ambiguity in the meaning or interpretation of any terms or provisions of this Easement. In the event that any provision or clause in this Easement conflicts with applicable law, such conflict shall not affect other provisions hereof which can be given effect without the conflicting provision. To this end the provisions of this Easement are declared to be severable.

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

14. **EXTINGUISHMENT & CONDEMNATION**

- A. **Extinguishment.** If circumstances arise in the future such as render the Purposes of this Easement impossible or impracticable to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which Grantor and 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 allocated in accordance with Section 14.C below.

In making this grant of Easement, Grantor has considered and acknowledges the possibility that uses prohibited by the terms of this Easement may become more economically viable than the uses specifically reserved by Grantor pursuant to this Easement. It is the intent of both Grantor and Grantee that any such change in economic conditions shall not be deemed to be circumstances justifying the termination or extinguishment of this Easement pursuant to this Section.

- B. **Condemnation.** If all or any part of the Property is taken, in whole or in part, by exercise of the power of eminent domain or is acquired by purchase in lieu of condemnation, whether by public, corporate or other authority, so as to terminate this Easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of their interests in the Property subject to the taking or in lieu purchase and to recover all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered. The amount of the proceeds to which the Grantor and Grantee shall be entitled, after payment of any expenses, shall be allocated in accordance with Section 14.C below.
- C. **Valuation.** This Easement constitutes a real property interest immediately vested in Grantee with a proportionate ownership value of thirty-four and nine-tenths percent (34.9%) of the appraised fair market value of the unrestricted Property at the time of this

grant, which proportionate value shall remain constant ("Grantee's Proceeds"). The proportionate value of the Easement was determined by a qualified appraisal prepared March 16, 2021 with effective date of June 8, 2020, by Robert Lamprey, a qualified appraiser licensed in the State of New Hampshire, copies of which are in possession of the Grantor and the Grantee. The proportionate value of the Easement includes \$182,500 in easement value donated to Grantee by Grantor.

For purposes of Sections 14.A and 14.B, the proceeds recovered subsequent to extinguishment, or the proceeds from any condemnation, as the case may be, shall be divided between the Grantor and the Grantee based on this proportionate value of the Easement to the fair market value of that part of the Property extinguished or condemned.

- D. Allocation of Grantee's Proceeds. The Parties agree that the Grantee's Proceeds shall be further allocated between SPNHF and NHFG as follows:
- i. By virtue of the Wildlife and Sport Fish Restoration Program grant received by NHFG from the Service for the purchase of this Easement, and of the provisions set forth in the Notice of Federal Grant Participation (attached hereto as Appendix B), Service shall be entitled to NHFG's forty-one and seven tenths percent (41.6%) of the Grantee's Proceeds, and
 - ii. SPNHF shall be entitled to the balance, or fifty-eight and three tenths percent (58.4%), of the Grantee's Proceeds. SPNHF shall use any proceeds received pursuant to this Section 14 in a manner consistent with the conservation Purposes of this Easement and NH RSA 227-M.

15. **ADDITIONAL EASEMENT**

Should the Grantor determine that the expressed Purposes of this Easement could better be effectuated by the conveyance of an additional easement, the Grantor, with prior written approval from the SPNHF, NHFG, LCHIP, and the Regional Director of the Service may execute an additional instrument to that effect, provided that the conservation Purposes of this Easement are not diminished thereby and that a Qualified Holder as described in Section 7 "Benefits and Burdens," above, accepts and records the additional easement.

16. **AMENDMENT & DISCRETIONARY CONSENT**

- A. The Grantor, Grantee, and LCHIP 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 Grantee, as further described below. To this end, the Grantor, Grantee and LCHIP have the right to agree to amendments to this Easement, and the Grantee may exercise discretionary consent, all in accordance with:

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

Any amendment or exercise of discretionary consent shall be:

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

- Not affect the qualification of this Easement or the status of the Grantee under any applicable laws, including Sects. 170(c)(1) and 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;
 - Shall have prior written approval from the Regional Director of the U.S. Fish and Wildlife Service; and
 - Not affect the perpetual duration of this Easement or the perpetual protection of its Purposes.
- B. Any request by the Grantor 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 Grantee to judge the consistency of the request and of the proposed activity with the Purposes and other terms and conditions of this Easement. To evaluate and then make a determination on the Grantor's request, the Grantee shall have the right to engage independent experts necessary for the Grantee to evaluate the adequacy of the proposal at the Grantor's sole expense. 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 would enhance said Purposes and/or Conservation Attributes, then the Grantee shall evaluate the net effect of such impacts when considering any amendment or exercise of discretionary consent. Nothing in this Section 16 shall require the Grantee or LCHIP to consider, negotiate, or approve any proposed amendment or request for discretionary consent.
- C. Amendments. Any amendment shall be executed by the Grantor, Grantee and LCHIP, subject to review by the N.H. Attorney General's Office, Charitable Trusts Division as necessary, the Regional Director of the U.S. Fish and Wildlife Service and shall be recorded in the Merrimack County Registry of Deeds.
- D. Discretionary Consent. If the Grantor and the Grantee agree that any activity otherwise prohibited herein or not contemplated by the Easement is desirable, and if the Grantee 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 Grantee may then consent to such activity under the conditions and circumstances described herein only after consulting the Regional Director of U.S. Fish and Wildlife Service. The Grantee's consent to a proposed use or activity may be limited or restricted in time, locale, or by ownership, and shall be in writing.
- E. Notwithstanding the foregoing, the Grantor, Grantee, and LCHIP 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. **GENERAL DISCLAIMER**

The State of New Hampshire and LCHIP and the employees, agents, and assigns of each disclaim and will not be held responsible for negligent acts or omissions or breach of any representation, warranty, covenant, or agreements contained in this Easement by the other parties to 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 the State of New Hampshire or LCHIP, acting through their respective interests in this Easement may be subject or incur relating to the Property.

18. 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 the Grantee and LCHIP 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 or LCHIP 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.

19. TITLE WARRANTY

Grantor warrants that it has good title to the Property and shall defend against all claims that may be made against it; that Grantor has the right to convey this Easement; and that the Property is free and clear of any encumbrances, other than those of record.

20. FEDERAL GRANT

The Easement on the above-described Property is acquired, in part, with funding received by the Grantee from Grant Agreement Number F14AF01270 (NH-W-108-L-1) between the Service and the State of New Hampshire Fish and Game Department as Grantee. All present and future terms and conditions of the Property are and shall remain subject to the terms and conditions described in the Notice of Federal Grant Participation (attached hereto as Appendix B), and to the other administrative requirements of the applicable grant funding program of the Service. 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 Purposes for which this Easement is delivered.

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

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of _____, 2021.

GRANTOR

Starling Winston Childs, II.

STATE OF CONNECTICUT
COUNTY OF _____, ss.

On this ____ day of _____, 2021, before me personally appeared **Starling Winston Childs, II**, known to me, or satisfactorily proven, to be the people whose names are subscribed to the foregoing instrument, and acknowledged that they executed the same as their free act and deed for the purposes therein contained.

Notary Public/Justice of the Peace
My commission expires:

ACCEPTED: SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE FORESTS

By: _____

Title: _____
Duly Authorized

Date: _____



STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK, ss.

On this _____ day of _____, 2021, before me personally appeared Jackson Davis Savage, known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing instrument, and acknowledged that she executed the same as her free act and deed for the purposes therein contained.

Notary Public/Justice of the Peace
My commission expires:

ACCEPTED: STATE OF NEW HAMPSHIRE FISH & GAME DEPARTMENT

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

The State of New Hampshire
County of Merrimack

Personally appeared Scott R. Mason, Executive Director of the New Hampshire Fish and Game Department, this 30th day of AUGUST, 2021 and being duly authorized acknowledged the foregoing on behalf of the State of New Hampshire.

LYNN H. GALLOP, Notary Public
State of New Hampshire
My Commission Expires September 7, 2021

Lynn Gallup
Notary Public/Justice of the Peace
My commission expires:

Approved by the Governor and Executive Council: _____, Item #: ____

Accepted: Right of Enforcement
LAND AND COMMUNITY HERITAGE INVESTMENT AUTHORITY

By _____
Dorothy T. Taylor, Executive Director
Duly Authorized

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK, ss.

On this _____ day of _____, 2021, before me the undersigned officer, personally appeared Dorothy T. Taylor known to me (or satisfactorily proven) to be the authorized agent of the Land and Community Heritage Investment Program Authority and that being authorized so to do on behalf of such entity, executed the foregoing instrument for the purposes therein contained.

Notary Public/Justice of the Peace
My commission expires:

APPENDIX A

Legal Description

The "Property" subject to this Easement is that tract of land with any and all structures and improvements thereon situated on consisting of approximately 579 acres, more or less, located off West Salisbury Road (aka Mill Road) in the Town of Salisbury, Merrimack County, New Hampshire, more particularly bounded and described in Appendix "A" attached hereto and made a part hereof and shown on a survey plan entitled "Property Survey for Dalphond Brothers, Inc., Merrimack County, Salisbury, N.H., July 1976, Scale 1" = 200', Hirst Lot", Pike Industries, Route 3, Tilton, Ronald J. Natoli R.L.S., said plan being recorded with the Merrimack County Registry of Deeds as Plan #7787 (hereafter "Survey Plan"), and more particularly bounded and described as follows:

Beginning at a point at a 12" Hemlock tree, at the so-called "Tuttle Lot" now or formerly of Clarence McKenzie; thence running by a stone wall and land now or formerly of Clarence McKenzie by the following courses and distances: North 62° 15' West 757 feet, more or less; North 62° West 432 feet, more or less; North 62° 30' West 537 feet, more or less to an angle in said wall; thence South 43° 00' West 27 feet, more or less; South 23° 15' West 144 feet, more or less; South 26° 45' West 1236 feet, more or less; South 25° 15' West 384 feet, more or less, to a stone bound at land now or formerly of Fred Courser and shown said Survey Plan as the "Rogers Lot", so-called; thence running by land of said Fred Courser known as the "Rogers Lot" so-called, he "Couch Lot" so-called, "Moore Pasture", so-called and the "Pettingill-Jones-Gardner", Tract 2 by the following courses and distances: North 67° 00' West 154 feet, more or less; North 73° 00' West 296 feet, more or less; South 86° 45' West 121 feet, more or less; North 81° 45' West 229 feet, more or less; North 77° 00' West 212 feet, more or less; North 81° 15' West 1001 feet, more or less; North 85° 00' West 374 feet, more or less, to a stone wall; thence turning and running South 28° 00' West 859 feet, more or less by said stone wall to a brook; thence turning and running in a generally Northwesterly and Northerly direction by said brook a distance of 1166 feet, more or less; thence turning and running North 75° 30' West 209 feet, more or less; North 75° 45' West 449 feet, more or less; North 77° 15' West 679 feet, more or less; thence turning and running North 57° 45' East 161 feet, more or less; North 60° 00' East 442 feet, more or less; North 60° 00' East 2782 feet, more or less to a pile of stones at a stone wall; thence running North 26° 30' East 1244 feet, more or less; North 24° 45' East 893 feet, more or less; North 24° 00' East 413 feet, more or less to land now or formerly of Will Dunlop; thence turning and running North 83° 00' East by said land of Dunlop and a stone wall, a distance of 446 feet, more or less to a point; thence running North 80° 15' East 541 feet, more or less to a stake and stones at the boundary line between land of Dunlop and land now or formerly E. R. Riener; thence running North 64° 15' East by said land of Riener and a stone wall, a distance of 142 feet, more or less; thence running North 79° 15' East still by said land of Riener and a stone wall, a distance of 1593 feet, more or less to the end of the stone wall; thence running North 79° 45' East 2034 feet, more or less to a stake and stones at land now or formerly of Rey Prince; thence turning and running South 13° 15' West by said land of Prince, a distance of 1908 feet, more or less to a point; thence running South 30° 15' West 39 feet, more or less to a point; thence turning and running South 02° 30' West 119 feet to a point; thence turning and running South 27° 00' West 1277 feet to a point; Thence running South 27° 45' West 334 feet, more or less; thence running South 31° 45' West 255 feet, more or less; thence running South 27° 30' West 346 feet ,

more or less; thence running South 26° 15' West 1312 feet, more or less to the point of beginning. Containing 579 acres, more or less.

SUBJECT TO the following:

1. Current Use Taxation by the Town of Salisbury, NH recorded August 23, 1979 at Merrimack County Registry of deeds at Book 1354, Page 763.
2. Current Use Taxation by the Town of Salisbury, NH recorded June 30, 1976 at said Registry at Book 1275, Page 737.
3. Matters set forth on a certain Plan entitled, "Property Survey for Dalphond Bros, Inc. Merrimack County, Salisbury, N.H. 'Hirst Lot'" dated July 1976 and recorded with the Merrimack County Registry of Deeds as Plan# 7787.
4. Right of Benjamin Pettingill reserved indeed of Roy B. Gookin to Philip H. Blodgett dated July 25, 1927 and recorded with said Registry at Book 491, Page 324.
5. The Premises are benefited by and subject to a right of way easement in and to a roadway that accesses the Premises and crosses the Premises. The access easement was conveyed to StarlingW. Childs II by deed of Cacel Enterprises, Inc. dated April 12, 1990 which easement deed is recorded at Book 1843, Page 1011 of said Registry. The Easement Deed states that the conveyance is subject to an agreement between the parties relative to the easement and right of way. This Agreement is NOT OF RECORD. The easement crosses the Premises conveyed to StarlingWinston Childs II by warranty Deed of Cacel Enterprises, Inc. dated July 21, 1988 and recorded with said Registry at Book 1734, Page 848.
6. Matters set forth on a certain Plan entitled "Plans of Proposed Access Roadway for Starling Childs, II in Salisbury, N.H." dated June 21, 1989 and recorded with said Registry as Plan# 11778.
7. An access easement from Starling Winston Childs II to Cheryl O'Connor dated December 31, 2019 and recorded with said Registry at Book 3661, Page 2376 as affected by Affidavit recorded at Book 3668, Page 1333.

TOGETHER WITH, the benefit of a right of way from West Salisbury Road (aka Mill Road) in the Town of Salisbury, Merrimack County, New Hampshire, and shown on a survey plan entitled "Plans of Proposed Access Roadway for Starling Childs, II in Salisbury, NH," C&S Engineering, Inc. Fox Pond Plaza, Loudon, New Hampshire, June 21, 1989, said plan being recorded in the Merrimack County Registry of Deeds as Plan #7787 and further described in the Easement Deeds recorded at the Merrimack Registry of Deeds in Book 1843, Page 1011. Also an access easement over the Town of Salisbury's Map 214 Lot 4 set forth in Access Easement Deed of Cheryl O'Connor to Starling Winston Childs II dated December 9, 2019 and recorded with the Merrimack County Registry of Deeds at Book 3661, Page 2378. Along with any and all rights Grantor may have over the Wilder Pond Road for access to the Property by the public and for monitoring purposes

MEANING AND INTENDING to describe the premises conveyed to Starling Winston Childs, II, by Cacel Enterprises, Inc., by Warranty deed dated July 21, 1988 and recorded at the Merrimack Registry of Deeds in Book 1734, Page 0848.

This is not homestead property of the Grantor.

APPENDIX B
Notice of Federal Grant 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 dated September 1, 2014 between the Service and the Department, which includes the entire file on this project (hereinafter GRANT AGREEMENT). 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 wildlife habitats for wild birds and mammals and providing public access to these resources 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 title encumbered, in whole or in part, to any other party or for any other use, whatsoever, without first notifying and requesting instructions of the 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:_____

APPENDIX C
LAND AND COMMUNITY HERITAGE INVESTMENT PROGRAM
GRANT AGREEMENT

The Society for the Protection of New Hampshire Forests ("Recipient") as recipient of a \$180,000 financial assistance grant from the Land and Community Heritage Investment Program ("LCHIP") in support of Recipient's acquisition of the above described conservation easement from **Starling Winston Childs, II** on ~579-acre parcel of land more or less, located off West Salisbury Road (aka Mill Road) in the Town of Salisbury, Merrimack County, New Hampshire (the "Easement Area"), agrees to the following conditions:

1. Recipient shall acquire a conservation easement on the Easement Area pursuant to RSA 477:45-47, with an Executory Interest granted to the State of New Hampshire and a right of enforcement granted to LCHIP (the "Deed") and further requiring that the Property be maintained for the purposes set forth in RSA 227-M;
2. Recipient shall return to LCHIP any grant funds herein provided in the event of a material breach of the terms of this Agreement, material misrepresentations made by Recipient during the LCHIP grant application process, a material breach of Recipient's obligations under the Deed, or an uncured cloud on or failure of title for any portion of the easement interest acquired in the Deed in proportion to the value of the portion of the easement interest with defective title;
3. Recipient shall carry out easement stewardship activities on the Property in accordance with the *LCHIP Criteria, Guidelines and Procedures Rev. Date 1.14.19 ("Guidelines")* and with the Standards and Practices for Conservation Easement Stewardship as published by the Land Trust Alliance; which activities shall include:
 - a. marking and maintaining the exterior boundary lines of the Easement Area in a manner sufficient to ensure they remain easily distinguishable over a reasonable period of time;
 - b. insuring at least one inspection of the Easement Area is conducted per calendar year. Said inspection to be conducted so as to reasonably determine that no activities or uses inconsistent with the Deed, this Agreement, or NH RSA 227-M, are occurring on the Easement Area; and
 - c. ensuring an annual report is submitted to LCHIP on or before the annual reporting deadline established by LCHIP, which report shall contain:
 - i. the inspection date and the name, title, address and signature of the person(s) conducting the inspection;
 - ii. a description of the conditions on the Easement Area and any activities taking place thereon;
 - iii. a description of any physical changes to the Easement Area, whether natural or human-made;
 - iv. a map of the route taken in conducting any on-the-ground inspection;
 - v. photographs of any material observations; and

- vi. other reasonable information, documentation or other material as may be requested from time to time by LCHIP;
- 4. Recipient shall take all reasonable steps to proactively investigate and address any challenge, known or suspected, to the purposes and intent of this Agreement or the Deed, to work diligently to cure any violation of those terms or that may be discovered and to promptly inform LCHIP in writing of any actions taken to resolve any known or potential violation of the terms of the Deed or this Agreement;
- 5. Recipient shall deliver to LCHIP copies of any notice of violation or lien relating to the Easement Area it receives from any government authority within ten (10) business days of receipt. Upon request by LCHIP, Recipient shall promptly furnish LCHIP with evidence of compliance with such notice or lien where compliance is required by law.
- 6. Recipient shall provide the names of any successors in title to the Easement Area or any interest in the Easement Area to LCHIP no more than twenty (20) business days following any sale, transfer or conveyance of any portion of same;
- 7. Any materials Recipient produces or approves promoting or publicizing the Easement Area, including on-site kiosks, informational signs, guides or brochures, will include the intent of the following statement: "This Property (name may be used) protected with assistance from the Land and Community Heritage Investment Program";
- 8. Recipient shall place a sign, if provided by LCHIP, at a prominent location on the Easement Area and accept financial responsibility for the repair or replacement in-kind of said sign, if requested to do so by LCHIP; and
- 9. Recipient shall allow LCHIP to make photographs, drawings, or other representations documenting the Easement Area and distribute them to magazines, newsletters, or other publicly available publications, or use them to fulfill its charitable and educational purposes, with proper acknowledgment and designation of Recipient.

LCHIP RIGHT OF ACCESS AND ENFORCEMENT

LCHIP shall have reasonable access to the Easement Area and all of its parts for such inspection as necessary to determine compliance with and enforce the terms of this Agreement and to exercise the rights conveyed hereby and to carry out the duties assumed by LCHIP under this Agreement.

AMENDMENT

If circumstances arise under which an amendment to or modification of this Agreement would be appropriate, Recipient and LCHIP may by mutual written agreement jointly amend this Agreement. Any such amendment shall not negatively impact the protection of the Conservation Values of the Easement Area or the purposes of the Grant Award, shall not permit any private inurement to any person or entity, and shall not adversely impact the overall conservation and natural resource values protected by the Deed and this Agreement. Nothing in this paragraph shall require Recipient or LCHIP to agree to any amendment or to consult or negotiate regarding any proposed amendment.

ASSIGNMENT

LCHIP may convey, assign, or transfer its rights and obligations under this Agreement to any party qualified by the State of New Hampshire to become LCHIP's assignee or transferee, who shall have like power upon such assignment or transfer. Recipient may convey, assign or transfer its rights and obligations under this Agreement to any qualified applicant or to an agency of the State of New Hampshire pursuant to NH RSA 227-M:8 II, subject to LCHIP's prior approval.

LCHIP'S REMEDIES

LCHIP may, following reasonable written notice to Recipient, institute suit(s) to enjoin any violation of the terms of this Agreement by ex parte, temporary, preliminary, and/or permanent injunction, including prohibitory and/or mandatory injunctive relief. LCHIP shall also have available all legal and other equitable remedies to enforce Recipient's obligations hereunder. In the event Recipient is found to have violated any of its obligations under this Agreement, Recipient shall reimburse LCHIP for any costs or expenses incurred in connection with LCHIP's enforcement of the terms of this Agreement, including but not limited to all reasonable court costs, and legal, administrative or other costs. Exercise by LCHIP of one remedy hereunder shall not have the effect of waiving or limiting any other remedy, and the failure to exercise any remedy shall not have the effect of waiving or limiting the use of any other remedy or the use of such remedy at any other time.

SEVERABILITY

This instrument is made pursuant to NH RSA 227-M, but the invalidity of such act or any part thereof shall not affect the validity and enforceability of this Agreement according to its terms, it being the intent of the parties to agree and to bind themselves, their successors, and their assigns in perpetuity whether this instrument be enforceable by reason of any statute, common law, or private agreement in existence either now or hereafter. The invalidity or unenforceability of any provision of this instrument shall not affect the validity or enforceability of any other provision of this instrument or any ancillary or supplementary agreement relating to the subject matter thereof.

INDEMNIFICATION

Recipient hereby agrees to pay, protect, indemnify, and hold harmless and defend at its own cost and expense, LCHIP, its agents, trustees, directors, officers and employees, or independent contractors from and against any and all claims, liabilities, expenses, costs, damages, losses, and expenditures (including reasonable attorneys' fees and disbursements hereafter incurred) arising out of or in connection with injury to or death of any person; physical damage to the Easement Area; the presence or release in, on, or about the Easement Area, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any law, ordinance, or regulation as a hazardous, toxic, polluting, or contaminating substance; or other injury or other damage occurring on or about the Easement Area unless such injury or damage is caused by LCHIP or any agent, trustee, director, officer, employee, or independent contractor of LCHIP. Provided, however, that nothing contained herein shall jeopardize the priority of any recorded lien of mortgage or deed of trust given in connection with a promissory note secured by the Easement Area.

INTERPRETATION

Nothing contained herein shall be interpreted to authorize or permit Recipient to violate any law, ordinance or regulation. In the event of any conflict between any such ordinance or regulation and the terms hereof, Recipient promptly shall notify LCHIP of such conflict and shall cooperate with LCHIP and the applicable governmental entity to accommodate the purposes of both this Agreement and such ordinance or regulation. To the extent that any action taken by LCHIP pursuant to this Agreement gives rise to a claim of breach of contract, Recipient and LCHIP agree that the sole remedy on the part of Recipient shall be reimbursement of actual direct out-of-pocket expenses reasonably incurred by Recipient as a result of such breach and that Recipient shall not have any right to indirect, consequential or monetary damages in excess of such actual direct out-of-pocket expenses.

NO WAIVER OF RIGHT TO TAKE ACTION

LCHIP does not waive or forfeit the right to take action as may be necessary to insure compliance with this Agreement by any prior failure to act and Recipient hereby waives any defense of laches with respect to any delay or omission by LCHIP in acting to enforce any restriction or exercise any rights under this Agreement and any such delay or omission shall not impair LCHIP's rights or remedies or be construed as a waiver.

FOR THE LAND AND COMMUNITY HERITAGE INVESTMENT PROGRAM

By: _____
Dorothy T. Taylor, Executive Director
Duly authorized

_____ Date

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK, ss.

On this ____ day of _____, 2021, before me personally appeared Dorothy T. Taylor, known to me or satisfactorily proven to be the person whose name appears above, and she acknowledged that she executed this document in the capacity indicated above.

Justice of the Peace/Notary Public
My commission expires: _____

FOR THE SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE FORESTS

Duly Authorized

_____ Date

Print Name and Title Above

STATE OF NEW HAMPSHIRE
COUNTY OF _____

On this ____ day of _____, 2021, before me personally appeared _____ known to me or satisfactorily proven to be the person whose name appears above, and s/he acknowledged that s/he executed this document in the capacity indicated above.

Before me, _____
Justice of the Peace/Notary Public
[seal]
My commission expires: _____

APPENDIX D

Childs Property Conservation Easement

Stewardship Cooperative Agreement

between the

New Hampshire Fish and Game Department

and

Society for the Protection of New Hampshire Forests

Whereas, the **Starling Winston Childs, II** owns approximately 579 acres of contiguous property in the Town of Salisbury (the **PROPERTY**);

Whereas, the **PROPERTY** contains high value natural resources including forestland, wetlands, vernal pools, talus slopes and streams;

Whereas, the **PROPERTY** provides habitat for forest dwelling birds and bats, and wide ranging mammals such as bear, moose and deer;

Whereas, the **Society for the Protection of New Hampshire Forests (SPNHF)** and the **New Hampshire Fish and Game Department (NHFG)** consider the **PROPERTY** to be a land conservation priority;

Whereas, **SPNHF** and **NHFG** have entered into a purchase and sales agreement with an Effective Date of October 15, 2021, with **Starling Winston Childs, II** (together with his heirs, successors, and assigns, the “**GRANTOR**”) to purchase the above Conservation Easement (the “**Easement**”) for \$247,500 on the **PROPERTY**, with said Easement to be substantially in the form above;

Whereas, **NHFG** has pledged \$134,400 towards the purchase of the Easement and associated transaction costs;

Whereas, **SPNHF** is committed to raising the additional funds needed to complete the project; and

Whereas, **SPNHF** and **NHFG** have agreed to co-hold the Easement subject to this Agreement.

Now therefore, the Society for the Protection of New Hampshire Forests and the New Hampshire Fish and Game Department hereby agree to the following Stewardship Cooperative Agreement (**Agreement**):

1. Statement of Purposes and Relationships

This Agreement applies to the Easement described above and to be co-held by the Society for the Protection of New Hampshire Forests and the New Hampshire Fish and Game Department (together referred to in the Easement as the “**Grantee**,” and for the purposes of this Agreement as the “**Party**” or “**Parties**,” as the context may require) on 579 acres in

Salisbury currently owned by Starling Winston Childs, II. Said Easement shall be substantially in the form of the conservation easement above and made a part hereof.

The purpose of this Agreement is to define and clarify the respective roles of SPNHF and NHFG and to delegate certain stewardship responsibilities with respect to the Easement.

Generally speaking, and as further defined herein, SPNHF will assume primary responsibility for preparing the baseline information and maintaining stewardship files on the PROPERTY, monitoring the Easement, responding to requests for approval as required in the Easement, investigating potential Easement violations, and coordinating the response to confirmed violations as "Grantee."

For the purposes of discharging responsibilities under this Agreement or addressing issues within the purview of this Agreement, the following individuals are designated as contact people:

For SPNHF: Vice President for Land Conservation, (603)-224-9945.

For NHFG, Habitat Program Supervisor for the Wildlife Division (603) 271-3511

Either Party may change these contact designations at any time, and agree to notify the other of any change in these designations.

This Agreement shall remain effective for a ten (10) year term commencing on the date of acquisition of the Easement through _____ (the "Expiration Date"). Prior to the Expiration Date, the Parties agree to review and revise this Agreement as necessary. If no changes to the document are required, the Agreement shall automatically renew for an additional ten-year term, which additional term shall be subject to the aforementioned review and revision procedure. This Agreement may be amended at any time by the written agreement of the Parties.

2. Assignment of Stewardship Responsibilities to SPNHF

This assignment shall constitute a delegation to SPNHF by NHFG of stewardship rights and responsibilities as Grantee under the Easement. Such assignment shall not constitute a delegation of any rights or responsibilities not addressed in the Agreement. Subject to the limitations of this Agreement, NHFG agrees to refer all stewardship issues to SPNHF. SPNHF shall notify the Grantor and the Right of Enforcement Holder identified in the Easement, of this Agreement and assignment of rights and responsibilities herein contained.

Except as limited by Section 9 below, the assignment may be terminated by either Party with written notice to the other Party.

SPNHF shall not alter, amend, modify or terminate the Easement responsibilities assigned hereunder, nor may it give, grant, sell, convey, transfer, pledge or otherwise encumber the Easement except as provided in Section 3 of this Agreement, and in the Easement.

Notwithstanding the foregoing, with the consent of NHFG, SPNHF may delegate to a qualified local or regional conservation organization limited stewardship tasks or responsibilities with respect to the Easement provided that such delegation is consistent with the rights and responsibilities of the Parties under this Agreement and that the delegation is contained in a written contract approved by each Party.

3. Amendments to the Conservation Easement

The Easement may not be amended without the prior written consent of each Party, and the Regional Director of the U.S. Fish and Wildlife Service, and each Party as Grantee executing the Amendment.

Any request for an amendment shall be referred to SPNHF for investigation and evaluation. SPNHF shall submit a written report and recommendation to NHFG.

In the event the Parties as Grantee approve an amendment request, SPNHF will coordinate with the other parties to the Easement, and prepare the necessary amendment documents for signature by all necessary parties. The stewardship responsibilities delegated to SPNHF under this Agreement shall also apply to the responsibilities of the Easement as amended without further assignment.

4. Baseline Documentation Report and Stewardship Files

SPNHF shall be responsible for creating a baseline documentation report for the PROPERTY prior to Easement closing. The baseline documentation report shall substantially conform to SPNHF's standards and policies pertaining to the preparation of such reports. At or prior to Easement closing, each Party shall sign and initial the baseline documentation report as a Grantee. SPNHF shall provide a fully executed copy of the document to NHFG.

SPNHF will maintain an original baseline documentation report and a stewardship file. SPNHF shall store such records in a manner which conforms to the Standards and Practices as adopted by the Land Trust Alliance and amended from time to time. Monitoring reports and all other stewardship information developed by SPNHF shall be maintained in the stewardship file.

SPNHF shall make originals of the stewardship file and documentation reports for the Easement available for inspection by NHFG at the SPNHF offices upon demand, and shall provide copies upon request.

5. Monitoring Visits

SPNHF shall monitor the PROPERTY subject to the Easement and covered by this Agreement at least annually, making a personal site visit and/or monitoring through high resolution aerial photography, and making every reasonable effort to meet with the Grantor by phone or in person. Monitoring will be performed as described in the Standards and Practices as adopted by the Land Trust Alliance and amended from time to time.

SPNHF shall provide a copy of all annual monitoring reports to NHFG upon completion.

6. Approvals

The Easement includes clauses requiring the Grantor to secure the prior consent or approval of the Grantee before taking certain identified actions or in the preparation of the Grantor's forest management plan. SPNHF will receive and review all such requests for approval, and thereafter report to and consult with NHFG. SPNHF shall have no authority to grant or deny a request for approval without the prior written consent of NHFG. The Parties as Grantee will work cooperatively and shall be responsive to each other's requests and interests with respect to said approvals, particularly when the Easement has specified deadlines for action. Both SPNHF and NHFG must agree to approve the request, otherwise it shall be considered denied, and so reported to the Grantor.

If an approval is granted, SPNHF will, no later than the next annual monitoring report, verify that the Grantor acted in conformance with the approval as granted.

7. Affirmative or Additional Rights of the Grantees

The Easement includes certain affirmative rights of the Grantee as set forth in Section 4, of the Easement. Prior to either as Grantee exercising those affirmative rights separately or cooperatively, written approval by each shall be required. The Parties will work cooperatively and shall be responsive to each other's requests and interests with respect to the exercise of any affirmative right.

8. Enforcement Activities

Violation Investigation: All complaints or information concerning potential conservation easement violations on the PROPERTY will be directed to SPNHF for investigation and analysis. NHFG shall be notified of any such potential violations, and may join in the investigation. SPNHF will attempt to perform at least preliminary investigation within ten (10) working days of its receipt of the initial complaint or information and, in the event of an apparent major violation, SPNHF will make every reasonable effort to perform a site visit within two (2) working days of its receipt of the initial complaint or information.

Violation Report and Consultation: SPNHF shall expeditiously report its findings concerning each potential violation to NHFG, describing the potential violation, the specific provisions of the Easement that pertain to the potential violation, and a proposed course of action. SPNHF is not empowered to make final decisions on behalf of the Parties

as Grantee with regard to final disposition of any violation. Upon receipt of SPNHF's report, the Parties shall promptly meet and confer in an effort to reach consensus about whether a violation has occurred and what course of action is appropriate under the facts of each event. The Parties each acknowledge that the integrity of their respective easement programs depend on a timely and thorough consideration of each potential violation as well as swift, responsible action in response to each allegation. Therefore, both SPNHF and NHFG agree that they will give high priority to enforcement matters. During this consultation the Parties will seek consensus about (i) what relevant information has been collected through investigation and whether a violation has occurred when the information is viewed in the context of applicable Easement language; (ii) the impact of the violation both on the resource values of the PROPERTY and on the integrity of their respective easement programs; (iii) what judicial or non-judicial action is appropriate; and (iv) if judicial action is agreed to, the coordination of litigation and public relations related to litigation. Upon reaching such consensus, SPNHF shall be responsible for undertaking the agreed upon course of action.

Attorney General Participation: NHFG will notify the Office of the Attorney General in advance of filing any judicial enforcement action with respect to the Easement, and will seek the advice, participation and support of the Attorney General in any such action. Further, the Attorney General may elect to represent NHFG in any such litigation, but participation of the Attorney General will not be a condition precedent to initiating an enforcement action.

Individual Grantee's Rights: If the Parties cannot reach consensus on the course of action in accordance with this Section 8, they agree that either of them as Grantee may individually exercise rights to enforce the Easement. The non-participating Party agrees not to oppose the enforcement action.

Reimbursement of Costs: Section 9 (H) of the Easement states in part: "Provided that the Grantor is directly or primarily responsible for the breach, all reasonable costs incurred by the Grantees in enforcing the terms of this Easement against the Grantor, including, without limitation, staff and consultant costs, reasonable attorneys' fees and costs and expenses of suit, and any costs of restoration necessitated by the Grantor's breach of this Easement shall be borne by the Grantor; . . ." The Parties shall make every reasonable effort to exercise this right so as to accurately and appropriately reimburse each of them for any costs of enforcement either or both of them may have incurred.

Non-Judicial Emergency Enforcement: When SPNHF identifies a substantial, ongoing major violation of the Easement which may cause irreparable harm to the PROPERTY'S conservation and resource values, SPNHF may unilaterally take reasonable non-judicial steps to terminate the activity in question and to preserve the status quo upon the PROPERTY pending a full consultation with NHFG as otherwise provided in this Section 8, and shall provide timely notice to NHFG of any such action that has been undertaken.

Judicial Emergency Enforcement: Notwithstanding the other paragraphs of this Section, in the event of an ongoing, substantial violation of the Easement which requires immediate judicial action, SPNHF may undertake to secure a temporary restraining order, preliminary injunction, or other equitable relief to secure the status quo, and shall provide timely notice to NHFG that such action has been undertaken.

9. Liability and Indemnity

The Parties acknowledge that neither Party will be liable for any claims, liabilities or penalties asserted by or on behalf of any person on account of, based on, resulting from, or arising out of (or which may be claimed to arise out of) the acts or omissions of the other party. SPNHF shall indemnify and hold harmless ("indemnify") the State of New Hampshire (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 or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of SPNHF, its officers, employees or agents. Notwithstanding the foregoing, no obligation to indemnify shall arise out of any act, omission, failure to act, request for approval or enforcement activity hereunder where said act, omission, failure to act, request for approval or enforcement activity was agreed upon or acquiesced to following consultation with NHFG, nor shall SPNHF be obligated to indemnify the State for any enforcement activity initiated hereunder by the State against the Grantor or a third party. 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 in Paragraph 9 shall survive the termination of this Agreement.

10. Miscellaneous Provisions

Each Party shall be responsible for its own costs and expenses with respect to their responsibilities hereunder. The Parties acknowledge that SPNHF has raised funds for its stewardship responsibilities, which shall be held in its Stewardship Fund. NHFG has no responsibility to contribute to, or right of reimbursement from, this fund, except in extraordinary circumstances as the Parties may then agree. Nothing herein shall prevent either or both Parties from seeking reimbursement or costs from third parties (including the GRANTOR) pursuant to the terms of the Easement.

Either of the parties to this Agreement may withdraw from the Agreement by giving written notice to the other of its intent to withdraw at least twelve (12) months prior to the date of withdrawal.

No rights or responsibilities set forth in this Agreement cannot be assigned or otherwise transferred to any other party without prior written consent of both SPNHF and NHFG. No successor or assign of any Party's rights in the Easement shall have any rights under this

Agreement unless the Agreement is amended to include the successor or assign and said amendment is signed by the successor or assign.

SPNHF shall notify NHFG in the event of any effort to extinguish or otherwise terminate the rights and interests of the Parties under the Easement. Unless otherwise agreed to by the Parties, in the event of such extinguishment results in an award of extinguishment proceeds, said proceeds shall be distributed to the Parties as Grantee in direct proportion to each of their respective financial contribution to the original conservation project and in accordance with Section 14 of the Easement.

In the event either Party receives statutory or other notice of any judicial or administrative proceedings which could result in a taking of their property interests, or which permits either Party to participate in a proceeding to preserve its legal interest in the PROPERTY, such Party must immediately notify the other Party to this Agreement.

Either Party may choose to convene an annual meeting with the other Party to discuss activities performed by SPNHF under this Agreement.

11. Governing Law: This Agreement is made in accordance with, and shall be interpreted, governed and enforced under New Hampshire law.

STATE OF NEW HAMPSHIRE FISH & GAME DEPARTMENT

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

The State of New Hampshire
County of Merrimack

Personally appeared **Scott R. Mason, Executive Director of the New Hampshire Fish and Game Department**, this 30th day of AUGUST, 2021 and being duly authorized acknowledged the foregoing on behalf of the State of New Hampshire.

Before me, Lynn H. Gallop
Justice of the Peace/Notary Public
[seal]
My commission expires: 9/7/2021

LYNN H. GALLOP, Notary Public
State of New Hampshire
My Commission Expires September 7, 2021

SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE FORESTS

By: _____

Duly Authorized

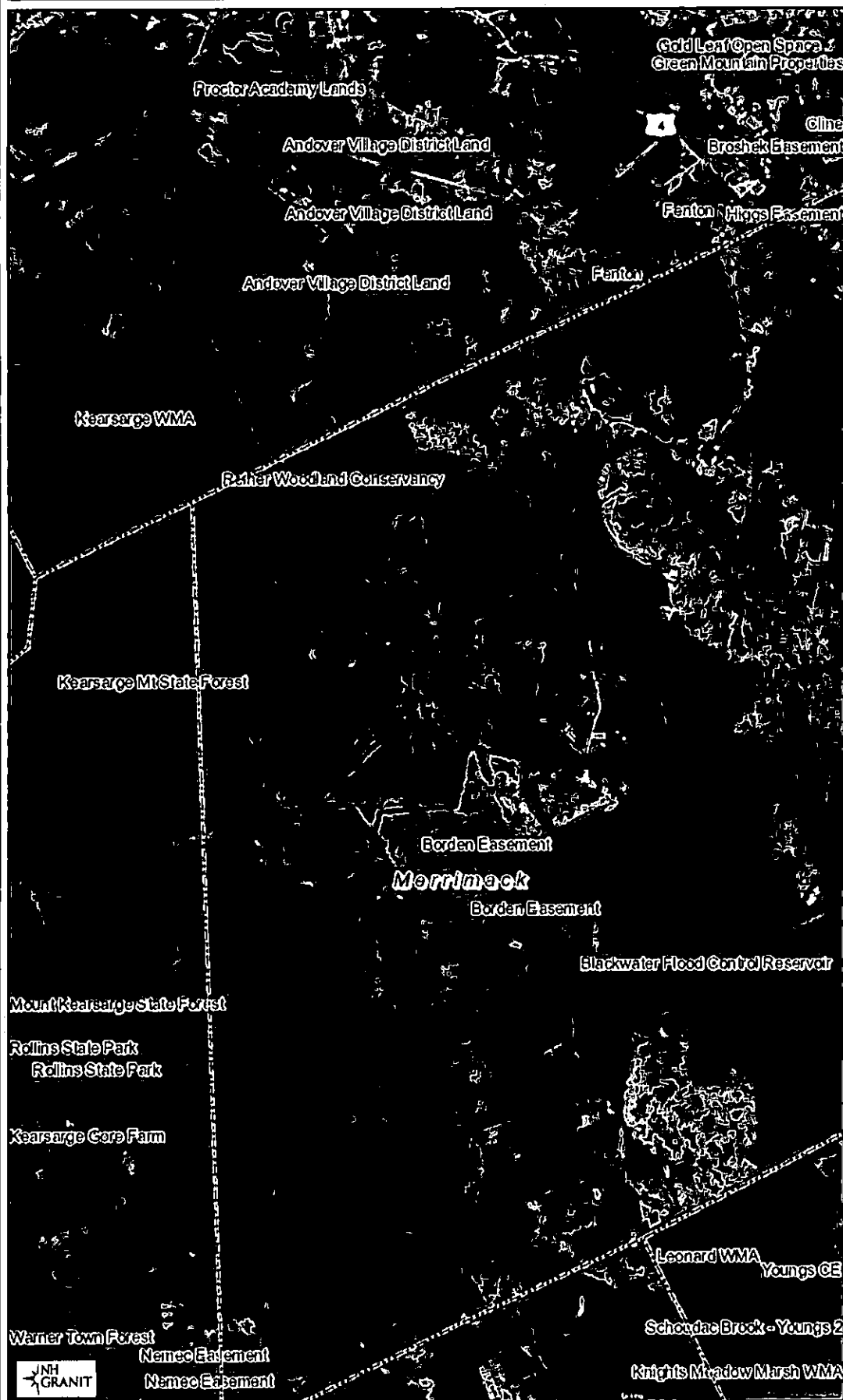
STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK, ss.

On this _____ day of _____, 2021, before me personally appeared _____, known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same as his free act and Easement for the purposes therein contained.

Notary Public/Justice of the Peace
My commission expires:

4845-4759-4860, v. 1

Childs Conservation Easement, Salisbury



Legend

- State
- County
- City/Town
- Conservation and Public Land

Map Scale

1: 51,953

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Map Generated: 4/5/2018



Notes

