



The State of New Hampshire
Department of Environmental Services

Robert R. Scott, Commissioner



April 15, 2020

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

REQUESTED ACTION

Authorize the Department of Environmental Services to award a grant to the Society for the Protection of New Hampshire Forests (hereinafter "SPNHF"), (VC#177170-B002), Concord, NH in the amount of \$73,000 to acquire a conservation easement on 36 acres of land in the Town of Lee to protect drinking water supply, effective upon Governor & Council approval through December 31, 2020. 100% Drinking Water/Groundwater Trust Fund.

Funding is available in the following account:

03-44-44-442010-3904-073-500580	<u>FY 2020</u>
Dept Environmental Services, DWGW Trust, Grants Non-Federal	\$73,000

EXPLANATION

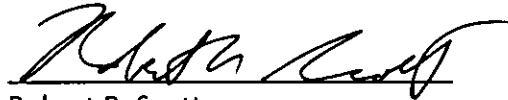
The Drinking Water and Groundwater Trust Fund (DWGTF) was created in 2016, using \$276 million of MtBE trial judgment funds, as authorized by RSA 485-F. The purpose of the Trust Fund is to provide sustainable, long-term funding for the protection, preservation, and enhancement of the drinking water and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

On December 9, 2019, the Advisory Commission voted to authorize grants for 7 drinking water source protection projects. SPNHF's request for \$73,000 was selected for grant funding from the DWGTF. SPNHF will use the grant funds to acquire a conservation easement on 34 acres of land within the water supply protection area of UNH/Durham.

The total cost for SPNHF to acquire the conservation easement is \$267,320. The DWGTF will provide \$73,000 with \$194,320 in match provided by SPNHF. The purchase price of this conservation easement is based on a recent appraisal of fair market value.

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

We respectfully request your approval.

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


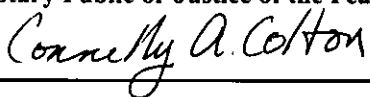
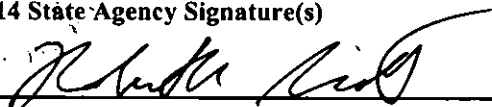
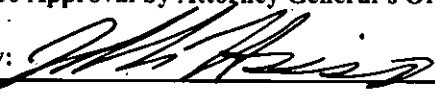
Robert R. Scott
Commissioner

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

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

GENERAL PROVISIONS

1. IDENTIFICATIONS

1.1 State Agency Name NH Department of Environmental Services		1.2 State Agency Address 29 Hazen Drive, Concord, NH 03302-0095	
1.3 Grantee Name: Society for the Protection of New Hampshire Forests		1.4 Grantee Address 54 Portsmouth Street, Concord, NH 03301	
1.5 Effective Date Upon G&C approval	1.6 Completion Date 12/31/2020	1.7 Audit Date N/A	1.8 Grant Limitation \$73,000
1.9 Grant Officer for State Agency Holly Green NH Department of Environmental Services		1.10 State Agency Telephone Number (603) 271-3114	
1.11 Grantee Signature 		1.12 Name & Title of Grantee Signor David Jackson Savage, President	
1.13 Acknowledgment: State of <u>New Hampshire</u> , County of <u>Merrimack</u> On <u>03/18/2020</u> , before the undersigned officer, personally appeared the person identified in block 1.12., or satisfactorily proven to be the person whose name is signed in block 1.11., and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace (Seal) 		CONNELLY A. COLTON NOTARY PUBLIC State of New Hampshire My Commission Expires March 13, 2024	
1.13.2 Name & Title of Notary Public or Justice of the Peace Connelly A. Colton, Notary Public			
1.14 State Agency Signature(s) 		1.15 Name/Title of State Agency Signor(s) Robert R. Scott, Commissioner	
1.16 Approval by Attorney General's Office (Form, Substance and Execution) By:  Attorney, On: <u>4/20/2020</u>			
1.17 Approval by the Governor and Council By: _____ On: ____/____/____			

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

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

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

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

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

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

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

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

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

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

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

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

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

7. **RECORDS AND ACCOUNTS.**

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

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

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

8. **PERSONNEL.**

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

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

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

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

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

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

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

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

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

10. **CONDITIONAL NATURE OF AGREEMENT.**

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

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

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

11.1.1 failure to perform the Project satisfactorily or on schedule; or

11.1.2 failure to submit any report required hereunder; or

11.1.3 failure to maintain, or permit access to, the records required hereunder; or

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

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

11.2.1 give the Grantee a written notice specifying the Event of

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

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

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

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

12. TERMINATION.

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

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

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

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

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

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

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

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

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

17. INSURANCE AND BOND.

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

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

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

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

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

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

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

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

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

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

EXHIBIT A

SCOPE OF SERVICES

Society for the Protection of New Hampshire Forests

The Society for the Protection of New Hampshire Forests (SPNHF) will use the grant to acquire a conservation easement on approximately 36 acres of land within the protection area of UNH/Durham's Water System's Oyster River intake. SPNHF will hold the conservation easement. The parcel of land, designated on the Town of Lee's tax map as Map 2, Lot 5-6 will be protected in perpetuity, as specified in conservation easement deed (see Attachment A), with water supply protection being one of the purposes of the conservation easement.

EXHIBIT B

GRANT AMOUNT & PAYMENT SCHEDULE

Payment in the amount of \$73,000 shall be made to SPNHF upon receipt of the following:

1. Survey of the parcel of land.
2. A copy of the appraisal as specified in Env-Dw 1002.22.
3. Title examination as specified in Env-Dw 1002.23.
4. Acceptable stewardship plan for the property that ensures the permanent protection of the water supply.
5. Completed baseline documentation form, which indicates the current condition of the property.
6. Documentation to support the match of \$194,320 provided by SPNHF.
7. The finalized conservation easement deed.

Grantee Initials LA
Date 02.16.2020

EXHIBIT C

SPECIAL PROVISIONS

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

Grantee Initials AP
Date 03.18.12

54 Portsmouth Street
Concord, NH 03301

Tel. 603.224.9945

info@forestsociety.org

www.forestsociety.org

Follow @forestsociety

EXCERPT

Be it noted that the Board of Trustees of the Society for the Protection of New Hampshire Forests, in a board vote taken on October 2, 2019


VOTED to authorize David Jackson Savage (Jack), President, and Anne G. Truslow, Vice President of Development, to sign all contracts; checks, drafts and orders drawn on SPNHF General Funds or Restricted funds; and that they are hereby authorized to deposit checks and drafts payable to this Corporation; and further are authorized to sell, assign, and endorse for transfer, certificates representing stocks, bonds, annuities, or other securities now registered or hereafter registered in the name of this Corporation.

As the duly authorized Assistant Secretary of the Society for the Protection of New Hampshire Forests, having been appointed at the meeting of December 4, 2019, I hereby confirm that the above Vote was taken by said Board of Trustees on October 2, 2019.



Maria E. Stewart, Assistant Secretary

Attested:


Connelly A. Colton, Notary Public
Commission expires: March 13, 2024

CONNELLY A. COLTON
NOTARY PUBLIC
State of New Hampshire
My Commission Expires
March 13, 2024

State of New Hampshire

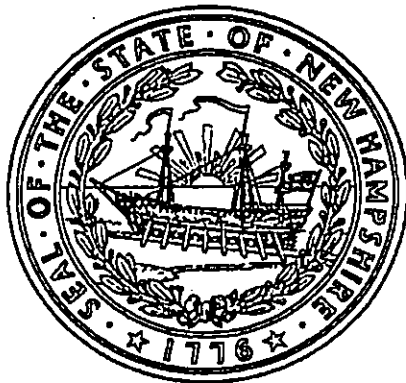
Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE FORESTS is a New Hampshire Nonprofit Corporation registered to transact business in New Hampshire on March 03, 1910. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 64922

Certificate Number: 0004533324



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 26th day of June A.D. 2019.

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

William M. Gardner
Secretary of State



SOCIFOR-09

AHILL

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2/13/2020

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

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

PRODUCER License # 0C36861 Chantilly-Alliant Ins Svc Inc. 4530 Walney Rd Ste 200 Chantilly, VA 20151-2285	CONTACT Anna Hill	
	PHONE (A/C, No, Ext): (703) 397-0977	FAX (A/C, No): (703) 397-0995
INSURED Society for the Protection of New Hampshire Forests 64 Portsmouth St Concord, NH 03301	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
	INSURER A: Federal Insurance Company	
	INSURER B: Great Northern Insurance Company	
	INSURER C:	
	INSURER D:	
	INSURER E:	
INSURER F:		

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADOL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:			3606-34-24 EUC	1/1/2020	1/1/2021	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPROP AGG \$ Included
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			(20)7361-30-22	1/1/2020	1/1/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			9365-12-19	1/1/2020	1/1/2021	EACH OCCURRENCE \$ 3,000,000 AGGREGATE \$ 3,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below:	Y/N	N/A	71777188	1/1/2020	1/1/2021	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000

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

CERTIFICATE HOLDER

CANCELLATION

NH Department of Environmental Services - Drinking Water and Groundwater Bureau
29 Hazen Drive

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

AUTHORIZED REPRESENTATIVE

ATTACHMENT A

THIS IS A TRANSFER TO AN AGENCY OF THE UNITED STATES OF AMERICA, AND THE REAL ESTATE TRANSFER TAX IMPOSED BY NEW HAMPSHIRE RSA 78-B DOES NOT APPLY TO ANY SUCH AGENCY PURSUANT TO RSA 78-B:2, II AND REV. 802.44. THIS TRANSFER IS ALSO EXEMPT FROM THE LCHIP SURCHARGE PURSUANT TO RSA 478:17-g, (II)(a).

CONSERVATION EASEMENT DEED

WESTWICK FARMING LLC, a limited liability company, of 11 Randall Road; Town of Lee, County of Strafford, State of New Hampshire 03861 (hereinafter referred to as the "Landowner", which word where the context requires includes the plural and shall, unless the context clearly indicates otherwise such as in Section 2.B., below include the Landowner's executors, administrators, legal representatives, devisees, heirs, successors, assigns, and agents),

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

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

the **CONSERVATION EASEMENT** (herein referred to as the "Easement") hereinafter described with respect to that certain parcel of land (herein referred to as the "Conservation Area") with any and all buildings, structures, and improvements thereon consisting of approximately 36 +/- acres situated on northerly side of NH Route 155 and Captain Smith Emerson Road, so-called, in the Town of Lee, County of Strafford, State of New Hampshire, being identified as all of Tax Lot 02-05-0600 on Tax Map #2, shown on a survey plan entitled "Conservation Easement Plan Prepared For Westwick Farming LLC, Located at Captain Smith Emerson Road, Lee, NH" by Atlantic Surveying CO, LLC, dated March 2020, to be recorded herewith at the Strafford County Registry of Deeds (hereinafter "Survey Plan"), more particularly bounded and described in Appendix "A" attached hereto and made a part hereof.

and pursuant to New Hampshire RSA 227-M, **AN EXECUTORY INTEREST**, as further defined below, to the **STATE OF NEW HAMPSHIRE** with a principal place of business at 107 North Main Street, City of Concord, County of Merrimack, State of New Hampshire 03301

(referred to herein as the "Executory Interest Holder" or the "State"),

and by virtue of and pursuant to the Grant Agreements and **TOGETHER WITH RIGHTS OF ENFORCEMENT**, as further defined in Section 7 & 8 below and to the following:

- a. The **UNITED STATES OF AMERICA** (the United States), acting by and through the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) on behalf of the Commodity Credit Corporation (CCC), with mailing address of 273 Locust Street, Suite 2D, City of Dover, County of Rockingham, State of New Hampshire, 03820. This **AGRICULTURAL LAND EASEMENT** is acquired with funds provided, in part, under the Agricultural Conservation Easement Program (ACEP) 16 U.S.C. Section 3865 et seq. and 7 CFR Part 1468 for the purpose of protecting the agricultural use and future viability, and related conservation values, by limiting nonagricultural uses that negatively affect the agricultural uses and conservation values of the Protected Conservation Area (the "Purpose of the ALE"),
- b. The **LAND AND COMMUNITY HERITAGE INVESTMENT PROGRAM**, a not-for-profit corporation and public instrumentality of the State of New Hampshire, with a principal place of business at 3 North Spring Street, Suite 100, City of Concord, County of Merrimack, State of New Hampshire 03301 (referred to herein as "LCHIP"). In accordance with NH RSA 227-M:14, notwithstanding any other provision of law, no deviation in the uses of this Conservation Area to uses or purposes not consistent with the purposes of NH RSA 227:M shall be permitted. The sale, transfer, conveyance, or release of this Easement from **PUBLIC TRUST** is prohibited, except as provided in NH RSA 227 M:13,
- c. The **STATE OF NEW HAMPSHIRE, DRINKING WATER AND GROUNDWATER TRUST FUND**, acting through its **DEPARTMENT OF ENVIRONMENTAL SERVICES (NH DES)** and is granted pursuant to NH RSA 485-F; an administrative agency duly organized and existing under the laws of the State of New Hampshire, with a principal place of business at 29 Hazen Drive, City of Concord, County of Merrimack, State of New Hampshire, 03302 (NH DES, as the context may require),

Much of the funds needed to acquire this Conservation Easement and cover the project expenses have been provided to the Easement Holder by the Right of Enforcement Holders mentioned above. These grant awards place certain restrictions on the Conservation Area as described herein, and continuing obligations on the Easement Holder as described in each program's Grant Agreement on file with the Easement Holder (hereinafter the referred to as "Funders"):

The Conservation Area includes the following significant recreational, educational, natural habitat, open space, scenic, forestry, agricultural, water supply, historical, and conservation attributes which are protected by the terms of this Easement (hereinafter "**Conservation Attributes**") and which, along with other present conditions of the Conservation Area, are further described and set forth in a Baseline Documentation Report on file with the Easement Holder and Landowner, the terms of which are incorporated herein by reference. The parties acknowledge that environmental or other conditions that sustain the Conservation Attributes may change over time, and that the resulting change or disappearance of any given Conservation Attribute does not necessarily negate the significance or public benefit of the others. Similarly,

the parties acknowledge that the Conservation Area may have certain significant conservation features as of creation of this Easement whose presence is unknown as of that time but may be discovered later. Additionally, certain significant conservation features may arrive to and become established on the Conservation Area after creation of this Easement. In either case, such conservation features are not specifically identified in the following description of Conservation Attributes and are worthy of permanent conservation or protection consistent with the Purposes of this Easement as described in Section I, below. Accordingly, the parties agree that, upon the appropriate documentation of such features as a supplement to the Baseline Documentation Report, such features shall be considered part of the Conservation Attributes to be conserved or protected prospectively by this Easement.

Land Types: 45% operable forest, 20% riparian/wetland and 35% agricultural fields

Soils: Approx. 56% of Conservation Area's soils are in highest suitability category (Group I) for forest products. Approx. 26% of Conservation Area's soils are "prime farmland", 10% "farmland of statewide importance", and 26% "of local importance for agriculture."

Habitat: The Conservation Area includes high quality wildlife habitat including 24 acres of the land being Tier 1 (best habitat in the state), 5 acres of land being Tier 2 (best habitat in the bioregion) and 2 acres of land being Tier 3 (supporting habitat) according to the State's 2015 Wildlife Action Plan.

Water: The Conservation Area contains 3,542 feet of frontage on the Oyster River. The Oyster River is a State designated river under the New Hampshire Rivers Management and Protection Program (RMPP). The Oyster River is also a significant source of drinking water for the town of Durham and UNH. The entire Conservation Area is located within a Source Water Protection Area for the Town of Durham's drinking water intake in the Oyster River.

Forest Management: The forest portion of the land contains a well-stocked Appalachian Oak-Pine forest that has not been harvested in many years.

Recreation: The conservation easement will guarantee public access. The Conservation Area is mostly used by fishermen and hunters.

Agriculture: The Cox family has farmed this land for nearly 25 years and it's an important component to their farm. They have grown hay corn and other grains in the fields.

Potential for More Conservation: The land is located directly across the Oyster River from our 192-acre Powder Major's Forest, abuts the existing 79-acre Tuckaway Farm conservation easement and is near the 146 acre Randall Farm Conservation Easement..

Regional Conservation Plan: 100% of the project is located with a priority focus area of the Great Bay Partnership's Coastal Conservation Plan.

1. PURPOSES

In order to conserve and protect the Conservation Attributes, the Landowner hereby grants this Easement pursuant to NH RSA 477:45-47, exclusively for the following conservation Purposes (herein referred to as the "Purposes") for the public benefit:

- A. The conservation of open spaces, particularly the conservation of the productive farm and forest land of which the Conservation Area consists, protection of the Conservation Area's prime, statewide, or locally significant agricultural soils, and the long-term protection of the Conservation Area's capacity to produce economically valuable agricultural and forestry products;
- B. The protection of the quality and availability of ground water and surface water resources on, under and adjacent to the Conservation Area, which serves as the public water supply for citizens of the Town of Durham, and to prevent any development, construction, or use that will impair or interfere with the watershed's conservation attributes of the Conservation Area;
- C. The enjoyment by the general public of the scenic rural views of the Conservation Area as viewed from the more than 845 +/- feet of frontage on NH Route 155;
- D. Enlargement and enhancement of conservation land located directly across the Oyster River from the Easement Holder's 192-acre Powder Major's Forest, and abutting the existing 79-acre Tuckaway Farm conservation easement and near the 146 acre Randall Farm Conservation Easement; and
- E. The protection of the Conservation Area for the general public's use for outdoor recreational and educational purposes to the extent that these purposes will have minimal impact on the Conservation Area.

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

and with New Hampshire RSA Chapter 79-A:1 "Declaration of Public Interest," 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 which also states, relative to the Conservation Area's acreage being enrolled in the Current Use Assessment Program: "It is further declared to be in the public interest to prevent the loss of open space due to Conservation Area taxation at values incompatible with open space usage. Open space land imposes few if any costs on local

government and is therefore an economic benefit to its citizens. The means for encouraging preservation of open space authorized by this chapter is the assessment of land value for Conservation Area taxation on the basis of current use.”

Notwithstanding any other provision of the Easement, the Parties agree that all present and future use of the Conservation Area is and will remain subject to all of the terms and conditions identified in the following Sections II and III. If the terms and conditions in Sections II and III are inconsistent with terms and conditions in other portions of the Easement, Sections II and III will control; provided, however, that if other portions of the Easement have terms and conditions that are consistent with, but more restrictive to the rights of the Landowner than the terms and conditions in Section II, Paragraphs 1, 2, and 4, those more restrictive terms and conditions will control. If other portions of the Easement are more restrictive to the rights of the Landowner than Section II Paragraph 3 and 5 and Section III then Section II Paragraph 3 and 5 and Section II will control.

2 - USE LIMITATIONS -MINIMUM CONSERVATION DEED RESTRICTIONS

Even if the Conservation Area consists of more than one parcel for real estate tax or any other purpose or if it was acquired previously as separate parcels, it will be considered one parcel for purposes of this Easement, and the restrictions and covenants of this Easement will apply to the Protected Conservation Area as a whole. The terms and conditions of the Easement run with the land and are binding upon the Landowner and Easement Holder and their respective heirs, successors, agents, assigns, lessees, and any other person claiming under them, any and all of whom must comply with all terms and conditions of this Easement, including the following:

The Conservation Area shall be maintained in perpetuity as undeveloped open space any activities inconsistent with the Purpose of the Easement are prohibited. The following activities are inconsistent with the Purpose of the Easement and are specifically prohibited, subject to the qualifications stated below:

A. Industrial or Commercial Uses. Industrial or commercial activities on above, or below the Conservation Area are prohibited except for the following: commercial activities, except forestry and agriculture thereon, all as described below and including rent or lease of all or a portion of the Conservation Area for said forestry or agriculture, provided that all associated on-site activities do not significantly impair the productive capacity, including soil productivity, of the Conservation Area to yield forest and agricultural products.

(i) Commercial Agricultural Production and Forestry and related uses in accordance with the terms and conditions of this Easement subject to the Section II.2 and 3 below;

(ii) The sale of excess power generated in the operation of renewable energy structures and associated equipment or other energy structures that Easement Holder approves in writing as being consistent with the Purpose of the Easement and in accordance with the terms and conditions of this Easement subject to Section _____, below;

(iii) temporary or seasonal outdoor activities or events that do not harm the Purpose of the Easement; and which are permitted under Section III.2. "Commercial Activities with *De Minimis* Impacts" below; and

(iv) commercial enterprises related to agriculture or forestry including but not limited to agritourism, processing, packaging, and marketing of farm or forest products, farm machinery repair, farm wineries, and small-scale retail enterprises compatible with agriculture or forestry, including but not limited to cafés, shops, and studios for arts or crafts. Commercial enterprise activities related to interpretation of the Protected Conservation Area's historic or archaeological resources and which are permitted under Section III.2. "Commercial Activities with *De Minimis* Impacts" below.

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

2. **Commercial Agriculture** - Any agricultural production and related uses in accordance with the terms and conditions of this Easement conducted for commercial purposes on the Conservation Area shall be performed in accordance with the following Sections II.a,b,c. Additionally, the provisions of this Easement and associated exhibits will not be interpreted to restrict the types of agricultural operations that can function on the Protected Conservation Area, so long as the agricultural operations are consistent with the long-term viability of the Protected Conservation Area and the Purpose of the ALE. No uses will be allowed that violate Federal laws, including Federal drug laws, or that decrease the ALE's protection for the Purpose of the ALE. Allowed uses of the Protected Conservation Area include the specific uses allowed in Section II, Paragraph a,b,c and the following activities, subject to the qualifications stated below:

a. **Agricultural Productions.** The production, processing, and marketing of agricultural crops and livestock are allowed provided these activities are conducted in a manner consistent with the terms of the Easement and the agricultural land easement plan described in Section II, Paragraph c. For the purposes of this Easement, and to distinguish deliberately this definition from that of the state, municipality, or any other entity, the term "agriculture" shall mean:

(i) The propagation, planting, growing, production, collection, or harvesting of plants, fungi, or parts thereof on the Conservation Area, except for certain trees and activities related thereto which are included within the above definition of "forestry" (examples of said plants,

fungi, or parts thereof include: vegetables; fruits; nuts; berries; grains; mushrooms; hay and other fodder grazed by livestock; ornamental flowers and nursery stock; and trees planted, grown, and wholly harvested on a predictable, often short-term rotation including but not limited to ornamental trees for landscaping, Christmas trees, and fast-growing tree species harvested for energy production);

(ii) The breeding, raising, growing, production, boarding, training, exercising, or harvesting of animals on the Conservation Area (for example: livestock, poultry, fish, and pets); and

(iii) The processing, storing, or marketing for sale of plants, fungi, animals, or parts or products thereof on the Conservation Area, only if said plants, fungi, or animals were grown or raised on the Conservation Area, and except for certain trees and activities related thereto which are included within the above definition of "forestry" (examples of said parts or products include: honey, eggs, milk, cheese, meat, fur, manure, animal feed, and compost).

(iv) "Agriculture" shall not include any activity on or use of the Conservation Area whose principal connection to agriculture relies on the fact that said activity or use may: be enhanced by, or otherwise benefit from, Conservation Area features created or maintained as a result of agricultural activities; or generate income for the Landowner helpful for maintaining agricultural use of the Conservation Area. (Examples of uses or activities which are not part of agriculture include: leasing of a farm for a wedding in a scenic hayfield; vehicular parking for a concert involving purchased tickets; and the sale of wagon rides, of prepared food with ingredients not produced from or grown on the Conservation Area, and of handicrafts made with materials not from the Conservation Area. For non-agricultural uses or activities, see potential applicability of Section III.B. "Commercial Activities With *De Minimis* Impacts," below).

b. Best Management Practices. Any such agriculture shall be guided by then-current BMPs as said term is defined in Section 2.A.ii.f., above, and which are relevant to agriculture. Agricultural BMPs as of the execution of this Easement include but may not be limited to those contained in the "Manual of Best Management Practices (BMPs) for Agriculture in New Hampshire" by the New Hampshire Department of Agriculture, Markets, and Food and last revised June 2011.

c. Agricultural Land Easement Plan. The Landowner and Easement Holder shall prepare an agricultural land easement plan (the "Plan") in consultation with the Landowner and as needed NRCS. The Landowner and Easement Holder agree to update the Plan, in consultation with the Landowner and as needed NRCS, in the event the agricultural uses or ownership of the Conservation Area change. A copy of the current Plan is kept on file with the Landowner and Easement Holder. The Plan shall describe the farm or ranch management system, describe the natural resource concerns, describe the conservation measures and practices a Landowner may employ to address the identified concerns, and promote the long-term viability of the land to meet the Purpose of the Easement. Further, all cost for preparing the Plan shall be the sole responsibility of the Landowner.

3. **Forest Management and Timber Harvest** - Forest management and timber harvesting are

allowed, any forestry conducted for commercial purposes on the Conservation Area shall be performed in accordance with the following Sections II.a-f

a. **Definition.** For the purposes of this Easement, and to distinguish deliberately this definition from that of the state, municipality, or any other entity, the term "forestry" shall mean:

(i) The planting, growing, managing, production, or harvesting of trees, or parts of trees (for example: seeds, sap, leaves, and bark) on the Conservation Area, only if said trees are being grown, or were grown as the case may be, in the ground in the Conservation Area's soils and exposed to the natural sunlight, moisture, and other weather conditions of the Conservation Area (for example, pre-commercial, silvicultural activities such as but not limited to thinning, girdling, and other forms of forest stand improvement).

(ii) The processing, storing, or marketing for sale of trees, or parts or products thereof (for example: sawlogs, chips, firewood, sawdust, sap and syrup, and bark mulch) on the Conservation Area, only if said trees were grown on the Conservation Area as set forth in the immediately preceding paragraph.

(iii) Notwithstanding the above, excepted from "forestry" and included within "agriculture" as defined below are those activities described in the immediately preceding two paragraphs, above, with respect to trees planted, grown and wholly harvested on a predictable, often short-term rotation (for example: ornamental trees for landscaping, Christmas trees, and fast-growing tree species harvested for energy production).

(iv) "Forestry" shall not include any activity on or use of the Conservation Area whose principal connection to forestry relies on the fact that said activity or use may: be enhanced by, or otherwise benefit from, Conservation Area features created or maintained as a result of forestry activities; or generate income for the Landowner helpful for maintaining forestry use of the Conservation Area. (Examples of activities or uses which are not part of "forestry" include a paying third party hunting in managed woodlands or receiving a dogsled ride along woods roads. For non-forestry activities and uses, see potential applicability of Section 3.B. "Commercial Activities With *De Minimis* Impacts.")

b. **Management Plan.** Any such forestry shall be performed in accordance with a written forest management plan ("Management Plan") consistent with this Easement. Said Management Plan shall be prepared at the sole expense of the Landowner by a licensed professional forester, or by another qualified person approved in advance and in writing by the Easement Holder in the Easement Holder's sole discretion, either of whom shall hereinafter be referred to as a "Qualified Person." The Management Plan shall have been prepared, or else reviewed and updated as required by a Qualified Person, not more than ten (10) years prior to the commencement of any commercial forestry activities, such as but not limited to the cutting of trees, timber stand improvement, and construction of woods roads.

The Management Plan shall include but not be limited to:

1) A statement of the following forestry goals:

- a) Maintenance of soil productivity;
 - b) Protection of water quality, wetlands, and riparian zones;
 - c) Maintenance or improvement of the overall quality of forest resources;
 - d) Conservation of scenic quality;
 - e) Protection or enhancement of significant natural communities, and significant plant and animal species or their habitats, identified as Conservation Attributes or as otherwise identified by the State of New Hampshire's Natural Heritage Bureau, the State's Fish and Game Department, or the agency then recognized by the State of New Hampshire as having responsibility for the identification or conservation of such communities, species, or habitats;
 - f) Protection of recreational and educational features or improvements, such as then-existing trails and signage;
 - g) Protection of significant historic, archeological, and cultural features identified as Conservation Attributes or as otherwise identified by the State of New Hampshire's Division of Historical Resources, or other party or agency then recognized by the State as having responsibility for the identification or conservation of such resources;
- 2) A statement of the Landowner's objectives, which must not be inconsistent with the aforementioned forestry goals;
 - 3) Forest type map showing stands related to the prescriptions provided in the Management Plan;
 - 4) Maps showing topography, and soil types as determined by the U.S. Department of Agriculture's Natural Resources Conservation Service (or by another similarly charged successor governmental agency);
 - 5) Maps showing the following types of features but only to the extent such features and their locations are known by the Landowner or Qualified Person or are otherwise identified as Conservation Attributes or further described in the aforesaid Baseline Documentation Report: wetlands including but not limited to vernal pools; surface waters; habitat features, including significant natural communities or significant plant or animal species; recreational trails and other recreational or educational features; significant historic, archeological, or cultural features; and any other Conservation Attributes;
 - 6) Copy of, or recording reference to, this Easement;
 - 7) Copy of, or reference to, relevant Best Management Practices as more fully described in Section 2.A.ii.f. below; and
 - 8) Prescriptions for each described stand, including but not limited to commercial and non-commercial treatments, and proposed schedule for activities;

and shall specifically address:

- the accomplishment of the Purposes of this Easement; and
- the aforementioned list of forestry goals.

c. **Provision of Management Plan & Certification.** At least thirty (30) days prior to the commencement of any of said forestry operations, including but not limited to on-site preparations, the Landowner shall provide to the Easement Holder the following:

1) A copy of said Management Plan, including any proposed revisions thereto, except that forestry operations already prescribed within a Management Plan previously provided to the Easement Holder within the past ten (10) years are not subject to this submission requirement; upon request by the Easement Holder, the Landowner shall submit the Management Plan itself to the Easement Holder within ten (10) days of such request; although the Management Plan's purpose is to guide forest management activities in compliance with this Easement, actual activities will determine compliance; and

2) A written certification, signed by a Qualified Person, that such Management Plan is in compliance with the terms of this Easement.

d. **Supervision.** Any cutting of trees, timber stand improvement, construction of roads, or other operations with respect to such forestry shall be supervised by a Qualified Person in order to assist the Landowner with conforming to the Management Plan and this Easement.

e. **Low-Impact Forestry Activities.** The Landowner may be exempted from any or all of the requirements of Sections II.a-d., above, if the Easement Holder provides an advance, written waiver of same to the Landowner after the Easement Holder finds, in its sole discretion, that the proposed forestry activities are anticipated to conform to all other applicable terms and provisions of this Easement (for example, the small-scale collection and sale of sap from maple trees without other associated forestry activity).

f. **Best Management Practices.** Any such forestry shall be guided by then-current, scientifically based, 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).

B. Subdivision & Separate Conveyance. Separate conveyance of a portion of the Protected Conservation Area or division or subdivision of the Protected Conservation Area is prohibited.

C. Structures & Improvements on the Protected Conservation Area.

All new structures and improvements must be located within the Building Envelope(s), containing approximately 5.89 acres and described or shown in Appendix B, which is appended

to and made a part of the Easement. The identified boundaries and locations of the approved Building Envelope(s) may be adjusted only with prior written approval from the Easement Holder and the Chief of NRCS. The adjusted Building Envelope(s) may not be larger than the approved Building Envelope(s) and must provide equal or greater protection of the Purpose of the Easement. Following receipt of written approval to adjust identified Building Envelope(s), the Landowner and Easement Holder shall amend this Easement to add an exhibit that describes the subsequently approved boundaries and locations of the Building Envelope(s).

Agricultural structures and utilities to serve approved buildings or structures, including on-farm energy structures allowed under **Section I, Paragraph 2(B)(ii)** and **Section II, Paragraph 3(C)** and structures in the accomplishment of forestry, conservation, habitat management, outdoor recreation, and outdoor education that neither individually nor collectively have an adverse impact on the Purpose of the Easement, may be built outside of the Building Envelopes with prior written approval of the Easement Holder.

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

Maintenance of existing roads documented on the Baseline Documentation Report is allowed; however, existing roads may not be widened or improved unless widening and improving is within impervious surface limits, approved in advance by Easement Holder, and necessary to carry out the agricultural operations or other allowed uses on the Protected Conservation Area. Fences may be maintained and replaced, and new fences installed if they are necessary for agricultural operations or other allowed uses on the Protected Conservation Area or to mark boundaries of the Protected Conservation Area. Maintenance, replacement, and installation of fences must be conducted in a manner consistent with the Purpose of the ALE.

For the purposes of this Easement and to distinguish deliberately this definition from that of the state, municipality, or any other entity or source of definition, a “structure” or “improvement” shall mean any combination of materials on, over, in, or under the ground and having a temporary or permanent fixed location, and regardless of size. A structure or improvement may be primarily two dimensional, such as a paved or unpaved trail, road or parking lot, fence or a sign, or three dimensional, such as a building, wall or piping.

(Examples of such permitted structures or improvements, as may be limited by the specific additional conditions set forth below, may include: buildings such as but not limited to barns, maple sugar houses, farmstands, and sheds; roadways, bridges, culverts, and landings for agricultural or forestry purposes; trails and boardwalks; gates or fences; signs; blinds and stands for observing or hunting wildlife; camping tents; and utilities providing power, communications, water supply, and sewage disposal.) Where there are multiple uses of any given structure or improvement, each different use must be evaluated separately with respect to permissibility by this Easement. Any permitted structure or improvement must meet all of the following additional conditions:

- i. **Impermissible Structures & Improvements.** Notwithstanding the other provisions of

this Section II.C. "Structures & Improvements," there shall not be constructed, placed, introduced, enlarged, relocated, used, maintained, repaired, replaced, rebuilt, or improved on, under, or above the Conservation Area any of the following structures or improvements, including any portion thereof: dwelling, which for the purposes of this Easement is any house, apartment, or other place of residence; residence; dormitory; residential driveway; tennis or other athletic court or field, swimming pool, or golf course or golf driving range; telecommunications tower serving parties other than the Landowner; and underground storage tank other than as part of any water supply or waste water disposal system permitted by this Easement;

ii. **Limitation on Impervious Surfaces.** Impervious surfaces will not exceed 2 percent of the Conservation Area, excluding NRCS-approved conservation practices. Impervious surfaces are defined as material that does not allow water to percolate into the soil on the Conservation Area, including, but not limited to, buildings with or without flooring, paved areas, and any other surfaces that are covered by asphalt, concrete, or roofs. This limitation does not include public roads or other roads owned and controlled by parties with rights superior to those rights conveyed to Easement Holder by this Easement;

iii. **Year-Round Covered Recreational or Educational Structures.** In the case of any year-round, recreational or educational structure which is covered (for example: a cabin, lean-to, gazebo, pavilion, tent, yurt, studio, hunting blind, and child's play house), said structure shall meet all of the following additional conditions:

- a. Any overnight use of said structure shall be temporary only;
- b. The footprint of each such structure, as measured to the dripline in the case of any roof or other cover extending beyond the structure's base, shall not exceed five hundred (500) square feet in size, and the cumulative total footprint of all such structures across the entire Conservation Area shall not exceed seven hundred fifty (750) square feet in size;
- c. Any accessway to any such structure shall consist of pervious surfaces only;
- d. The height of any such structure shall not exceed thirty (30) feet as measured from the highest point of said structure to its lowest point at grade, or else, if said structure is mounted upon some other structure, to the lowest point at grade of the underlying structure;
- e. There shall be no utility lines, including but not limited to power, communication, water, and sewer lines with associated poles, pipes, and other structures, running on, under, or above the Conservation Area and serving said recreational or educational structures from sources outside of the Conservation Area;
- f. There shall be no system for disposing of human waste on or under the Conservation Area and serving said structures except for self-contained facilities such as but not limited to: outhouses, composting toilets, and temporary, portable toilets;

g. A water supply whose source is the Conservation Area and that serves said structures, such as but not limited to a spring, well, and associated pipeline and pump, together with any associated system for disposing of waste water without human waste, would be considered customary, ancillary improvements to such structure and are subject to the Easement Holder's approval as provided for in Section 2.C.vi., below, as well as to other provisions of this Easement;

iv. **Renewable Energy Production.** Any renewable energy production facility (as defined in Section III.A., below) permitted under this Section 2.C. must also meet all of the provisions of Section III.A.

v. **Signs & Outdoor Advertising Structures.** Any sign or outdoor advertising structures displayed on the Conservation Area shall not have a face exceeding sixteen (16) square feet in size, shall not consist of digital or other electronic displays, and may be artificially illuminated only to the extent of not significantly impairing any scenic Conservation Attributes, in the sole determination of the Easement Holder; and

vi. **Advance Approval.** Notwithstanding the above, prior to the Landowner's construction, placement, introduction, enlargement, or relocation of any of the following structures or improvements on the Conservation Area, including site preparation therefor, the Landowner must obtain advance written approval of same from the Easement Holder:

a. Any pond; any impoundment of surface waters by a dam, levee, or other water control structure, or any bridge other than one for a recreational trail or as a temporary structure for forestry operations;

b. The construction, installation, or development of any water supply facility in the Conservation Area, including but not limited to a spring, well, and associated pipeline and pump, and of any associated system for disposing of waste water without human waste;

c. Any outdoor recreational or outdoor educational structure or improvement with a footprint exceeding three hundred (300) square feet, as measured to the dripline in the case of any roof or other cover extending beyond the base of any structure or improvement; and

d. Any other structure or improvement with a footprint exceeding one thousand (1,000) square feet, as measured to the dripline in the case of any roof or other cover extending beyond the base of any structure or improvement.

e. At least thirty (30) days prior to the commencement of any such construction, installation, or on-site preparation therefor including but not limited to land clearing, the Landowner shall provide the Easement Holder with written notice containing the details of said structure or improvement including but not limited to scope, size, and location, and method and timing of said construction or installation. Within thirty (30) days after the Easement Holder's receipt of such notice, the Easement Holder shall approve or disapprove in writing the proposed structure or improvement, and shall so inform the Landowner. Any disapproval shall specify the reasons therefor.

D. Soil Disturbance, Surface Alteration Water Manipulation & Extraction, & Topographic Alteration.

Grading, blasting, filling, sod farming, earth removal, or any other activity that will disturb the soil surface or materially alter the topography, surface or subsurface water systems, or wetlands of the Conservation Area is prohibited, except for the following:

- (i) Dam construction pursuant to a plan approved by the Easement Holder to create ponds for agricultural use, fire protection, or wildlife enhancement, including enhancement through wetland restoration, enhancement, or creation;
- (ii) Erosion and sediment control pursuant to a plan approved by the Easement Holder;
- (iii) Soil disturbance activities required in the construction of approved buildings, structures, roads, and utilities provided that the required alteration has been approved in writing by Easement Holder as being consistent with the Purpose of the Easement; and
- (iv) Agricultural activities and related conservation activities conducted in accordance with the terms and conditions of this Easement and the agricultural land easement plan as described in Section II.c.

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

F. Conveyance of Right of Way, Easements for Utilities, Roads, or Use Restrictions - The granting or modification of easements for utilities and roads, right-of-way, or use restrictions into, under, on, over, or across the Conservation Area is prohibited when the utility or road, right-of-way, or use restrictions will adversely impact the Purpose of the Easement as determined by the Easement Holder, Executory Interest Holder and in consultation with the Chief of NRCS.

(i) Notwithstanding the foregoing, any application by the Landowner for enrollment in, release from, or other change with respect to N.H. Current Use Assessment under RSA 79-A or N.H. Conservation Restriction Assessment under RSA 79-B, both as may be amended from time to time, shall be exempt from this Section II.F.

(ii) In the case of the conveyance of an additional conservation easement or restriction consistent with RSA 477:45-47, a Qualified Holder must accept and record any such easement or restriction.

(iii) At least thirty (30) days prior to the execution of any instrument conveying said right of way, easement, or use restriction, the Landowner shall provide to the Easement Holder [and Executory Interest Holder] written notice and a draft of said instrument, plus any associated map, sketch, or survey plan, at the Landowner's sole expense. Within thirty (30) days after

the Easement Holder's [and Executory Interest Holder's] receipt of same, the Easement Holder shall approve or disapprove in writing of the proposed conveyance, and shall so inform the Landowner. Any disapproval shall specify the reasons therefor. The Easement Holder of said instrument shall record the same at the relevant County Registry of Deeds, including the final, approved version of any associated survey plan.

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

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

J. **Public Access** - Pursuant to RSA 227-M:15, there is hereby conveyed to the public an affirmative right of pedestrian access to, on, and across the Conservation Area by members of the public for hunting, fishing, and transitory passive recreational purposes, subject to the following:

- (i) Landowner may post against or limit such access, with prior written approval of LCHIP, if such activities become inconsistent with the purposes for protecting the Conservation Area and/or when public safety would be at risk. Notwithstanding the foregoing, Landowner may post against vehicles, motorized or otherwise, against access to active livestock fields, against access to agricultural cropland during planting and growing season, and against access to forest land during harvesting or establishment of plantations without prior written approval of LCHIP;
- (ii) Nothing herein shall prohibit Landowner from disallowing specific individuals or entities access under lawful court orders or injunctive relief;
- (iii) Nothing in the foregoing shall be construed as conveying a right for the public to build trails, install improvements or alter Landowner's Conservation Area in any way. This right of public access shall not entitle any person to charge others for access to the Conservation Area or programs on the Conservation Area without Landowner's prior approval;
- (iv) Landowner, Easement Holder and LCHIP shall be under no duty to supervise said public access, use, or purpose.
- (v) Pursuant to NH RSA 227-M:15 III, Landowner shall not be liable to a user of this right of access for injuries suffered on the Conservation Area unless those injuries are caused by Landowner's willful or wanton misconduct; and
- (vi) The public access conveyed herein shall not extend to the interior of any structures on the Conservation Area.

K. **Motorized Vehicle Use.** The Landowner shall not use or grant permission for motorized vehicle use on the Conservation Area except for as necessary in the accomplishment of forestry, agricultural, conservation, habitat management, non-commercial recreational uses of the Conservation Area, provided that no use of motorized vehicles shall create impacts that are detrimental to the Purposes of this Easement. The Landowner shall have the right to use motorized vehicles for non-commercial recreation and maintenance activities of the Conservation Area. Notwithstanding the foregoing, the use of snowmobiles as defined in RSA 215-A:1, XIII shall be restricted to the existing roads/trails as identified in the Baseline Documentation Report. The development of new snowmobile trails, unless otherwise approved, shall be outside the sanitary protective area of public water supply well(s); at least two hundred fifty (250) feet from a surface water body being used as a public water supply; at least 100 feet from tributaries contributing to such water bodies except when crossing such tributaries; and shall be depicted on a plan approved by the Easement Holder and Department of Environmental Services in accordance with Env-Dw 1002.25 Snowmobile Trail Plan Approval.

3. RESERVED RIGHTS OF LANDOWNER

Notwithstanding any other provision of this Easement, and specifically as exceptions to the restrictions of Section II. "Use Limitations," above, the Landowner reserves the following rights on, over, and under the Conservation Area only so long as they do not affect the qualification of this Easement or the status of the Easement Holder under any applicable laws, including but not limited to Sections 170(h) and 501(c)(3) of the Internal Revenue Code of 1986 and regulations promulgated thereunder, and NH RSA 477:45-47, all as may be amended from time to time.

A. **Renewable Energy Production** – The sale of excess power generated in the operation of renewable energy structures and associated equipment or other energy structures that Easement Holder approves in writing as being consistent with the Purpose of the ALE and in accordance with the terms and conditions of this Easement;

1. **Definition.** For the purposes of this Easement, "renewable energy" is energy available for collection or conversion from direct sunlight, wind, running water, organically derived fuels including but not limited to wood and agricultural sources, waste heat, and geothermal sources. Allowance for renewable energy production on the Conservation Area can enhance Conservation Attributes by supporting permitted uses of the Conservation Area and by potentially lessening the need for other energy production facilities which may emit gases that contribute to global warming and thus help mitigate the negative impacts of climate change on the Conservation Attributes; see the Fifth Assessment Report (2014) of the United Nations' Intergovernmental Panel on Climate Change, as may be amended from time to time.
2. **Sizing.** Any renewable energy production facilities, including but not limited to associated lines, poles, pipes, and other infrastructure for transmitting said energy, shall have a height not exceeding thirty (30) feet as measured from the highest point of said structure to its lowest point at grade, or else, if said structure is mounted upon some other

structure, to the lowest point at grade of the underlying structure. Further, any such facility shall be sized at the time of installation to serve not more than the combined energy needs of:

- (i) Then existing, or otherwise simultaneously proposed, uses, or activities on the Conservation Area for forestry, agriculture, conservation, habitat management, outdoor recreation, and outdoor education as permitted by the terms of this Easement; and
- (ii) One single-family residence with customary ancillary improvements owned by the Landowner as of the proposed time of installation and located adjacent to the Conservation Area, only upon the Landowner's demonstration, to the satisfaction of the Easement Holder, that there is not a reasonable, and physically and economically feasible, site in such adjacent area for meeting said need; and
- (iii) Commercial activities with *de minimis* impacts as permitted under Section III.B., below.
- (iv) Under Sections III.A.ii.a. and b., above, the momentary sale of surplus or incidental energy generated in excess of the then-current demand, under a "net metering" or similar other type of arrangement, shall not be considered a commercial activity for the purposes of this Easement.
- (v) The maximum footprint of all aboveground renewable energy structures on the Conservation Area, as measured to the dripline in the case of any roof or other cover extending beyond the structure's base, shall not exceed the impervious surface limitations described in Section II.C.ii., above, in combination with all other impervious surfaces subject to said impervious surface limits. However, exempted from the immediately referenced calculation is the footprint of any such energy structure mounted on top of some other permitted structure with impervious surface footprint also subject to said square footage limitation (for example, solar panels mounted on the roof of a dairy barn).

3. **Later Expansion.** Following the initial installation of any approved renewable energy production facility on the Conservation Area, any later, proposed expansion of the physical size of said facility shall require the Easement Holder's advance approval, and the Landowner's reassessment and recalculation, relative to the above maximum sizing limit, of the entire facility including the proposed expansion as if the entire facility were being constructed for the first time.
4. **Approval Process.** At least thirty (30) days prior to the commencement of any construction, installation, or on-site preparation, including but not limited to land clearing, for a renewable energy production facility on the Conservation Area, the Landowner shall provide the Easement Holder with written notice including details of said facility including but not limited to the scope, size, and location, and method and timing of said construction or installation. Within thirty (30) days after the Easement Holder's receipt of such notice, the Easement Holder shall approve or disapprove in writing the proposed facility, and shall so inform the Landowner. Any disapproval shall specify the reasons therefor.

B. Commercial Activities with *De Minimis* Impacts. Subject to the advance written approval of the Easement Holder, in the Easement Holder's sole discretion, the Landowner reserves the rights to conduct certain commercial activities on, under, or over the Conservation Area which have *de minimis* or no negative impacts on the Conservation Attributes and which are not "forestry" or "agriculture" as defined above, and to construct, place, introduce, use, maintain, repair, replace, enlarge, relocate, improve, or rebuild certain structures and improvements in furtherance thereof. "*De minimis*" refers to minimal negative impacts on the Conservation Attributes or the Purposes of this Easement. The exercise of said reserved right is subject to the use limitations regarding public access in Section II.J. above.

- i. **Structures & Improvements.** Any of said structures and improvements, whether used in whole or in part for commercial activities with *de minimis* impacts, must meet all of the following additional conditions a.-e., below:
- a. The impervious surfaces of all such structures and improvements shall count towards the impervious surface limits described in Section II.C.ii., above
 - b. Any such structure or improvement shall not be occupied as a residence, and any overnight use shall be temporary only;
 - c. There shall be no water supply source such as but not limited to a spring or well established or used on or in the Conservation Area, nor any associated system for disposing of waste water without human waste, if the primary use of said water supply or waste disposal system is to serve said commercial activity;
 - d. Any sign or outdoor advertising structures in association with commercial activities with *de minimis* impacts and displayed on the Conservation Area shall not have a face exceeding sixteen (16) square feet in size, shall not consist of digital or other electronic displays, and shall not be artificially illuminated; and
 - e. Any renewable energy production facility in support of said structure or improvement shall conform to Section III.A., above.

Further, the following additional restrictions f.-j. shall apply only if any said structure or improvement is used primarily for commercial activities with *de minimis* impacts, and that where such activities are not primary, other provisions of this Easement relevant to the primary activity shall control for the entire structure or improvement. For purposes of evaluating what is the primary vs. secondary, tertiary, etc. activity being made of a given structure or improvement relative to this Easement, the Easement Holder may consider measures including but not limited to the extent of interior floor space used for different types of activities, amount of time said structure or improvement is used for different types of activities, and extent of impacts resulting from different types of activities.

- f. Any accessway to any such structure shall consist of pervious surfaces only;

- g. The cumulative footprint of all such structures which are year-round shall not exceed seven hundred fifty (750) square feet, as measured to the dripline in the case of any roof or other cover extending beyond the base of any such structure. Furthermore, the impervious surfaces of any such structures that are covered and used for recreational purposes shall count towards the impervious surface limits described in Section 2.C.ii., above;
- h. The height of any such structure shall not exceed thirty (30) feet as measured from the highest point of said structure to its lowest point at grade, or else, if said structure is mounted upon some other structure, to the lowest point at grade of the underlying structure;
- I. There shall be no utility lines running on, under, or above the Conservation Area and serving said structures from sources outside of the Conservation Area, including but not limited to power, communication, water, and sewer lines; and
- j. There shall be no sewage or other waste water disposal system or components thereof, located on, under, or above the Conservation Area and serving said structures except for self-contained facilities such as but not limited to: outhouses, composting toilets, and temporary, portable toilets.

ii. Examples. Commercial activities with potentially *de minimis* impacts might include but shall not be limited to: cross-country skiing, and wagon rides for any of which a third party pays a user fee; occasional use of the Conservation Area for a wedding, party, or festival by a paying third party; any event for which entrants must pay a fee; production and sale of maple syrup made with sap not from the Conservation Area; the sale of prepared food with ingredients not produced from or grown on the Conservation Area and of handicrafts made with materials not from the Conservation Area; rental of an empty stall in a barn for seasonal storage of a boat; ongoing and regular sale of surplus electricity generated by solar panels on the Conservation Area under a “net metering” or other similar pricing scheme; and the Landowner’s receipt of payments or governmental subsidies for undertaking affirmative actions to restore wetlands on the Conservation Area.

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

Easement Holder shall evaluate the proposal and may approve the same only if the Easement Holder finds, in its sole discretion, that said activity, use, structure, or improvement meet(s) all of the conditions and terms of this Easement. The Easement Holder may choose to limit its approval to a certain time period, and to ownership only by the Landowner who originally requested approval of the use or activity. Within thirty (30) days after the Easement Holder's receipt of such notice and plan, the Easement Holder shall approve or disapprove in writing the proposal, and shall so inform the Landowner. Any disapproval shall specify the reasons therefor. In cases where the proposal, or the impact(s) thereof, is obviously minor, the Easement Holder has the right, in its sole discretion, to waive the requirement that the Landowner's notice and plan be submitted in writing.

4. SUBSEQUENT TRANSFER, TAXES, & MAINTENANCE

A. The Landowner shall notify the Easement Holder in writing at least ten (10) days prior to the transfer of title to the Conservation Area or to any portion thereof permitted hereby. Transfer of title shall include but not be limited to any change in Trustee if the Conservation Area is held in trust. Said notice shall include the name and contact information for the new owner. Further, the Landowner shall make specific reference to this Easement in any deed or other document transferring such title.

B. The Easement Holder [and Executory Interest Holder] shall be under no obligation to maintain the Conservation Area or pay any taxes or assessments thereon.

5. BURDENS & BENEFITS

The burden of the Easement conveyed hereby shall run with the Conservation Area and shall be enforceable against all future owners and tenants in perpetuity. In the event of any rent or lease of all or a portion of the Conservation Area as permitted by this Easement, the Landowner shall remain responsible for conformance and compliance with all of the terms of this Easement. The benefits of this Easement shall not be appurtenant to any particular parcel of land but shall be in gross and assignable or transferable, in whole or in part, only to the State of New Hampshire, the U.S. Government, or any subdivision of either of them, consistent with Section 170(c)(1) of the U.S. Internal Revenue Code of 1986, as amended, or to any charitable conservation organization, but only if said governmental or charitable recipient is a "qualified organization" within the meaning of Section 170(h)(3) of said Code ("Qualified Holder") and thus: has among its purposes the conservation and preservation of land and water areas; agrees to and is capable of protecting the conservation Purposes of this Easement; and has the resources to enforce the restrictions of this Easement. Further, a Qualified Holder must meet the qualifications established in NH RSA 477:46, as may be amended from time to time. Any such assignee's or transferee's power of assignment or transfer shall be similarly limited. If the Easement Holder or Executory Interest Holder transfers its interest in this Easement to another Qualified Holder, the transferor shall provide written notice of same to the Landowner and to the other holder(s) of interests in this Easement no later than ten (10) days after the date of said transfer.

Notwithstanding any other provisions in this Easement to the contrary, this Easement evidences no intent to, and does not, convey or afford to any parties other than signatories to this Easement any rights herein, including enforcement rights.

6. AFFIRMATIVE RIGHTS OF EASEMENT HOLDER

- a. Access to Conservation Area.** The Easement Holder [and the Executory Interest Holder] shall have access to the Conservation Area and all of its parts for such inspection and documentation (including but not limited to taking photographs and collecting data) as are necessary to determine compliance with and to enforce this Easement and exercise the rights conveyed hereby and fulfill the responsibilities and carry out the duties assumed by the acceptance of this Easement.
- b. Review of Ongoing Activities.** In furtherance of the exercise of the Easement Holder's stewardship obligations under Section 6.A., above, the Easement Holder shall have the right, but not obligation, to review and assess all ongoing activities, uses, and associated impacts on the Conservation Area. Said impacts may include but shall not be limited to impacts which were not anticipated as of the Easement Holder's earlier issuance of written approval of certain uses or activities, whether due to the accumulation of impacts over time, or the emergence or detection of impacts for the first time, or otherwise. If the Landowner, or any of his or her agents or representatives such as but not limited to any Qualified Person with respect to forestry, assists the Easement Holder in undertaking such review, for example, by joining in a site visit to the Conservation Area, the rendering of such assistance shall be at the expense of the Landowner. For any activity or use for which the Easement Holder has already provided specific written approval to the Landowner, if the Easement Holder finds upon inspection that said activity or use exceeds what was permitted within said written approval, or that the impacts of said activity or use are significantly impairing Conservation Attributes or are otherwise detrimental to the Purposes of this Easement, the Easement Holder shall have the right to modify or revoke said approval in accordance with the terms of said approval. The Landowner's continuation of any activity or use in excess of what is provided for within said written approval shall not give rise to any claim of prescriptive right or waiver of the terms and conditions of this Easement.
- c. Boundary Signs.** To facilitate such inspection and to identify the Conservation Area as conservation land protected by the Easement Holder, the Easement Holder shall have the right to place and maintain signs, each of which shall not have a face exceeding twenty-four (24) square inches in size, along the Conservation Area's boundaries.

7. AFFIRMATIVE RIGHTS OF LCHIP AND THE EXECUTORY INTEREST HOLDS

- a. Right of Access** - The Executory Interest Holder and LCHIP shall each have the right to access the Conservation Area and all of its parts for such inspection as either party finds necessary to determine compliance with the terms of this Easement, to exercise the rights

conveyed hereby, to carry out the duties assumed herein or to maintain boundaries if either party so desires.

- b. LCHIP's Right of Enforcement** - Notwithstanding the above, if Easement Holder ceases to enforce the Easement conveyed hereby or refuses to enforce it within thirty (30) days after receipt of written notice, delivered in hand or by certified mail, return receipt requested, from LCHIP, identifying: (a) the specific breach of conduct; (b) the specific failure on the part of the Easement Holder to enforce; and (c) requesting such enforcement, then LCHIP shall have the right to enforce this Easement in accordance with Section XX "Breach of Easement" above.
- c. State of New Hampshire's Executory Interest** - The State of New Hampshire is granted an Executory Interest in the Easement conveyed hereby. Should LCHIP exercise its Right of Enforcement in accordance with this Easement, the Executory Interest Holder shall then also have the right, but not the obligation, to request that a Court of competent jurisdiction terminate the interest of the Easement Holder in the Conservation Area, but not terminate the Easement, by filing an action to quiet title in the appropriate Court. If said Court determines that a material breach of conduct has occurred, and that Easement Holder has failed to enforce this Easement, then the rights and obligations under this Easement shall immediately vest in the Executory Interest Holder who shall then assume all interests and responsibilities granted to the Easement Holder in this Easement.
- d. Right to Recover Costs** - In the event LCHIP exercises its right of enforcement it is entitled to recover any and all administrative and legal costs associated with any enforcement or remedial action related to the enforcement of this Easement from Landowner, including, but not limited to, attorney's fees and expenses related to Landowner's violations. In the event Executory Interest Holder or LCHIP exercise the rights of enforcement and termination conveyed herein each shall be entitled to recover any and all administrative and legal costs associated with any action related thereto from the Easement Holder, including, but not limited to, attorney and consultant fees, staff costs, and other reasonable expenses related to Easement Holder's failure to enforce the Easement. However, if Executory Interest Holder initiates litigation against the Easement Holder to terminate the Easement Holder's interest in this Easement and a court of competent jurisdiction determines that a material breach of conduct on the part of the Easement Holder has not been established, each party shall bear its own costs. Notwithstanding the foregoing, if the court determines that either LCHIP or the Executory Interest Holder initiated litigation against the Easement Holder without reasonable cause or in bad faith, then the initiating party shall reimburse the Easement Holder's reasonable costs incurred in defending the action.
- e. Right to Take Action** - LCHIP and the Executory Interest Holder do not waive or forfeit the right to take action as may be necessary to insure compliance with this Easement by any prior failure to act, and Easement Holder and Landowner hereby waive any defense of laches with respect to any delay or omission by LCHIP or the Executory Interest Holder in acting to enforce any restriction or exercise any rights under this Easement, any

such delay or omission shall not impair LCHIP's or the Executory Interest Holder's rights or remedies, or be construed as a waiver.

- f. Right of Assignment** - The interests held by LCHIP and the Executory Interest Holder are assignable or transferable to any party so qualified by the State of New Hampshire. Any such assignee or transferee shall have like power of assignment or transfer. The interest held by the Secondary Executory Interest Holder is assignable or transferable to the State of New Hampshire or any subdivision of either of them, consistent with Section 170(c)(1) of the United States Internal Revenue Code of 1986, as amended, or to any qualified organization within the meaning of Section 170(h)(3) of said Code, which organization has among its purposes the conservation and preservation of land and water areas and which agrees to and is capable of protecting the Purposes of this Easement, and which has the resources to enforce the restrictions of this Easement. Any holder of an interest in this Easement desiring to transfer or assign its interest shall send written notice describing said intention to all other holders of any interest in this Easement at least thirty (30) days prior to such transfer or assignment taking effect.
- g. Taxes, Maintenance** - Neither Easement Holder, LCHIP or Executory Interest Holder shall be under any obligation to maintain the Conservation Area or to pay any taxes or assessments thereon.
- h. Requests for Approval** - Where LCHIP approval is required, Easement Holder or Landowner shall submit a detailed written request, delivered in hand or by certified mail and containing information sufficiently detailed (including, but not limited to, documents, maps, plans, specifications, and designs where appropriate) to reasonably evaluate the proposed activity, no less than forty-five (45) days prior to the start of the proposed activity. LCHIP approval shall not be unreasonably withheld, delayed, or conditioned and approval or denial of the request, or a request for additional information as may be required to evaluate the request, shall be provided no later than thirty (30) days following receipt of request. LCHIP reserves the right to consult with governmental agencies, nonprofit conservation or preservation organizations, and/or other consultants or advisors as it may choose concerning any approval request. No activity requiring such approval shall be undertaken until a letter detailing such approval has been received from LCHIP.
- i. General Disclaimer** - The State of New Hampshire and LCHIP, and their employees, agents, and assigns disclaim and will not be held responsible for Easement Holder's or Landowner's negligent acts or omissions or Easement Holder's or Landowner's breach of any representation, warranty, covenant, or agreements contained in this Easement, or violations of any Federal, State, or local laws, including all Environmental Laws including, without limitation, those that give rise to liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs of actions, or sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which the State of New Hampshire or LCHIP may be subject or incur relating to the Conservation Area.

8. PROTECTION OF THE UNITED STATES'S INTERESTS

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

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

The Easement Holder will annually monitor compliance and provide the United States with an annual monitoring report that documents that the Easement Holder and Landowner are in compliance with the Easement. If the annual monitoring report is insufficient or is not provided annually, or if the United States has a reasonable and articulable belief of an unaddressed violation, as determined by the Secretary, the United States may exercise its right of inspection.

For purposes of inspection and enforcement of the Easement and the United States ALE Agreement with the Easement Holder, the United States will have reasonable access to the Protected Conservation Area. Prior to its inspection of the Protected Conservation Area, the United States shall provide advance notice to Easement Holder and Landowner and provide Easement Holder and Landowner a reasonable opportunity to participate in the inspection.

In the event of an emergency, the United States may enter the Protected Conservation Area to prevent, terminate, or mitigate a potential or unaddressed violation of the Easement and will give notice to Easement Holder and Landowner at the earliest practicable time.

b. General Disclaimer and Landowner Warranty. The United States, its employees, agents, and assigns disclaim and will not be held responsible for Easement Holder's or Landowner's negligent acts or omissions or Easement Holder's or Landowner's breach of any representation, warranty, covenant, or agreements contained in this Easement, or violations of any Federal, State, or local laws, including all Environmental Laws (defined below) 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 United States may be subject or incur relating to the Protected Conservation Area.

Landowner must indemnify and hold harmless the United States, its employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions and costs of actions, 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 United States may be subject or incur relating to the Protected Conservation Area, which may arise from, but are not limited to, Landowner's negligent acts, omissions, or breach of any representation, warranty, covenant, agreements contained in this Easement or violations of any Federal, State, or local laws, including all Environmental Laws (defined below).

9. RESOLUTION OF DISAGREEMENTS

- a. Informal Dialogue.** The Landowner and the Easement Holder desire that issues arising from time to time concerning the interpretation of this Easement, or any use or activity on the Conservation Area, will first be addressed through candid and open communication between the parties rather than unnecessarily formal or adversarial action. Therefore, if either party becomes concerned about whether any proposed or actual use, activity, or failure to take action (which together for the purposes of this Section 9 "Resolution of Disagreements" shall be referred to as the "Activity") complies with this Easement, wherever reasonably possible the concerned party shall notify the other party of the concern, and the parties shall explore the possibility of reaching an agreeable resolution by informal dialogue.
- b. Mediation.** If informal dialogue does not resolve a disagreement regarding the Activity, and if the Landowner agrees not to proceed or continue with the Activity pending resolution of the disagreement concerning the Activity, either party may refer the disagreement to mediation by written notice to the other. Within ten (10) days of the delivery of such a notice, the parties shall agree on a single impartial mediator. Mediation shall be conducted in Concord, New Hampshire, or such other location as the parties shall agree. Each party shall pay its own legal fees and other associated costs, and the costs of mediation shall be split equally between the parties.
- c. Legal Action.** Notwithstanding the availability of mediation to address disagreements concerning the compliance of any Activity with this Easement, if the Easement Holder believes that some use, activity, or failure to take action of the Landowner or of a third party is causing irreparable harm or damage to the Conservation Area, or creates an imminent threat of same, the Easement Holder may seek a temporary restraining order, preliminary injunction or other form of equitable relief from any court of competent jurisdiction to cause the cessation of any such damage or harm or threat of same.

10. BREACH OF EASEMENT – EASEMENT HOLDER'S REMEDIES

a. Notification of Breach & Demand for Action.

- i. If the Easement Holder determines that a violation or breach of this Easement has occurred (which together shall hereinafter be referred to as "breach"), the Easement

Holder shall have the rights to provide notice and demand corrective action to cure the breach, except as otherwise provided for in Section 10.J. "Causes Beyond Landowner's Control," below. In addition, where the breach involves damage, disturbance, or harm (hereinafter referred to as "damage") to the Conservation Area, the Easement Holder shall have the right to demand corrective action to require the restoration of the portion of the Conservation Area so damaged to its prior condition as of creation of this Easement.

ii. If the Landowner learns of a breach, or purported breach, from a source other than the Easement Holder, the Landowner shall notify the Easement Holder of same within five (5) days after learning of same.

- b. **Performance by Landowner.** Within thirty (30) days after the Landowner's receipt of such notice from the Easement Holder, or the Landowner's delivery of such notice to the Easement Holder, as the case may be, the Landowner shall undertake those actions, including but not limited to restoration, which are reasonably calculated to cure swiftly said breach and to repair any damage. The Landowner shall promptly notify the Easement Holder of its actions taken hereunder. If the Landowner believes that said thirty (30) day period is insufficient to accomplish said cure, the Landowner may request an extension of time by submitting to the Easement Holder within ten (10) days after the aforesaid notice a proposed plan of action to cure said breach (hereinafter "Cure Plan") for the Easement Holder's review and possible approval. Within fifteen (15) days after the Easement Holder's receipt of the Cure Plan, the Easement Holder shall approve or disapprove in writing of said plan, and shall so inform the Landowner. Any disapproval shall specify the reasons therefor. If the Easement Holder does not approve of the Cure Plan in its entirety, the Landowner retains the aforesaid burden to cure said breach within the originally established thirty (30) day period.
- c. **Failure by Landowner.** If the Landowner fails to perform its obligations under the immediately preceding Section 8.B. "Performance....," or fails to continue diligently to cure any breach until finally cured, the Easement Holder may undertake any actions, in the Landowner's name, that are reasonably necessary to repair any damage or to cure such breach, including but not limited to an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Conservation Area to the condition that existed as of creation of this Easement.
- d. **Easement Holder's Remedies.** If the Easement Holder, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to any conservation attribute of the Conservation Area, the Easement Holder may pursue its remedies under this Section 8 "Breach of Easement..." without prior notice to the Landowner or without waiting for the period provided for cure to expire.
- e. **Damages.** The Easement Holder shall be entitled to recover damages from the party directly or primarily responsible for the breach or for damage to any Conservation Attributes protected hereby, including but not limited to damages for the loss of scenic, aesthetic, or environmental attributes of the Conservation Area. Without limiting the

Landowner's liability therefor, the Easement Holder, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Conservation Area.

- f. **Easement Holder's Rights Additive.** The Easement Holder's rights under this Section 8 "Breach of Easement..." are in addition to the provisions of Section 7 "Resolution of Disagreements," said Section 7 also applying to any disagreement that may arise with respect to activities undertaken in response to a notice of breach and the exercise of the Easement Holder's rights hereunder.
- g. **Immediate Danger of Irreparable Damage.** If at any time the Easement Holder determines, in its sole discretion, that Conservation Attributes protected by this Easement are in immediate danger of irreparable damage, the Easement Holder may seek the injunctive relief described in Section 8.C. "Failure by Landowner," both prohibitive and mandatory, in addition to such other relief to which the Easement Holder may be entitled, including but not limited to specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. All of the Easement Holder's remedies described in this Section 8 "Breach of Easement..." shall be available to the Easement Holder and shall be in addition to all remedies now or hereafter existing at law or in equity.
- h. **Costs.** Provided that the Landowner is directly or primarily responsible for the breach, including responsibilities identified in Section 8.J.ii., below, all reasonable costs incurred by the Easement Holder in enforcing the terms of this Easement against the Landowner, including, without limitation, staff and consultant costs, reasonable attorneys' fees and costs and expenses of suit, and any costs of restoration necessitated by the Landowner's breach of this Easement shall be borne by the Landowner; however, if the Landowner ultimately prevails in an enforcement action, each party shall bear its own costs. Notwithstanding the foregoing, if the Easement Holder initiates litigation against the Landowner to enforce this Easement, and if the court determines that the litigation was initiated without reasonable cause or in bad faith, then the court may require the Easement Holder to reimburse the Landowner's reasonable costs and reasonable attorney's fees in defending the action.
- i. **Forbearance by Easement Holder.** No failure, forbearance, omission, or delay by the Easement Holder in exercising any right, power, or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, remedy, power, or privilege hereunder.
- j. **Causes Beyond Landowner's Control.** The Landowner and Easement Holder shall have the following rights and obligations for acts or occurrences on the Conservation Area that are beyond the direct control of the Landowner.
- k. **Natural Causes.** Nothing contained in this Easement shall be construed to entitle the Easement Holder to bring any action against the Landowner for any damage to, or change

in, the Conservation Area resulting from natural causes beyond the Landowner's control, including but not limited to such natural disasters or occurrences as fire, flood, storm, disease, infestation and earth movement, or from any prudent action taken by the Landowner under emergency conditions to prevent, abate, or mitigate significant damage to the Conservation Area or to any party resulting from such causes.

- l. **Third Parties.** The Landowner is responsible for the acts and omissions of other parties acting on the Landowner's behalf or direction, acting as the Landowner's tenant, or acting with the Landowner's permission, and of other parties encroaching with the Landowner's knowledge, and the Easement Holder shall have the right to enforce against the Landowner for events or circumstances inconsistent with this Easement resulting from such acts or omissions. However, as to the acts or omissions of third parties other than the aforesaid parties, the Easement Holder shall not have a right to enforce against the Landowner unless the Landowner is complicit in said acts or omissions, fails to cooperate with the Easement Holder in all respects to halt or abate the event or circumstance of non-compliance resulting from such acts or omissions, or fails to report such acts or omissions to the Easement Holder as provided for in Section 8.A. "Notification of Breach & Demand for Action."
- m. **Notice to Landowner.** Upon the Easement Holder's receipt of information concerning a purported breach of this Easement apparently caused by circumstances beyond the Landowner's control, such as but not limited to acts of God and unauthorized actions by third parties, the Easement Holder shall give reasonable notice of same to the Landowner.
- n. **Remedies.** The Easement Holder and the Landowner reserve the right, separately or collectively, to pursue all legal and equitable remedies, as set forth in this Section 8 "Breach of Easement . . .," against any third party responsible for any actions inconsistent with this Easement, and, further, prior to either party taking any such separate action, the acting party shall provide timely advance notice and description of said intended action to the other party. Further, the Landowner shall, at the Easement Holder's option, assign the Landowner's right of action against such third party to the Easement Holder, or appoint the Easement Holder as the Landowner's attorney in fact for the purpose of pursuing an enforcement suit or action against such third party.

11. PROCEEDINGS INVOLVING OTHER PARTIES

In the event of any legal or administrative proceeding or dispute relating to the Conservation Area and which involves the Landowner and a party or parties other than the Easement Holder, the Landowner shall provide to the Easement Holder prompt notice and, upon the Easement Holder's request, copies of any and all documents relating to any such proceeding or dispute. Further, the Landowner shall give the Easement Holder the opportunity to participate in the defense, settlement, or resolution of any such proceeding or dispute. If the Easement Holder elects to participate in such proceeding or dispute, no such settlement or resolution shall be agreed to without the prior written consent of the Easement Holder.

12. NOTICES

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

- (i) Digital forms of written communication, including but not limited to email, with confirmation of delivery by the sender and non-automatic acknowledgment of receipt by the recipient; and
- (ii) Such other forms of notice as the Landowner and Easement Holder may agree on from time to time.
- (iii) Notice shall be deemed to have been given when so delivered or mailed.

13. SEVERABILITY

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

14. ENVIRONMENTAL RESPONSIBILITIES

Except as otherwise specifically set forth herein, nothing in this Easement shall be construed as giving any right or ability to the Easement Holder to exercise physical or managerial control of any of the Landowner's activities on the Conservation Area. Under no circumstance shall this Easement be construed such that the Easement Holder shall become an operator with respect to the Conservation Area within the meaning of the Comprehensive Environmental Response Compensation and Liability Act of 1980 as amended ("CERCLA"), or of any other federal, state, or local law or regulation making operators of Conservation Area responsible for remediation of contamination.

15. EXTINGUISHMENT, CONDEMNATION, Valuation & Allocation of Proceeds.

The interests and rights under this Agricultural Land Easement may only be extinguished or terminated with written approval of the Easement Holder, LCHIP, STATE and the United States. Due to the Federal interest in this EASEMENT, the United States must review and approve any

proposed extinguishment, termination, or condemnation action that may affect its Federal interest in the Protected Conservation Area.

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

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

The allocation of the Proportionate Share between the Easement Holder, LCHIP, NHDES and the United States will be as follows: (a) to the Easement Holder or its designee, XXXXXX percent (XX.XX%) of the Proportionate Share; (b) to LCHIP or its designee, XXX percent (XX.XX%) of the Proportionate Share; (c) to NHDES or its designee, XXX percent (XX.X%) of the Proportionate Share and (d) to the United States XXXX percent (XX.XX%) percent of the Proportionate Share.

Easement Holder shall use its proceeds from the Proportionate Share in a manner consistent with the Conservation Purposes of this EASEMENT; Until such time as the Easement Holder, Executory Interest Holders, and the United States receive the Proportionate Share from the Landowner or the Landowner's successor or assign, the Easement Holder, LCHIP, NHDES and the United States shall each have a lien against the Protected Conservation Area for the amount of the Proportionate Share due each of them. If proceeds from termination, extinguishment, or condemnation are paid directly to Easement Holder, the Easement Holder must reimburse LCHIP, NHDES and the United States for the amount of the Proportionate Share due to them.

Extinguishment. If an unexpected change in the conditions surrounding the Conservation Area can make impossible or impracticable the continued use of the Conservation Area for the Purposes of this EASEMENT, this EASEMENT can only be extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds from any sEasement, exchange, or involuntary conversion of all or any portion of the Conservation Area subsequent to such judicial extinguishment, and to which the Landowner or Easement Holder may be entitled shall be allocated among the Landowner and Easement Holder in proportion to their respective interests in the real estate so sold, exchanged, or converted in accordance with Section XX. "Valuation & Allocation of Proceeds," below. Each party shall be responsible for covering the expenses of its own actions.

In making this grant of EASEMENT, the Landowner 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 the Landowner pursuant to this EASEMENT. Any such change in economic conditions shall not be deemed to be circumstances justifying the extinguishment of this EASEMENT pursuant to this Section XX "Extinguishment."

Condemnation. If all or any part of the Conservation Area is taken, in whole or in part, by exercise of the power of eminent domain by public, corporate or other authority so as to extinguish this EASEMENT, in whole or in part, or if all or a part of the Conservation Area is lawfully sold without the restrictions imposed hereunder in lieu of the exercise, and under the threat, of eminent domain (both subsequently referred to as a "taking"), the Landowner and the Easement Holder, as holders of the real estate so taken, in consultation with LCHIP, the STATE and United States, shall thereupon act jointly to recover the full value of their respective interests in the real estate so taken and to recover all direct or incidental damages resulting therefrom. Following such taking, all expenses reasonably incurred by Landowner or Easement Holder shall be paid out of the amount recovered for the taking, with the resulting balance to be referred to hereinafter as the "Balance of the Proceeds." The Balance of the Proceeds shall be allocated among the Landowner and Easement Holder in proportion to their respective interests in the taken real estate in accordance with Section XX. "Valuation & Allocation of Proceeds," below.

Review & Approval

The interests and rights under this EASEMENT may only be extinguished or terminated with written approval of the Easement Holder and the United States. Due to the Federal interest in this EASEMENT, any proposed extinguishment, termination, or condemnation action that may affect its the United States' interest in the Conservation Area must be reviewed and approved by the United States.

Valuation and Allocation of Proceeds

The EASEMENT constitutes a real Conservation Area interest immediately vested in the Easement Holder, STATE, and the United States entitling each of them to compensation upon the extinguishment or condemnation of any portion of the EASEMENT. With respect to a proposed extinguishment, termination, or condemnation action, the Landowner, Easement Holder, LCHIP, STATE, and the United States stipulate that the fair market value of the EASEMENT is _____ percent (____%), hereinafter the "Proportionate Share," of the fair market value of the land unencumbered by this EASEMENT. The Proportionate Share will remain constant over time. Said percentage is obtained by dividing the appraised fair market value of the EASEMENT as of the creation of said EASEMENT by the appraised fair market value of the Conservation Area unencumbered as of that same time. Said appraisal was prepared _____, with effective date of _____, by _____, a qualified appraiser licensed in the State of New Hampshire, and copies of same have been provided to the Landowner, Easement Holder, LCHIP, STATE, and the United States.

If this EASEMENT is extinguished, terminated, or condemned, in whole or in part, then the Landowner must reimburse the Easement Holder, LCHIP, STATE and the United States an

amount equal to the Proportionate Share of the fair market value of the land unencumbered by this EASEMENT, only if compensation resulting from said extinguishment, termination, or condemnation and owed to the Easement Holder has first been paid to the Landowner. The fair market value will be determined at the time all or a part of this EASEMENT is terminated, extinguished, or condemned by an appraisal that meets the Uniform Standards of Professional Appraisal Practice (USPAP) or Uniform Acquisition Standards or Federal Land Acquisition (UASFLA). The appraisal must be completed by a certified general appraiser and be approved by the Easement Holder and the United States.

The allocation of the Proportionate Share between the Easement Holder, LCHIP, STATE, and the United States will be as follows: (1) to the Easement Holder or its designee, _____ (____%) of the Proportionate Share, which includes that part of the value of the EASEMENT donated to the Easement Holder by the Landowner; (2) to LCHIP, _____ percent (____%) of the Proportionate Share; (3) to the STATE (NH DES) _____ percent (____%) of the Proportionate Share; and (4) to the United States _____ (____%) of the Proportionate Share. Until such time as the Easement Holder, LCHIP, STATE, and United States receive the Proportionate Share from the Landowner or the Landowner's successor or assign, the Easement Holder, LCHIP, STATE, and United States each have a lien against the Conservation Area for the amount of the Proportionate Share due each of them. If proceeds from termination, extinguishment, or condemnation are paid directly to the Easement Holder, the Easement Holder must reimburse the LCHIP, STATE and United States for the amount of the Proportionate Share due to each of them.

Use of Proceeds for Conservation Purposes. The Easement Holder shall use any proceeds received under the circumstances described in this Section XX "Extinguishment, Termination, & Condemnation" in a manner consistent with the conservation Purposes of this EASEMENT.

16. AMENDMENT & DISCRETIONARY CONSENT

This Easement may be amended only if, in the sole and exclusive judgment of the Easement Holder, United States, by and through the Chief of NRCS, and Executory Interest Holder such amendment is consistent with the Purpose of the ALE and complies with all applicable laws and regulations. The Easement Holder must provide timely written notice to the Chief of NRCS of any proposed amendments. Prior to the signing and recordation of the amended Easement, such amendments must be mutually agreed upon by the Easement Holder, Executory Interest Holder Landowner, and United States, by and through the Chief of NRCS. Any purported amendment that is recorded without the prior approval of the United States is null and void.

The Landowner and Easement Holder and Executory Interest Holder recognize and agree that natural conditions, landscapes, consistency of uses, cultural conditions, and technologies change over time, and that unforeseen or changed circumstances could arise in which an amendment to certain terms or restrictions of this Easement would be appropriate and desirable, or that some activities may require the discretionary consent of the Easement Holder, as further described below. To this end, the Landowner and Easement Holder, United States, by and through the Chief of NRCS and Executory Interest Holder have the right to agree to amendments to this Easement according to the provision above, and the Easement Holder may exercise discretionary

consent, all in accordance with:

- The provisions and limitations of this Section 14;
- The then-current policies of the Easement Holder; and
- Applicable governmental laws, rules, regulations, and guidelines.

Any amendment or exercise of discretionary consent shall:

- Be consistent with the Purposes of this Easement; and
- Not significantly impair Conservation Attributes; and
- Not affect the qualification of this Easement or the status of the Easement Holder under any applicable laws, including Sections 170(h) and 501(c)(3) of the Internal Revenue Code of 1986 and regulations promulgated thereunder, and NH RSA 477:45-47, all as may be amended from time to time; and
- Not affect the perpetual duration of this Easement or the perpetual protection of its Purposes.

Any request by the Landowner for an amendment or for discretionary consent shall be in writing and shall describe the proposed amendment or the activity for which consent is sought in sufficient detail to allow the Easement Holder to judge the consistency of the request and of the proposed activity with the Purposes and other terms and conditions of this Easement. To evaluate and then make a determination on the Landowner's request, the Easement Holder shall have the right to engage independent experts, at the Landowner's sole cost, necessary for the Easement Holder to evaluate the adequacy of the proposal. If a proposed amendment or exercise of discretionary consent has aspects which, in some respects, would be detrimental to the Purposes of this Easement or would impair the Conservation Attributes, but, in other respects, enhance said Purposes or Conservation Attributes, then the Easement Holder shall evaluate the net effect of such impacts when considering any amendment or exercise of discretionary consent. Nothing in this Section 16 shall require the Easement Holder, United States, by and through the Chief of NRCS and Executory Interest Holder to consider, negotiate, or approve any proposed amendment or request for discretionary consent. The Easement Holder shall have sole discretion in all of its determinations regarding an amendment of this Easement or discretionary consent therefor.

A. **Amendments.** Any amendment shall be executed by the Landowner and the Easement Holder, United States, by and through the Chief of NRCS and Executory Interest Holder, subject to review by the N.H. Attorney General's Office, Charitable Trusts Unit as necessary, and shall be recorded in the _____ County Registry of Deeds.

B. **Discretionary Consent.** If the Landowner and the Easement Holder agree that any activity otherwise prohibited herein or not contemplated by the Easement is desirable, and if the Easement Holder determines, in its sole discretion, that such activity (i) is not detrimental to the Purposes of the Easement and (ii) would not have more than *de minimis* negative impacts on the Conservation Attributes protected hereby, the Easement Holder may then consent to such activity (only after consulting the, United States, by and through the Chief of NRCS and

Executory Interest Holder) and under the conditions and circumstances described herein. The Easement Holder's consent to a proposed use or activity may be limited or restricted in time, locale, or by ownership, and shall be in writing.

C. Notwithstanding the foregoing, the Landowner and Easement Holder [and Executory Interest Holder] shall have no right or power to agree to any amendment or consent to any activities that would result in the termination of this Easement.

17. GOVERNING LAW & INTERPRETATION

This Easement shall be interpreted under and governed by the laws of the State of New Hampshire, and shall be liberally construed to effect the Purposes of 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.

18. GOVERNMENTAL APPROVALS

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

19. NO MERGER

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

18. HOLD HARMLESS

The Landowner shall release, hold harmless, defend, and indemnify the Easement Holder, except as provided for in Section 10.J. "Causes Beyond Landowner's Control," from any and all liabilities including but not limited to injuries, losses, damages, judgments, costs, expenses and

fees which the Easement Holder may suffer or incur as a result of, arising out of, or connected with: (A) the activities of the Landowner on the Conservation Area, other than those caused by the negligent acts or acts of misconduct by the Easement Holder; or (B) violation or alleged violation of, or other failure to comply with, any state, federal or local law, regulation or requirement by the Landowner in any way affecting, involving, or relating to the Conservation Area.

19. ENTIRE AGREEMENT

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

20. ENVIRONMENTAL WARRANTY.

As used herein, "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.

As used herein, "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.

Landowner warrants that it is in compliance with, and will remain in compliance with, all applicable Environmental Laws. Landowner 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 Protected Conservation Area. Landowner further warrants that it has no actual knowledge of an undisclosed release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable Federal and State law.

Furthermore, Landowner warrants the information disclosed to Easement Holder and United States regarding any past violations or noncompliance with Environmental Laws and associated remedial actions, or any past releases of Hazardous Materials and any associated remedial actions is complete and accurate.

Moreover, Landowner hereby promises to hold harmless and indemnify Easement Holder and the United States against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any hazardous materials on, at, beneath or from the Protected Conservation Area, or arising from or connected with a violation of any Environmental Laws by Landowner or any other prior owner of the Protected Conservation Area. Landowner's indemnification obligation will not be affected by any authorizations provided by Easement Holder or the United States to Landowner

with respect to the Protected Conservation Area or any restoration activities carried out by Easement Holder on the Protected Conservation Area; provided, however, that Easement Holder will be responsible for any Hazardous Materials contributed after this date to the Protected Conservation Area by Easement Holder.

The Easement Holder and Executory Interest Holder, by accepting and recording this Easement, shall be bound by, observe, and enforce the provisions hereof and assume(s) the rights and responsibilities herein granted to and incumbent upon the Easement Holder and Executory Interest Holder, all in the furtherance of the conservation purposes for which this Easement is

delivered.

This Easement is effective as of the date of the last signature below.

IN WITNESS WHEREOF, We have hereunto set our hands this _____ day of _____, 2020.

Westwick Farming LLC

By _____
Dorn Cox
Duly authorized

By _____
Sarah Cox
Duly authorized

THE STATE OF NEW HAMPSHIRE
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of February, 2020, by Dorn Cox and Sarah Cox of Westwick Farming LLC.

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

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

Notary Public/Justice of the Peace

My Commission Expires: _____

**ACCEPTED BY SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE
FORESTS**

By: _____

Title: _____
Duly Authorized

Date: _____

STATE NEW HAMPSHIRE
COUNTY OF MERRIMACK

This instrument was acknowledged before me on this _____ day of _____,
2020 by David Jackson Savage, President on behalf of the Society for the Society for the
Protection of New Hampshire Forests. The identity of the subscribing party was determined by

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

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

Notary Public/Justice of the Peace

My Commission Expires: _____

ACCEPTANCE OF CONSERVATION AREA INTEREST BY THE UNITED STATES
OF AMERICA

The United States of America acting by and through the United States Department of Agriculture, Natural Resources Conservation Service, an agency of the United States Government, on behalf of the Commodity Credit Corporation hereby accepts and approves the foregoing Agricultural Easement Deed.

By: _____

Name: Rick Ellsmore, NH State Conservationist
Duly Authorized

Date: _____

State of New Hampshire
County of Strafford

This instrument was acknowledged before me on this ____ day of _____, 2020 by Rick Ellsmore, State Conservationist on behalf of the United States of America. The identity of the subscribing party was determined by **(check box that applies and complete blank line, if any):**

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

Notary Public/Justice of the Peace

(Printed Name, above)

My Commission Expires: _____

RIGHT OF ENFORCEMENT

ACCEPTED BY THE STATE OF NEW HAMPSHIRE on this ____ day of _____ 2020:

By: _____
Robert R. Scott, Commissioner

New Hampshire Department of Environmental Services

STATE OF NEW HAMPSHIRE
COUNTY OF _____, ss.

On this ____ day of _____, 2020, before me personally appeared Robert R. Scott, Commissioner of the New Hampshire Department of Environmental Services and duly authorized, known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he/she executed the same as his free act and deed for the purposes therein contained.

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

Notary Public/Justice of the Peace

(Printed Name, above)

My Commission Expires: _____

RIGHT OF ENFORCEMENT

LAND AND COMMUNITY HERITAGE PROGRAM AUTHORITY

By _____

Dorothy T. Taylor, Executive Director

Land and Community Heritage Investment Program Authority

STATE OF NEW HAMPSHIRE

COUNTY OF MERRIMACK, ss.

On this _____ day of _____, 2020, 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. Conservation Area

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

Notary Public/Justice of the Peace

(Printed Name, above)

My Commission Expires: _____

APPENDIX A

The "Conservation Area" subject to this Easement is certain parcel of land (herein referred to as the "Conservation Area") with any and all buildings, structures, and improvements thereon consisting of approximately 36 +/- acres situated on northerly side of NH Route 155 and Captain Smith Emerson Road, so-called, in the Town of Lee, County of Strafford, State of New Hampshire, being identified as all of Tax Lot 02-05-0600 on Tax Map #2, shown on a survey plan entitled "Conservation Easement Plan Prepared For Westwick Farming LLC, Located at Captain Smith Emerson Road, Lee, NH" by Atlantic Surveying CO, LLC, dated March 2020, to be recorded herewith at the Strafford County Registry of Deeds (hereinafter "Survey Plan"), and more particularly bounded and described as follows:

Property description to be added

EXCEPTING AND RESERVING THEREFROM

SUBJECT TO

TOGETHER WITH

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

[Not homestead Conservation Area.]

Appendix B
BUILDING ENVELOPE

A certain areas of land located in the Town of Lee, County of Strafford, State of New Hampshire, and depicted as "Agricultural Building Envelope", and shown on said Survey Plan to be recorded herewith and further described as follows:

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

Building Envelope #1

Beginning

Description to be added

to the POINT OF BEGINNING.

Said Building Envelope containing approximately ____ acres.

Attachment B

Map of SPNHF-Emerson-Oyster River Project (Lee)

Emerson - Oyster River

- Emerson Proposed Conservation Lands
- Conservation Lands
- Wellhead Protection Areas
- Hydrologic Areas of Concern
- Public Water Supply Wells
- Hydrography
- Town Boundaries
- Roads

Total Acres= 34.4 Ac.
Eligible Acres= 34.4 Ac.

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

11/4/2019

0 415 830 1,660 Feet

