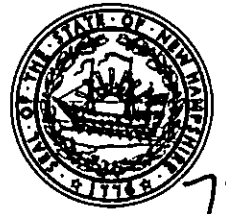


Sam



The State of New Hampshire
Department of Environmental Services

Robert R. Scott, Commissioner



72F

September 29, 2021

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 Five Rivers Conservation Trust (hereinafter "Five Rivers"), (VC# #156600), Concord, NH in the amount of \$13,248 to acquire a conservation easement on approximately 133.5 acres of land in the Town of Dunbarton to protect a drinking water supply, effective upon Governor & Council approval through December 31, 2021. 100% Drinking Water and Groundwater Trust Fund.

Funding is available in the following account:

03-44-44-444010-7428-073-500580

Dept Environmental Services, DWGW Trust, Grants Non-Federal

FY 2022

\$13,248

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 (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 seven drinking water source protection projects. Five Rivers' request for \$13,248 was selected for grant funding from the DWGTF. Five Rivers will use the grant funds to acquire a conservation easement on approximately 133.5 acres of land, of which 7% (9.3 acres) is within the wellhead protection area for the Dunbarton Elementary School well.

The total cost for Fiver Rivers to acquire the easement is \$378,500. The DWGTF will provide \$13,248 with \$365,252 in match provided by LCHIP, the Town of Dunbarton Conservation Fund, Moose Plate

DES Website: www.des.nh.gov

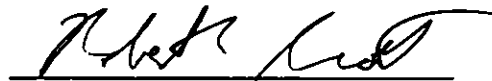
P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095

Telephone: (603) 271-2513 • Fax: (603) 271-5171 • TDD Access: Relay NH 1-800-735-2964

grant, Merrimack Conservation Partnership grant and private fundraising. 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 draft conservation easement. The Attorney General's office has approved the attached draft conservation easement as to form and substance, and will approve the actual deed as to execution. Attachment B contains a map of the land, which shows its relationship to the water supply source being protected.

We respectfully request your approval.

A handwritten signature in dark 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

I. IDENTIFICATIONS

1.1 State Agency Name NH Department of Environmental Services		1.2 State Agency Address 29 Hazen Drive, PO Box 95, Concord, NH 03302-0095	
1.3 Grantee Name: Five Rivers Conservation Trust		1.4 Grantee Address 10 Ferry Street, Suite 311-A, Concord, NH 03301	
1.5 Effective Date Upon G&C approval	1.6 Completion Date 12/31/2021	1.7 Audit Date N/A	1.8 Grant Limitation \$13,248
1.9 Grant Officer for State Agency Sandra Crystall NH Department of Environmental Services		1.10 State Agency Telephone Number (603) 271-2862	
1.11 Grantee Signature <i>Elizabeth H. Short</i>		1.12 Name & Title of Grantee Signor <i>Elizabeth Short, Executive Director</i>	
1.13 Acknowledgment: State of <u>NH</u> , County of <u>Merrimack</u> On <u>9/28/2021</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) <i>Alison C. Scheiderer</i>			
1.13.2 Name & Title of Notary Public or Justice of the Peace <i>Alison C. Scheiderer, Notary Public</i>			
1.14 State Agency Signature(s) <i>Robert R. Scott</i>		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: <i>[Signature]</i> Attorney, On: <u>9/29/2021</u>			
1.17 Approval by the Governor and Council By: _____ On: <u> </u> / <u> </u> / <u> </u>			

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

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

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

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

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

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

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

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

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

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

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

6. **COMPLIANCE BY GRANTEE WITH LAWS AND REGULATIONS.** In connection with the performance of the Project, the Grantee shall comply with all statutes, laws, regulations, and orders of federal, state, county, or municipal authorities which shall impose any obligations or duty upon the Grantee, including the acquisition of any and all necessary permits.

7. **RECORDS AND ACCOUNTS.**

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

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

the entity identified as the Grantee in block 1.3 of these general provisions.

8. **PERSONNEL.**

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

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

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

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

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

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

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

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

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

10. **CONDITIONAL NATURE OF AGREEMENT.**

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

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

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

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

11.1.2 failure to submit any report required hereunder; or

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

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

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

11.2.1 give the Grantee a written notice specifying the Event of

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

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

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

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

12. TERMINATION.

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

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

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

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

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

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

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

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

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

17. INSURANCE AND BOND.

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

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

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

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

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

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

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

21. CONSTRUCTION OF AGREEMENT AND TERMS.

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

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

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

EXHIBIT A

SCOPE OF SERVICES

Five Rivers Conservation Trust

Five Rivers Conservation Trust will use the grant to acquire a conservation easement on 134 acres of land, 9 acres of which is within the wellhead protection area of Dunbarton Elementary School. Five Rivers Conservation Trust will hold the conservation easement. The parcel designated on current Dunbarton Tax Map F3 Lot 12 will be protected in perpetuity, as specified in a 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 up to \$13,248 (3.6% of total project costs) shall be made to the Five Rivers Conservation Trust upon receipt of the following:

1. Survey of the parcel of land.
2. A copy of the appraisal.
3. Title examination.
4. Acceptable stewardship plan for the property that ensures the permanent protection of the water supply.
5. Completed baseline documentation form, which indicates the current condition of the property.
6. Documentation to support the match of up to \$365,252 provided by Five Rivers Conservation Trust.
7. The finalized conservation easement deed with restrictions to protect the water supply.

Grantee Initials EHS
Date 9/28/2021

EXHIBIT C

SPECIAL PROVISIONS

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

Grantee Initials EHS
Date 9/28/2021

CERTIFICATE of AUTHORITY

1. The Five Rivers Conservation Trust has agreed to accept State of New Hampshire, Department of Environmental Services, Drinking Water and Groundwater Trust Fund funds and to enter into a contract with the NH Department of Environmental Services.
2. The Five Rivers Conservation Trust further authorizes the
Executive Director to execute any documents which may be necessary for this contract;
3. This authorization has not been revoked, annulled, or amended in any manner whatsoever, and remains in full force and effect as of the date hereof; and
4. The following person has been appointed to and now occupies the office indicated in (3) above:
Elizabeth Short

Print (Officer Name)
Executive Director

Print (Officer Title)
5. I have hereunto set my hand as the

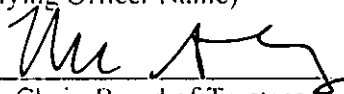
Sign (Certifying Officer Name)

9/28/21

Date Signed

Maura Adams

Print (Certifying Officer Name)



Chair, Board of Trustees

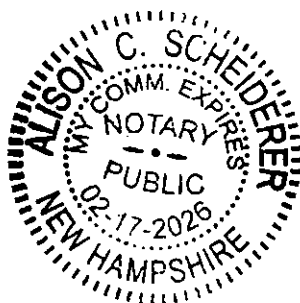
STATE OF NEW HAMPSHIRE


County of Merrimack

On this the 27th of July 2021, before me Alison Scheiderer (Notary Public), the undersigned officer, personally appeared Maura Adams who acknowledged herself to be the Chair of the Board of Trustees of Five Rivers Conservation Trust, executed the foregoing instrument for the purpose therein contained.

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

Commission Expiration Date:
(Seal)





Notary Public Signature
9/28/21

State of New Hampshire

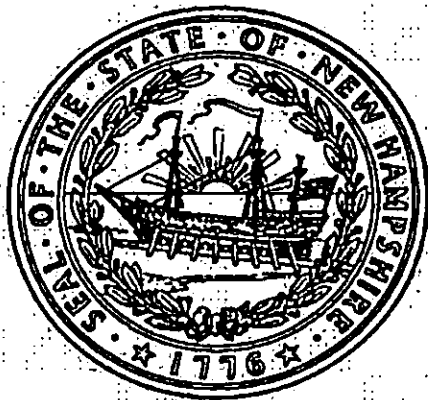
Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that FIVE RIVERS CONSERVATION TRUST is a New Hampshire Nonprofit Corporation registered to transact business in New Hampshire on December 13, 1988. 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: 136984

Certificate Number: 0005293600



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 16th day of March A.D. 2021.

A handwritten signature in cursive script, appearing to read "Wm Gardner".

William M. Gardner
Secretary of State



FIVERIV-01

CCHALFANT

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
7/30/2021

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-Aillant Ins Svc Inc.
4530 Wainey Rd Ste 200
Chantilly, VA 20161-2285

CONTACT Carol Chalfant

PHONE (A/C, No, Ext): (703) 397-7841

FAX (A/C, No): (703) 397-0995

E-MAIL ADDRESS: carol.chalfant@alliant.com

INSURER(S) AFFORDING COVERAGE

NAIC #

INSURER A: Federal Insurance Company

20281

INSURER B:

INSURER C:

INSURER D:

INSURER E:

INSURER F:

INSURED

Five Rivers Conservation Trust
10 Ferry Street, Suite 311A
Concord, NH 03301

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 LTB	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR			3585-24-74 EUC	8/15/2021	8/15/2022	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 - COMP/OP AGG \$ Included
	GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:						
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$			9385-12-18	8/15/2021	8/15/2022	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y <input checked="" type="checkbox"/> N If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	(22) 7177-71-86	8/15/2021	8/15/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 100,000 E.L. DISEASE - EA EMPLOYEE \$ 100,000 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)
Proof of coverages.

Grant: NH Department of Environmental Services, Drinking and Sourcewater Protection Grant.

CERTIFICATE HOLDER









CANCELLATION

NH Dept. of Environmental Services, Drinking Water & Groundwater Bureau
Attn: Sandy Crystall
29 Hazen Dr.
Concord, NH 03301

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

Koerber - Dunbarton WHPA

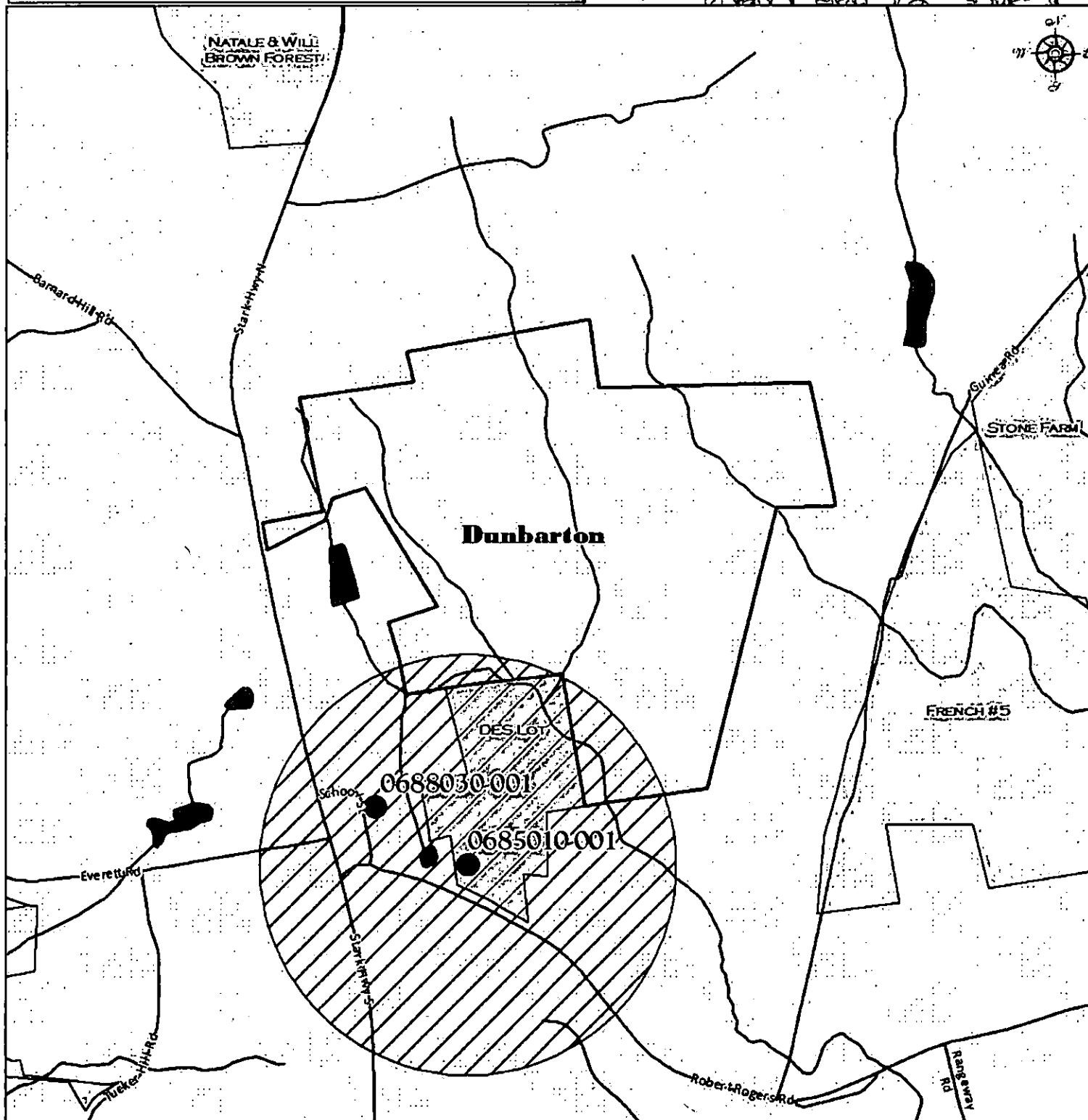
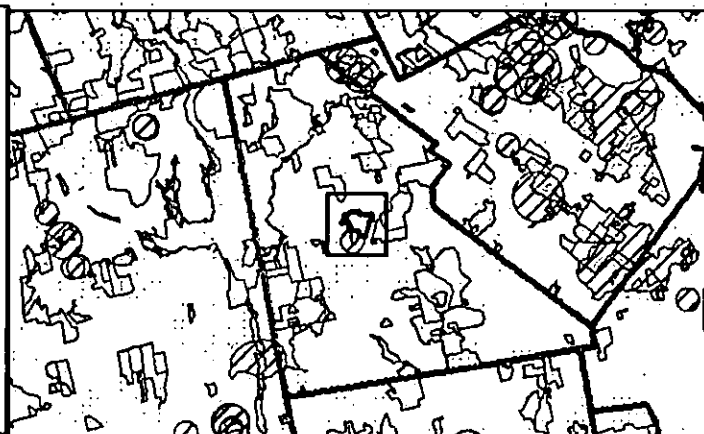
-  Koerber Proposed Conservation Lands
-  Conservation Lands
-  Public Water Supply Wells
-  Wellhead Protection Areas
-  Hydrologic Areas of Concern
-  Public Water Supply Wells
-  Hydrography
-  Town Boundaries

Total Acres = 131.5
Eligible Acres = 9.3

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. NH DES is not responsible for the use or interpretation of this information. Not intended for legal purposes.

5/17/2021

0 500 1,000 2,000 Feet



Notes:

- Print signature version of deeds single sided

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

CONSERVATION EASEMENT DEED and DEED RESTRICTION

SUSAN R. AND KENNETH C. KOERBER, husband and wife, of 31 Stark Highway North, Town of Dunbarton, County of Merrimack, State of New Hampshire (hereinafter referred to as the "Landowner," which word where the context requires includes the plural and shall, unless the context clearly indicates otherwise, include the Landowner's executors, administrators, legal representatives, devisees, heirs, successors and assigns),

for consideration paid, with **WARRANTY** covenants, grant in perpetuity to

the **FIVE RIVERS CONSERVATION TRUST**, a corporation duly organized and existing under the laws of the State of New Hampshire, with a principal place of business and mailing address at 10 Ferry St., #311A, City of Concord, County of Merrimack, State of New Hampshire 03301, having been determined by the Internal Revenue Service to be an income tax exempt, publicly supported corporation, contributions to which are deductible for federal income tax purposes pursuant to the United States Internal Revenue Code (hereinafter referred to as the "Easement Holder" which shall, unless the context clearly indicates otherwise, include the Easement Holder's successors and assigns),

the Conservation Easement (herein referred to as the "Easement") hereinafter described and pursuant to 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 "State,") and

with a Right of Enforcement, as further defined below in Section 15, to 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"); and

with, pursuant to NH RSA 485-F, a Right of Enforcement, as further defined in Section 15 herein to the STATE OF NEW HAMPSHIRE, DRINKING WATER AND GROUNDWATER TRUST FUND, acting through the DEPARTMENT OF ENVIRONMENTAL SERVICES ("NH DES") an administrative agency duly organized and existing under the laws of the State of New Hampshire, with a principal place of business at 29 Hazen Drive, City of Concord, County of

Merrimack, State of New Hampshire, 03301; and

a Secondary Executory Interest to the TOWN OF DUNBARTON, 1011 School St., Dunbarton NH 03046, as further described in the Executory Interest Section, Section 15, below (hereinafter referred to as "Town"),

all with respect to that certain area of land (herein referred to as the "Conservation Area") being unimproved land, of approximately 131.49 acres, situated on 31 Stark Highway North in the Town Dunbarton, County of Merrimack State of New Hampshire as shown on a Plan entitled "Plat of Conservation Easement, Land of Kenneth C. Koerber and Susan R. Koerber," by Stephen P. Perron, dated April 22, 2020, recorded as Plan # _____ at the Merrimack Country Registry of Deeds (hereafter "Plan"), and as more particularly bounded and described in Appendix "A" attached hereto and made a part hereof.

AND, in aid of such Easement, the Deed Restriction hereinafter described with respect to that certain area of land with any and all buildings, structures, and improvements thereon, consisting of approximately 14.87 acres as shown and identified on the Plan as the Area Excluded from the Conservation Easement (hereinafter referred to as the "Excluded Area") and more particularly bounded and described in Appendix "B" attached hereto and made part hereof.

The Conservation Area described in Appendix A and subject to the Easement, and the Excluded Area described in Appendix B subject to the Deed Restriction together comprise the entire parcel of the Landowner, as shown on the Plan.

Acknowledgment of Grant Award

Purchase of this Easement is made possible, in part, by a \$100,000 grant award from the Land and Community Heritage Investment Program and with a \$13,248 grant award from NH DES. These awards place certain restrictions on the Conservation Area as described herein, and continuing obligations on the Easement Holder as described in the NH DES Grant Agreement on file with the Easement Holder and the LCHIP Grant Agreement attached hereto as Appendix "C".

Public Trust

In accordance with NH RSA 227-M:14, notwithstanding any other provision of law, no deviation in the uses of the 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.

1. PURPOSES

The Easement is hereby granted pursuant to NH RSA 477:45-47, exclusively for the following conservation purposes (herein referred to as the "Purposes") for the public benefit and to prevent any use of the Conservation Area that will impair or interfere with the Conservation Values of the Conservation Area (defined below).

- A. To assure that the Conservation Area will be retained forever in its predominantly undeveloped, forested, and open space condition; and

- B. To conserve natural habitat or ecosystems for plants, animals, and natural communities including areas identified by New Hampshire Fish and Game's 2015 Wildlife Action Plan Highest Ranked Habitat map as highest ranked habitat in the biological region; and
- C. To conserve the Conservation Area's land and important forest soils categorized by the U.S. Natural Resource Conservation Service as Groups IA and IB soils, and to ensure the long-term protection of the Conservation Area's capacity to produce economically valuable forest products; and
- D. To conserve the Conservation Area's productive farm land and agricultural soils including agricultural soils of statewide and local importance as categorized by the U.S. Natural Resource Conservation Service and to ensure the long-term protection of the Conservation Area's capacity to produce economically valuable agricultural products; and
- E. To provide for low-impact, non-commercial outdoor recreational and educational use by the neighboring Dunbarton Elementary School and by the general public on the Conservation Area; and
- F. To conserve water quality and aquatic habitat in the wetlands, vernal pools and four headwater streams that flow into the Great Meadows wetland complex; and
- G. To protect the quality and sustainable yield of the public drinking water supply of the Dunbarton Elementary School well;
- H. To protect the cultural and historical landmarks on the Conservation Area, including but not limited to the historic carriage road barn foundation;
- H. The enhancement and enlargement of 770 acres of protected lands in the immediate vicinity of the Conservation Area including to the east, the Farley and Stone Farm conservation easements held by Five Rivers Conservation Trust and the French #5 conservation easement held by the Society for the Protection of New Hampshire Forests; to the west, the Natalie and Wilcox Brown lands owned by the Society for the Protection of New Hampshire Forests; and to the north, the Hough conservation easement held by the Society for the Protection of New Hampshire Forests.

The above Purposes are consistent with the clearly delineated open space conservation goals and objectives as stated in the "2019 Master Plan of the Town of Dunbarton", adopted September 18, 2019, which recommends that the Town:

- "Ensure protection for water systems including, but not limited to, ponds, streams, wetlands, and vernal pools;
- "Locate and permanently protect corridors that connect contiguous areas of protected lands so that wildlife can pass from one conservation area to another;
- "Locate large tracts of land or smaller tracts of land that could be joined to create larger tracts that have qualities worthy of protection (vi., 25);
- "Take advantage of opportunities to collaborate with landowners and land trusts to conserve important open space/natural resources in Dunbarton (vi., 26); and
- "Support efforts to provide opportunities for outdoor recreation throughout Town" (vi.,

26).

and are consistent with New Hampshire RSA Chapter 79-A:1 which states in part: "It is hereby declared to be in the public interest to encourage the preservation of open space, thus providing a healthful and attractive outdoor environment for work and recreation of the state's citizens, maintaining the character of the state's landscape, and conserving the land, water, forest, agricultural and wildlife resources."

and with New Hampshire RSA 481:1 which states, in part: "The general court declares and determines that the water of New Hampshire ...constitutes a limited and, therefore, precious and invaluable public resource which should be protected, conserved and managed in the interest of present and future generations."

and with NH RSA 227-M which states in part: "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, or 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."

These significant conservation features as well as other characteristics, which include but are not limited to those set forth in detail in the Baseline Documentation Report on file with the Easement Holder (hereinafter "Baseline Report"), shall be collectively referred to herein as the "Conservation Values." The Landowner, the Easement Holder, the State, LCHIP, NHDES, and the Town (hereinafter collectively the "Parties," and individually a "Party") acknowledge that environmental or other conditions which sustain the Conservation Values may change over time, and that the resulting change or disappearance of any given Conservation Value does not necessarily negate the significance and/or public benefit of the others. Similarly, the Parties acknowledge that certain significant conservation features may exist on the Conservation Area but not be known about as of the execution of this Easement or may arrive to the Conservation Area at some later time, are not specifically identified in the above description of Conservation Values, and are worthy of permanent conservation and/or protection consistent with the Purposes of this Easement as described herein. Accordingly, the Parties agree that, upon the appropriate documentation of such features as a supplement to the Baseline Report, such features shall be conserved and or protected prospectively by this Easement. All of these purposes are consistent and in accordance with the U.S. Internal Revenue Code, Section 170(h).

2. USE LIMITATIONS (Subject to the reserved rights specified in Section 3 below)

- A. No acts, uses, or management activities shall be undertaken on the Conservation Area that
- i. are inconsistent with the purposes of this Easement as stated herein or,
 - ii. may materially impair the Conservation Values of the Conservation Area, or
 - iii. may be inconsistent with the purposes of NH. RSA 485-F, or
 - iv. will degrade the water quality such that the standards set for public drinking water by the New Hampshire Department of Environmental Services would be threatened, or
 - v. will cause an unsustainable quantity of water to be withdrawn, or

- vi. will harm state or federally recognized rare, threatened, or endangered species, or exemplary natural communities, such determination of harm to be based upon information from the New Hampshire Natural Heritage Bureau, the New Hampshire Fish and Game Department, or the agency then recognized by the State of New Hampshire as having responsibility for identification and/or conservation of such species and natural communities.
- B. The Conservation Area shall be maintained in perpetuity as open space without there being conducted thereon any industrial or commercial activities, except agriculture and forestry, including timber harvesting as described below, and provided that the productive capacity of the Conservation Area to produce forest and agricultural crops shall not be degraded by on-site activities.
- i. For the purposes hereof, "forestry" shall include the growing, stocking, cutting, and sale of Christmas trees or forest trees of any size capable of producing timber or other forest products; the construction of roads or other accessways for the purpose of removing forest products from the Conservation Area; pre-commercial silvicultural activities including, but not limited to, timber stand improvement; and the processing and sale of products produced on the Conservation Area (such as firewood and maple syrup).
 - ii. For the purposes hereof, "agriculture" shall include animal husbandry, floriculture, and horticulture activities; the production of plant and animal products for domestic or commercial purposes; the growing of food crops; the construction of roads or other accessways for the purpose of removing agricultural products from the Conservation Area; and the processing and sale of products produced on the Conservation Area (such as pick-your-own fruits and vegetables).
 - iii. Any agriculture conducted for industrial or commercial purposes shall be performed, to the extent reasonably practicable, in accordance with a written coordinated management plan for the sites and soils of the Conservation Area. Agricultural management activities shall be in accordance with the then-current scientifically based practices recommended by the UNH Cooperative Extension, U.S.D.A. Natural Resources Conservation Service, the NH Department of Agriculture, Markets, and Food, or other government natural resource conservation and management agencies then active. Such management activities shall not be detrimental to the Purposes of this Easement, nor materially impair the water quality and aquatic habitat of the wetlands, vernal pools and headwater streams on the Conservation Area, or materially impair the scenic quality of the Conservation Area as viewed from public trails.
 - iv. Any forestry conducted for industrial or commercial purposes shall be performed, to the extent reasonably practicable, as hereinafter specified in accordance with the following goals, and in a manner not detrimental to the Purposes of this Easement.
 - a. The goals are:
 - maintenance of soil productivity;
 - protection of public drinking water resource lands for water quality and

quantity

- protection of water quality, wetlands, vernal pools, and riparian zones;
 - maintenance or improvement of the overall quality of forest products;
 - conservation of scenic quality;
 - protection of significant natural habitat, such as habitat for rare species, exemplary natural communities, and important wildlife habitat, as identified by the NH Natural Heritage Bureau, the NH Fish and Game Department, or the agency then recognized by the State of New Hampshire as having responsibility for identification and/or conservation of such natural features;
 - protection of unique historic and cultural features; and
 - conservation of native plant and animal species.
- b. Such forestry shall be performed in accordance with a written forest management plan ("Management Plan") consistent with this Easement, prepared by a licensed professional forester, or by other qualified person approved in advance and in writing by the Easement Holder. Said Management Plan shall have been prepared not more than ten (10) years prior to the date any harvesting is expected to commence or shall have been reviewed and updated as required by such a forester or other qualified person at least thirty (60) days prior to said date.
- c. At least sixty (60) days prior to harvesting, the Landowner shall submit to the Easement Holder a written certification, signed by a licensed professional forester, or by other qualified person approved in advance and in writing by the Easement Holder, that such Management Plan has been prepared in compliance with the terms of this Easement along with a copy of said Management Plan for review and approval in accordance with Section 8 "Request for Approval." It is acknowledged that the Management Plan's purpose is to guide forest management activities in compliance with this Easement, and that the actual activities will determine compliance therewith.
- d. The Management Plan shall include:
- A statement of landowner objectives;
 - Forest type map showing stands related to the prescriptions provided in the plan;
 - A map showing soil types as determined by the U.S. Department of Agriculture's Natural Resources Conservation Service (or by other similarly charged successor governmental agency), access roads, wetlands, and surface waters;
 - Prescriptions for each described stand, including commercial and non-commercial treatments;
- and shall specifically address:
- The long-term protection of those values for which this easement is granted,

- as described in Section 1 above;
 - The goals in Section 2.B.iv.a above; and
 - How drinking-water supply areas, wetlands, riparian areas, vernal pools, and soils will be protected in association with forestry activities; and
 - How the impact of forestry activities on any rare, threatened or endangered species found on the property will be minimized; and
 - How the barn foundation, and other cultural and historic resources will be protected in association with forestry activities.
- e. Timber harvesting with respect to such forestry shall be conducted in accordance with said Management Plan and be supervised by a licensed professional forester, or by other qualified person approved in advance and in writing by the Easement Holder.
- f. Such forestry shall be carried out in accordance with all applicable local, state, federal, and other governmental laws and regulations, and, to the extent reasonably practicable, in accordance with then current, generally accepted best management practices for the sites, soils, and terrain of the Conservation Area. For references, see “Good Forestry in the Granite State: Recommended Voluntary Forest Management Practices for New Hampshire” (K. Bennett, 2010), “New Hampshire Best Management Practices for Erosion Control on Timber Harvesting Operations” (NH Division of Forests and Lands and UNH Cooperative Extension Service, 2016), “Best Management Practices for Forestry: Protecting New Hampshire’s Water Quality” (UNH Cooperative Extension Service, 2005) or similar successor publications.
- g. Along roads and trails used by, or visible to, the general public, such forestry shall be carried out, to the extent reasonably practicable, in accordance with the recommendations contained in “A Guide to Logging Aesthetics: Practical Tips for Loggers, Foresters, and Landowners” (Geoffrey Jones, 1993) or similar successor publications.
- C. The Conservation Area shall not be subdivided or conveyed in any form in separate parcels except that the lease of any portion of the Conservation Area for any use permitted by this Easement shall not violate this provision.
- D. No structure or improvement shall be constructed, placed, or introduced onto the Conservation Area except for ancillary structures and improvements:
- i. used in the accomplishment of the agricultural, forestry, conservation, habitat management, water supply, or noncommercial outdoor recreational uses of the Conservation Area, and which may include but are not limited to roads, trails, dams, fences, bridges, culverts, barns, maple syrup houses, farm stands, or sheds; and
 - ii. which are not detrimental to the Purposes of this Easement.

Notwithstanding the above, there shall not be constructed, placed, or introduced onto the Conservation Area any of the following structures or improvements: dwelling, residence, cabin, indoor riding arena, residential driveway, any portion of a septic system,

telecommunications and/or wireless communication facility, tower, tennis court, swimming pool, athletic field, golf course, storage trailer, or aircraft landing area.

Before applying for governmental permits or beginning site work for, or construction of, any such ancillary structure or improvement with a footprint greater than 250 square feet in area on the Conservation Area, the Landowner shall request approval in accordance with Section 8 "Request for Approval."

- E. No removal, filling, or other disturbances of soil surface, nor any changes in topography, surface or subsurface water systems, wetlands, or natural habitat shall be allowed unless such activities are commonly used in the accomplishment of the agricultural, forestry, conservation, habitat management, water supply, or noncommercial outdoor recreational uses of the Conservation Area; and are not detrimental to the Purposes of this Easement. No wastes generated off the property shall be disposed of, stored, or discharged on the Conservation Area.
- F. Prior to commencement of any such activities, the Landowner shall secure all necessary federal, state, local, and other governmental permits and approvals.
- G. No outdoor advertising structures, such as signs and billboards, shall be displayed on the Conservation Area except in the accomplishment of the agricultural, forestry, conservation, habitat management, water supply, or noncommercial outdoor recreational uses of the Conservation Area, and provided such structures are not detrimental to the Purposes of this Easement. No sign face shall exceed 16 square feet in size and no sign shall be artificially illuminated.
- H. There shall be no mining, quarrying, excavation, or removal of rocks, minerals, gravel, sand, topsoil, or other similar materials on the Conservation Area, except in connection with any improvements made pursuant to and consistent with the provisions of Sections 2.A., C., D., or E., above and provided that such activities on the Conservation Area will have a limited and localized impact on the Conservation Area, as determined at the sole discretion of the Easement Holder, and shall not be irretrievably destructive of or detrimental to the Purposes of this Easement. The Conservation Area shall be regraded and restored to its natural condition and appearance within a reasonable time after cessation of use permitted by this Section 2.H. In no case shall any rocks, minerals, gravel, sand, topsoil, or other similar materials be removed from the Conservation Area.
- I. There shall be no accumulation, dumping, injection, disposal, burning, or burial on the Conservation Area of man-made materials, building demolition or construction debris, trash, refuse, sewage, tires, municipal plowed snow, vehicle bodies or parts or similar materials, or materials then known to be environmentally hazardous. This restriction will not prevent generally accepted agricultural or wildlife management practices such as creation of brush piles, composting of materials generated on the Conservation Area, or the storage of farm machinery, organic matter, agricultural products or agricultural byproducts on the Conservation Area.
- J. No rights-of-way, easements of ingress or egress, driveways, roads, or utility lines shall be granted, constructed, developed, or maintained into, on, over, under, or across the

Conservation Area without the prior written approval of the Easement Holder and LCHIP, in accordance with Section 8, "Requests for Approval" below, except those of record as of the execution of this Easement and those specifically permitted by the terms of this Easement.

- K. The Landowner shall not grant permission for motorized vehicle use on the Conservation Area except in the accomplishment of the agricultural, forestry, habitat management, or conservation uses of the Conservation Area, provided that no use of motorized vehicles shall create impacts that are detrimental to the productivity of the soils on the Conservation Area and the Purposes of this Easement; however, notwithstanding the foregoing, non-commercial, recreational use of snowmobiles on snow may be allowed on the Conservation Area at the discretion of the Landowner only if such use is located outside of the sanitary protective area of the Dunbarton Elementary School public water supply well and only on designated trails depicted on a plan approved by the N.H. Department of Environmental Services.
- L. Pursuant to RSA 229-M:15, there is hereby conveyed to the public an affirmative right of pedestrian access to, on, and across the Conservation Area for hunting, fishing, and transitory passive recreational purposes such as hiking, cross country skiing, snowshoeing and nature observation. The Easement Holder shall be under no duty to supervise said access, use or purpose.

3. RESERVED RIGHTS

Notwithstanding the foregoing, the Landowner shall retain the right to make the following uses of the Conservation Area:

- A. Posting. The Landowner reserves the right to post portions of the Conservation Area to communicate the following restrictions or limitations:
 - i. to prohibit public access to agricultural cropland during the planting, growing, or harvesting seasons; lands actively used by livestock; forestland during establishment of plantations, harvesting, or other active forest management operations such as planting and thinning of trees and construction or maintenance of woods roads.
 - ii. to prohibit any types of motorized vehicles and wheeled vehicles.
 - iii. to limit or prohibit public access to and use of any portion of the Conservation Area for an appropriate period of time to halt problematic or abusive uses or behaviors by said public, subject to prior written approval from the Easement Holder and LCHIP. Said problematic or abusive uses or behaviors may include, but are not limited to, loitering, partying or other unauthorized large gatherings of people, noisy activities, vandalism, and/or making of fires or development of unauthorized trails or structures. The Landowner shall request approval from the Easement Holder and LCHIP in accordance with Section 8 "Request for Approval" before exercising the right(s) described in this Section 3.A.iii.
- B. Agritourism. Low impact commercial agritourism activities such as farm tours, work experiences, field trips, corn mazes, and non-motorized hayrides are allowed on the Conservation Area, provided that no such activities shall create impacts that are detrimental

to the Purposes of this Easement and provided that all parking for such events shall be outside the Conservation Area. Events such as commercial weddings, concerts, and other high intensity commercial activities shall not be considered Agritourism and shall be prohibited on the Conservation Area.

- C. Renewable Energy Generation. Renewable energy shall be considered energy that can be produced without depleting its source, including, but not limited to, sources such as wind, solar, and geothermal. The Landowner reserves the right to construct, maintain, operate, repair, and replace facilities within the Conservation Area but outside of the Dunbarton Elementary School Wellhead Protection Area for the production of renewable energy, including the right to construct and install appurtenant structures and improvements in connection therewith, *only if*:
- i. such facilities cannot be sited in the Excluded Area due to physical constraints or distance from the site of the needed power, AND
 - ii. the siting of such facilities and improvements is not detrimental to the Purposes of the Easement, AND
 - iii. such facilities serve only the allowed uses of the Conservation Area, AND
 - iv. such facilities and improvements shall be sized appropriately for and may supply energy generation for the primary benefit of permitted structures, uses and activities on the Conservation Area. The Landowner reserves the right to connect such facilities to the local power grid to sell incidental, excess power back to the power grid through a net-metering or similar program, AND
 - v. The Easement Holder may require such facilities and improvements to be removed, at the Landowner's expense, if the sole purposes for which they are allowed are discontinued for a continuous period of sixty (60) months, AND
 - vi. The Landowner shall request and receive prior written approval from the Easement Holder, in accordance with Section 8, "Request for Approval" below, before seeking federal, state, local, and other governmental permits or approvals or exercising the right(s) described in this Section 3.C.

4. RESTRICTION CONVEYED ON EXCLUDED AREA

For the benefit and in aid of the Easement granted hereby and running therewith, the Landowner hereby also grants to the Easement Holder the right to enforce the following Restriction with respect to the Excluded Area:

The Excluded Area shall not be further subdivided, and shall not itself be subdivided from and conveyed separately from the Easement Area.

5. AFFIRMATIVE RIGHTS OF THE EASEMENT HOLDER AND SECONDARY EXECUTORY INTEREST HOLDER

- A. The Easement Holder shall have reasonable access to the Conservation Area and all its parts for such inspection as is necessary to determine compliance and to enforce this Easement, to exercise the rights conveyed hereby and fulfill the responsibilities and carry out the duties assumed by acceptance of this Easement.

B. In part to facilitate the public access rights accorded under Section 2.L hereunder, the Town, acting through its Conservation Commission, is conveyed the following affirmative rights:

- i. The right to create and maintain pedestrian trails on the Conservation Area to connect existing trails to Stark Highway North or to another point of public access, plans for which are subject to approval in accordance with Section 8 below, by the Landowner and the Easement Holder. Should the Conservation Commission fail to maintain the trails, the Easement Holder may elect to maintain the trail. If the Conservation Commission and the Easement Holder fail to maintain the trails, the Landowner may request in writing to both the Conservation Commission and the Easement Holder that trails be maintained or temporarily closed until such time that they are maintained, and Conservation Commission or Easement Holder shall either improve the trails or close them.
- ii. The right to construct, maintain, and replace, at trail entrances or other appropriate location(s) on the Conservation Area, signs and/or kiosks for purposes of property identification, safety, outdoor recreation, funder acknowledgment or outdoor education and to install interpretive signs at historic sites for general education and appreciation by the public, all with written approval of the Landowner and the Easement Holder, and at the Town's expense. The Easement Holder, at its sole discretion, may contribute funds for such signs but has no obligation to do so. If the Town elects not to erect a kiosk or other signage, the Easement Holder may, at its sole discretion and with written permission of the Landowner, elect to construct, maintain, and replace at appropriate location(s) signs and/or kiosks for the above stated purposes.
- iii. The right to construct a trailhead parking area for the purpose of trail access where the Conservation Area fronts on Stark Highway North, plans for which are subject to review and approval by the Landowner and the Easement Holder in accordance with Section 8 below.

C. To facilitate such inspection described in Section 5.A, above, and to identify the Conservation Area as conservation land protected by the Easement Holder, the Easement Holder shall have the right to place signs, each of which shall not exceed twenty-four (24) square inches in size, along the Conservation Area's boundaries. The Easement Holder shall have the right, but not the obligation, to mark and maintain the Conservation Area boundaries.

6. NOTIFICATION OF TRANSFER

The Landowner agrees to notify the Easement Holder in writing within ten (10) days of the transfer of title to the Conservation Area, or any interest therein, including any change in Trusteeship if the Conservation Area is held in trust, and shall provide the Easement Holder with a copy of the proposed deed thereof.

7. NOTIFICATION OF ACTIVITIES

Notification required above, shall be made in writing, in accordance with the provisions in Section 16, "Notices," below, by the Landowner and shall be received by the Easement Holder at least sixty (60) days before the Landowner applies for any necessary federal, state, local, and other governmental permits or approvals; or, if no such permits or approvals are required, shall be similarly made and received at least 60 days prior to commencement of any site preparation, construction or other activities on the Conservation Area. Said notification of activities shall include a written plan describing or showing, as appropriate, the nature and location of proposed physical changes to, improvement to or activities on the Conservation Area, and shall describe the overall scope of the proposal in relation to the Purposes of the Easement.

8. REQUESTS FOR APPROVAL

- A. Requests for approval by the Easement Holder required in Sections 2.B.iv.c., 2.D.ii., 2.J and 3.A.iii, 3.C.vi., and 5.B. i. and iii. above, shall be made in writing, in accordance with the provisions in Section 16, "Notices," below, by the Landowner, or as described in Section 5.B., by the Secondary Executory Interest Holder (Town), and shall be received by the Easement Holder at least sixty (60) days before the Landowner or the Town applies for any necessary federal, state, local, and other governmental permits or approvals; or, if no such permits or approvals are required, shall be similarly made by the Landowner or the Town and received by the Easement Holder at least 60 days prior to commencement of any site preparation, construction, or other activities on the Conservation Area related to the said required Easement Holder approval. Said request for approval shall include a written plan, describing or showing, as appropriate, the nature and location of the proposed physical changes, improvement to, or activities on the Conservation Area, and shall describe the overall scope of the proposal in relation to the Purposes of the Easement.
- B. Within sixty (60) days after the Easement Holder's receipt of the request for approval described in Section 8.A., above, and any supplemental information requested by the Easement Holder, the Easement Holder shall approve or disapprove the plan and so inform the Landowner or Town in writing. Approval is at the Easement Holder's sole discretion, and any disapproval shall specify in detail the Easement Holder's objections and the reasons therefor. Failure to provide written approval or disapproval of the request within sixty days shall not constitute its approval.
- C. Where LCHIP approval is required, the 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) business 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) business days following receipt of request. LCHIP reserves the right to consult with governmental agencies, nonprofit conservation or preservation organizations, and/or consultants or advisors as it may choose concerning approval request. No activity requiring such approval shall be undertaken until a letter detailing such approval has been received from LCHIP.

- D. Notwithstanding the requirements for Approval in this Section 8, this provision shall not apply to plans for routine maintenance or repairs of existing or approved structures or improvements.
- E. Where Landowner approval is required for Town plans as in Section 5.B.i. and iii. above, the Town shall submit requests for approval to the Landowner in writing at least sixty (60) days before the Town applies for any necessary federal, state, local, and other governmental permits or approvals; or, if no such permits or approvals are required, shall be similarly made by the Town and received by the Landowner at least 60 days prior to commencement of any site preparation, construction, or other activities on the Conservation Area related to the said required Landowner approval. Said request for approval shall include a written plan, describing or showing, as appropriate, the nature and location of the proposed physical changes, improvement to, or activities on the Conservation Area, and shall describe the overall scope of the proposal in relation to the Purposes of the Easement.

9. SUBSEQUENT TRANSFER

The Landowner agrees that the terms, conditions, restrictions and Purposes of this grant or reference thereto will be inserted by the Landowner in any subsequent deed or other legal instrument by which the Landowner divests either the fee simple title or possessory interest in the Conservation Area.

10. TAXES, MAINTENANCE

Neither the Easement Holder, LCHIP, nor the Town shall be under any obligation to maintain the Conservation Area or pay any taxes or assessments thereon.

11. BENEFITS AND BURDENS

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. The benefits of this Easement shall not be appurtenant to any particular parcel of land but shall be in gross and assignable or transferable only to the State of New Hampshire, the U.S. Government, or any subdivision of either of them, consistent with Section 170(c)(1) of the U.S. Internal Revenue Code of 1986, as amended, or to any qualified organization within the meaning of Section 170(h)(3) of said Code, which organization has among its purposes the conservation and preservation of land and water areas and agrees to and is capable of enforcing the conservation Purposes of this Easement. Any such assignee or transferee shall have like power of assignment or transfer.

12. SEPARATE PARCEL

The Landowner agrees that for the purpose of determining compliance with any present or future regulation (other than those governing N.H. Current Use Assessment under RSA 79-A), bylaw, order, or ordinance (within this section referred to as "legal requirements") of the Town of Dunbarton, the State of New Hampshire, or any other governmental unit, the Conservation Area shall be deemed a separate parcel of land and shall not be taken into account in determining whether any land of the Landowner, other than the Conservation

Area, complies with any said legal requirements. The Conservation Area shall not be taken into account to satisfy in whole or in part any of said legal requirements or any area, density, setback or other dimensional standard applicable to such land.

13. DISPUTE RESOLUTION

- A. The Landowner and the Easement Holder desire that issues arising from time to time concerning the interpretation of the provisions of the 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, the Landowner and the Easement Holder agree that if a party becomes concerned whether any proposed use, activity, or failure to take action (which together for the purposes of this Section shall be referred to as the "Activity") complies with the provisions of this Easement, wherever reasonably possible, the concerned party shall notify the other party of the perceived or potential problem, and the parties shall explore the possibility of reaching an agreeable resolution by informal dialogue.
- B. If informal dialogue does not resolve a disagreement regarding the Activity, and if the Landowner agrees not to proceed with the Activity pending resolution of the disagreement, either party may refer the dispute to mediation by written notice to the other. Within ten (10) days of the receipt of such notice, the parties shall confer and agree on a single impartial and trained mediator, using best efforts to select a mediator with experience regarding conservation easement deeds. The purpose of the mediation is to help the parties arrive at a mutually acceptable resolution of the disagreement and is not intended to result in any express or *de facto* modification or amendment of the terms, conditions or restrictions of this Easement. Mediation shall be conducted in Concord, New Hampshire, or other such location as the parties may agree. Each party shall pay its own attorneys' fees and the costs of mediation shall be split equally between the parties, unless otherwise agreed to prior to the mediation.
- C. If the parties do not agree to resolve the dispute by mediation, then either party may bring an action at law or in equity in any court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation by permanent injunction, and to require the restoration of the Conservation Area to its condition prior to the breach and for such damages as appropriate.
- D. Notwithstanding the availability of mediation to address disagreements concerning the compliance of any Activity with the provisions of this Easement, if the Easement Holder believes that some Activity of the Landowner or 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 New Hampshire court of competent jurisdiction to cause the cessation of any such damage or harm or threat of same.

14. BREACH OF EASEMENT – EASEMENT HOLDER'S REMEDIES

- A. If the Easement Holder determines that a violation or breach of this Easement has occurred (which together shall hereinafter be referred to as the "breach"), the Easement Holder shall notify the Landowner in writing of such breach and demand corrective action to cure the

breach and, where the breach involves damage, disturbance, or harm (hereinafter referred to as "damage") to the Conservation Area resulting from any use or activity inconsistent with the Purpose of this Easement, to restore the portion of the Conservation Area so damaged to its prior condition in accordance with a plan approved by the Easement Holder (hereinafter the "Restoration Plan").

- B. The Landowner, after receipt of such notice or after otherwise learning of the breach, shall (i) immediately discontinue any activity constituting the breach, (ii) promptly notify the Easement Holder of the Landowner's intent to remedy the breach; and (iii) within thirty (30) days thereafter submit to the Easement Holder for approval the Restoration Plan for the Conservation Area, which Restoration Plan shall be reasonably calculated to cure swiftly said breach and to repair any damage to the Conservation Area. Upon the Easement Holder's approval of the Restoration Plan, the Landowner shall begin all necessary action to fully implement the Restoration Plan.
- C. If the Landowner fails to perform its obligations under the immediately preceding paragraph or fails to continue diligently to cure such 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 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 prior to any such damage.
- D. If the Easement Holder, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to any of the Conservation Values of the Conservation Area, the Easement Holder may pursue its remedies under this Section without prior notice to the Landowner or without waiting for the period provided for cure to expire, including the actions described in the Dispute Resolution Section 13.D. above, and in Paragraph C of this Section 14.
- E. 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 Values protected hereby, including, but not limited to, damages for the loss of scenic, aesthetic, or environmental values 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. The Easement Holder's rights under this Section are in addition to the provisions of the prior Section, which section shall also apply to any disagreement that may arise with respect to activities undertaken in response to a notice of breach and the exercise of the Easement Holder's rights hereunder. However, any obligation of the Easement Holder hereunder to resolve any disagreement with the Landowner through informal dialogue or mediation, or to forbear from exercising any of the Easement Holder's rights and remedies under this Easement or under applicable law, is expressly conditioned upon the Landowner's agreement to cease and desist from the disputed use or activity giving rise to the alleged breach or any other use or activity that would constitute a breach of this Easement, pending resolution of the disagreement.

- G. The Landowner and the Easement Holder acknowledge and agree that should the Easement Holder determine, in its sole discretion, that any of the Conservation Values protected by this Easement are in immediate danger of irreparable damage, the Easement Holder may seek the injunctive relief described in Paragraph C. of this Section 14, both prohibitive and mandatory, in addition to such other relief to which the Easement Holder may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The Easement Holder's remedies described in this Section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
- H. Provided that the Landowner is directly or primarily responsible for the breach, and if a court so orders, all reasonable costs incurred by the Easement Holder in enforcing the terms of this Easement against the Landowner, including, without limitation, costs and expenses of suit, reasonable attorneys' fees, staff and consultant costs, and any costs of restoration necessitated by the Landowner's breach of this Easement shall be borne by the Landowner, and provided further, however, that if the Landowner ultimately prevails in an enforcement action each party shall bear its own costs. Notwithstanding the above, 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 the Easement Holder to exercise its rights under this Easement in the event of any breach of any term thereof by the Landowner shall not be deemed or construed to be a waiver by the Easement Holder of such term or of any subsequent breach of the same or any other term of this Easement or of any of the Easement Holder's rights hereunder. No delay or omission by the Easement Holder in the exercise of any right or remedy under this Easement upon any breach by the Landowner shall impair such right or remedy or be construed or operate as a waiver, and waiver on any one or more occasions shall not be construed as a bar to or waiver of any right or remedy on any future occasion. No single or partial exercise of any right or remedy hereunder shall preclude other or future exercise thereof or the exercise of any other right or remedy. The Landowner hereby waives any defense of laches or estoppel.
- J. 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 causes beyond the Landowner's control, including, but not limited to, unauthorized actions by third parties, natural disasters such as fire, flood, storm, disease, infestation and earth movement, or from any prudent action taken by the Landowner under emergency conditions to prevent, abate, or mitigate significant damage to the Conservation Area resulting from such causes. The Easement Holder and the Landowner reserve the right, separately or collectively, to pursue all legal and/or equitable remedies, as set forth in this Section against any third party responsible for any actions inconsistent with the provisions of this Easement. Further, subject to the Landowner's rights under the Dispute Resolution, Section 13.D above, prior to either party taking any such separate action, the Easement

Holder and the Landowner shall first discuss with one another opportunities for taking collective action.

15. RIGHTS OF ENFORCEMENT and EXECUTORY INTERESTS

- A. Right of Access. The State, NH DES, and LCHIP shall each have the right to access the Easement Area and all of its parts for such inspection as such party finds necessary to determine compliance with the terms of this Easement, to exercise the rights conveyed hereby, and to carry out the duties assumed herein or to maintain boundaries if such party so desires.
- B. LCHIP Right of Enforcement. If the Easement Holder ceases to enforce the Easement conveyed hereby or fails to enforce it within thirty (30) business 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 14 "Breach of Easement" above and shall have the right to recover the costs of such enforcement from the Easement Holder and/or the Landowner..
- C. NH DES Right of Enforcement. If the Easement Holder ceases to enforce the Easement conveyed hereby or fails to enforce it within thirty (30) business days after receipt of written notice delivered in hand or by certified mail, return receipt requested, from NH DES, 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 NH DES shall have the right to enforce this Easement in accordance with Section 14 "Breach of Easement" above, and shall have the right to recover the costs of such enforcement from the Easement Holder and/or the Landowner.
- D. State's Executory Interest. The State is granted an Executory Interest in the Easement conveyed hereby. Should LCHIP or NH DES exercise the rights of enforcement as described in Sections 15.B and C above, the State of New Hampshire shall then 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 the Easement Holder has failed to enforce this Easement, then the rights and obligations under this Easement shall immediately vest in the State, which shall thereupon assume and thereafter have all interests, rights, responsibilities and duties granted to and incumbent upon the Easement Holder in this Easement.

The State's exercise of its executory interest under this Easement shall not divest LCHIP, NH DES or Town of the rights and interests herein conveyed.

- E. Town's Executory Interest. If the Easement Holder ceases to exist or ceases to function as a qualified organization as specified in this Easement, then, at the sole option and election of the Town, the Easement shall immediately vest in, and shall be deemed to have been transferred and conveyed to the Town. In order to effectuate such a vesting (if so elected by the Town), the Town shall record an affidavit with the Merrimack County Registry of Deeds

which shall state: (a) that the Easement Holder has ceased to exist or has ceased to function as a qualified organization under said Section 170(h)(3) of the Internal Revenue Code of 1986, as amended, as the case may be, (b) that said filing is made pursuant to the terms and conditions of this Easement, and (c) that the Easement Holder's interest in this Easement has vested in the Town.

In the circumstances of Section 15 E above, or in the event the Easement Holder acquires the underlying fee interest in the Conservation Area, the Town shall then also have the right to terminate the easement interest of the Easement Holder in the Conservation Area, after providing written notice to the Easement Holder, by recording a notice to that effect in the Registry of Deeds referring hereto. The Town shall thereupon assume and thereafter have all interests, rights, responsibilities and duties granted to and incumbent upon the Easement Holder in this Easement.

The Town's exercise of its rights under this Easement shall not divest LCHIP, NH DES, or the State of its rights and interests hereunder.

- F. Right to Recover Costs. In the event State of New Hampshire, NH DES, or LCHIP exercise their respective executory interest rights or rights of enforcement conveyed herein each shall be entitled to recover any and all administrative and legal costs associated with any action related thereto from the Landowner, including, but not limited to, attorney and consultant fees, staff costs, and other reasonable expenses related to the Landowner's violations.

In the event the State, NH DES, or LCHIP exercise their respective executory interest rights or rights of enforcement 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 the Easement Holder's failure to enforce the Easement.

However, if either LCHIP, NH DES, or the State initiate litigation against the Landowner or the Easement Holder and a court of competent jurisdiction determines that a material breach of conduct has not been established, each party shall bear its own costs. Notwithstanding the foregoing, if the court determines that either LCHIP, NH DES, or the State initiated litigation without reasonable cause or in bad faith, then the initiating party shall reimburse the responding party's reasonable costs incurred in defending the action.

- G. Right to Take Action. Neither LCHIP, NH DES, nor the State 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 the Easement Holder and the Landowner hereby waive any defense of laches with respect to any delay or omission by LCHIP, NH DES, or the State in acting to enforce any restriction or exercise any rights under this Easement, and any such delay or omission shall not impair LCHIP, NH DES, or the State's rights or remedies, or be construed as a waiver.
- H. Right of Assignment. The interests held by LCHIP, NH DES, Town, and the State are assignable or transferable only to the State of New Hampshire, the U.S. Government, or any subdivision of either of them, consistent with Section 170(c)(1) of the U.S. Internal Revenue Code of 1986, as amended, or to any qualified organization within the meaning of Section 170(h)(3) of said Code, which organization has among its purposes the conservation and preservation of land and water areas and agrees to and is capable of protecting the Purposes

of this Easement and has the resources to enforce the provisions of this Easement. Any such assignee or transferee shall have like power of assignment or transfer.

Any holder of an interest in this Easement excluding the Landowner 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) business days prior to such transfer or assignment taking effect.

16. 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 any of the Parties may hereafter designate by notice given in accordance herewith. Notice shall be deemed to have been given when so delivered or so mailed.

17. SEVERABILITY

This Easement shall be interpreted under and governed by the laws of the State of New Hampshire, and shall be liberally construed to effect the Purposes of the Easement, especially in the case of any ambiguity in the meaning or interpretation of any terms or provisions of this Easement. In the event that any provision or clause in this Easement conflicts with applicable law, such conflict shall not affect other provisions hereof which can be given effect without the conflicting provision. To this end the provisions of this Easement are declared to be severable.

18. HOLD HARMLESS

The Landowner agrees to release, hold harmless, defend and indemnify the Easement Holder 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: (i) the activities of the Landowner or any other person on the Conservation Area, other than those caused by the negligent acts or acts of misconduct by the Easement Holder; or (ii) violation or alleged violation of, or other failure to comply with, any state, federal or local law, regulation or requirement by any person, other than the Easement Holder, in any way affecting, involving, or relating to the Conservation Area.

19. CONDEMNATION/EXTINGUISHMENT

- A. Condemnation. Whenever all or part of the Conservation Area is taken by exercise of the power of eminent domain by public, corporate, or other authority so as to abrogate in whole or in part the Easement conveyed hereby, or whenever all or a part of the Conservation Area is lawfully sold without the restrictions imposed hereunder in lieu of condemnation or exercise of eminent domain, the Landowner and the Easement Holder shall thereupon act jointly to recover the full damages resulting from such taking with all incidental or direct damages and expenses incurred by them thereby to be paid out of the damages recovered.

- B. Extinguishment. In the event circumstances arise in the future such as to render the purpose of this Easement impossible or impracticable to accomplish, this Easement may be terminated or extinguished, in whole or in part, by judicial proceedings in a court of competent jurisdiction and in no other manner. The proceeds from any sale, exchange, or involuntary conversion of all or any portion of the Conservation Area subsequent to such judicial termination or extinguishment shall be distributed between the Landowner and the Easement Holder in accordance with Section C. 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. It is the specific and considered intent of both the Landowner and the Easement Holder that any such change in economic conditions shall not be deemed to be circumstances justifying the termination or extinguishment of this Easement pursuant to this Section.

- C. Valuation. The balance of the land damages recovered from such taking or lawful sale in lieu of condemnation or exercise of eminent domain shall be divided between the Landowner and the Easement Holder in proportion to the fair market value of their respective interests in the Conservation Area. For this purpose and that of any other judicial extinguishment of this Easement, in whole or in part, the Easement Holder's interest shall be the amount by which the fair market value of the Conservation Area immediately prior to the execution of this Easement is reduced by the use limitations imposed hereby.

The value of the Easement Holder's interest shall be determined by a fair market value, qualified appraisal prepared for the Landowner's federal income tax purposes within one year of the date of this Easement by a qualified appraiser licensed in the State of New Hampshire and provided by the Landowner to the Easement Holder.

If no such appraisal is prepared and delivered to the Easement Holder within one year of the date of this Easement, then the values of the Landowner's and the Easement Holder's interests extinguished or condemned shall be determined by a fair market value appraisal prepared by a qualified appraiser as of the date of extinguishment or condemnation.

Whichever party obtains said appraisal (as of extinguishment or condemnation) shall submit timely a complete copy of said appraisal to the other party to this Easement.

- D. Allocation of Net Proceeds. The proceeds accruing to the Easement Holder (hereinafter "Easement Proceeds"), shall be further allocated between the Easement Holder, LCHIP and the NH DES based on the relative contribution of each of said parties toward the total expense of acquiring the Easement as of the date of its execution, i.e. LCHIP's share of the Easement Proceeds shall be _____(xx%), NH DES's share shall be _____ percent (X%) and the Easement Holder's share shall be _____ percent (xx%), which share includes any property value donated to the Easement Holder by the Landowner, as determined in accordance with Section 19. C. above.

- E. The Easement Holder, LCHIP, and NHDES shall each use their respective share of the Easement Proceeds in a manner consistent with and in furtherance of one or more of the conservation Purposes set forth herein.

20. ADDITIONAL EASEMENT

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

21. AMENDMENT AND DISCRETIONARY CONSENT The Landowner and the Easement Holder recognize and agree that unforeseen or changed circumstances could arise in which an amendment to, or modification of, 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, the Easement Holder, the Executory Interest Holders, LCHIP and NHDES have the right to agree to amendments to this Easement and the Easement Holder may exercise discretionary consent in accordance with the provisions and limitations of this Section, the then-current policies of the Easement Holder, and applicable state and federal law. Any amendment or exercise of discretionary consent: (a) shall not conflict with, or be contrary to or inconsistent with the Purposes of this Easement; (b) shall not reduce the protection of the Conservation Values of the Conservation Area protected by this Easement; (c) shall 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, as amended, and NH RSA 477:45-47 as may be amended from time to time; (d) shall not affect the perpetual duration of this Easement; and (e) shall not create an impermissible private benefit or private inurement in violation of federal tax law. 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 the proposed activity with the Purposes of this Easement. Nothing in this section shall require the Easement Holder, Executory Interest Holders, LCHIP or NHDES to consider or negotiate any proposed amendment or request for discretionary consent.

- A. **Amendments.** Any amendment shall not permit development, improvements, or uses prohibited by this Easement on its effective date, and shall be mutually agreed upon and executed by the Landowner, the Easement Holder, the Executory Interest Holders, LCHIP and NHDES, subject to review by the N.H. Attorney General's Office, Charitable Trusts Division, and shall be recorded in the Merrimack 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) either enhances or does not impair the Conservation Values protected hereby; the Easement Holder may then consent to such activity only under

the conditions and circumstances described above. The Easement Holder's consent to a proposed use or activity may be limited or restricted in time, locale or by ownership. Any request by the Landowner for discretionary consent shall be in writing, copied to LCHIP, NHDES and the Town and shall describe 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.

Notwithstanding the foregoing, the Landowner and the Easement 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 or to allow any residential, commercial or industrial structures, or any commercial or industrial activities not otherwise allowed or provided for above.

21. NO MERGER

The Landowner and the Easement Holder explicitly agree that it is their intent that the provisions of this Easement are to continue in perpetuity, and that to that end no purchase or transfer of the underlying fee interest in the Conservation Area by or to the Easement Holder or any successor or assign shall be deemed to eliminate the Easement, or any portion thereof under the doctrine of merger or any other legal doctrine.

22. ENVIRONMENTAL WARRANTY

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

materials, and any other element, compound, mixture, solution, or substance that may pose a present or potential hazard to human health or the environment.

23. 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.

24. GENERAL DISCLAIMER

The State, NH DES, and LCHIP, and their employees, agents, and assigns disclaim and will not be held responsible for the Easement Holder's or the Landowner's negligent acts or omissions or the Easement Holder's or the 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, 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 attorney's fees and attorneys' fees on appeal) to which the State, NH DES, or LCHIP may be subject or may incur relating to the Conservation Area.

25. GOVERNING LAW & INTERPRETATION

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

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

IN WITNESS WHEREOF, we have hereunto set our hands this ____ day of _____, 2021.

Susan R. Koerber

Kenneth C. Koerber

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

This instrument was acknowledged before me on this ____ day of _____, 2021 by Susan R. Koerber. 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: _____

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

This instrument was acknowledged before me on this ____ day of _____, 2021 by Kenneth C. Koerber. 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: _____

ACCEPTED:

EASEMENT HOLDER:
FIVE RIVERS CONSERVATION TRUST

By: _____
Maura K. Adams, Board Chair
Duly authorized

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

This instrument was acknowledged before me on this ____ day of _____, 2021 by Maura K. Adams who acknowledged herself to be the Chairperson of the Board of Directors of the **FIVE RIVERS CONSERVATION TRUST**, and acting in said capacity, and being authorized so to do, executed the foregoing instrument on behalf of the **FIVE RIVERS CONSERVATION TRUST** as its voluntary act and deed for the purposes therein contained. (check box that applies and complete blank line, if any):

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

Notary Public/Justice of the Peace
My Commission Expires: _____

ACCEPTED: THE LAND AND COMMUNITY HERITAGE INVESTMENT PROGRAM

By: _____ Date _____
Dorothy T. Taylor, Executive Director
Duly Authorized

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK, ss.

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

Justice of the Peace/ Notary Public
My commission expires:

ACCEPTED: TOWN OF DUNBARTON

**ACTING THROUGH ITS
CONSERVATION COMMISSION
PURSUANT TO NH RSA 36-A:4**

**TOWN OF DUNBARTON
CONSERVATION COMMISSION**

By: _____
Name: Brett St. Clair
Title: Its Chair
Duly Authorized

**STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK**

This instrument was acknowledged before me on this ____ day of _____, 2021 by Brett St. Clair, Conservation Commission Chair on behalf of the **TOWN OF DUNBARTON CONSERVATION COMMISSION**. 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: _____

**TOWN OF DUNBARTON
BOARD OF SELECTMEN**

David Nault

Michael Kaminski

Robert Martel

This instrument was acknowledged before me on this _____ day of _____, 2021 by David Nault, Michael Kaminski, and Robert Martel on behalf of the **TOWN OF DUNBARTON BOARD OF SELECTMEN**. The identity of the subscribing parties were 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: _____

APPENDIX A

A Conservation Easement upon that certain parcel/area of land being unimproved land, consisting of approximately 131.49 acres, situated on Stark Highway North, so-called, in the Town of Dunbarton, County of Merrimack, State of New Hampshire, consisting of approximately acres, shown on a plan entitled "Plat of Conservation Easement, Land of Kenneth C. Koerber and Susan R. Koerber," by Stephen Perron, last revised April 22, 2020, recorded at Merrimack County Registry of Deeds (hereafter "Plan"), and more particularly bounded and described as follows, with all bearings based on magnetic north orientation, and all distances being approximate unless otherwise noted.

Beginning at a rebar set in stone wall at the easterly side of Route 13 and at land of Desrochers; thence South 85°06' East, along a stone wall as shown on Plan, a distance of 369.3' to a turn in the wall;

thence North 02° 15' East along a stone wall and land now or formerly of Benjamin Slocum and Randee Slocum, a distance of 847.3' to the corner of two stone walls;

thence South 85° 37' East, along the land now or formerly of Keith Gerald Bennett a distance of 655.9' to an iron pipe in a stone wall;

thence North 14° 32' West, along a stone wall a distance of 160.0' to an iron pipe set in a turn in the wall;

thence continuing along the stone wall and land now or formerly of the Kathryn J. Layne Revocable Trust the following courses and distances:

- South 85° 46' East, a distance of 813.0';
- South 81° 33' East, a distance of 197.1';
- South 86° 38' East, a distance of 170.7' to a turn in the wall;
- South 04° 17' West, a distance of 650.9' to a turn in the wall;
- South 85° 37' East, a distance of 518.8' to an iron pipe;

thence South 85° 37' East, along land now or formerly of the Kathryn J. Layne Revocable Trust a distance of 799.0' to a drill hole in the end of a stone wall;

thence continuing along the stone wall and the land of the Kathryn J. Layne Revocable Trust the following courses and distances:

- South 01° 52' West, a distance of 195.0';
- South 02° 24' West, a distance of 185.0';
- South 02° 02' West, a distance of 202.0';
- South 01° 52' West, a distance of 212.0' to a drill hold in the stone wall;

thence along the land now or formerly of David W. Crooker Jr and Carol L Crooker the following courses and distances:

- North 85° 41' West, a distance of 374.0' to a drill hole in a 24" by 18" triangular stone;

South 27° 56' West, a distance of 1278.0' to a rebar
South 05° 55' West, a distance of 84.4' to a rebar;
South 29° 12' West, a distance of 94.2' to a drill hole found at grade;
South 41° 53' West, a distance of 48.0' to an unmarked point;
South 33° 00' West, a distance of 149.0' to an unmarked point;
South 25° 41' West, a distance of 118.6' to a fieldstone bound;

thence North 85° 00' West, along the land now or formerly of Walter Chrzaszcz, a distance of 566.0' to an iron pipe;

thence North 85° 00' West, along a stone wall along the land of Denise McKeen to a turn in the stone wall, a distance of 147.0';

thence North 03° 38' East, along a stone wall and along the land of the Dunbarton School District a distance of 817.0';

thence North 83° 14' West, along a stone wall a distance of 97.0';

thence North 83° 11' West, a distance of 376.0';

thence North 83° 52' West, along a stone wall a distance of 257.0' to an intersection with another stone wall and the corner of land now or formerly of Ashley L. and Justin C. Rioux;

thence North 83° 52' West along a stone wall with land of Rioux, a distance of 233.0' to an intersection with another stone wall at the corner with land now or formerly of the Peter and Barbara Weeks Joint Revocable Trust;

thence North 03° 00' East, along a stone wall a distance of 250.0' to a turn in the wall;

thence North 02° 07' East, a distance of 208.3' to a wooden post;

thence North 65° 28' East, a distance of 314.4' to a rebar set at the end of a stone wall;

thence North 14° 25' West along a low stone wall, a distance of 330.4';

thence continuing along the low stone wall North 12° 47' West, a distance of 147.2' to a rebar set;

thence North 09° 49' West, a distance of 265.4' to a rebar set;

thence North 60° 22' West along a stone wall, a distance of 48.2';

thence North 71° 56' West along a stone wall, a distance of 38.9';

thence South 85° 34' West along a stone wall, a distance of 42.6';

thence South80°49'West along a stone wall, a distance of 105.4';
thence South70°33'West along a stone wall, a distance of 144.8';
thence South25°00'West along a stone wall, a distance of 64.3';
thence South74°03'West along a stone wall, a distance of 100.1';
thence South73°48'West along a stone wall, a distance of 164.7';
thence North74°00'West along a stone wall, a distance of 30.0';
thence South36°04'West along a stone wall, a distance of 20.0';
thence South69°23'West along a stone wall, a distance of 41.9';
thence South89°50'West along a stone wall, a distance of 47.0' to a rebar set;
thence North00°35'East, along a stone wall along Stark Highway North a distance of 144.7' to the POINT OF BEGINNING; said described tract containing 131.49 Acres, more or less.
MEANING AND INTENDING to describe a portion of the premises conveyed by Deed from Elwin H. Clark and Elizabeth M. Clark to Kenneth C Koerber and Susan R. Koerber, dated May 27th, 1968, recorded at said Registry at Book 1026, Page 415.

Appendix B

Property description of Excluded Area

A certain tract or parcel of land situated on Stark Highway North in Dunbarton, County of Merrimack, State of New Hampshire, consisting of approximately 14.87 acres, and shown as the area that is excluded from the Conservation Easement on a Plan entitled "Plat of Conservation Easement, Land of Kenneth C. Koerber and Susan R. Koerber," dated April 22, 2020 prepared by Stephen Perron and recorded in the Merrimack County Registry of Deeds as Plan No. _____ (the "Plan"), and more particularly bounded and described as follows:

Beginning at drill hole found in a stone wall on the east side of Stark Highway North, at the corner of the Excluded Area, at land now or formerly of the Georgia E. Carlquist Revocable Trust ;

Thence proceeding N 01°16' E along a stone wall a distance of 191.1 feet along Stark Highway North to of the end of the stone wall ;

Thence N 02°33' E along Stark Highway North a distance of 303.4 feet to the end of another stone wall;

Thence N 01°01' E along a stone wall with Stark High North a distance of 108.2 feet to a rebar set;

Thence N 89°50' E along a stone wall bounding the Conservation Area from the Excluded Area 47 feet;

Thence N 69°23' E along said stone wall 41.9 feet;

Thence N 36°04' E along said stone wall 20.0 feet;

Thence S 74°00' E along said stone wall 30.0 feet;

Thence N 73°48' E along a said stone wall 164.7 feet;

Thence N 74°03' E along said stone wall 100.1 feet;

Thence N 25°00' E along said stone wall 64.3 feet;

Thence N 70°33' E along said stone wall 144.8 feet;

Thence N 80°49' E along said stone wall 105.4 feet;

Thence N 85°34' E along said stone wall 42.6 feet;

Thence S 71°56' E along said stone wall 38.9 feet;

Thence S 60°22' E along a stone wall 48.2 feet to a rebar set;

Thence S 09°49' E a distance of 265.4 feet to a rebar set;

Thence S 12°47' E along a low stone wall a distance of 147.2 feet;

Thence S 14°25' E along a low stone wall a distance of 330.4 feet to rebar set;

Thence S 65°28' W a distance of 314.4 feet to a wooden post and the corner with the Georgia E. Carlquist Revocable Trust; ;

Thence N 84°18' W a distance of 667.3 feet to a drill hole found in a stone wall at the POINT OF BEGINNING; said described Excluded Area containing 14.87 Acres, more or less.

The Conservation Area described above in Appendix A and the Excluded Area described in Appendix B constitute the entire premises owned by Kenneth C. Koerber and Susan R. Koerber by warranty deed of Elwin H. Clark and Elizabeth M. Clark dated May 27th, 1968 and recorded in the Merrimack County Registry of Deeds at Book 1026 Page 415.

APPENDIX C
LAND AND COMMUNITY HERITAGE INVESTMENT PROGRAM
GRANT AGREEMENT

The Five Rivers Conservation Trust ("Recipient"), as recipient of a \$100,000 financial assistance grant from the Land and Community Heritage Investment Program ("LCHIP") in support of Recipient's acquisition of the above described conservation easement (the "Easement") from on Susan R. and Kenneth C. Koerber on a 131⁴¹-acre parcel of land in the Town of Dunbarton, State of New Hampshire (the "Easement Area"), agrees to the following conditions:

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

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

LCHIP RIGHT OF ACCESS AND ENFORCEMENT

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

AMENDMENT

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

ASSIGNMENT

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

LCHIP'S REMEDIES

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

SEVERABILITY

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

INDEMNIFICATION

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

INTERPRETATION

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

NO WAIVER OF RIGHT TO TAKE ACTION

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

FOR THE LAND AND COMMUNITY HERITAGE INVESTMENT PROGRAM

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

_____ Date

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK, ss.

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

Justice of the Peace/Notary Public
My commission expires:

FOR THE RECIPIENT

(Enter Name and title here)
Duly Authorized

Date

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK, S.S.

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

Justice of the Peace/Notary Public
My commission expires:

