



New Hampshire Fish and Game Department

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E-mail: info@wildlife.nh.gov

March 20, 2013

Her Excellency, Governor Margaret Wood Hassan
And the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the New Hampshire Fish and Game Department (NHFG) to grant to the Ausbon Sargent Land Preservation Trust (Vendor Code 166648) \$30,000 to provide partial funding for the purchase of a conservation easement on 46 acres in Springfield, New Hampshire effective upon Governor and Council approval through June 30, 2013. Funding is 100% other. Wildlife Habitat Funds.

Funding for this grant is available as follows:

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

020-07500-21550000-305-500845 Habitat Acquisition and Management

FY2013
\$30,000

EXPLANATION

NHFG has worked with the Ausbon Sargent Land Preservation Trust (ASLPT) to protect 46 acres in Springfield, NH. The conservation easement on the Patten Family tract will be held by the ALSPT. The ASLPT has facilitated this protection effort through their fund raising efforts and undertaking the due diligence required to complete this transaction.

This property is adjacent to the 609 acre McDaniels Marsh Wildlife Management Area and is a mixture of forest and agricultural fields. The conservation easement contains an affirmative right for public access for hunting, fishing and other forms of low impact non-commercial recreation.



Her Excellency, Governor Margaret Wood Hassan
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March 20, 2013
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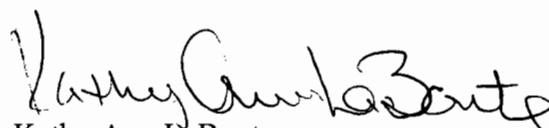
NHFG funding would be provided by the Wildlife Habitat Account and was approved by the Fish and Game Commission at their February 20, 2013 meeting, item # 3.

NHFG is requesting authorization to enter into a grant agreement with the ASLPT to provide \$30,000 to cover a portion of the conservation easement acquisition costs of a 46 acre parcel in Springfield, NH.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Glenn Normandeau', with a long horizontal flourish extending to the right.

Glenn Normandeau
Executive Director

A handwritten signature in dark ink, appearing to read 'Kathy Ann LaBonte', with a long horizontal flourish extending to the right.

Kathy Ann LaBonte
Chief, Business Division

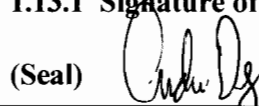
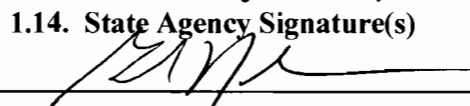
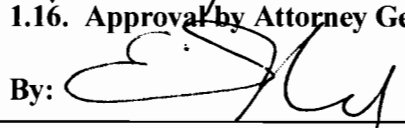
GRANT AGREEMENT

(April 2001 revision)

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

GENERAL PROVISIONS

1. Identification and Definitions.

1.1. State Agency Name Fish and Game Department		1.2. State Agency Address 11 Hazen Drive, Concord, NH 03301	
1.3. Grantee Name Ausbon Sargent Land Preservation Trust		1.4. Grantee Address 71 Pleasant St., New London, NH 03257	
1.5. Effective Date Upon G&C approval	1.6 Completion Date June 30, 2013	1.7. Audit Date N/A	1.8. Grant Limitation \$30,000
1.9. Grant Officer for State Agency Glenn Normandeau		1.10. State Agency Telephone No. 603-271-3511	
1.11. Grantee Signature 		1.12. Name & Title of Grantee Signor John Garvey, Chairman, Board of Directors	
1.13. Acknowledgment: State of <u>New Hampshire</u> , County of <u>Merrimack</u> , on <u>3/14/13</u> , Before the undersigned officer, personally appeared the person identified in block 1.11., known to me (or satisfactorily proven) to be the person whose name is signed in block 1.12., and acknowledged that <u>he</u> executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace (Seal) 		ANDREW DEEGAN Notary Public, State of New Hampshire My Commission Expires Dec. 3, 2013	
1.13.2. Name and Title of Notary Public or Justice of the Peace <u>Andrew Deegan Notary Public</u>			
1.14. State Agency Signature(s) 		1.15. Name & Title of State Agency Signor(s) Glenn Normandeau, Executive Director	
1.16. Approval by Attorney General (Form, Substance and Execution) By:  Assistant Attorney General, On: <u>3-18-13</u> <u>11</u>			
1.17. Approval by the Governor and Council On: <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"), 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 hereinafter referred to as "the Project"). Except as otherwise specifically provided for herein, the Grantee shall perform the Project in the State of New Hampshire

ANDREW DEEGAN
Notary Public in New Hampshire
My Comm. Expires 06/30/2019

3. EFFECTIVE DATE; COMPLETION OF PROJECT.

3.1. 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").

3.2. 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").

4. GRANT AMOUNT; MANNER OF PAYMENT; LIMITATIONS.

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

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

4.3. 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 4.5 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 those sums required, or permitted, to be withheld pursuant to N.H. RSA 80:7 through 7-c.

4.4. The payment by the State of the Grant amount shall be the only, and the complete payment 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.

4.5. 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.

5. SPECIAL CONDITIONS. Modifications to these General Conditions and any additional grant conditions shall be set forth in Exhibit C attached hereto.

6. COMPLIANCE BY GRANTEE WITH LAWS AND REGULATIONS. In connection with the performance of the Project, the Grantee shall comply with all applicable statutes, regulations, and orders of federal, state, county, or municipal authorities that impose any legal 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 of 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, contract for or 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 the Project, to hire any person 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 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 or data, 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, unless otherwise specified in Exhibit C.

10. CONDITIONAL NATURE OR 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 thirty (30) days written notice.

13. CONFLICT OF INTEREST. No representative, officer, member or employee of the Grantee, and no representative, officer or 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 interest 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 contractor, 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

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- representatives, 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.
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 or its contractors, subcontractor, or subgrantee or other agent of the Grantee in the performance of the Project. 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 general liability insurance for 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 thereof has been received by the State. A certificate of insurance demonstrating compliance with subparagraphs 17.1 and 17.2 shall be attached to this Grant Agreement.
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.

Grant Agreement
Patten Property Springfield
Conservation Easement Acquisition

March 15, 2013

The Ausbon Sargent Land Preservation Trust (ASLPT) and the New Hampshire Fish and Game Department (NHFG) will cooperate to acquire a conservation easement on land adjacent to the McDaniel's Marsh Wildlife Management Area to ensure the long-term conservation of wildlife species and habitats and continued public access to the property. NHFG will provide a grant of \$30,000 to ASLPT toward the purchase of the conservation easement on 46+/- acres in Springfield belonging to the Dallas and Malcolm Patten, with an appraised value at \$75,000

EXHIBIT A

Scope of Services

ASLPT agrees to complete the following:

1. Acquire a conservation easement on 46+/- acres on George Hill Road in Springfield belonging to Dallas and Malcolm Patten.
2. Work with NHFG and the landowners to develop conservation easement language acceptable to all parties.
2. Maintain financial accounting records and provide to NHFG documentation that supports the grant funds expenditure.
3. Acknowledge the funding received through NHFG in materials produced for public distribution.

NHFG agrees to:

1. Submit a Governor and Council request to authorize a grant agreement with ASLPT for up to \$30,000.00 towards the purchase of a conservation easement on 46+/- acres on George Hill Road in Springfield belonging to Dallas and Malcolm Patten.
2. Pass through to ASLPT funds in the amounts authorized by the NH Governor and Executive Council.

Initials:

Date:

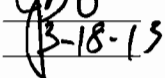



EXHIBIT B

Method of Payment and Grant Limits

NHFG will provide a check for up to \$30,000 in a single payment to be used to purchase the conservation easement on 46+/- acres on George Hill Road in Springfield belonging to Dallas and Malcolm Patten contingent upon:

1. Approval of the use of Wildlife Habitat Account funds for the above described purpose by the Fish and Game Commission.
2. Approval of this Grant Agreement between the Ausbon Sargent Land Preservation Trust and the NH Fish and Game Department by the NH Governor and Executive Council.

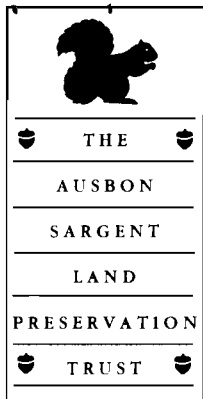
Total payment shall not exceed \$30,000.

EXHIBIT C

Special Provisions

Paragraph 17, Insurance and Bond, of the General Provisions shall not apply to this Agreement.

Initials: JBG
Date: 3-18-13



CERTIFICATE OF VOTE

I, Nan Kaplan Secretary of the Ausbon Sargent Land Preservation Trust, a New Hampshire non-profit corporation do hereby certify that:

1. I am the duly elected Secretary of the Ausbon Sargent Land Preservation Trust
2. The following are true copies of two resolutions duly adopted at a meeting of the Board of Directors of the Ausbon Sargent Land Preservation Trust duly held on May 19, 2011

RESOLVED that this organization enters into a contract with the State of New Hampshire, acting through its Fish and Game Department.

RESOLVED that the Chairman of the Board of Trustees is hereby authorized on behalf of this Organization to enter into a contract with the State and to execute any and all documents, agreements and other instruments, and any amendments, revisions or modifications thereto, as he may deem necessary or desirable to effect the purpose of these resolutions.

3. The foregoing resolutions have not been amended or revoked and remain in full force and effect as of March 18, 2013.

4. John Garvey is the duly appointed Board Chairman of the Organization.

IN WITNESS WHEREOF, I have hereunto set my hand as the Secretary of the Ausbon Sargent Land Preservation Trust, this 18th day of March 2013.

Nan Kaplan, Secretary
Nan Kaplan, Secretary

*Serving the towns of
Andover, Bradford
Danbury, Goshen
Granitham, New London
Newbury, Springfield
Sunapee, Sutton
Warner and Wilton*

Board of Trustees

Chairman
John Garvey
Vice-Chairman
Doug Lyon
Secretary
Nan Kaplan
Treasurer
Paula Wyeth
Laura Alexander
Steve Allenby
Martha Cottrill
Joe DiClerico
Charlie Foss
Cindy Lawson
Susan Nooney
John O'Dowd
Kiki Schneider

Executive Director
Deborah Stanley
Land Protection Specialists
Beth McGuinn
Andrew Deegan
Operations Manager
Sue Ellen Andrews
Development Associate
Laurie DiClerico
Administrative Assistant
Nancy Kipp Smith
Bookkeeper
Patsy Steverson
Communications Coordinator
Peggy Hutter

State of New Hampshire, County of Merrimack

On this the 18th day of March 2013, before me Andrew Deegan, the undersigned officer, personally appeared Nan Kaplan, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained. In witness whereof, I hereunto set my hand and official seal.

ANDREW DEEGAN
Notary Public, State of New Hampshire
My Commission Expires Dec. 3, 2013

Andrew Deegan
Andrew Deegan

P.O. Box 2040

New London

New Hampshire

03257-2040

603-526-6555

www.ausbonsargent.org



Helping preserve the rural landscape of the Mt. Kearsarge/Lake Sunapee region.

[illegible]

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 THE AUSBON SARGENT LAND PRESERVATION TRUST is a New Hampshire nonprofit corporation formed September 25, 1987. I further certify that it is in good standing as far as this office is concerned, having filed the return(s) and paid the fees required by law.



In TESTIMONY WHEREOF, I hereto set my hand and cause to be affixed the Seal of the State of New Hampshire, this 4th day of March A.D. 2013

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

William M. Gardner
Secretary of State

NEW HAMPSHIRE FISH AND GAME DEPARTMENT

FEBRUARY 20, 2013 COMMISSION MEETING

Meeting Location: NH Fish & Game Department, 11 Hazen Drive, Concord, NH 03301

Commissioners Present: D. Patch, T. Hubert, R. Blake, T. Tichy, W. Morse, F. Clews, R. Phillipson and S. Guaraldi.

Commissioners absent/excused: J. Ryan, E. Orff, J. McGonagle.

Executive Director Normandeau - Present

Chairman Hubert called the meeting to order at 1:03 p.m., and asked the audience to join in the pledge of allegiance. He informed the audience that the public is entitled to attend all Commission meetings and when recognized by the chairman, the public may speak on any item on the agenda. The Chair reserves the right to limit comment to the extent necessary for the orderly conduct of the meeting.

ACTION ITEMS:

1.) Commissioner Patch moved to approve the January 16, 2013 Commission Minutes as written and Commissioner Tichy seconded. The vote was unanimous in the affirmative.

1a.) Commissioner Phillipson moved to approve the February 5, 2013 Special Meeting Minutes as written and Commissioner Morse seconded. The vote was unanimous in the affirmative.

2.) Consent Agenda - The following items were grouped together and noticed as consent agenda items to expedite action on routine matters, which may not require public discussion. The Commission was asked to vote to approve these matters as presented. Commission members have the option to remove certain items if further public input or discussion is deemed necessary.

Commissioner Guaraldi moved to approve the below consent agenda items as presented and Commissioner Patch seconded. The vote was unanimous in the affirmative.

2a.) Commission accepted a \$400.00 donation from the Lakeview Neurorehabilitation Center for assistance they received in locating a patient.

2b.) Commission accepted the following donation from Daniel DaRosa, for use by District 1 Conservation Officers:
4 – Contour Roam Cameras (\$799.00 value)
4- 32 SD Cards (\$180.00 value)

2c.) Commission accepted a \$200.00 donation from Helen Anderson, Seattle, Washington, for assistance received on the Dry River Trail, Harts Location in New Hampshire, to be deposited into the Search & Rescue Account for future search & rescue needs.

2d.) Commission accepted a \$5,000 contribution from the Brown-Monson Foundation, to be utilized to support the 47th North American Moose Conference being hosted by the Department.

3.) [REDACTED] WILLIAMS II [REDACTED] the [REDACTED] Trust as [REDACTED] of a conservation easement on 40 acres in [REDACTED], New Hampshire [REDACTED]. The vote was unanimous in the affirmative.

***WHEREAS**, Stephen G. Perry, retired on January 24, 2013, after completing outstanding service to the New Hampshire Fish and Game Department since 1978; and*

***WHEREAS**, Stephen G. Perry has had a long and illustrious career in fisheries research and management serving the State of New Hampshire for over 35 years; and*

***WHEREAS**, Stephen G. Perry began his fisheries management career as a Fish Culturist at the New Hampton Fish Hatchery in 1978, moving on to serve as Fisheries Biologist I in 1980, as Fisheries Biologist II in 1986, and as Regional Supervisor in 1992; and*

***WHEREAS**, Stephen G. Perry became the Chief of Inland Fisheries with the New Hampshire Fish and Game Department in 1997 where among numerous accomplishments, he became the first and only National Conservation Leadership Institute Fellow in the state and led the Department's "Agency Change Initiative" which recognized the need to adapt to the Department's changing constituency; and*

***WHEREAS**, Stephen G. Perry earned the admiration and respect of staff and colleagues at the New Hampshire Fish and Game Department, and the constituents of New Hampshire for his dedication, enthusiasm, professionalism and hard work.*

***NOW, THEREFORE, BE IT RESOLVED**, that the Executive Director and Commission of the New Hampshire Fish and Game Department hereby congratulate Stephen G. Perry on his retirement as Chief of Inland Fisheries with the New Hampshire Fish and Game Department.*

***BE IT FURTHER RESOLVED**, that the New Hampshire Fish and Game staff and colleagues, Executive Director, and Commission of the New Hampshire Fish and Game Department takes great pleasure in recognizing the professional*



This is a transfer to an instrumentality of the state and is exempt from the New Hampshire real property transfer tax pursuant to RSD78-B:2I, and exempt from the LCHIP surcharge pursuant to RSA 478:17-g,II(a).

Please Return to:

ASLPT, PO Box 2040, New London, NH 03257

CONSERVATION EASEMENT DEED

We, MALCOLM PATTEN, single, of 260 Main Street, Town of Springfield, County of Sullivan, State of New Hampshire 03284 and **DALLAS AND MABEL PATTEN**, husband and wife, of ____ Main Street, Town of Springfield, County of Sullivan, State of New Hampshire 03284 (P.O. Box 39, Springfield, NH 03284) (hereinafter referred to collectively as the "Grantor," which word, where the context requires, includes the plural and shall, unless the context clearly indicates otherwise, include the Grantor's executors, administrators, legal representatives, devisees, heirs, successors and assigns),

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

the **AUSBON SARGENT LAND PRESERVATION TRUST**, a New Hampshire Voluntary Corporation organized under the provisions of NH RSA Chapter 292, 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, with its principal office at 71 Pleasant Street, Town of New London, County of Merrimack, State of New Hampshire (mailing address: PO Box 2040, New London, NH 03257) (hereinafter referred to as the "Grantee" which shall, unless the context clearly indicates otherwise, include the Grantee's successors and assigns), and

with an Executory Interest (as described in Section 10, below) therein, pursuant to New Hampshire RSA chapter 227-M, to the **STATE OF NEW HAMPSHIRE**, acting through the New Hampshire **LAND AND COMMUNITY HERITAGE INVESTMENT PROGRAM**, 13 West Street, Suite 3, Concord, NH 03301.

The monies needed to acquire this Conservation Easement and cover a portion of the project expenses have been provided to the Grantee through three separate grants totaling \$75,000 provided by the following funders (herein after the "Funders") in the amounts and

percentages of said total grants listed herein, the New Hampshire Land and Community Heritage Investment Authority (LCHIP) (\$30,000), New Hampshire Fish and Game Department (NH F&G) (\$30,000), and the New Hampshire State Conservation Committee's Moose Plate Grant Program (SCC) (\$15,000). The Property shall be managed consistent with the terms of this Conservation Easement. In the event that the Conservation Easement interest in the Property is converted to other non-conservation uses, condemned or extinguished, each of the forgoing Funders shall be entitled to its percentage of the net proceeds payable to the Grantee resulting from any such conversion, condemnation or extinguishment based upon their percentage of said \$75,000 dollar grant funding. The foregoing does not prohibit the assignment of the Property or this Easement to any qualified entity as described in the Section "Benefits, Burdens" below.

the Conservation Easement (herein referred to as the "Easement") hereinafter described with respect to that certain parcel of land (herein referred to as the "Property") with any and all buildings, structures, and improvements thereon, consisting of approximately 46.2 acres, situated on George Hill Road in the Town of Springfield, County of Sullivan, State of New Hampshire, as shown on a plan entitled "Proposed Subdivision for Patten – Yeager, George Hill Road, Springfield" dated November 21, 1995, prepared by Allan L. Wilson, L.L.S. and recorded at the Sullivan County Registry of Deeds at Plan File 4 Pocket 4 Folder 2 Number 24 (hereinafter known as the "Plan"), and as more particularly bounded and described in Appendix "A" attached hereto and made a part hereof.

The Property is primarily undeveloped and consists of a mix of fields and forest. The Property contains prime agricultural soils which are rare in the state of New Hampshire. The Property is listed as Supporting Landscapes under the 2010 Wildlife Action Plan. The Property is within the buffer for New Hampshire Fish and Game's McDaniels Marsh. There is one intermittent and one perennial stream that flow across the Property into McDaniels Marsh. To ensure the protection of the water quality of McDaniels Marsh, New Hampshire Fish and Game has listed the Property as a target for conservation. The Property provides scenic enjoyment to the public traveling along George Hill Road.

In order to establish the present condition of the Property and its conservation values so as to be able to properly monitor future uses of the Property and assure compliance with the terms hereof, the Grantee has prepared an inventory of the Property's relevant features and conditions (the "Baseline Documentation") and the Grantor and Grantee have acknowledged the same as an accurate representation of the condition of the Property as of the date of this Easement, as required under Treasury Regulations §1.107A-14. The Baseline Documentation is incorporated by reference herein, and is on file with the Grantee and Grantor.

1. PURPOSES

The Easement hereby granted is pursuant to NH RSA 477:45-47, exclusively for the following conservation purposes (herein referred to as "Purposes"), which Purposes are consistent with and in accordance with the US Internal Revenue Code, Section 170(h) and for the public benefit:

- A. To assure that the Property will be retained forever in its predominantly undeveloped and open space condition for critical wildlife habitat including wetland, upland, waterfowl, and

deer winter habitat, and to prevent any use of the Property that will significantly impair or interfere with its conservation values ;

- B. To conserve rare plant and the diverse wildlife habitat identified in the NH Wildlife Action Plan, as Supporting Landscapes, and to conserve forests and wetlands for the benefit of native plants and wildlife;
- C. To conserve and protect the Property's productive forest land and important forest soils, including Groups IA and IC, and to ensure the long-term protection of the Property's capacity to produce economically valuable forest products;
- D. To conserve the Property's agricultural soils (including prime agricultural soils) and agricultural productivity, and to ensure the long-term protection of the Property's capacity to produce economically valuable agricultural products;
- E. To provide for low-impact non-commercial, non-motorized outdoor recreation by the general public for such activities as hiking, bird watching, cross-country skiing, hunting, fishing , trapping in accordance with RSA 210:11;
- F. To protect the quality of ground and surface water resources on and under the Property;
- G. To provide for the scenic enjoyment of the general public including 1,775 feet of frontage along George Hill Road; and
- H. The availability of the Property for the enhancement and enlargement of over 890 acres of conserved land nearby the Property, including New Hampshire Fish & Game's McDaniels Marsh, The Village District of Eastman's Land and the Ausbon Sargent Land Preservation Trust's Barraspur Easement.

The above Purposes are consistent with the Town of Springfield's clearly delineated conservation policy set forth in its Master Plan dated 2005 which states:

"Preserve and protect Springfield's forest resources to ensure that they continue to have environmental, aesthetic and economic values." (Page 30)

"Conserve our agricultural and open space lands for their positive impact on the economic base resulting from their scenic and aesthetic qualities, particularly on the tourism and recreation markets, and for their food production value." (Page 35)

"Encourage protection measures and preserve sufficient healthy habitats to ensure the continuation of the community's wildlife and rare plant species recourses." (Page 42)

"Preserve and protect important scenic resources to ensure that Springfield continues to maintain a small town, rural identity." (Page 45)

"Maintain or improve the water quality in all of the Town's watersheds and surface water features. Ensure they continue to support recreational, visual, environmental, and other important values." (Page 50)

The above Purposes are also consistent with New Hampshire RSA Chapter 79-A:1
"Declaration of Public Interest" which states:

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

and with New Hampshire RSA 481:1 which states:

"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."

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

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

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

- A. There shall not be conducted on the Property any industrial or commercial activities, except agriculture and forestry, including timber harvesting as described below, and provided that the productive capacity of the Property to produce forest and/or agricultural crops shall not be degraded by on-site activities and that such activities will not cause significant pollution of surface or subsurface waters or soil erosion.

i. **Definitions**

For the purposes of this Easement, "agriculture" shall include but not be limited to 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 access ways for the purpose of removing agricultural products from the Property; and the processing and sale of products produced on the Property such as pick your own fruits and vegetables.

For the purposes of this Easement, "forestry" shall include but not be limited to 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 access ways for the purpose of removing forest products from the Property; and the processing and sale of products produced on the Property such as firewood and maple syrup.

- ii. If any agriculture is conducted for industrial or commercial purposes it shall be performed, to the extent reasonably practicable, in accordance with a written coordinated agricultural management plan for the sites, soils and terrain of the Property. Said agriculture shall not be detrimental to the Purposes of this Easement, nor materially impair the scenic quality of the Property as viewed from George Hill Road and McDaniels Marsh. Agricultural management activities shall be in

accordance with the then-current scientifically based practices recommended by the University of New Hampshire's Cooperative Extension, by the U.S. Department of Agriculture's Natural Resources Conservation Service, by the New Hampshire Department of Agriculture, Markets, and Food, including, but not limited to recommended practices in said NH Agriculture Department's "Manual of Best Management Practices (BMP's) for Agriculture in New Hampshire, dated June 2011 and as may be revised, updated, or superseded from time to time or by other governmental, private or non-profit natural resource conservation and management agencies then active. Grantee may request a copy of said management plan, which Grantor shall provide within 14 days of the request.

- iii. If any forestry is conducted for industrial or commercial purposes it 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 as described in Section 1 above.
 - a. The goals are:
 - maintenance of soil productivity;
 - protection of water quality, wetlands, and riparian zones;
 - maintenance or improvement of the overall quality of forest products;
 - conservation of native plant and animal species and wildlife habitat;
 - conservation of scenic quality;
 - protection of unique or fragile natural areas; and
 - protection of unique historic and cultural features.
 - b. Such forestry shall be performed in accordance with a written forest management plan consistent with this Easement, prepared by a licensed professional forester, or by another qualified person approved in advance and in writing by the Grantee (hereinafter "Forestry Professional"). Said 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 Forestry Professional at least thirty (30) days prior to said date.
 - c. At least thirty (30) days prior to harvesting, Grantor shall submit to Grantee a written certification, signed by a licensed professional forester, or by other qualified person approved in advance and in writing by the Grantee, that such plan has been prepared in compliance with the terms of this Easement. Grantee shall, within thirty (30) days after receiving said certification, provide a copy of same to the N.H. Fish and Game Department. Upon request by the Grantee, the Grantor shall submit the plan itself to Grantee within ten (10) days of such request, with the Grantee acknowledging that the plan's purpose is to guide forest management activities in compliance with this Easement and that the actual activities will determine compliance therewith. Upon request by the N.H. Fish and Game Department, Grantee shall provide to said Department a copy of the forest management plan in effect as of the date of the most recent certification received by the Grantee within the prior ten years. Said Department may, upon reviewing

said plan, provide comment only to the Grantee as to said plan's consistency with the Purposes of this conservation easement.

d. The plan shall specifically address:

- the long-term protection of those values for which this Easement is granted, as described in Section 1 above; and
- the accomplishment of the goals in Section 2.A.iii.a above;

and shall include:

- a statement of landowner objectives;
- a map showing the boundaries, access roads, wetlands, streams, and forestry management units;
- a soils map, description of soils on the Property, and their suitability for the uses proposed;
- a description of and forest management prescriptions for each management unit (including commercial and non-commercial treatments);
- an explanation of how wetlands, riparian areas, vernal pools, and soils will be protected in association with road construction, other soil disturbing activities and the implementation of forest management prescriptions;
- forest inventory data, if collected;
- a copy of this Easement Deed; and
- protection of the prime agricultural soils located on the property.

e. Timber harvesting with respect to such forestry shall be conducted in accordance with said forest management plan and be supervised by Forestry Professional.

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 Property. For references, see "Best Management Practices for Forestry: Protecting New Hampshire's Water Quality" (Sarah Smith, 2005), and "Good Forestry in the Granite State: Recommended Voluntary Forest Management Practices for New Hampshire" (The Good Forestry in the Granite State Steering Committee, December, 2010), or similar successor publications or standards.

g. In areas used by, or visible to, the general public, such forestry shall be carried out, to the extent reasonably practicable, in accordance with the recommendations contained in "A Guide to Logging Aesthetics: Practical Tips for Loggers, Foresters, and Landowners" (Geoffrey Jones, 1993) or similar successor publications.

B. The Property shall not be subdivided and none of the individual tracts that may comprise the Property shall be conveyed separately from one another. The granting of a life estate on or lease of any portion of the Property for any use allowed by this Easement shall not violate this Section 2.B., so long as notice of said life estate or lease is provided to

Grantee as required in Section 6.B., herein.

- C. No structures or improvements, including, but not limited to, a dwelling, residence, mobile home, cabin, driveway, any portion of a septic system, tennis court, swimming pool, athletic field, parking area, golf course, indoor riding arena, storage structure, tower, aircraft landing strip, utility tower or wireless communication facility, shall be constructed, placed, or introduced onto the Property. However, ancillary structures and improvements including, but not limited to, roads, trails, dams, fences, utility lines, bridges, culverts, barns, farm stands, maple sugar houses, or sheds may be constructed, placed, or introduced onto the Property only as necessary in the accomplishment of the agricultural, forestry, conservation, habitat management, or noncommercial outdoor recreational uses of the Property and provided that they are not detrimental to the Purposes of this Easement.
- D. No removal, filling, or other disturbances of soil surface, nor any changes in topography, surface or subsurface water systems, wetlands, or natural habitat shall be allowed unless such activities:
- i. are commonly necessary in the accomplishment of the agricultural, forestry, conservation, habitat management, or noncommercial outdoor recreational uses of the Property, or are permitted in Section 3.B below; and
 - ii. do not harm state or federally recognized rare, threatened, or endangered species, such determination of harm to be based upon information from the New Hampshire Natural Heritage Bureau, New Hampshire Fish and Game Department or the agency then recognized by the State as having responsibility for identification and/or conservation of such species; and
 - iii. are not detrimental to the Purposes of this Easement.
- Prior to commencement of any such activities, all necessary federal, state, local, and other governmental permits and approvals shall be secured.
- E. No outdoor advertising structures such as signs and billboards shall be displayed on the Property except as desirable or necessary in the accomplishment of the agricultural, forestry, conservation, or noncommercial outdoor recreational uses of the Property, or as necessary for public safety, and in any case provided such structures are not detrimental to the Purposes of this Easement. Any sign allowed on the Property under said exception shall comply with Springfield municipal regulations, and shall not exceed sixteen (16) square feet (even if permitted by regulation) and shall not be artificially illuminated.
- F. There shall be no mining, quarrying, or excavation of rocks, minerals, gravel, sand, topsoil, or other similar materials on the Property, except in connection with any improvements made pursuant to and consistent with the provisions of Sections 2.A., C., D., or E., above and provided that such activities on the Property are not detrimental to the Purposes of this Easement. No such rocks, minerals, gravel, sand, topsoil, or other similar materials shall be removed from the Property.

- G. There shall be no dumping, disposal, injection, burning, or burial on the Property of man-made materials or materials then known to be environmentally hazardous.
- H. No rights-of-way or easements of ingress or egress in favor of any third party shall be created or developed into, on, over, or across the Property without the prior written approval of the Grantee, except those of record as of the execution of this Easement and those specifically permitted in the provisions of this Easement.
- I. The Property shall not be used to satisfy the density, open space, frontage, setback or other requirements of any applicable zoning ordinance or subdivision regulation with respect to the development of any other property.
- J. There shall be no posting to prohibit the public from accessing and using the Property for low-impact, pedestrian, non-commercial outdoor recreational purposes, including, but not limited to hiking, cross-country skiing, snowshoeing, and nature observation. However, the Property may be posted against uses identified in Section 3.A., below.

3. RESERVED RIGHTS OF THE GRANTOR

All rights not expressly granted to the Grantee are expressly reserved to the Grantor, including, without limitation, the following:

- A. The Grantor reserves the right to post against camping, horseback riding, snowmobiling, motorized vehicles, wheeled vehicles, or any other use that is detrimental to the non-recreational Purposes of this Easement, and, to temporarily post portions of the Property in which the Grantor is conducting activities otherwise allowed under this Easement including posting against public access to agricultural cropland during the planting, growing, or harvesting season; lands actively used by livestock; and forestland during active forest management operations such as planting, thinning and harvesting of trees and construction or maintenance of forestry or agricultural roads.
- B. The Grantor reserves the right to install, maintain, utilize, repair or replace wind, solar, geothermal or other renewable power generating equipment (referred to hereinafter as "Renewable Power Equipment") to provide energy for agricultural, forest management and conservation activities on the Property, provided that the location of any such Renewable Power Equipment, associated utility line and equipment has been approved in advance and in writing by the Grantee as described in Section 3.B.i.a., below. In addition, the Grantor reserves the right to connect said Renewable Power Equipment to the local power grid and to sell incidental, excess power back to the power grid through a net-metering or similar program.
 - i. Grantor shall obtain written approval from the Grantee prior to commencing any tree clearing, excavation, construction or other activity or use associated with the reserved right in this Section 3.B pertaining to Renewable Power Equipment, in accordance with the following procedure:

- a. The Grantor shall provide the Grantee with a written request for approval, in accordance with Section 5, below, and with sufficient information, such as maps, plans and narratives, to identify the purpose, equipment type, location, design, scope and timetable of the proposed equipment, with reasonable specificity, including but not limited to site plans, design specifications, elevations, and construction schedule (hereinafter the "Request"). The Grantee shall have sixty (60) days from receipt of the Request to approve, disapprove, seek additional information, or negotiate alternative terms or conditions agreeable to the Grantor and Grantee for the proposed equipment and its location, by written notice of its decision ("Notice of Decision").
- b. Written approval by the Grantee shall not be unreasonably delayed, conditioned or denied, and shall be based on the Request's compliance with the terms and conditions of this Easement and its impact on the Purposes of this Easement. The Grantee reserves the right to consult with agencies, organizations or others which it deems necessary or advisable to determine whether the proposed equipment and location is in compliance with this Easement.
- c. In the event the Grantee requires additional information or documentation in order to act on the Request, it shall give notice to the Grantor in accordance with Section 5, below, within forty-five (45) days of receipt of the Request, which shall automatically extend the period of time to give Notice of Decision for an additional sixty (60) days. If the Grantor fails to respond to the notice and request for additional information, the Grantee may, in its sole discretion, issue a Notice of Decision denying consent to the Request.
- ii. All plans, construction and distribution contracts and other agreements shall be made expressly subordinate to this Easement and to the rights of the Grantee to protect the Purposes of the Easement.

4. AFFIRMATIVE RIGHTS OF GRANTEE

- A. The Grantee and the Executory Interest Holder shall have reasonable access to the Property and all of its parts for such inspection as is necessary to maintain boundaries, to determine compliance with and to enforce the terms of this Easement, and to exercise the rights conveyed hereby and to fulfill the responsibilities and carry out the duties assumed by the acceptance of this Easement.
- B. There is hereby conveyed to the Grantee the right to afford public access to, on and across the Property for low-impact pedestrian non-commercial outdoor recreational Purposes, including, but not limited to hiking, cross-country skiing, snowshoeing, hunting and nature observation; however, the public access conveyed herein shall not extend to camping, snowmobiling, motorized vehicles, wheeled vehicles, or any other use that is detrimental to the non-recreational Purposes of this Conservation or to the quiet enjoyment of the Property by the Grantor. The Grantee shall be under no duty to supervise any of the foregoing activities.

- i. With the Grantor's prior written permission, the Grantee shall have the right to construct, manage, use and maintain trails for the various purposes specified in Section 4.B. above, and to create and maintain vistas, overlooks and/or signs associated with said trails provided that said trails are not detrimental to the forestry and agricultural management activities of the Grantor.
 - ii. With the Grantor's prior written permission the Grantee shall have the right to allow other conservation organizations to do the same under its supervision.
- C. After notice to the Grantor, the Grantee shall have the right to post, and to authorize others to post, the Property against or otherwise limit public access if such access is shown to degrade the conservation values of the Property, to be inconsistent with the Purposes of this Easement, or to threaten public safety.
- D. The Grantee shall have the right, but not the obligation, to mark and maintain the Property boundaries.
- E. The Grantee shall have the right to post a sign or signs on the Property identifying it as conserved land.

5. NOTICES

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

6. NOTIFICATION OF TRANSFER OR LEASE, TAXES, MAINTENANCE

- A. The Grantor agrees to notify the Grantee in writing at least 10 days before the transfer of title to the Property (including any change in trustee for Property held in trust) or any division of ownership thereof permitted hereby. Said notice shall include the name and contact information of the new Grantor.
- B. The Grantor agrees to notify the Grantee in writing at least 10 days before granting a life estate or lease of 2 years or longer on any portion of the Property. Said notice shall include the name and contact information of the Lessee and the activities allowed under said lease.
- C. The Grantee shall be under no obligation to maintain the Property or pay any taxes or assessments thereon.

7. BENEFITS AND BURDENS

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

8. RESOLUTION OF DISAGREEMENTS

- A. The Grantor and the Grantee desire that issues arising from time to time concerning the interpretation of the provisions of this Easement or any use or activity in light of the Purposes of the Easement will first be addressed through candid and open communication between the parties rather than unnecessarily formal or adversarial action. Therefore, the Grantor and the Grantee agree that if a party becomes concerned about the consistency of any proposed or actual use, activity or failure to take action (which together for the purposes of this Section 8 shall be referred to as the "Activity") complies with the Purposes of this Easement, wherever reasonably possible, the concerned party shall notify the other party of the perceived or potential problem, and explore the possibility of reaching an agreeable resolution.
- B. If informal dialogue does not resolve the issue, and if the Grantor agrees not to proceed or continue with the Activity pending resolution of the Activity, either party may refer the dispute to mediation by request made in writing to the other. Within ten (10) days of the receipt of such a request, the parties shall agree on a single impartial mediator. Mediation shall be conducted within 40 miles of New London, New Hampshire. Each party shall pay its own legal fees and other associated costs and the costs of mediation shall be split equally between the parties.
- C. If the disagreement has not been resolved by mediation within sixty (60) days after delivery of the mediation request, or the parties are unable to agree on a mediator within thirty (30) days after delivery of the mediation request, then, upon the Grantor's continued agreement not to proceed with the Activity pending resolution, either party may refer the dispute to binding arbitration by request made in writing and in accordance with New Hampshire RSA 542. Within thirty (30) days of the receipt of such a request, the parties shall select a single impartial arbitrator to hear the matter. Judgment upon the award rendered by the arbitrator may be enforced in any court of competent jurisdiction. The arbitrator shall be bound by and follow the substantive law of New Hampshire and the applicable provisions of the United States Internal Revenue Code. The arbitrator shall render a decision within thirty (30) days of the arbitration hearing. Arbitration shall be conducted within 40 miles of New London, New Hampshire. Each party shall pay its own legal fees and other associated costs and the cost of arbitration shall be split equally between the parties.

- D. If the parties do not agree to resolve the dispute by arbitration, or if the parties are unable to agree on the selection of an arbitrator, 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 Property to its condition prior to the breach and for such damages as appropriate.
- E. Notwithstanding the availability of mediation and arbitration to address disagreements concerning the compliance of any Activity with the provisions of this Easement, if the Grantee believes that some action or inaction of the Grantor or a third party is causing irreparable harm or damage to the Property or creates an imminent threat of same, the Grantee 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; enforce the terms of this Easement; enjoin any violation by permanent injunction; and require the restoration of the Property to its condition prior to any breach in accordance with this Section 8.

9. BREACH OF EASEMENT – GRANTEE’S REMEDIES

- A. If the Grantee determines that a violation or breach of this Easement has occurred (which together shall hereinafter be referred to as “breach”), the Grantee shall notify the Grantor 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 Property, to restore the portion of the Property so damaged to its prior condition in accordance with a plan approved by the Grantee. Such notice shall be delivered in accordance with Section 5, above.
- B. The Grantor shall, within thirty (30) days after receipt of such notice or after otherwise learning of such breach, undertake those actions, including restoration, which are reasonably calculated to swiftly cure said breach and to repair any damage to the Property caused thereby. The Grantor shall promptly notify the Grantee of its actions taken hereunder.
- C. If the Grantor fails to perform its obligations under Section 9.B., above, or fails to continue diligently to cure any breach until finally cured, the Grantee may undertake any actions, in the Grantor’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 Property to the condition that existed prior to any such damage.
- D. If the Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, the Grantee may pursue its remedies under this Section 9 without prior notice to the Grantor or without waiting for the period provided for cure to expire.

- E. The Grantee shall be entitled to recover damages from the party directly or primarily responsible for 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. Without limiting the Grantor's liability therefor, the Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.
- F. The Grantee's rights under this Section 9 apply equally in the event of either actual or threatened violations of the terms of this Easement and are in addition to the provisions of Section 8, above, which section shall also apply to any disagreement that may arise with respect to activities undertaken in response to a notice of breach and the exercise of the Grantee's rights hereunder.
- G. The Grantor and the Grantee acknowledge and agree that, should the Grantee determine, in its sole discretion, that conservation attributes protected by this Easement are in immediate danger of irreparable damage, the Grantee may seek the injunctive relief described in Section 9.C., above, both prohibitive and mandatory, in addition to such other relief to which the Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The Grantee's remedies described in this Section 9 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
- H. Provided that the Grantor is directly or primarily responsible for the breach, all reasonable costs incurred by the Grantee in enforcing the terms of this Easement against the Grantor, including, without limitation, staff and consultant costs, reasonable attorneys' fees, costs and expenses of suit, and any costs of restoration necessitated by the Grantor's breach of this Easement shall be borne by the Grantor; and provided further, however, that if the Grantor ultimately prevails in an enforcement action each party shall bear its own costs. Notwithstanding the foregoing, if the Grantee initiates litigation against the Grantor 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 Grantee to reimburse the Grantor's reasonable costs and reasonable attorney's fees in defending the action.
- I. Forbearance by the Grantee to exercise its rights under this Easement in the event of any breach of any term thereof by the Grantor shall not be deemed or construed to be a waiver by the Grantee of: such term or any subsequent breach of the same; any other term of this Easement; or any of the Grantee's rights hereunder. No delay or omission by the Grantee in the exercise of any right or remedy upon any breach by the Grantor shall impair such right or remedy or be construed as a waiver. The Grantor hereby waives any defense of laches or estoppel.
- J. Nothing contained in this Easement shall be construed to entitle the Grantee to bring any action against the Grantor for any damage to, or change in, the Property, or to any person, resulting from causes beyond the Grantor's control, including, but not limited to, unauthorized actions by third parties, natural disasters such as fire, flood, storm, disease, infestation and earth movement, or from any prudent action taken by the Grantor under

emergency conditions to prevent, abate, or mitigate significant damage to the Property or to any person resulting from such causes. The Grantee and the Grantor reserve the right, separately or collectively, to pursue all legal and/or equitable remedies, as set forth in this Section 9, against any third party responsible for any actions inconsistent with the provisions or detrimental to the Purposes of this Easement, and, further, prior to either party taking any such separate action, the Grantee and Grantor shall first discuss with one another opportunities for taking collective action.

10. EXECUTORY INTEREST

- A. If the Grantee ceases to enforce the Easement conveyed hereby or fails to enforce it within thirty (30) days after receipt of written notice from EXECUTORY INTEREST HOLDER, a qualified organization as specified in Section 7 above (sometimes herein referred to as the "Executory Interest Holder"), requesting such enforcement delivered in accordance with Section 5, above, then the Executory Interest Holder shall have the right to enforce this Easement. All reasonable costs of such enforcement shall be paid by the Grantee.
- B. In such circumstance, or in the event the Grantee acquires the underlying fee interest in the Property, the Executory Interest Holder shall then also have the right to terminate the interest of the Grantee in the Property by recording a notice to that effect in the Registry of Deeds referring hereto. The Executory Interest Holder shall thereupon assume and thereafter have all interests, rights, responsibilities and duties granted to and incumbent upon the Grantee in this Easement.
- C. The interests held by the Executory Interest Holder are assignable or transferable to any party qualified to become the Grantee's assignee or transferee as specified in Section 7., above. Any such assignee or transferee shall have like power of assignment or transfer. Any holder of an interest in this Easement desiring to transfer or assign its interest shall send written notice in accordance with Section 5, above, describing said intention to all other holders of any interest in this Easement at least thirty (30) days prior to such transfer or assignment taking effect.
- D. If the Land and Community Heritage Investment Program can no longer carry out its responsibilities as EXECUTORY INTEREST HOLDER, the New Hampshire Fish and Game Department shall have the right, but not the obligation, to accept the executory interest in the Property.

11. CONDEMNATION/EXTINGUISHMENT

- A. Whenever all or part of the Property is taken in the exercise 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 Property is lawfully sold without the restrictions imposed hereunder in lieu of condemnation or exercise of eminent domain, the Grantor and the Grantee 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. 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. After the satisfaction of prior claims, the proceeds from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such judicial termination or extinguishment shall be distributed between the Grantor and the Grantee and Funders in accordance with Section C. below. In making this grant of Easement, the Grantor has considered the possibility that uses prohibited by the terms of this Easement may become more economically viable than the uses specifically reserved by the Grantor pursuant to this Easement. It is the specific and considered intent of both Grantor and Grantee that any such change in economic conditions shall not be deemed to be circumstances justifying the termination or extinguishment of this Easement pursuant to this Section.
- C. The balance of the land damages recovered from such taking lawful, sale in lieu of condemnation or exercise of eminent domain or from any judicial extinguishment of this Easement, the Grantor, the Grantee and each Funder identified on page 2 above shall be entitled to a portion of the net proceeds equal to the proportionate value of the Conservation Easement relative to the fair market value of the Property as a whole (or in the event that the Property is exchanged, the Grantee and each Executory Interest Holder shall be entitled to an equivalent amount at the time of such exchange). The values of the interest of the Grantor and Grantee's and each Funder's interests shall be determined by an appraisal prepared by a qualified appraiser at the time of extinguishment. By virtue of the grant funding provided for the purchase of this Conservation Easement and to the provisions set forth in the Grant Agreements of each Funder, each Funder shall be entitled to its percentage of the net proceeds payable to the Grantee resulting therefrom. Each of the said Funders may consent to or require the Grantee's use of its portion of the proceeds to acquire other land or interests in land of equal monetary or resource value. The Grantee shall use its share, if any, of the proceeds in a manner consistent with the conservation Purposes of this Conservation Easement
- D. The Grantee shall use its share of the proceeds in a manner consistent with and in furtherance of one or more of the conservation Purposes set forth herein.

12. DISCRETIONARY APPROVALS AND AMENDMENTS

- A. The Grantee's consent for activities otherwise prohibited herein may be given under the following conditions and circumstances. If, owing to unforeseen or changed circumstances, any activity otherwise prohibited or limited by the terms of this Easement is deemed desirable by the Grantor and the Grantee, the Grantee may, in its sole discretion, with consent of the Executory Interest Holder give permission for such activities, subject to the limitations herein. The Grantor's request for permission shall be in writing and shall describe the proposed activity in sufficient detail to allow the Grantee to judge the consistency of the proposed activity with the Purposes of this Easement. The Grantee may give its permission only if it determines, in its sole discretion, that such activities (i) do not violate the Purposes of this Easement and (ii) either enhance or do not impair any

significant conservation interests associated with the Property.

Notwithstanding the foregoing, the Grantor and the Grantee shall have no right or power to agree 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 provided for above.

- B. If, owing to unforeseen or changed circumstances, Grantor and Grantee agree that an amendment to, or modification of this Easement would be appropriate and desirable, Grantor and Grantee may jointly amend this Easement pursuant to: the provisions and limitations of this section; the then current amendment policies of the Grantee; and applicable state and federal law. Any amendment shall be consistent with the Purposes of this Easement, and shall enhance protection of or further clarify, but not impair, the conservation values of the Property protected by this Easement. No amendment shall affect the perpetual duration of this Easement, and no amendment shall permit any residential, commercial, or industrial development of the Property beyond that permitted by the terms of this Easement on its effective date. No amendment shall affect the qualification of this Easement or the status of the Grantee under any applicable laws, including Section 170(h) or Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or NH RSA 477:45-47. Any such amendment shall be executed by the Grantor and the Grantee and the Executory Interest Holder and shall be recorded in the Sullivan County Registry of Deeds. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

13. HOLD HARMLESS

The Grantor agrees to release, hold harmless, defend and indemnify the Grantee from any and all liabilities including, but not limited to, injuries, losses, damages, judgments, costs, expenses and fees which the Grantee may suffer or incur as a result of, arising out of, or connected with: (i) the activities of the Grantor or any other person on the Property, other than those caused by the negligent acts or acts of misconduct by the Grantee; 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 Grantee, in any way affecting, involving, or relating to the Property.

14. ENVIRONMENTAL RESPONSIBILITIES

Nothing in this Easement shall be construed as giving any right or ability to Grantee to exercise physical or managerial control of any of Grantor's activities on the Property, except for Grantee's rights and responsibilities related to the monitoring of the Property and enforcement of this Easement, or otherwise to become an operator with respect to the Property within the meaning of the Comprehensive Environmental Response Compensation and Liability Act of 1980 as amended ("CERCLA"), or of any other federal, state, or local law or regulation making operators of property responsible for remediation of contamination.

15. ENVIRONMENTAL WARRANTY

- A. Grantor warrants that it is in compliance with, and shall remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with or any liability under any Environmental Law relating to the operations or conditions of the Property. Grantor further warrants that it has no actual knowledge of a release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable federal and state law.
- B. Moreover, Grantor hereby promises to hold harmless and indemnify the Grantee against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Property. The Grantor's indemnification obligation shall not be affected by any authorizations provided by the Grantee to the Grantor with respect to the Property or any restoration activities carried out by Grantee at the Property; provided, however, that Grantee shall be responsible for any Hazardous Materials contributed after this date to the Property by Grantee.
- C. "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 which may pose a present or potential hazard to human health or the environment.

16. GRANT AGREEMENT

This Conservation Easement was acquired in part with funding received by the Grantee from the Funders. All present and future uses of the protected property are and shall remain subject to the terms and conditions described in each of the Grant Agreements of the Funders, signed by the Grantee and to the other administrative requirements of the applicable grant funding programs.

17. GOVERNING LAW & INTERPRETATION

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

18. MERGER

The Grantor and Grantee and Executory Interest Holder explicitly agree that it is their express intent, forming a part of the consideration hereunder, that the provisions of this Easement are to last in perpetuity, and that, to that end, no conveyance of the underlying fee interest in the Property to the Grantee or Executory Interest Holder shall be deemed to eliminate this Easement, or any portion thereof, under the doctrine of "merger" or any other legal doctrine.

19. ADDITIONAL EASEMENT

Should the Grantor determine that the expressed Purposes of this Easement could better be effectuated by the conveyance of an additional easement, the Grantor may execute an additional instrument to that effect, provided that: the Purposes of this Easement are not diminished thereby; a public agency or qualified organization described in Section 7, above, accepts and records the additional easement; and the Grantor has given advance written notice, including a copy of the proposed additional easement, to the Grantee and Executory Interest Holder at least sixty (60) days prior to execution.

20. SEVERABILITY

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

21. 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.

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

IN WITNESS WHEREOF, we have hereunto set our hands this _____ day of _____, 2013.

MALCOLM F. PATTEN

STATE OF NEW HAMPSHIRE
COUNTY OF _____

This instrument was acknowledged before me on this _____ day of _____, 2013 by **MALCOLM F. PATTEN**. 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: _____
(Notary Seal)

DALLAS R. PATTEN

STATE OF NEW HAMPSHIRE
COUNTY OF _____

This instrument was acknowledged before me on this _____ day of _____, 2013 by **DALLAS R. PATTEN**. 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: _____
(Notary Seal)

MABEL M. PATTEN

STATE OF NEW HAMPSHIRE
COUNTY OF _____

This instrument was acknowledged before me on this _____ day of _____, 2013 by **MABEL M. PATTEN**. 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: _____
(Notary Seal)

Executed and Accepted: **THE AUSBON SARGENT LAND PRESERVATION TRUST** this ____ day of _____, 2013.

By: _____
JOHN GARVEY
Its Chairman, Duly Authorized

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

This instrument was acknowledged before me on this _____ day of _____, 2013 by **JOHN GARVEY, CHAIRMAN, THE AUSBON SARGENT LAND PRESERVATION TRUST**, a New Hampshire Voluntary Corporation. 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: _____
(Notary Seal)

Acceptance by the EXECUTORY INTEREST HOLDER
STATE OF NEW HAMPSHIRE, acting through the
LAND AND COMMUNITY HERITAGE INVESTMENT PROGRAM

By: _____ Date _____

DOROTHY TRIPP TAYLOR,
Executive Director
Duly Authorized

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

This instrument was acknowledged before me on this _____ day of _____, 2013 by
**DOROTHY TRIPP TAYLOR, EXECUTIVE DIRECTOR, LAND AND COMMUNITY HERITAGE
INVESTMENT PROGRAM.** 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: _____
(Notary Seal)

APPENDIX A
PROPERTY DESCRIPTION

The "Property" subject to this Easement is that certain parcel of land with any and all buildings, structures, and improvements thereon, situated on George Hill Road, so-called, in the Town of Springfield, County of Sullivan, State of New Hampshire, consisting of approximately 46.2 acres, shown on a plan entitled "Proposed Subdivision for Patten – Yeager, George Hill Road, Springfield," prepared by Alan L. Wilson, LLS, dated November 21, 1995, recorded at Plan File 4 Pocket 4 Folder 2 Number 24 at the Sullivan County Registry of Deeds (hereafter "Plan"), and more particularly bounded and described as follows, with all bearings based on magnetic north orientation:

Beginning at an Iron Pin in a stone wall corner on the East side of George Hill Road, at land now or formerly of J. And B. Simeone, said iron pin being the Northwest corner of the Property;

Thence proceeding along land of George Hill Road the following course:

Southwesterly along George Hill Road a distance of 1,775.1 feet, to an iron pin, said pin lying on a tie course running S 07°28'55" W, 1,752.1 feet from the last named point;

Thence proceeding along land of Yeager the following courses:

S 67°58'10" E, 401.1 feet to a drill hole;
N 84°35'40" E, 637.1 feet to an iron pin;
N 38°48'25" E, 284.5 feet to an iron pin;
N 28°35'15" E, 1,188.6 feet to an iron pin at the end of a stone wall at land now or formerly of J. and B. Simone;

Thence proceeding along the land of Simone the following course:

N 69°45'50" W, 1,625.3 feet along a stone wall to an iron pin marking the point and place of beginning.

CONTAINING 46.2 acres, more or less.

MEANING AND INTENDING to describe and convey a conservation easement on all and the same conveyed by Quit Claim Deed from James Yager, to Malcolm F. Patten, Mabel M. Patten and Dallas R. Patten, dated December 4, 1995, recorded at said Registry at Book 1077, Page 196.

Not homestead property of the Grantor.

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