

Cathy Ann Seay

RECORDING 134.00
SURCHARGE 2.00



*Cassissa Law
Box 9*

The within conveyance is a non-contractual transfer pursuant to RSA 78-B:2(IX) and is exempt from the New Hampshire Real Estate Transfer Tax. This is also a transfer to an instrumentality of the State of New Hampshire which is exempt from the New Hampshire real estate transfer tax pursuant to New Hampshire RSA 78-B:2, I. This transfer is also exempt from the LCHIP surcharge pursuant to Rev. 3002.03 and Rev. 3002.04.

CONSERVATION EASEMENT DEED

I, **EDITH BARKER, TRUSTEE OF THE EDITH C. BARKER REVOCABLE TRUST OF 2003, u/d/t November 13, 2003**, an unmarried individual, having a mailing address of P.O. Box 154, Town of Stratham, County of Rockingham, State of New Hampshire 03885, (hereinafter referred to as the "Grantor", which word where the context requires includes the plural and shall, unless the context clearly indicates otherwise, include the Grantor's executors, administrators, legal representatives, devisees, heirs, successors and assigns),

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

the **SOUTHEAST LAND TRUST OF NEW HAMPSHIRE**, a corporation duly organized and existing under the laws of the State of New Hampshire, with a principal place of business at 6 Center Street, PO Box 675, Town of Exeter, County of Rockingham, State of New Hampshire, 03833, 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 "Grantee" which shall, unless the context clearly indicates otherwise, include the Grantee's successors and assigns),

the **Conservation Easement** (herein referred to as the "Easement") hereinafter described with respect to that certain area of land (herein referred to as the "Property") with any and all buildings, structures, and improvements thereon, consisting of approximately 33.31 acres, which consists of a 29.32 acre portion of Tax Map 21 Lot 80 and the entirety of the 3.99 acre Tax Map 18 Lot 37, situated off Portsmouth Avenue in the Town of Stratham, County of Rockingham, State of New Hampshire, and shown on a plan entitled "Conservation Easement Plan, Tax Map 18 Lot 37, Tax Map 21 Lot 80 Portsmouth Avenue (Route 33), Stratham, NH Owner: Edith C. Barker Rev. Trust of 2003" Dated September 25, 2018, Scale: 1" = 120', prepared by Eric C. Mitchell & Associates, Inc. to be recorded herewith, more particularly bounded and described in

Appendix "A" attached hereto and made a part hereof; and

grants a **Primary Executory Interest**, as further defined in Section 9 "Primary and Secondary Executory Interests" below, to the **TOWN OF STRATHAM**, a duly authorized municipal corporation acting by and through the **STRATHAM CONSERVATION COMMISSION**, an official commission of the Town of Stratham, pursuant to New Hampshire RSA 36-A:4, with a principal place of business at 10 Bunker Hill Avenue, Town of Stratham, County of Rockingham, State of New Hampshire, 03885, (sometimes referred to as the "Town", and otherwise hereinafter referred to as the "Primary Executory Interest Holder", which term shall include the Primary Executory Interest Holder's successors and assigns; and together with the Secondary Executory Interest Holder sometimes collectively referred to herein as the "Executory Interest Holders", as the context may require); and

grants a **Secondary Executory Interest**, as further defined in Section 9 below, to the **STATE OF NEW HAMPSHIRE**, acting by and through the **LAND AND COMMUNITY HERITAGE INVESTMENT AUTHORITY**, a nonprofit corporation and public instrumentality of the State of New Hampshire (sometimes referred to as "LCHIP", and otherwise hereinafter referred to as the "Secondary Executory Interest Holder", and together with the Primary Executory Interest Holder sometimes collectively referred to herein as the "Executory Interest Holders", as the context may require), with a mailing address of 3 North Spring Street, Suite 100, City of Concord, County of Merrimack, State of New Hampshire, 03301.

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

The conservation attributes and present conditions of the Property are further described and set forth in a Baseline Documentation Report with the original on file with the Grantee and a copy provided to the Grantor and with additional copies provided to the Executory Interest Holders.

1. PURPOSES

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

- A. The conservation and protection of open spaces, particularly the conservation of the productive farm and forest land of which the Property consists, which includes approximately nine-tenths (0.9) acres of statewide important farmland soils and approximately six and four-tenths (6.4) acres of locally important farmland soils, and which also includes fifteen (15) acres of Group 1A important forest soils and six and four-tenths (6.4) acres of Group 1B important forest soils; and the long-term protection of the Property's capacity to produce economically valuable agricultural and forestry products; and of the wetland and upland wildlife habitat thereon; and

- B. The protection of the wildlife habitats on the Property including approximately thirty-two (32) acres of “Highest Ranking Habitat in the State”, one (1) acre of “Highest Ranking Habitat in Biological Region”, and one (1) acre of “Supporting Landscape”, all as identified by the 2015 NH Wildlife Action Plan; and the enhancement and enlargement of protected or public land near the Property, said other land including but not limited to the approximately eighty-six (86) acre Stratham Hill Park property and the approximately one hundred twenty-six (126) acre Gifford property including the Gordon Barker Town Forest owned by the Town of Stratham; and the protection of any exemplary natural communities and/or rare, threatened, or endangered species, such as the swamp white oak basin swamp designated by the New Hampshire Natural Heritage Bureau as critically imperiled; and
- C. The protection of the quality of ground water and surface water resources on and under the Property by managing the agricultural and forest lands in accordance with best management practices. Said water resources includes approximately four and six-tenths (4.6) acres of the Property that falls within the Stratham Memorial School Well Head Protection Area, and the approximately one and three-tenths (1.3) acres of the Property that falls within a high transmissivity aquifer, and the approximately six hundred and seventy (670) feet of frontage along both sides of an unnamed intermittent stream; and
- D. The scenic and recreational enjoyment of the general public that enjoy the Property from the pedestrian and bicycle trail system that is open to the public on and adjoining the Property. Said trail system extends through the Town owned and maintained Stratham Hill Park and the Gordon Barker Town Forest, to and across the land upon which the Stratham Memorial School is located, through the Property and through the Short conservation easement and the Open Space Cluster Subdivision known as Crockett Farms, all of which trails also lead to the Scamman and Long Hill Roads trail entrances, which together provide miles of recreational opportunities and access.

The above Purposes are consistent with the clearly delineated open space conservation goals and/or objectives as stated in the 1998 Master Plan of the Town of Stratham, which states in Chapter 6 “Recreation”, Section 5 “Recommendations” Paragraph 4 whereby the Town should “Seek to establish a network of trails linking public conservation and recreation by interconnecting, through easements and other agreements with landowners”; and in Chapter 7 “Resource Conservation and Preservation”, in Map RCP-6 and Table RCP-7 which specifically references Barker Farm, and in Section 6 “Recommendations” Paragraph 2 “Natural Resources” which states “It is the policy of the Town of Stratham to protect its natural resources both for the health and enjoyment of the residents and for the health and well-being of the environment”, and Paragraph 3 “Water Resources” which states “It is the policy of the Town of Stratham to vigorously protect the quality and quantity of the Town’s surface and groundwater resources to ensure present and future water supplies for the Town and to protect the health, safety and welfare of its residents”, and Paragraph 4 “Open Space and Conservation Lands” which states “It is the policy of the Town of Stratham to protect Stratham’s natural resources, agricultural lands and other open spaces by securing the development rights to important open space and conservation lands”, and Paragraph 5 “Agricultural Resources” which states “It is the policy of the Town of Stratham to protect Stratham’s agricultural resources by securing development

rights and by promoting conservation measures and best management practices”;

and 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 which also states, relative to the entire Property being enrolled in the Current Use Assessment Program: “It is further declared to be in the public interest to prevent the loss of open space due to property taxation at values incompatible with open space usage. Open space land imposes few if any costs on local government and is therefore an economic benefit to its citizens. The means for encouraging preservation of open space authorized by this chapter is the assessment of land value for property taxation on the basis of current use.”,

and with NH RSA 227-M which states: “The intent of the Program is to conserve and preserve this state’s most important natural, cultural and historical resources through the acquisition of lands and cultural and historical resources, or interests therein, of local, regional and statewide significance, in partnership with the state’s municipalities and the private sector, for the primary purposes of protecting and ensuring the perpetual contribution of these resources to the state’s economy, environment and overall quality of life”,

and consistent with the aforesaid Wildlife Action Plan, approved by the U.S. Fish and Wildlife Service in 2015, whose “Conservation Action 1500. Land Protection” states “Highly threatened and essential habitat resources should be priorities, such as riparian/shoreland habitat, larger unfragmented blocks, and wildlife corridors that connect significant habitat.”

The Easement has been acquired in part with a grant award from LCHIP; which award places certain restrictions on the Property as described herein and continuing obligations on the Grantee as described in a Grant Agreement recorded herewith, and also with financial assistance from the Town of Stratham.

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

Notwithstanding any of the provisions contained herein, under no circumstances shall a use inconsistent with or in violation of the Town Zoning Ordinance, Site Plan Regulations, bylaws, or any other ordinance or rule of the Town be permitted to occur, except if that use is explicitly listed in Section 2.J hereof.

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, as described below, and provided that the productive capacity of the Property to yield forest and/or agricultural crops shall not be degraded by on-site activities.

i. **Description of Agriculture and Forestry**

- a. **Agriculture:** 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, stocking, cutting, and sale of Christmas trees; and the processing and sale of products produced on the Property (such as pick-your-own fruits and vegetables and maple syrup) all as not detrimental to the Purposes of this Easement.
- b. **Forestry:** For the purposes hereof, "Forestry" shall include the growing, stocking, cutting, and sale of forest trees of any size capable of producing timber or other forest products, all as not detrimental to the Purposes of this Easement.

1. **Commercial Forestry:** For the purposes hereof, "Commercial Forestry" shall include all forestry and forest management activities performed for commercial or industrial purposes, including barter transactions.

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

- ii. **Requirements for Agriculture:** Agriculture shall be performed, to the extent reasonably practicable, in accordance with a coordinated management plan for the sites and soils of the Property. Agricultural management activities shall be in accordance with the then-current scientifically based practices recommended by UNH Cooperative Extension, U.S. Natural Resources Conservation Service, or other government or private, nonprofit natural resource conservation and management agencies then active. Such management activities shall not be detrimental to the Purposes of this Easement.
- iii. **Requirements for Forestry:** Any and all Commercial and Non-commercial Forestry shall be carried out in accordance with all applicable local, state, and federal laws and regulations, and, to the extent reasonably practicable, in accordance with then-current, generally accepted best management practices for the sites, soils, and terrain of the Property and shall not be detrimental to the Purposes of the Easement. For references

on best management practices see:

- “New Hampshire Best Management Practices for Erosion Control on Timber Harvesting Operations” (N.H. Division of Forests and Lands, 2016); and
- “Good Forestry in the Granite State: Recommended Voluntary Forest Management Practices for New Hampshire” (New Hampshire Forest Sustainability Standards Work Team, 2010), or similar successor publications.

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

- 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 scenic quality and recreational access and trails;
 - protection of significant or fragile natural areas, exemplary natural communities, and rare, threatened and endangered species, including their habitats;
 - protection of significant historic and cultural features; and
 - conservation of native plant and animal species.
- b. Any and all Commercial Forestry shall be performed in accordance with a written Forest Management Plan consistent with this Easement, prepared by a licensed professional forester, or by other qualified person approved in advance and in writing by the Grantee.
- c. Said Forest Management Plan shall have been prepared not more than ten (10) years prior to the date any harvesting is expected to commence. Or, if more than ten (10) years old, the plan shall have been reviewed and updated as required by such a forester or other qualified person at least thirty (30) days prior to the date of harvest.
- d. Said Forest Management Plan shall include a statement of Grantor objectives, and shall specifically address:
 - the accomplishment of those Purposes for which this Easement is granted; and
 - the goals in Section 2.A.iv.above.
- e. At least thirty (30) days prior to any commercial timber harvest, the Grantee shall have received from the Grantor a written certification, signed by a licensed professional forester, or by other qualified person approved in advance and in writing by the Grantee, that the Forest Management Plan, as defined in 2.A.iv, a-d, above, has been prepared in compliance with the terms of this Easement.

Grantee may request the Grantor to submit the Plan itself to Grantee within ten (10) days of such request, but acknowledges 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.

- f. Timber harvesting with respect to any Commercial Forestry shall be conducted in accordance with said Plan and be supervised by a licensed professional forester, or by other qualified person approved in advance and in writing by the Grantee.
- B. The Property shall not be subdivided and none of the individual tracts which together comprise the Property shall be conveyed separately from one another, except that the lease of any portion of the Property for any use permitted by this Easement shall not violate this provision.
- C. The following provisions shall apply to structures or improvements on the Property:
- i. No structure or improvement shall be constructed, placed, introduced, enlarged, relocated, used, maintained, repaired, replaced, rebuilt, or improved on, above, or below the Property, except for structures and improvements which:
 - a. Assist in the accomplishment of agriculture, forestry, conservation, habitat management, or outdoor recreational or educational uses on the Property, which may include but shall not be limited to: permeable roads, dams, fences, bridges, culverts, barns, maple sugar houses, trails, informational kiosks, boardwalks or sheds; and
 - b. Do not cause the total impervious surface coverage of the Property to exceed two percent (2%) of the Property's overall size, or 29,020 square feet; for the purposes of this restriction, impervious surfaces are defined as material that does not allow water to percolate into the soil on the Property. Impervious surfaces include, but are not limited to buildings with or without flooring, paved areas, and any other surfaces that are covered by asphalt, concrete, or roofs. Notwithstanding the foregoing, impervious surfaces shall specifically exclude bridges; boardwalks; culverts; impervious surfaces not in place year-round such as row covers for agricultural crops, tents and awnings; and roadways, or other improvements established on the Property by third parties exercising lawful rights obtained prior to the date of this Easement; and
 - c. Are not detrimental to the Purposes of this Easement.
 - ii. Prior to the Grantor's construction, placement, introduction, enlargement, or relocation of any structure or improvement with a footprint exceeding two hundred and fifty (250) square feet, the Grantor must obtain written approval of the same from the Grantee. The footprint of any roofed structure shall include the area within the dripline. For an enlargement of a structure, the square footage calculation under this provision shall only be the enlargement and shall not include the original structure.

- a. At least forty-five (45) days prior to the commencement of any such construction, placement, introduction, enlargement, relocation, or on-site preparation therefor including but not limited to land clearing, the Grantor shall provide the Grantee with written notice with details of said structure or improvement including but not limited to scope, size, and location, and method and timing of said construction/installation. Within thirty (30) days after Grantee's receipt of such notice, the Grantee shall inform the Grantor in writing of its approval, approval with conditions, or disapproval of the proposed structure or improvement, such approval not to be unreasonably withheld. Any disapproval shall specify the reasons therefor.
 - iii. Notwithstanding the above provisions of this Section 2.C., there shall not be constructed, placed, introduced, enlarged, relocated, used, maintained, repaired, replaced, rebuilt, or improved on, under, or above the Property any of the following structures or improvements, including any portion thereof: dwelling, mobile home, cabin, residential driveway, any portion of a septic system, underground petroleum/gas storage tank, tennis court, swimming pool, athletic field, golf course, indoor riding arena, tower or aircraft landing area.
- D. There shall be 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 outdoor recreational or educational uses of the Property; and
 - ii. do not harm state or federally recognized rare, threatened, or endangered species, or exemplary natural communities, such determination of harm to be based upon information from the New Hampshire Natural Heritage Bureau or the agency then recognized by the State of New Hampshire as having responsibility for identification and/or conservation of such species and/or natural communities; 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.

Notwithstanding this Section 2.D, Grantor and Primary Executory Interest Holder shall also be subject to the provisions described in Section 6.C.

- E. No outdoor advertising structures shall be displayed on the Property except as desirable or necessary in the accomplishment of the agricultural, forestry, conservation, habitat management, educational, outdoor recreational, or other permitted uses of the Property, and provided such structures are not detrimental to the Purposes of this Easement. No

sign on the Property shall exceed 25 square feet in size, and no sign shall be artificially illuminated.

- F. There shall be no mining, quarrying, excavation, or removal (hereinafter referred to as “Extractive Activities”) of surface or subsurface materials including but not limited to hydrocarbons, rocks, minerals, gravel, sand, topsoil, or other similar materials (hereinafter referred to as “Extractive Materials”) on, under, or from the Property, unless Extractive Activities will have a limited and localized impact on the Property and shall not be irretrievably destructive of or detrimental to the Purposes of this Easement, and all of the following conditions are met:
- i. Said Extractive Activities shall be undertaken in furtherance of improvements made pursuant to and consistent with the provisions of Sections 2.A., C., D., and/or E., above, and in accordance with relevant Best Management Practices;
 - ii. No Extractive Materials shall be removed from the Property, except with advance written approval of the Grantee after the Grantee has determined, in its sole discretion, that said removal is not detrimental to the Purposes of this Easement;
 - iii. Said Extractive Activities shall be limited to specific Extraction Zone(s) approved in accordance with Section 2.F.(viii.) below, with opportunity for said zone(s), once initially established, to be relocated from time to time by mutual agreement of the Grantor, Primary Executory Interest Holder and the Grantee, but only after a finding by the Grantee in its sole discretion that the proposed new location and configuration of said zone(s) are no more detrimental to the Purposes of this Easement than the established zone(s) proposed to be relocated; and, further, only if said relocation does not convey impermissible private benefit;
 - iv. The maximum cumulative footprint of the Extractive Zones with exposed soil at any one time shall not exceed 2% or 29,020 square feet of the Property;
 - v. Said Extractive Activities shall not significantly diminish the Property’s productive capacity, including soil productivity, to yield forest and/or agricultural products, nor the Property’s potential future uses for forestry or agriculture, or other permitted uses;
 - vi. Said Extractive Activities shall not harm state or federally recognized rare, threatened, or endangered species, or exemplary natural communities, such determination of harm to be based upon information from the New Hampshire Natural Heritage Bureau or the agency then recognized by the State of New Hampshire as having responsibility for identification and/or conservation of such species and/or natural communities;
 - vii. Following the cessation of Extractive Activities at any given Extractive Zone on the Property, the Grantor shall restore such zone(s) to a natural vegetated condition and appearance in conformance with all governmental laws, ordinances, rules, and regulations, including but not limited to the requirements of U.S. Treasury

Regulations at 1.170A-14(g)(4)(i), as may be amended from time to time;

- viii. At least forty-five (45) days prior to the initial commencement or site preparation for Extractive Activities in any Extractive Zone or to designate a new or relocated Extractive Zone, the Grantor shall give the Grantee and Primary Executory Interest Holder written notice of the commencement of said activities or the desire to designate an initial Extractive Zone(s). Said notice shall include a detailed description of the proposed activities (hereinafter the "Extraction Plan") including but not limited to the type(s) and volume(s) of said Extractive Materials to be mined, quarried, excavated, and/or removed from the Property; the proposed uses of said materials; the source and location of said Extractive Materials within the Property; the size and location of the Extractive Zone; the timing, duration, and frequency of said Extractive Activities; and a plan for restoring the extraction zone following the cessation of Extractive Activities. The Primary Executory Interest Holder may provide written comments to the Grantee within twenty-one (21) days of receipt of the Grantor's written request. The Grantee shall have thirty (30) days from receipt of the Grantor's Extraction Plan to evaluate said plan and approve, approve with conditions, or disapprove the same, at the Grantee's sole discretion. Said approval or disapproval shall be based on whether the proposed Extraction Plan meets all of the above conditions of this Section 2.F., and said approval shall not to be unreasonably withheld. Any disapproval shall specify the reasons therefor. Once an Extraction Plan is approved by the Grantee, the Grantor does not need to notify the Grantee of individual instances of extraction activities within said zone so long as said activities are within the parameters of the Extraction Plan.
- G. There shall be no dumping, injection, burning, or burial on the Property of man-made materials or materials then known to be environmentally hazardous.
- 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 Grantor shall neither use nor grant permission for motorized vehicle use on the Property, except as necessary in the accomplishment of the agricultural, forestry, conservation, education, habitat management, law enforcement and public safety, or other allowed uses of the Property, provided that no use of motorized vehicles shall create impacts that are detrimental to the productivity of the soils on the Property and the Purposes of this Easement.
- J. There is hereby conveyed pedestrian and bicycle access to, on, and across the Property for hunting, fishing, and transitory passive recreational purposes, but not camping, by members of the public. The Grantee may post against or limit such access, with prior approval of the Executory Interest Holders, if such activities harm the agricultural or forestry-related uses or other conservation-related values of the Property and/or when public safety would be at risk. Notwithstanding the above, bicycle access shall only be

permitted on designated trails approved by the Grantor, Grantee, and Primary Executory Interest Holder. Also notwithstanding the above, the Grantor reserves the right to post the Property against public access to areas being actively used by/for livestock, to agricultural cropland during the planting and growing season, and to forestland during harvesting, establishment of plantations, or other forest management activities, without prior approval of the Executory Interest Holders.

3. RESERVED RIGHTS

- A. Agritourism. For the purposes hereof, "Agritourism" shall include any practice on the farm incidental to, or in conjunction with, Agriculture to attract visitors to the farm to attend events and activities that are accessory uses to the primary farm operation, including, but not limited to, eating a meal, overnight stays, enjoyment of the farm environment, education about farm operations, or active involvement in the activity of the farm.

Subject to the following conditions, the Grantor reserves the right to use a portion or portions of the Property for Agritourism activities. Said activities shall be secondary to the agricultural uses of the Property or adjacent parcels owned by the Grantor and subject to the prior written approval of the Grantee, such approval to be granted at the Grantee's sole discretion. At least sixty (60) days before the initiation of the proposed activity, the Grantor shall provide the Grantee with written information sufficient to identify and evaluate the activity and its consistency with the terms and Purposes of this Easement. The Grantee shall approve, approve with conditions, or disapprove within thirty (45) days of receipt of the Grantor's written request, but in any event, Grantee shall make best efforts in good faith to expedite its decision making. Said approval is to be exercised on a case-by-case basis and based upon, for example but not limited to, consideration of whether such activities, or the intensity of such activities, may be detrimental to the Purposes of this Easement. Nothing contained herein shall prevent the Grantee, at its sole discretion, from providing a perpetual or an extended term approval for an initially approved event or activity. This provision is an exception to the limitation on commercial activities on the Property under Section 2.A. above.

- B. Commercial Educational Activities. Subject to the following conditions, the Grantor or its designee(s) reserves the right to sponsor and conduct commercial educational activities on the Property, including but not limited to the hosting of school or youth groups, youth summer and vacation programs, and family, community, and adult education programs. Grantor or its designee(s) reserves the right to collect nominal fees for such sponsored commercial educational activities; however, the Grantor or its designee(s) shall not charge fees or admission to the general public for access to the Property for allowed uses as otherwise provided in this Easement that are independent of Grantor's said commercial educational activities. The conduct of such commercial educational activities shall not be detrimental to the Purposes of this Easement. This provision is an exception to the limitation on commercial activities on the Property under Section 2.A. above.

C. Commercial Recreational Activities. Subject to the following conditions, the Grantor or its designee(s) reserves the right to sponsor and conduct commercial recreational activities on the Property, including but not limited to bicycle or pedestrian trail races, passive recreation programs (such as birding tours), or other organized commercial recreational events. Grantor or its designee(s) reserves the right to collect nominal fees for such sponsored commercial recreational activities; however, the Grantor or its designee(s) shall not charge fees or admission to the general public for access to the Property for allowed uses as otherwise provided in this Easement that are independent of Grantor's said commercial recreational activities. The conduct of such commercial recreational activities shall not be detrimental to the Purposes of this Easement. This provision is an exception to the limitation on commercial activities on the Property under Section 2.A. above.

4. NOTIFICATION OF TRANSFER, TAXES, MAINTENANCE

- A. The Grantor agrees to notify the Grantee in writing or via email within ten (10) days of offering the Property for sale. In addition, the Grantor agrees to notify the Grantee in writing or via email at least ten (10) days before the transfer of title to the Property.
- B. The Grantee shall be under no obligation to maintain the Property or pay any taxes or assessments thereon.

5. BENEFITS AND BURDENS

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

6. AFFIRMATIVE RIGHTS OF GRANTEE AND EXECUTORY INTEREST HOLDERS

- A. The Grantee and Executory Interest Holders shall have reasonable access to the Property and all of its parts for such inspection as is necessary to determine compliance with and to enforce this Easement and exercise the rights conveyed hereby and fulfill the responsibilities and carry out the duties assumed by the acceptance of this Easement.
- B. Grantee shall have the right to place, maintain, and replace signs on the Property as follows:

- i. Signs to facilitate inspection of the Property and to identify the Property as conservation land protected by the Grantee, said signs located along the Property's boundaries with each sign not exceeding thirty (30) square inches in size.
 - ii. Signs to identify to the public that the Property is conserved land and to recognize funding entities who contributed funding toward the conservation of the Property, as may be required. Said signs shall be located at a visible location on the Property, said location to be mutually agreed upon by the Grantor and Grantee. The Grantee shall be responsible for ensuring that said sign(s) conform with applicable local, state, and federal regulations and shall bear the cost of installation.
 - iii. Up to 4 informational kiosks that are no more than eight (8) feet wide by eight (8) feet high within which the Grantee or Primary Executory Interest Holder can display information related to its mission, the Property, the effort to conserve the Property and the conservation context of the Property. The Grantor and Grantee shall work together on a mutually agreeable location and size for said kiosk(s).
- C. The Primary Executory Interest Holder or its designee(s) shall have the right to maintain the existing trails and other improvements (e.g. bridges, signs and trail markers) on the Property as shown in the Baseline Documentation Report map entitled "Public Recreational Trails". The Primary Executory Interest holder shall also have the right to operate motorized vehicles, including the use of snowmobiles on snow, in order to maintain and manage said Public Recreational Trails. This right is an exception to Section 2.I., above. Additionally, the Primary Executory Interest Holder or its designee(s) shall have the right to construct new trails, relocate or close existing trails, and install/remove trail-related improvements subject to the following conditions:
- i. All new trail construction, maintenance and relocation shall be located off hydric soils to the extent possible, shall not be of an impervious surface, and shall conform to best management practices recommended by the Appalachian Mountain Club or similar trail-maintaining organizations (see "The Complete Guide to Trail Building and Maintenance" Appalachian Mountain Club, or similar successor publications).
 - ii. To exercise the right to construct new trails, relocate or close existing trails, or install/remove trail-related improvements, the Primary Executory Interest Holder must obtain written approval from the Grantor and Grantee. At least forty-five (45) days before the planned initiation of trail construction, relocation, closure, or installation/removal of trail-related improvements, the Primary Executory Interest Holder shall provide the Grantor and Grantee with a detailed map and written information sufficient to identify and evaluate trail location, proposed action, installation/removal of trail-related improvements, impacts to hydric soils, timing of trail construction or relocation, and consistency with the terms and Purposes of this Easement. The Grantor and Grantee shall approve, approve with conditions, or disapprove within thirty (30) days of receipt of the Primary Executory Interest Holder's written request, but in any event, Grantor and Grantee shall make best efforts in good faith to expedite their decision making.

- iii. Once said trail construction, relocation, or closure or installation/removal of trail-related improvements is complete, Primary Executory Interest Holder shall provide an updated "Public Recreational Trails" map identifying all new, relocated, or closed trails, along with any associated improvements. Said map shall be maintained at the office of the Grantee, with copies provided to the Grantor and Primary Executory Interest Holder.
- iv. The Primary Executory Interest Holder shall bear the cost of constructing, maintaining, repairing and relocating said trails and trail-related improvements.

7. RESOLUTION OF DISAGREEMENTS

- A. The Grantor and the Grantee desire that issues arising from time to time concerning uses or activities in light of the provisions of the Easement will first be addressed through candid and open communication between the parties rather than unnecessarily formal or adversarial action. Therefore, the Grantor and the Grantee agree that if either party becomes concerned whether any use or activity (which together for the purposes of this Section 7. "Resolution of Disagreements," shall be referred to as the "Activity") complies with the provisions of this Easement, wherever reasonably possible the concerned party shall notify the other party of the perceived or potential problem, and the parties shall explore the possibility of reaching an agreeable resolution by informal dialogue.
- B. If informal dialogue does not resolve a disagreement regarding the Activity, and the Grantor agrees not to proceed or to continue with the Activity pending resolution of the disagreement concerning the Activity, either party may refer the disagreement to mediation by written notice to the other. Within ten (10) days of the delivery of such a notice, the parties shall agree on a single impartial mediator. Mediation shall be conducted in Exeter, New Hampshire, or such other location as the parties shall agree. Each party shall pay its own attorneys' fees and the costs of mediation shall be split equally between the parties.
- C. If the parties agree to bypass mediation, if the disagreement concerning the Activity has not been resolved by mediation within sixty (60) days after delivery of the notice of mediation, or if the parties are unable to agree on a mediator within ten (10) days after delivery of the notice of mediation, the disagreement may be submitted to binding arbitration in accordance with New Hampshire RSA 542. The parties shall have ten (10) days to accept or refuse binding arbitration. The Grantor and the Grantee shall each choose an arbitrator within twenty (20) days of the delivery of written notice from either party referring the matter to arbitration. The arbitrators so chosen shall in turn choose a third arbitrator within twenty (20) days of the selection of the second arbitrator. The arbitrators so chosen shall forthwith set as early a hearing date as is practicable, which they may postpone only for good cause shown. The arbitration hearing shall be conducted in Exeter, New Hampshire, or such other location as the parties shall agree. A decision by two of the three arbitrators, made as soon as practicable after submission of the matter, shall be binding upon the parties and shall be enforceable as part of this Easement.

- 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, to require the restoration of the Property to its condition prior to the breach, and to recover 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, the Grantee may seek a temporary restraining order, preliminary injunction or other form of equitable relief from any court of competent jurisdiction to cause the cessation of any such damage or harm, to enforce the terms of this Easement, to enjoin any violation by permanent injunction, and to require the restoration of the Property to its condition prior to any breach.

8. BREACH OF EASEMENT – GRANTEE’S REMEDIES

- A. If the Grantee determines that a breach of this Easement has occurred or is threatened, the Grantee shall notify the Grantor in writing of such breach and demand corrective action to cure the breach and, where the breach involves injury to the Property, to restore the portion of the Property so injured to its prior condition.
- B. The Grantor shall, within thirty (30) days after receipt of such notice or after otherwise learning of such breach, undertake those actions, including restoration, which are reasonably calculated to cure swiftly said breach and to repair any damage. The Grantor shall promptly notify the Grantee of its actions taken hereunder.
- C. If the Grantor fails to perform its obligations under the immediately preceding paragraph B. above, or fails to continue diligently to cure any breach until finally cured, the Grantee may undertake any actions that are reasonably necessary to repair any damage in the Grantor’s name or to cure such breach, including an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury.
- D. If the Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation features of the Property, the Grantee may pursue its remedies under this Section 8. “Breach of Easement...,” without prior notice to the Grantor or without waiting for the period provided for cure to expire.
- E. The Grantee shall be entitled to recover damages from the party directly or primarily responsible for violation of the provisions of this Easement or injury to any conservation features protected hereby, including, but not limited to, damages for the loss of scenic, aesthetic, or environmental attributes of the Property. Without limiting the Grantor’s

liability therefore, the Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.

- F. The Grantee's rights under this Section 8. "Breach of Easement..." apply equally in the event of either actual or threatened breach of this Easement, and are in addition to the provisions of the preceding Section 7. "Resolution of Disagreements," which section shall also apply to any disagreement that may arise with respect to activities undertaken in response to a notice of breach and the exercise of the Grantee's rights hereunder.
- G. The Grantor and the Grantee acknowledge and agree that should the Grantee determine, in its sole discretion, that the conservation features protected by this Easement are in immediate danger of irreparable harm, the Grantee may seek the injunctive relief described in the third paragraph of this Section 8. "Breach of Easement..." both prohibitive and mandatory, in addition to such other relief to which the Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The Grantee's remedies described in this Section 8. "Breach of Easement..." shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
- H. Provided that the Grantor is directly or primarily responsible for the breach, all reasonable costs incurred by the Grantee in enforcing the terms of this Easement against the Grantor, including, without limitation, staff and consultant costs, reasonable attorneys' fees and costs and expenses of suit, and any costs of restoration necessitated by the Grantor's breach of this Easement shall be borne by the Grantor; and provided further, however, that if the Grantor ultimately prevails in a judicial enforcement action each party shall bear its own costs. Notwithstanding the foregoing, if the Grantee initiates litigation against the Grantor to enforce this Conservation Easement, and if the court determines that the litigation was initiated without reasonable cause or in bad faith, then the court may require the Grantee to reimburse the Grantor's reasonable costs and reasonable attorney's fees in defending the action.
- I. Forbearance by the Grantee to exercise its rights under this Easement in the event of any breach of any term thereof by the Grantor shall not be deemed or construed to be a waiver by the Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of the Grantee's rights hereunder. No delay or omission by the Grantee in the exercise of any right or remedy upon any breach by the Grantor shall impair such right or remedy or be construed as a waiver. The Grantor hereby waives any defense of laches or estoppel.

The Executory Interest Holders do not waive or forfeit the right to take action as may be necessary to insure compliance with this Easement by any prior failure to act, and Grantee and Grantor hereby waive any defense of laches with respect to any delay or omission by the Executory Interest Holders in acting to enforce any restriction or exercise any rights under this Easement, any such delay or omission shall not impair Executory Interest Holders' rights or remedies or be construed as a waiver.

- J. Nothing contained in this Easement shall be construed to entitle the Grantee to bring any action against the Grantor for any injury to or change in the Property resulting from causes beyond the Grantor's control, including, but not limited to, unauthorized actions by third parties, natural disasters such as fire, flood, storm, disease, infestation and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. The Grantee and the Grantor reserve the right, separately or collectively, to pursue all legal and/or equitable remedies, as set forth in this Section 8. "Breach of Easement..." against any third party responsible for any actions inconsistent with the provisions of this Easement.

9. PRIMARY AND SECONDARY EXECUTORY INTERESTS

- A. The Executory Interest Holders shall have reasonable access to the Property and all of its parts for such inspection as necessary to: (i) determine compliance with and enforce the terms of this Easement through any and all authorities under Federal or State Law, and to exercise the rights conveyed hereby; (ii) carry out the duties assumed by the Executory Interest Holders under this Section 9. "Primary and Secondary Executory Interests"; and (iii) maintain the Easement boundaries if the Executory Interest Holders identify a failure of the Grantee to maintain such boundaries.
- B. 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 the Primary Executory Interest Holder requesting such enforcement delivered in hand or by certified mail, return receipt requested, then the Primary Executory Interest Holder shall have the right to enforce this Easement. All reasonable costs of such enforcement shall be paid by the Grantee. In such circumstance, the Primary Executory Interest Holder shall then also have the right, but not the obligation, to terminate the Easement interest of the Grantee in the Property and to cause Grantee's Easement interest to be transferred and conveyed to, and to vest in, the Primary Executory Interest Holder. These rights may be exercised at the sole option and election of the Primary Executory Interest Holder and such termination and vesting shall be effectuated (if so elected by the Primary Executory Interest Holder) by the Primary Executory Interest Holder recording an affidavit to that effect in the Rockingham County Registry of Deeds referring hereto which shall state: (i) that the Grantee has ceased to enforce the Easement conveyed hereby, (ii) that said recording is made pursuant to the terms and conditions of this Easement, and (iii) that Primary Executory Interest Holder elects to terminate and to assume the Grantee's interest in this Easement which such Easement interest is transferred to and vested in the Primary Executory Interest Holder by such recording. The Primary 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.

If the Grantee ceases to exist or ceases to function as a qualified organization as specified in the Section 5. "Benefits & Burdens" above, then, at the sole option and election of the Primary Executory Interest Holder, Primary Executory Interest Holder may elect to cause

the Easement interest to be transferred and conveyed to, and to vest in, the Primary Executory Interest Holder. In order to effectuate such vesting (if so elected by the Primary Executory Interest Holder), the Primary Executory Interest Holder shall record an affidavit with the Rockingham County Registry of Deeds which shall state: (i) that the Grantee 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, (ii) that said recording is made pursuant to the terms and conditions of this Easement, and (iii) that Primary Executory Interest Holder elects to terminate and to assume the Grantee's interest in this Easement which such Easement interest is transferred to and vested in the Primary Executory Interest Holder by such recording. The Primary Executory Interest Holder's exercise of its rights under this Section 9. "Primary and Secondary Executory Interests" shall not divest the Secondary Executory Interest Holder of its rights and interests hereunder.

The interests held by the Primary Executory Interest Holder are assignable or transferable to any party qualified by the State of New Hampshire to become the Executory Interest Holders' assignee or transferee as specified in Section 5. "Benefits and Burdens" above. Any assignee or transferee shall have like power of assignment or transfer.

- C. Following the vesting of Grantee's Easement interest in the Primary Executory Interest Holder as set forth in Section 9.B. above (should such vesting be elected by Primary Executory Interest Holder), or in the event that both Grantee and Primary Executory Interest Holder cease to enforce the Easement conveyed hereby or both fail to enforce it within thirty (30) days after receipt of written notice of the failure to enforce from the Secondary Executory Interest Holder, which notice may be delivered concurrently to both Grantee and Primary Executory Interest Holder and shall be delivered in hand or by certified mail, return receipt requested, then the Secondary Executory Interest Holder shall have the right to enforce this Easement. All reasonable costs of such enforcement shall be paid by the Grantee. In such circumstance, the Secondary Executory Interest Holder shall then also have the right to terminate the Easement interest of the Grantee (or the Easement interest of the Primary Executory Interest Holder, if Grantee's Easement interest has been vested in the Primary Executory Interest Holder) in the Property by recording an affidavit in the Rockingham County Registry of Deeds referring hereto which shall state: (i) that the Grantee (or Primary Executory Interest Holder, as applicable) has ceased to enforce the Easement conveyed hereby, (ii) that said recording is made pursuant to the terms and conditions of this Easement, and (iii) that the Secondary Executory Interest Holder is terminating Grantee's (or Primary Executory Interest Holder's, as applicable) Easement interest in the Property and assuming such interest, and therefore that the Grantee's (or Primary Executory Interest Holder's, as applicable) interest in this Easement has been transferred and conveyed to, and vested in, the Secondary Executory Interest Holder. The Secondary 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.

In the event that Grantee ceases to exist or cease to function as a qualified organizations as specified in Section 5. "Benefits & Burdens" above and Primary Executory Interest

Holder fails to succeed to Grantee's Easement interest as provided in Section IV(I)(2) above, or should Primary Executory Interest Holder cease to exist or cease to function as a qualified organization as specified in Section 5. "Benefits & Burdens" above then, at the sole option and election of the Secondary Executory Interest Holder, it may cause the Easement interest to be transferred and conveyed to, and to vest in the Secondary Executory Easement Holder. In order to effectuate such vesting (if so elected by the Secondary Executory Interest Holder): (i) in the event Primary Executory Interest Holder fails to succeed to Grantee's Easement Interest as provided in Section IV(I)(2), the Secondary Executory Interest Holder shall provide Primary Executory Interest Holder with thirty (30) days prior written notice of its desire to assume the Easement interest, which notice shall be delivered in hand or by certified mail, return receipt requested, which such notice shall give Primary Executory Interest Holder the opportunity to assume the Easement interest as provided in Section 9.B. above; or (ii) in the event that Primary Executory Interest Holder ceases to exist or ceases to function as a qualified organization as specified in Section 5. "Benefits & Burdens" above, or following Primary Executory Interest Holder's failure to assume the Easement interest within the thirty (30) days following said notice from Secondary Executory Interest Holder, the Secondary Executory Interest Holder shall record an affidavit with the Rockingham County Registry of Deeds which shall state: (i) that the Primary Executory Interest Holder has failed to assume the Easement Interest as permitted by the terms and conditions of this Easement, and/or that the Grantee (or Primary Executory Interest Holder, as applicable) 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, (ii) that said recording is made pursuant to the terms and conditions of this Easement, and (iii) that the Grantee's (or Primary Executory Interest Holder, as applicable) interest in this Easement has vested in the Secondary Executory Interest Holder. The Secondary 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. The Secondary Executory Interest Holder's exercise of its rights under this Section 8. "Primary and Secondary Executory Interests" shall not divest the Primary Executory Interest Holder of its rights and interests hereunder. Therefore, should Secondary Executory Interest Holder thereafter fail to enforce the Easement or should Secondary Executory Interest Holder cease to exist or cease to function as a qualified organization as specified in Section 5. "Benefits & Burdens" above, then, at the sole option and election of the Primary Executory Interest Holder, Primary Executory Interest Holder may elect to succeed to Secondary Executory Interest Holder's Easement interest as assumed by it herein, and may cause the Easement interest to vest in and to be transferred and conveyed to the Primary Executory Interest Holder following the procedure provided herein for the Primary Executory Interest Holder to terminate and assume Grantee's Easement interest as provided herein.

The interest held by the Secondary Executory Interest Holder is assignable or transferable to any party qualified by the State of New Hampshire to become the Secondary Executory Interest Holder's assignee or transferee, with the express written consent of the United States. Any assignee or transferee shall have like power of assignment or transfer.

In the event the Secondary Executory Interest Holder exercises its rights of enforcement or termination under this Easement it is entitled to recover any and all administrative and legal costs associated with any action related thereto from the Grantee, including, but not limited to, attorney and consultant fees, staff costs, and other reasonable expenses related to Grantee's failure to enforce the Easement. However, if the Secondary Executory Interest Holder initiates litigation against the Grantee to enforce the terms of the Easement or to terminate the Grantee's interest in this Easement, 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 the Secondary Executory Interest Holder initiated litigation against the Grantee without reasonable cause or in bad faith, then the court may require the Secondary Executory Interest Holder reimburse the Grantee's reasonable costs incurred in defending the action.

Notwithstanding the language in this Section 9, "Primary and Secondary Executory Interests" above, the Primary Executory Interest Holder's right of termination shall not apply against any Easement interest in the Property held by the State of New Hampshire.

10. NOTICES

All notices, requests and other communications, required to be given under this Easement shall be in writing, except as otherwise provided herein, and shall be delivered in hand or sent by certified mail, postage prepaid, return receipt requested to the appropriate address set forth above or at such other address as 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.

11. 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.

12. EXTINGUISHMENT & CONDEMNATION

A. **Extinguishment.** If circumstances arise in the future such as render the Purposes of this Easement impossible or impracticable to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such judicial termination or extinguishment, shall be determined in accordance with Section 12.C. below. In making this grant of Easement, Grantor has considered and acknowledges the possibility that uses prohibited by the terms of this Easement may become more economically viable than the

uses specifically reserved by Grantor pursuant to this Easement. It is the intent of both Grantor and Grantee that any such change in economic conditions shall not be deemed to be circumstances justifying the termination or extinguishment of this Easement pursuant to this Section.

- B. **Condemnation.** If all or any part of the Property is taken, in whole or in part, by exercise of the power of eminent domain or is acquired by purchase in lieu of condemnation, whether by public, corporate or other authority, so as to terminate this Easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of their interests in the Property subject to the taking or in lieu purchase and to recover all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered. The amount of the proceeds to which the Grantee shall be entitled, after payment of any expenses, shall be determined in accordance with Section 11.C. below.
- C. **Valuation.** This Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of Sections 12.A. and 12.B. above, shall have a fair market value which shall be determined as follows:
- (i) **If the Grantor claims a charitable contribution deduction,** that value determined by multiplying (1) the fair market value of the Property without deduction for the value of this Easement as of the time of said extinguishment or condemnation, by (2) the ratio of the value of the Easement at the time of this grant to the value of the Property at the time of this grant without deduction for the value of this Easement, those values being those used to calculate the deduction for federal income or estate tax purposes allowable by reason of this grant, pursuant to the IRS Code Section 170(h) or 2055(f), determined by an appraisal report which shall be prepared by a qualified appraiser on behalf of the Grantor and which the Grantor shall submit to the Grantee. For the purposes of this Section 12, the ratio of the value of the Easement to the value of the Property unencumbered by this Easement shall remain constant.
 - (ii) **If the Grantor does not claim a charitable contribution deduction,** that value determined by an appraisal prepared by a qualified appraiser as of the time of said extinguishment or condemnation.
- D. **Allocation of Net Proceeds.** All expenses reasonably incurred by Grantor and Grantee in connection with Section 12.A. or 12.B. above shall be paid out of the amount recovered. The balance recovered less expenses shall hereinafter be referred to as the "Net Proceeds". The Net Proceeds shall be divided between the Grantor and the Grantee in proportion to the value of their respective interests in that part of the Property extinguished or condemned as determined pursuant to Section 12.C. (i) or (ii) as the case may be. Any increase in value attributable to improvements made after the date of the Easement shall accrue to the party who made the improvements.

Grantee's share of the Net Proceeds shall be divided between the Grantee, Primary Executory Interest Holder, and Secondary Executory Interest as follows: the Grantee's share shall be sixty four and three-tenths percent (64.3%), the Primary Executory Interest Holder's share shall be twenty three and eight-tenths percent (23.8%), and the Secondary Executory Interest Holder's share shall be eleven and nine-tenths percent (11.9%). These percentage shares represent the proportion each party contributed to the total project cost. The Grantee shall use its share of the Net Proceeds for conservation purposes consistent with the Purposes of this Easement.

If the Net Proceeds are paid directly to Grantor then Grantee, Primary Executory Interest Holder, and Secondary Executory Interest Holder shall each have a lien against the Property for the amount due each of them until such time as Grantee, Primary Executory Interest Holder, and Secondary Executory Interest Holder receive their share of the Net Proceeds from Grantor or Grantor's successor or assigns. If Grantee, Primary Executory Interest Holder, and Secondary Executory Interest Holder's share of the Net Proceeds are paid to Grantee, Grantee must forthwith reimburse Primary Executory Interest Holder and Secondary Executory Interest Holder for the amount due each of them.

13. AMENDMENT

If, owing to unforeseen or changed circumstances, Grantor, Grantee, Primary Executory Interest Holder and Secondary Executory Interest Holder agree that an amendment to, or modification of, this Easement would be appropriate and desirable, Grantor and Grantee may jointly amend this Easement subject to: the provisions and limitations of this section; the then-current amendment policies of the Grantee; notification being given to the New Hampshire Attorney General's Office at least thirty (30) days prior to the adoption of the amendment; obtaining the agreement of the Primary Executory Interest Holder and Secondary Interest Holder to any proposed amendment or modification; and applicable state and federal law. Any amendment shall be consistent with the Purposes of this Easement, and shall not impair the conservation attributes of the Property protected by this Easement. No amendment shall affect the qualification of this Easement or the status of the Grantee 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, nor shall any amendment affect the perpetual duration of this Easement. Any amendment shall be executed by the Grantor, Grantee, Primary Executory Interest Holder, and Secondary Executory Interest Holder and shall be recorded in the Rockingham County Registry of Deeds. Any purported amendment recorded without the signature and agreement of the Primary Executory Interest Holder and of the Secondary Executory Interest Holder is null and void. Nothing in this paragraph shall require Grantor, Grantee, Primary Executory Interest Holder or Secondary Executory Interest Holder to agree to any proposed amendment or to consult or negotiate regarding any proposed amendment.

14. 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 conservation purposes of this Easement are not diminished thereby and that a public agency or qualified organization described in the Section 5. "Benefits and Burdens," above, accepts and records the additional easement.

15. GENERAL DISCLAIMER

The Town of Stratham and the State of New Hampshire, acting through the Primary and Secondary Executory Interest Holders, and their employees, agents, and assigns disclaim and will not be held responsible for Grantee's or Grantor's negligent acts or omissions or Grantee's or Grantor's breach of any representation, warranty, covenant, or agreements contained in this Easement, or violations of any Federal, State, or local laws, including all Environmental Laws including, without limitation, those that give rise to liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs of actions, or sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which the Town of Stratham acting through the Primary Executory Interest Holder and to which the State of New Hampshire acting through the Secondary Executory Interest Holder may be subject or incur relating to the Property.

16. MERGER

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

17. ENVIRONMENTAL WARRANTY

Grantor warrants that it is in compliance with, and will remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, noncompliance or alleged noncompliance with, or any liability under, any Environmental Law relating to the operations or conditions of the Protected Property. Grantor further warrants that it has no actual knowledge of an undisclosed release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable Federal and State law.

Furthermore, Grantor warrants the information disclosed to Grantee regarding any past violations or non-compliance with Environmental Laws and associated remedial actions, or any past releases of Hazardous Materials and any associated remedial actions is complete and accurate.

Moreover, Grantor hereby promises to hold harmless and indemnify Grantee and Executory Interest Holders against all litigation, claims, demands, penalties and damages, including

reasonable attorneys' fees, arising from or connected with the release or threatened release of any hazardous materials on, at, beneath or from the Protected Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Protected Property. Grantor's indemnification obligation will not be affected by any authorizations provided by Grantee or Executory Interest Holders to Grantor with respect to the Protected Property or any restoration activities carried out by Grantee at the Protected Property; provided, however, that Grantee will be responsible for any Hazardous Materials contributed after this date to the Protected Property by Grantee.

"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.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 19 day of

June, 2019.

Trustee's Certificate

Edith Barker, as Trustee of The Edith C. Barker Revocable Trust of 2003, under instrument dated November 13, 2003, being the Grantor under the foregoing Conservation Easement Deed, hereby certifies that (a) the Trust exists and remains in full force and effect, (b) it is the sole and current Trustee of the Trust, (c) under the Trust it has full and absolute power to convey any interest in real estate and improvements thereon held in the said Trust, and (d) no purchaser or third party shall be bound to inquire whether as the Trustee has said power or is properly exercising such power or to see to the application of any Trust asset paid to it as Trustee for a conveyance thereof.

GRANTOR:

[Signature]
Edith C. Barker, Trustee, The Edith C. Barker Revocable Trust of 2003
duly authorized, Grantor

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM, ss.

On this 19 day of June, 2019, before me personally appeared **Edith C. Barker**, Trustee for The Edith C. Barker Revocable Trust of 2003, known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing Deed and Trustee Certificate, and acknowledged that she executed the same as her free acts and deeds for the purposes therein contained.

[Signature]
Notary Public/Justice of the Peace
My commission expires:



ACCEPTED: SOUTHEAST LAND TRUST OF NEW HAMPSHIRE

By: [Signature]
Title: Executive Director
Duly Authorized,
Date: 06/18/2019

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM, ss.

On this 18th day of June, 2019, before me personally appeared
Brian Hart,
of the Southeast Land Trust of New Hampshire, duly authorized, known to me, or satisfactorily
proven, to be the person whose name is subscribed to the foregoing instrument, and
acknowledged that he executed the same as his free act and deed for the purposes therein
contained.



Allison Bolia
Notary Public/Justice of the Peace
My commission expires: October 29, 2019

ACCEPTANCE OF PRIMARY EXECUTORY INTEREST:
TOWN OF STRATHAM
BY ITS SELECTBOARD

By: Michael Houghton 5/23/19
Michael Houghton, Chairman, duly authorized Date

Joseph Lovejoy 5/23/19
Joseph Lovejoy, Vice Chairman, duly authorized Date

Allison Knab 5/23/19
Allison Knab, Member, duly authorized Date

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM, ss.

On this 23rd day of May, 2019, before me personally appeared **Michael Houghton, Joseph Lovejoy, and Allison Knab**, being all of the members of the Town of Stratham's Selectboard, duly authorized, known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same as his free act and deed for the purposes therein contained.

Valerie Kemp
Notary Public/Justice of the Peace
My commission expires: 1/28/2020

VALERIE KEMP
Notary Public - New Hampshire
My Commission Expires January 28, 2020

ACCEPTANCE OF SECONDARY EXECUTORY INTEREST:
STATE OF NEW HAMPSHIRE

By Dorothy T. Taylor
Dorothy T. Taylor, Executive Director
Land and Community Heritage Investment Program
for the State of New Hampshire

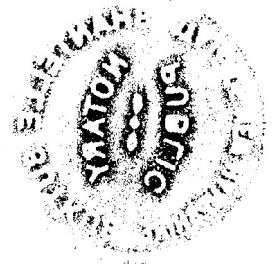
June 14, 2019
Date

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK, ss.

On this 14 day of June, 2019, 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.

Shantelle Sutkus

Notary Public/Justice of the Peace
My commission expires:



SHANTELE SUTKUS
Notary Public, State of New Hampshire
My Commission Expires May 1, 2024

APPENDIX A

The Property subject to this 33.31 acre Easement is that certain area of land herein referred to as the "Property" with any and all buildings, structures, and improvements thereon, situated off Portsmouth Avenue in the Town of Stratham, County of Rockingham, State of New Hampshire, and shown as "SELT Conservation Easement" on a plan entitled "Conservation Easement Plan, Tax Map 18 Lot 37, Tax Map 21 Lot 80 Portsmouth Avenue (Route 33), Stratham, NH Owner: Edith C. Barker Rev. Trust of 2003" Dated September 25, 2018, Scale: 1" = 120', prepared by Eric C. Mitchell & Associates, Inc. to be recorded herewith and further described as follows:

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

**SELT Conservation Easement of approximately 29.32 acres
being a portion of Map 21 Lot 80**

Beginning at a drill hole set at the end of a stonewall and the southwesterly corner of the herein described premises at the southeasterly corner of the ALE Conservation Easement and at land now or formerly Crocket Farm LLC, said drill hole is located approximately 3,135 feet southeasterly from Portsmouth Avenue; thence

North 15°49'02" East along said ALE Conservation Easement, a distance of 754.94 feet to a drill hole set at the beginning of a stonewall at land now or formerly the Town of Stratham

South 62°31'03" East along said stonewall and land of said Town of Stratham, a distance of 370.73 feet to a drill hole set at the end of said stonewall; thence

South 62°54'45" East along land of said Town of Stratham, a distance of 130.41 feet to a nail set in 20" oak tree with wire; thence

South 63°02'17" East along land of said Town of Stratham, a distance of 417.05 feet to a drill hole found at the beginning of a stonewall; thence

South 72°24'48" East along said stonewall and land of said Town of Stratham, a distance of 30.69 feet to a drill hole set; thence

South 64°32'11" East along said stonewall and land of said Town of Stratham, a distance of 117.48 feet to a drill hole set; thence

South 60°15'34" East along said stonewall and land of said Town of Stratham, a distance of 52.06 feet to a drill hole set; thence

South 49°37'27" East along said stonewall and land of said Town of Stratham, a distance of 65.05 feet to a drill hole found at the end of said stonewall; thence

South 61°16'33" East along land of said Town of Stratham, a distance of 111.79 feet to a nail set

in 24" hemlock tree with wire; thence

South 58°37'33" East along land of said Town of Stratham, a distance of 31.55 feet to an iron rod set at other land now or formerly the Town of Stratham; thence

South 53°13'39" East along land of said Town of Stratham, a distance of 31.73 feet to a nail set in 15" hemlock tree with wire; thence

South 66°18'58" East along land of said Town of Stratham, a distance of 61.91 feet to a nail set in 26" oak tree with wire; thence

South 64°26'59" East along land of said Town of Stratham, a distance of 250.99 feet to a nail set in 15" oak tree with wire; thence

South 61°41'11" East along land of said Town of Stratham and other land now or formerly the Town of Stratham, a distance of 418.48 feet to an iron pipe found at land now or formerly the Haley Family Revocable Trust; thence

South 32°01'34" West along land of said Haley Family Revocable Trust, a distance of 106.27 feet to an iron pipe found; thence

South 59°00'07" East along land of said Haley Family Revocable Trust, a distance of 76.94 feet to a drill hole found in lone stone; thence

South 37°26'33" West along land of said Haley Family Revocable Trust, a distance of 225.78 feet to an iron rod found at land now or formerly the Patenaude Sr. Revocable Trust; thence

North 61°13'27" West along land of said Patenaude Sr. Revocable Trust, a distance of 425.58 feet to an iron rod found in ring of stones; thence

South 30°49'10" West along land of said Patenaude Sr. Revocable Trust, a distance of 345.28 feet to an iron rod found in ring of stones at Tax Map 18 Lot 37; thence

North 64°48'49" West along said Tax Map 18 Lot 37, a distance of 255.23 feet to an iron rod found at land now or formerly the Heirs of C.H. Chase; thence

North 64°40'10" West along land of said C.H. Chase Heirs, a distance of 914.10 feet to an iron rod found at the corner of a stonewall at land now or formerly said Crocket Farm LLC; thence

North 65°06'19" West along said stonewall and land of said Crocket Farm LLC, a distance of 117.87 feet to a drill hole found at the end of said stonewall; thence

North 64°58'37" West along land of said Crocket Farm LLC, a distance of 116.25 feet to a nail set in an 18" grey birch tree with wire; thence

North 67°58'48" West along land of said Crocket Farm LLC, a distance of 56.67 feet to a nail set

in an 36" grey birch tree with wire; thence

North 67°38'19" West along land of said Crocket Farm LLC, a distance of 59.42 feet to the point of beginning.

Said Easement containing approximately 1,277,179 square feet or 29.32 acres and is subject to all matters as shown on said plan.

MEANING AND INTENDING to describe a portion of the premises conveyed by Deed from Gordon L. Barker and Edith C. Barker to Edith C. Barker, Trustee of the Edith C. Barker Revocable Trust of 2003 u/d/t dated November 13, 2003, dated November 20, 2003, recorded at the Rockingham County Registry of Deeds at Book 4195, Page 1685, and conveyed by Deed from Edith C. Barker to Edith C. Barker, Trustee of the Edith C. Barker Revocable Trust of 2003 u/d/t dated November 13, 2003, dated March 23, 2018, recorded at said Registry at Book 5901, Page 1193.

SELT Conservation Easement of 3.99 acres, being all of Map 18 Lot 37

Beginning at an iron rod found at the northwesterly corner of the herein described premises at the northeasterly corner of land now or formerly the Heirs of C.H. Chase and on the southerly line of Tax Map 21 Lot 80, said iron rod is located approximately 4,400 feet southeasterly from Portsmouth Avenue; thence

South 64°48'49" East along said Tax Map 21 Lot 80, a distance of 255.23 feet to an iron rod found in a ring of stones at land now or formerly the Patenaude Sr. Revocable Trust; thence

South 61°52'58" East along land of said Patenaude Sr. Revocable Trust, a distance of 367.33 feet to an iron rod found at land now or formerly the Haley Family Revocable Trust; thence

South 20°47'56" West along land of said Haley Family Revocable Trust, a distance of 280.86 feet to a nail set in 14" triple hemlock tree with wire at other land now or formerly the Heirs of C.H. Chase; thence

North 64°54'24" West along other land of said C.H. Chase Heirs, a distance of 143.24 feet to an iron rod found in a ring of stones at land now or formerly Jason G. & Nancy C. Frechette; thence

North 62°33'55" West along land of said Frechette, a distance of 452.28 feet to an iron rod found in a ring of stones at land of said C.H. Chase Heirs; thence

North 15°25'32" East along land of said C.H. Chase Heirs, a distance of 285.44 feet to the point of beginning.

Said Easement containing approximately 173,912 square feet or 3.99 acres and is subject to all matters as shown on said plan.

MEANING AND INTENDING to describe the premises conveyed by Deed from Edith C.

Barker to Edith C. Barker, Trustee of the Edith C. Barker Revocable Trust of 2003 u/d/t dated November 13, 2003, recorded at the Rockingham County Registry of Deeds at Book 5901, Page 1197.