

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

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Register of Deeds, Strafford County

## CONSERVATION EASEMENT DEED

**THE SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE FORESTS**, a corporation duly organized and existing under the laws of the State of New Hampshire, with a principal place of business at 54 Portsmouth Street, City of Concord, County of Merrimack, State of New Hampshire 03301-5400, (hereinafter referred to as the "Grantor", which word shall, unless the context clearly indicates otherwise, include the Grantor's successors and assigns),

for consideration paid, with WARRANTY covenants, grants in perpetuity to the following three municipal corporations a conservation easement over that portion of the Property contained within each said town:

**TOWN OF MADBURY**, with an address of, 13 Town Hall Road, Town of Madbury, County of Strafford, State of New Hampshire 03823;

**TOWN OF LEE**, with an address of, 7 Mast Road, Town of Lee, County of Strafford, State of New Hampshire 03861; and

**TOWN OF DURHAM**, with an address of, 8 Newmarket Road, Town of Durham, County of Strafford, State of New Hampshire 03824

(hereinafter collectively referred to as the "Easement Holder" which shall, unless the context clearly indicates otherwise, include the Easement Holder's successors and assigns),

the **CONSERVATION EASEMENT** (herein referred to as the "Easement") hereinafter described,

with respect to that certain area of land (herein referred to as the "Property") being unimproved land, consisting of approximately 192.44 acres, situated on Cherry Lane Road and NH Route 155, so-called, in the Towns of Madbury, Lee and Durham, New Hampshire, shown on a survey plan entitled "BOUNDARY PLAT, Land to be conveyed to the Society for the Protection of NH Forests, Map 6 Lot 6B and Map 6 Lot 9 located on Cherry Lane in Madbury, Map 9 Lots 1-1, 1-2, and 2-1 located on Route 155 in Durham, Map 2 Lots 5-3 and 5-4 located on Route 155 in Lee, MADBURY, LEE, AND DURHAM, NEW HAMPSHIRE Strafford County," by Stephen P. Perron, LLS 843, PO Box 816, Henniker NH 03242, dated November 11, 2016 and last revised February 6, 2017, recorded as Plan Drawer # 113, Page 11 at the Strafford County Registry of Deeds (hereafter "Survey Plan"), more particularly bounded and described in Appendix "A" attached hereto and made a part hereof.

The Property includes the following recreational, educational, natural habitat, open space, scenic, forestry, water supply attributes protected by the terms of this Easement:

**Wildlife Habitat** - The Property contains significant wildlife habitat according to the State of New Hampshire's Wildlife Action Plan, including 49 ac. of Tier I (the highest quality habitat in the state), 68 ac. of Tier II (the highest ranked wildlife habitat in the region) and 75 ac. of Tier 3 (supporting habitat). The land contains 3 confirmed vernal pools and the New Hampshire Natural Heritage Bureau has documented two listed species on the property or in the Oyster River abutting the Property - Blanding's Turtles and American Eel, with 12 other occurrences of rare, threatened, or endangered wildlife within the Oyster River corridor.

**Water Resources** - The 192.45 +/- acres of forestlands and wetlands are all critical to maintaining the pristine water quality of Oyster River. The Property contains some 4,020 feet of direct frontage on the Oyster River and approximately 800 feet along Dube Brook. The Property contains approximately 84 acres of identified wetlands and overlies an aquifer. Lastly, Oyster River is one of the drinking water sources for Town of Durham and University of New Hampshire.

**Recreation** - The Property's 6-10 miles of internal trails are used extensively by the public for recreation including, hiking, biking, skiing, hunting, fishing and snowmobiling. The Easement will guarantee pedestrian public access to the property.

**Conservation Priority** - The property is entirely within a focus area of the "Land Conservation Plan for New Hampshire's Coastal Watersheds", and is the central property in a 3-town greenbelt local conservation initiative. It abuts and enlarges other conservation lands including two nearby town-owned Property, and wraps around 60 acre town property to be conserved with a conservation easement.

**Forest Resources** - The property is nearly 77% forested with two dominate forest communities, appalachian-oak-pine and hemlock-hardwood-pine. 143 acres of its soils ranked as the highest suitability category (Group I) for forest products.

**Scenic Resources** - the property contains 2,160 feet of forested frontage along New Hampshire's Route 155 and 2,100 feet of frontage on Cherry Lane, a locally designated scenic road.

The conservation attributes and present conditions of the Property are further described and set forth in a Baseline Documentation Report which is on file with the Easement Holder and Landowner.

1. **PURPOSES**

Because of the above described conservation attributes, 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. To conserve, and protect in perpetuity the natural vegetation, soils, hydrology and habitats on the Property;
- B. To restore, protect, manage, maintain, and enhance the functional values of wetlands, vernal pools, streams, riparian areas and other lands, and for the conservation of natural values including fish and wildlife and their habitat, ecological integrity of the water resources, water quality improvement, flood water retention, groundwater recharge, and open space;
- C. To conserve and protect open spaces, particularly the conservation of the productive farm and/or forest land of which the Property consists, and the long-term protection of the Property's capacity to produce economically valuable agricultural and forestry products;
- D. The scenic enjoyment of the general public as seen from NH Route 155 and Cherry Lane; and
- E. The protection of the Property for the general public's use for outdoor recreational and educational purposes to the extent that these purposes will have minimal impact on the Property.

All of these Purposes are consistent and in accordance with the U.S. Internal Revenue Code, Section 170(h) and with NH RSA 36-A:2 & 4.

2. **USE LIMITATIONS** (Subject to the Section "Reserved Rights of Landowner" 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 yield forest and/or agricultural crops shall not be degraded by on-site activities.

i. Definitions:

- a. Forestry and Agriculture: For the purposes of this Easement, "agriculture" and forestry" shall include animal husbandry, floriculture, and horticulture activities; the production of plant and animal products for domestic or commercial purposes; the growing of food crops: 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 sale of products produced on the Property (such as firewood and maple syrup), all as not detrimental to the Purposes of this Easement.

- b. Riparian Buffers: For the purposes of this Easement, “Riparian Buffers” shall be the areas within 100 feet of perennial streams and Significant Wetland Areas as defined below. A map entitled “Water Resources & Buffers” on file with the Grantor, the Easement Holder, and DES as part of the baseline documentation, designates the approximate locations of the Riparian Buffers. The Riparian Buffer edge shall be measured from the stream edge, measured from the edge of the normal high water mark. In cases where the top of the embankment is less than 50 feet from the stream edge, the riparian edge shall be measured from the top of embankment. In cases where wetlands surround the stream edge, the riparian edge shall be measured from the boundary of the upland edge of the wetland area.
  
- c. Significant Wetland Areas: For the purposes of this Easement, “Significant Wetlands” are those areas that by virtue of their unspoiled condition, unique physical or biological features, rarity, and/or exemplary nature have special value in a particular locale. This value is reflected in a high degree of functioning relative to its ecological integrity, wildlife and aquatic life habitat, flood storage, groundwater interactions, and/or sediment and toxicant attenuation, and special social values such as education, scenic quality, and recreation. Significant wetlands are typically identified and evaluated by wetland scientists, wildlife biologists, or Natural Heritage ecologists through fieldwork and/or high resolution aerial photograph interpretation. Significant wetlands include, but are not necessarily limited to:
  - I. Wetland communities or systems that are classified as exemplary due to their high quality as determined by their size, condition, and landscape context (that is, the condition of the surrounding landscape).
  - II. Wetland communities or systems that are classified as exemplary (S1 and S2) due to their rarity in the State of New Hampshire by the NH Natural Heritage Bureau (NHB). Rare wetland types need not be of high quality to qualify as exemplary, but they must be considered viable in light of their size, condition, and landscape context.
  - III. New Hampshire Wildlife Action Plan Tier 1 and Tier 2 wetlands.
  - IV. Wetlands providing habitat for Endangered, Threatened and Special Concern wildlife.

Examples of significant wetland types in New Hampshire include, but are not limited to cedar swamps, black gum swamps, exemplary natural communities tracked in the Natural Heritage Bureau (NHB) database, any wetland community type ranked by the NHB as critically imperiled/or imperiled, bogs, fens (peat lands), and floodplain forests.

ii. Agriculture for industrial or commercial purposes shall be performed, to the extent reasonably practicable, in accordance with a coordinated management plan for the sites and soils 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 public roads, or public trails. Said agricultural management activities shall be in accordance with the then-current scientifically based practices recommended by the University of New Hampshire's Cooperative Extension Service, 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 Department's "Manual of Best Management Practices (BMP's) for Agriculture in New Hampshire" as may be revised, updated, or superseded from time to time, or by other successor governmental natural resource conservation and management agencies then active.

iii. For the purposes of this Easement, forestry shall not be performed in forested wetland areas which is a wetland area dominated by trees or woody vegetation 20 feet or taller; or shall not be performed in significant wetland areas.

iv. For the purposes of this Easement, forestry within the Riparian Buffer as defined in Section 2.A.i.B. shall adhere to the following additional restrictions:

- a. No soil disturbance, tree cutting or removal shall occur and no herbicides or pesticides shall be used, except to control invasive species.
- b. No skid trails, log landings, or road construction, except in circumstances where complying with this provision may result in a greater overall environmental impact or would preclude reasonable access to areas suitable for forestry. Existing roads and trails as identified in the baseline documentation may be retained and used but must be maintained to minimize degradation of water quality and aquatic habitat.

v. For the purposes of this Easement, forestry within Significant Wetlands as defined in Section 2.A.i.C. shall adhere to the following additional restrictions:

- a. No soil disturbance tree cutting or removal shall occur and no herbicides or pesticides shall be used, except to control invasive species.
- b. No skid trails, log landings, or road construction, except in circumstances where complying with this provision may result in a greater overall environmental impact or would preclude reasonable access to areas suitable for forestry. Existing roads as identified in the baseline documentation may be retained and used but must be maintained to minimize degradation of water quality and aquatic habitat.

vi. Forestry for industrial or commercial purposes shall be performed, to the extent reasonably practicable, as hereinafter specified in accordance with the

following goals, and in a manner not detrimental to the Purposes of this Easement.

- a. The goals are:
  - protection of wetlands, riparian zones, and water quality;
  - maintenance of soil productivity;
  - protection of unique or fragile natural areas;
  - conservation of native plant and animal species;
  - maintenance or improvement of the overall quality of forest products;
  - conservation of scenic quality; and
  - protection of unique historic and cultural features.
  - If forestry activities are performed, an acoustic survey shall be conducted prior to the harvest to determine the presence of Northern Long-eared bats, or to the extent reasonably practicable, harvest(s) should be conducted between September 30 and April 15, to take into consideration habitat and for the Northern long-eared bat and in a manner not detrimental to the Purposes of this Easement.
  
- b. Such forestry for industrial or commercial purposes 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 Easement Holder. Said Plan shall have been prepared not more than ten years prior to the date any harvesting is expected to commence, or shall have been reviewed and updated as required by such a forester or other qualified person at least thirty (30) days prior to said date.
  
- c. At least thirty (30) days prior to harvesting, Grantor shall submit to Easement Holder a written certification, signed by a licensed professional forester, or by other qualified person approved in advance and in writing by the Easement Holder, that such forest management plan has been prepared in compliance with the terms of this Easement. Upon request by the Easement Holder, the Grantor shall submit the plan itself to Easement Holder within ten (10) days of such request, with Easement Holder's acknowledgment 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.
  
- d. Forestry Management Planning
  - I. Timber harvesting with respect to such 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 Easement Holder.

- II. Riparian buffers shall be marked in the field by a licensed professional forester, or by other qualified person approved in advance and in writing by the Easement Holder prior to timber harvesting.
- III. 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 Erosion Control on Timber Harvesting Operations in New Hampshire 2004" , and "Good Forestry in the Granite State: Recommended Voluntary Forest Management Practices for New Hampshire" (Good Forestry in the Granite State Steering Committee, 2010), or similar successor publications.

e. The forest management plan shall include:

- I. Explanation of how significant wetlands, riparian areas, vernal pools, and soils will be protected in association with road construction, other soil disturbing activities, and the implementation of stand prescriptions;
- II. A statement of landowner objectives;
- III. A map showing soil types as determined by the U.S. Natural Resources Conservation Service, access roads, significant wetlands, vernal pools, and surface waters;
- IV. Forest type map showing stands related to the prescriptions provided in the Plan; and
- V. Prescriptions for each described stand, including commercial and non-commercial treatments;

and shall specifically address:

- the accomplishment of those Purposes for which this easement is granted;
- the goals in Section 2.A.vi.a. above; and

Shall maintain an uncut buffer of 100 feet from the wetland edge as noted in the Riparian Buffer and Significant Wetland limitations, Section 2.A.iv. and 2.A.v.

- B. Except as specifically provided for in Section 3 below, the Property shall not be subdivided, and none of the tracts which together may 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. No structure or improvement shall be constructed, placed, or introduced onto the Property, except for structures and improvements which are: i) necessary in the accomplishment of the agricultural, forestry, conservation, habitat management, or noncommercial outdoor recreational uses of the Property and which may include but not be limited to roads, trails, dams, fences, utility lines, bridges, culverts, barns, maple sugar houses, farmstands, ponds or sheds; and ii) not detrimental to the Purposes of this Easement. The Grantor shall provide the Easement Holder with forty-five (45) days' written notice prior to any construction of a permitted structure with a footprint exceeding two thousand (2,000) square feet. Notwithstanding the above, there shall not be constructed, placed, or introduced onto the Property any of the following structures or improvements: dwelling, residence, cabin, residential driveway, any portion of a septic system, tennis court, swimming pool, athletic field, golf course, tower, storage trailer, or aircraft landing area.
- 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; 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, the 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/or natural communities; and
- E. No outdoor advertising structures 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. No sign on the Property shall exceed sixteen (16) square feet in size, and no sign shall be artificially illuminated.
- F. There shall be no mining, quarrying, excavation, or removal 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. 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. Except as specifically provided for in Section 3, below, 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 Easement Holder, except those of record as of the execution of this Easement and those specifically permitted in the provisions of this Easement.
- I. Except as provided for below, the Property shall not be posted against, the Grantor shall hereby convey to the public, access to and use of the Property for such, non-wheeled, pedestrian, non-commercial, outdoor recreational and outdoor educational purposes as will have minimal impact on the Property, such as but not limited to hiking, wildlife nature observation, cross-country skiing, fishing, and hunting, but the Grantor shall not be required to keep the Property open to the public for camping, biking, horseback riding or snowmobiles. The Easement Holder shall be under no duty to supervise said public access or use. Said public access is subject to the following restrictions:
- i. The Grantor reserves the right to post portions of the Property against public access to: agricultural cropland during the planting, growing, or harvesting season; lands actively used by livestock; and forestland during establishment of plantations, harvesting, or other active forest management operations such as planting and thinning of trees and construction or maintenance of woods roads, and may temporarily restrict public access during an emergency situation where public safety could be at risk.
  - ii. Subject to prior approval in writing by Easement Holder, the Grantor reserves the right to limit or prohibit public access to and use of any portion of the Property for an appropriate period of time to halt problematic or abusive uses or behaviors by said public. Said problematic or abusive uses or behaviors may include, but are not limited to, loitering or other large gatherings of people, noisy activities, making of fires or development of unauthorized trails or structures. Grantor may post all or any portions of the Property for the communication of the restrictions or limitations contained in or established under this Section.
- J. There shall be no use of the Property to meet open space requirements of any land use regulation process.

The intent of the Grantor and Easement Holder is to permit all other uses of the Property that are not inconsistent with the Purposes of this Easement, such inconsistency as determined by the Easement Holder and that are not expressly prohibited herein.

### 3. RESERVED RIGHTS OF LANDOWNER

- A. **Trails** - Grantor reserves the right to use and maintain the existing hiking, skiing, horseback riding, biking and snowmobile trails on the Property at the time of this Conservation Easement (documented in the Baseline Documentation Report), along with any associated improvements including, but not limited to, fences, bridges, culverts and

signs. Subject to prior approval in writing by the Easement Holder, the Grantor reserves the right to develop on the Property additional unpaved trails for the above mentioned uses and two (2) unpaved parking areas of sufficient size to accommodate up to 30 vehicles on each parking lot and to erect informational kiosks and signs thereon.

- B. Outdoor Recreation and Educational Activities** - The Grantor reserves the right to conduct outdoor recreation and educational activities relating to forestry, wildlife, wildlife habitat and other environmental issues on the Property, including but not limited to events, demonstrations, classes, studies, experiments, ski, biking and running races, tours, field trips and other events of an recreational and educational nature; provided that no permanent structures shall be placed or constructed on the Property with respect to such activities and that any such activities and any temporary structures erected or placed thereon shall not be detrimental to the purposes of this Easement. Additionally, the Grantor reserves the right to collect reasonable fees for providing said outdoor recreation and educational activities relating to forestry, wildlife, wildlife habitat and other environmental issues on the Property.
- C. Additional Recreational Uses and Trails** - The Grantor reserves the right to allow horseback riding, biking and snowmobile riding on designated trails that currently exist or newly created trails, as long as said uses will have minimal impact on the Property.
- D. Archeological Investigations.** Grantor reserves the right to permit archaeological investigations on the Property after receiving written approval from the Easement Holder. Prior to permitting any such investigations, Grantor shall send written notice to the New Hampshire State Archaeologist (or other person or agency then recognized by the State as having responsibility for archaeological resources) for review and comment, and to the Easement Holder, such notice describing the nature, scope, location, timetable, qualifications of investigators, site restoration, research proposal, and any other material aspect of the proposed activity. The Grantor and Easement Holder shall request the State Archaeologist (or other person or agency, as above) to consider the proposal, to apply the standards as specified in rules implementing RSA 227-C:7 (Permits Issued for State Lands and Waters), as may be amended from time to time, and to provide written comments to the Grantor and Easement Holder. The Easement Holder may, in its sole discretion, approve the proposed investigations only if it finds that all of the following conditions are met:
- i. The archaeological investigations shall be conducted by qualified individuals and according to a specific research proposal;
  - ii. The proposed activities will not harm state or federally recognized rare, endangered, or threatened species, or exemplary natural communities, such determination of harm to be based upon information from the New Hampshire Natural Heritage Bureau, the New Hampshire Fish and Game Department, or the agency then recognized by the State of New Hampshire as having responsibility for identification and/or conservation of such species; and

iii. The proposed activities will not be materially detrimental to the Purposes of this Easement.

4. **NOTIFICATION OF TRANSFER, TAXES, & MAINTENANCE**

- A. The Grantor agrees to notify the Easement Holder in writing within ten (10) days of the transfer of title to the Property or any division of ownership thereof permitted hereby, including any change in Trustee for Property held in trust.
- B. The Easement Holder shall be under no obligation to maintain the Property or pay any taxes or assessments thereon.

5. **BENEFITS & 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 EASEMENT HOLDER**

- A. The Easement Holder 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. To facilitate such inspection and to identify the Property as conservation land protected by the Easement Holder, the Easement Holder shall have the right to place signs, each of which shall not exceed twenty-four (24) square inches in size, along the Property's boundaries.

7. **RESOLUTION OF DISAGREEMENTS**

- A. The Grantor and the Easement Holder desire that issues arising from time to time concerning the interpretation of the provisions of the Easement, or any use or activity on the Property, will first be addressed through candid and open communication between the parties rather than unnecessarily formal or adversarial action. Therefore, the Grantor and the Easement Holder agree that if either party becomes concerned whether any proposed or actual use, activity, or failure to take action (which together for the purposes of this Section, "Resolution of Disagreements," shall be referred to as the "Activity") complies

with the provisions of this Easement, wherever reasonably possible the concerned party shall notify the other party of the perceived or potential problem, and the parties shall explore the possibility of reaching an agreeable resolution by informal dialogue.

- B. If informal dialogue does not resolve a disagreement regarding the Activity, and if the Grantor agrees not to proceed or continue with the Activity pending resolution of the disagreement concerning the Activity, either party may refer the disagreement to mediation by written notice to the other. Within ten (10) days of the delivery of such a notice, the parties shall agree on a single impartial mediator. Mediation shall be conducted in Concord, New Hampshire, or such other location as the parties shall agree. Each party shall pay its own legal fees and other associated costs, and the costs of mediation shall be split equally between the parties.
- C. If the parties cannot agree upon the selection of a mediator, if all parties agree to bypass mediation, if any party refuses to participate in or continue with mediation, or if the parties are unable to resolve the disagreement, the disagreement shall be submitted to binding arbitration in accordance with New Hampshire RSA 542 as may be amended from time to time. The Grantor and the Easement Holder 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 Concord, 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. Each party shall pay its own legal fees and other associated costs, and the costs of arbitration shall be split equally between the parties.
- D. Notwithstanding the availability of mediation and arbitration to address disagreements concerning the compliance of any Activity with the provisions of this Easement, if the Easement Holder believes that some use, activity, or failure to take action of the Grantor or of a third party is causing irreparable harm or damage to the Property, or creates an imminent threat of same, the Easement Holder may seek a temporary restraining order, preliminary injunction or other form of equitable relief from any court of competent jurisdiction to: cause the cessation of any such damage or harm or threat of same; 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.

## 8. **BREACH OF EASEMENT – EASEMENT HOLDER’S REMEDIES**

- A. **Notification by Easement Holder.** If the Easement Holder determines that a violation or breach of this Easement has occurred (which together shall hereinafter be referred to as “breach”), the Easement Holder shall notify the Landowner in writing of such breach and demand corrective action to cure the breach and, where the breach involves damage, disturbance, or harm (hereinafter referred to as “damage”) to the Property, to restore the

portion of the Property so damaged to its prior condition.

- B. **Performance by Landowner.** The Landowner 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 Landowner shall promptly notify the Easement Holder of its actions taken hereunder.
- C. **Failure by Landowner.** If the Landowner 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 Easement Holder may undertake any actions, in the Landowner's name, that are reasonably necessary to repair any damage or to cure such breach, including an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such damage.
- D. **Easement Holder's Remedies.** If the Easement Holder, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to any conservation attribute of the Property, the Easement Holder may pursue its remedies under this Section, "Breach of Easement...", without prior notice to the Landowner or without waiting for the period provided for cure to expire.
- E. **Damages.** The Easement Holder shall be entitled to recover damages from the party directly or primarily responsible for the breach or for damage to any conservation attributes protected hereby, including, but not limited to, damages for the loss of scenic, aesthetic, or environmental attributes of the Property. Without limiting the Landowner's liability therefor, the Easement Holder, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.
- F. **Easement Holder's Rights Additive.** The Easement Holder's rights under this Section, "Breach of Easement...", are in addition to the provisions of the above Section "Resolution of Disagreements," which section shall also apply to any disagreement that may arise with respect to activities undertaken in response to a notice of breach and the exercise of the Easement Holder's rights hereunder.
- G. **Imminent Danger.** The Landowner and the Easement Holder acknowledge and agree that should the Easement Holder determine, in its sole discretion, that conservation attributes protected by this Easement are in immediate danger of irreparable damage, the Easement Holder may seek the injunctive relief described in the above Subsection, "Failure by Landowner," both prohibitive and mandatory, in addition to such other relief to which the Easement Holder may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The Easement Holder's remedies described in this Section, "Breach of Easement...", shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

H. **Costs.** Provided that the Landowner is directly or primarily responsible for the breach, all reasonable costs incurred by the Easement Holder in enforcing the terms of this Easement against the Landowner, including, without limitation, staff and consultant costs, reasonable attorneys' fees and costs and expenses of suit, and any costs of restoration necessitated by the Landowner's breach of this Easement shall be borne by the Landowner; and provided further, however, that if the Landowner ultimately prevails in an enforcement action, each party shall bear its own costs. Notwithstanding the foregoing, if the Easement Holder initiates litigation against the Landowner to enforce this Easement, and if the court determines that the litigation was initiated without reasonable cause or in bad faith, then the court may require the Easement Holder to reimburse the Landowner's reasonable costs and reasonable attorney's fees in defending the action.

I. **Forbearance by Easement Holder.** Forbearance by the Easement Holder to exercise its rights under this Easement in the event of any breach of any term hereof by the Landowner shall not be deemed or construed to be a waiver by the Easement Holder of: such term or any subsequent breach of the same; any other term of this Easement; or any of the Easement Holder's rights hereunder. No delay or omission by the Easement Holder in the exercise of any right or remedy upon any breach by the Landowner shall impair such right or remedy or be construed as a waiver. The Landowner hereby waives any defense of laches or estoppel.

J. **Causes Beyond Landowner's Control.** Nothing contained in this Easement shall be construed to entitle the Easement Holder to bring any action against the Landowner for any damage to, or change in, the Property, or to any person, resulting from causes beyond the Landowner's control, including, but not limited to, unauthorized actions by third parties, natural disasters such as fire, flood, storm, disease, infestation and earth movement, or from any prudent action taken by the Landowner under emergency conditions to prevent, abate, or mitigate significant damage to the Property or to any person resulting from such causes. The Easement Holder and the Landowner reserve the right, separately or collectively, to pursue all legal and/or equitable remedies, as set forth in this Section, "Breach of Easement..." against any third party responsible for any actions inconsistent with the provisions of this Easement, and, further, prior to either party taking any such separate action, the Easement Holder and Landowner shall first discuss with one another opportunities for taking collective action.

9. **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 Easement Holder may hereafter designate by notice given in accordance herewith. Notice shall be deemed to have been given when so delivered or so mailed.

## 10. 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. The Grantor and Easement Holder agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interest in the Property.

## 11. ENVIRONMENTAL RESPONSIBILITIES

Nothing in this Easement shall be construed as giving any right or ability to Easement Holder to exercise physical or managerial control of any of Grantor's activities on the Property, except for Easement Holder'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.

## 12. EXTINGUISHMENT & CONDEMNATION

- A. **Extinguishment.** The Grantor acknowledges that at the time of the conveyance of this Conservation Easement to the Easement Holder, this Conservation Easement gives rise to real property rights, immediately vested in the Easement Holder. If a change in conditions takes place which makes it impossible or impractical for the continued protection of the Property for conservation purposes and the restrictions contained herein are extinguished by judicial proceeding, the parties agree upon a subsequent sale or exchange of the Property, the Easement Holder 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 Easement Holder shall be entitled to an equivalent amount at the time of such exchange). The values of the interests of the Grantor, the Easement Holder and each Funder 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 Easement Holder resulting therefrom. Each of the said Funders may consent to or require the Easement Holder's use of its portion of the proceeds to acquire other land or interests in land of equal monetary or resource value. The Easement Holder shall use its share, if any, of the proceeds in a manner consistent with the conservation Purposes of this Conservation Easement.

B. **Condemnation.** Whenever all or part of the Property is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by this Conservation Easement, the Grantor and the Easement Holder shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking. In such event, the proceeds shall be divided between the Grantor and the Easement Holder and each said Funder in proportion to the fair market value, at the time of condemnation, of their respective interests in that part of the Property condemned. The values of the interests of the Grantor, the Easement Holder, and each Funder shall be determined by an appraisal prepared by a qualified appraiser at the time of condemnation. 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 a portion of the net proceeds payable to the Easement Holder pursuant to percentage of the funds provided to purchase the Conservation Easement and project expenses documented herein. Each of the Funders may consent to or require the Easement Holder's use its portion of the proceeds to acquire other land or interests in land of equal monetary or resource value. The Easement Holder shall use its share, if any, of the proceeds in a manner consistent with the conservation Purposes of this Conservation Easement.

#### 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; a public agency or qualified organization described in the Section "Benefits & Burdens," above, accepts and records the additional easement; and Grantor has given advance written notice, including copy of proposed additional easement, to Easement Holder at least sixty (60) days prior to execution.

#### 15. **AMENDMENT**

If, owing to unforeseen or changed circumstances, Grantor and Easement Holder agree that an amendment to, or modification of, this Easement would be appropriate and desirable, Grantor and Easement Holder may jointly amend this Easement pursuant to: the provisions and limitations of this section; the then-current amendment policies of the Easement Holder; 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 Easement Holder under any applicable laws, including Sections 170(h) and 501(c)(3) of the Internal Revenue Code of 1986, as amended, and NH RSA 477:45-47 or RSA 36-A:2 & 4, 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 and the Easement Holder and shall be recorded in said Registry of Deeds. Nothing in this paragraph shall require Grantor or Easement Holder to agree to any amendment or to consult or negotiate regarding any amendment.



16. **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.

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.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 15<sup>th</sup> day of February, 2017.

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

By: Jane A. Difley Duly Authorized  
Title: President/Forester  
Date: February 15, 2017

**STATE NEW HAMPSHIRE  
COUNTY OF MERRIMACK**

This instrument was acknowledged before me on this 15<sup>th</sup> day of February, 2017 by Jane A. Difley President/Forester on behalf of the Society for the Protection of New Hampshire Forests. The identity of the subscribing party was determined by

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

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

Maria E. Stewart  
Notary Public/Justice of the Peace

My Commission Expires: MARIA E. STEWART, Notary Public  
My Commission Expires October 16, 2018



ACCEPTED: TOWN OF MADBURY BOARD OF SELECTMEN

By: Bruce E Hodson  
Title: SELECTMAN CHAIR  
Duly Authorized  
Date: 2/13/17

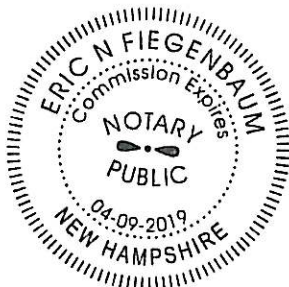
By: Robert Sterndale  
Title: Selectman  
Duly Authorized  
Date: 2/13/17

By: Joseph B Moriarty  
Title: Selectman  
Duly Authorized  
Date: 2/13/17

STATE OF NEW HAMPSHIRE  
COUNTY OF STRAFFORD

This instrument was acknowledged before me on this 13 day of FEBRUARY,  
2017 by BRUCE E HODSDON, ROBERT STERNDALE and  
JOSEPH B. MORIARTY on behalf of the Town of Madbury's Board of  
Selectmen. 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).



Eric Fiegenbaum  
Notary Public/Justice of the Peace

ERIC FIEGENBAUM  
(Printed Name, above)  
My Commission Expires: 4-9-2019

ACCEPTED: TOWN OF LEE BOARD OF SELECTMEN

By: [Signature]

Title: SELECTMAN  
Duly Authorized

Date: 2/14/17

By: [Signature]

Title: Selectman  
Duly Authorized

Date: 2/14/2017

By: [Signature]

Title: Selectman  
Duly Authorized

Date: 2/14/17

STATE OF NEW HAMPSHIRE  
COUNTY OF STRAFFORD

This instrument was acknowledged before me on this 15 day of February, 2017 by Scott Bugbee, John LaCourse and Cary Brown on behalf of the Town of Lee Board of Selectmen. 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, Julie E Glover (name of witness), the witness being personally known to me OR
- The following identification documents: \_\_\_\_\_ (driver's license, passport, other).

[Signature]  
Notary Public/Justice of the Peace

Edward J. Kelley  
(Printed Name, above)

My Commission Expires: \_\_\_\_\_



ACCEPTED: **TOWN OF DURHAM TOWN COUNCIL**

By: [Signature]  
Title: Administrator, Town of Durham, NH  
Date: 2/14/17

**STATE OF NEW HAMPSHIRE  
COUNTY OF STRAFFORD**

This instrument was acknowledged before me on this 14 day of February, 2017 by Todd I. Selig, Administrator for the Town of Durham, NH on behalf of the Town of Durham's Town Council. The identity of the subscribing party was determined by (check box that applies and complete blank line, if any):

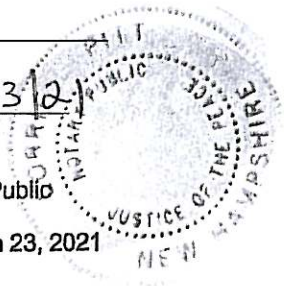
- My personal knowledge of the identity of said person **OR**
- The oath or affirmation of a credible witness, \_\_\_\_\_ (name of witness), the witness being personally known to me **OR**
- The following identification documents: \_\_\_\_\_ (driver's license, passport, other).

[Signature]  
Notary Public/Justice of the Peace

Lorrie Pitt  
(Printed Name, above)

My Commission Expires: 3/23/21

LORRIE L. PITT, Notary Public  
Justice of the Peace  
My Commission Expires March 23, 2021



## APPENDIX A

The "Property" subject to this Easement is that certain area of land with any and all buildings, structures, and improvements thereon consisting of approximately 192.44 acres, situated on Cherry Lane Road and NH Route 155, so-called, in the Towns of Madbury, Lee and Durham, New Hampshire, shown on a survey plan entitled "BOUNDARY PLAT, Land to be conveyed to the Society for the Protection of NH Forests, Map 6 Lot 6B and Map 6 Lot 9 located on Cherry Lane in Madbury, Map 9 Lots 1-1, 1-2, and 2-1 located on Route 155 in Durham, Map 2 Lots 5-3 and 5-4 located on Route 155 in Lee, Strafford County, New Hampshire" by Stephen P. Perron, LLS 843, PO Box 816, Henniker NH 03242, dated November 11, 2016, last revised February 6, 2017, recorded as Plan Drawer # 113, Page 11 at the Strafford County Registry of Deeds (hereafter "Survey Plan).

**SUBJECT TO** the following items:

- A. Conservation restrictions, an access and uses easement over the existing Log Yard and all other matters detailed in the Warranty deed from Edward W. Goss, Philip J. Goss, And Charles L. Goss, II, each individually; and Edward W. Goss, Successor Trustee of The Cherry Lane Realty Trust; (collectively, "Grantors"), to the Society for Protection of New Hampshire Forests, dated February 13, 2017, recorded at Strafford County Registry of Deeds at Book 4456, Page 912.
- B. The following matters as they relate to the three tracts shown on the said Plan:

### Tract 1

1. Current Use Taxation by the Town of Durham for land of Georgia G. Drew and Lane W. Goss recorded October 16, 1974 at Book 954, Page 28 of the Strafford County Registry of Deeds.
2. Current Use Taxation by the Town of Lee for land of Georgia G. Drew and Lane Goss recorded July 31, 1980 at Book 1052, Page 87 of said Registry.
3. Current Use Taxation by the Town of Madbury for land of Georgia Drew recorded September 15, 1982 at Book 1085, Page 784 of said Registry.
4. Utility Easement to Public Service Company of New Hampshire by deed of C. Lane Goss, dated February 9, 1954 and recorded with said Registry at Book 627, Page 214 (affecting that portion of the property located in the Town of Lee).
5. Matters set forth on a certain plan entitled "Revised Boundary Plan Georgia G. Drew, Holly Armitage and Lane W. Goss, Madbury, N.H." dated December 1990 and recorded with said Registry at Plan Drawer 38A, Page 51.
6. Riparian rights in and to the waters of the Oyster River.

**Tract 2**

1. Current Use Taxation by the Town of Lee for land of Jesse Gangwer recorded July 31, 1981 with said Registry at Book 1068, Page 422 as supplemented by Current Use Taxation by the Town of Lee recorded October 7, 1981 with said Registry at Book 1071, Page 457.

**Tract 3**

1. Current Use Taxation by the Town of Durham for land of Georgia G. Drew and Lane W. Goss recorded October 16, 1974 with said Registry at Book 954, Page 28.
2. Current Use Taxation by the Town of Madbury for land of Georgia Drew recorded September 15, 1982 with said Registry at Book 1085, Page 784.
3. Matters set forth on a certain plan entitled "Revised Boundary Plan Georgia G. Drew, Holly Armitage and Lane W. Goss, Madbury, N.H." dated December 1990 and recorded with said Registry at Plan Drawer 38A, Page 51.
4. Matters set forth on a certain plan entitled "Subdivision Plat, Land of Edward Goss, Phillip J. Goss and Charles L. Goss II, Tax Map 6, Lot 6, located on Cherry Lane, Madbury, New Hampshire, Strafford County" by Stephen P. Perron, dated October 31, 2016 and recorded with the Strafford County Registry of Deeds at Plan Book 112, Pages 67 and 68.

**MEANING AND INTENDING** to describe all and the same premises conveyed by Warranty Deed from Edward W. Goss, and Philip J. Goss; Edward W. Goss, Sole Surviving Trustee of the Cherry Lane Realty Trust; and Edward W. Goss, to Society For Protection of New Hampshire Forests, dated February 13, 2017, recorded at Strafford County Registry of Deeds at Book 4456, Page 912 ;

See also land conveyed by Warranty deed by Charles L. Goss, II to Edward W. Goss and Philip J. Goss, dated February 15, 2017 and recorded in the Strafford County Registry of Deeds at Book 4456, Page 536 .