



The State of New Hampshire
Department of Environmental Services

Robert R. Scott, Commissioner



November 2, 2021

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

REQUESTED ACTION

Authorize the Department of Environmental Services to award a grant to the Southeast Land Trust of New Hampshire (hereinafter "SELT"), (VC#155425-B001), Exeter, NH, in the amount of \$209,000, to protect approximately 59 acres of high priority water supply lands and direct river frontage along the Salmon Falls River, a drinking water supply for residents of Somersworth, NH, effective upon Governor and Council approval through June 30, 2022. 100% Drinking Water and Groundwater Trust Fund.

Funding is available in the following account:

03-44-44-444010-7428-073-500580	<u>FY 2022</u>
Dept Environmental Services, DWGW Trust, Grants Non-Federal	\$209,000

EXPLANATION

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

On November 9, 2020, the Advisory Commission voted to authorize grants for four drinking water source protection projects. SELT's request for \$209,000 was selected for grant funding from the Trust Fund. SELT will use the grant funds towards the purchase of a parcel in fee and acquisition of conservation easements on approximately 59 acres of land in the source water protection area of the Salmon Falls River.

The total project cost for SELT towards the purchase and acquisition of conservation easements is \$418,225. The DWGTF will provide \$209,000 with \$209,225 in match provided by SELT and the City of Rochester. The purchase price of the property and value of conservation easements are based on a recent appraisal of fair market value.

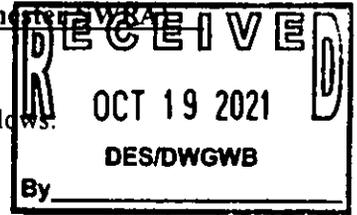
Exhibit A describes the scope of the grant. Exhibit B provides the grant amount and payment terms and Exhibit C contains special provisions. Attachment A contains the draft conservation easements. Attachment B contains a map of the land, which shows the land's relationship to the water supply source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

We respectfully request your approval.

For 

Robert R. Scott
Commissioner

Subject: Southeast Land Trust of NH- Salmon Falls: Carpenter & Pallas (Rockingham)



GRANT AGREEMENT

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

GENERAL PROVISIONS

I. IDENTIFICATIONS

1.1 State Agency Name NH Department of Environmental Services		1.2 State Agency Address 29 Hazen Drive, Concord, NH 03302-0095	
1.3 Grantee Name: Southeast Land Trust of New Hampshire		1.4 Grantee Address 6 Center Street, PO Box 675, Exeter, NH 03833	
1.5 Effective Date Upon G&C approval	1.6 Completion Date 6/30/2022	1.7 Audit Date N/A	1.8 Grant Limitation \$209,000
1.9 Grant Officer for State Agency Sandra Crystall		1.10 State Agency Telephone Number (603) 271- 2862	
1.11 Grantee Signature 		1.12 Name & Title of Grantee Signor Brian Hart, Executive Director	
1.13 Acknowledgment: State of <u>New Hampshire</u> , County of <u>Rockingham</u> On <u>10/14/2021</u> before the undersigned officer, personally appeared the person identified in block 1.12., or satisfactorily proven to be the person whose name is signed in block 1.11., and acknowledged that he/she executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace (Seal) <u>Kathy A. Werner</u>			
1.13.2 Name & Title of Notary Public or Justice of the Peace <u>Kathy A. Werner, Notary</u>			
1.14 State Agency Signature(s) 		1.15 Name/Title of State Agency Signor(s) <u>Robert R. Scott, Commissioner</u>	
1.16 Approval by Attorney General's Office (Form, Substance and Execution) By: <u>[Signature]</u> Attorney, On: <u>11/15/2021</u>			
1.17 Approval by the Governor and Council By: _____ On: / /			



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

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

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

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

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

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

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

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

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

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

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

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

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

7. **RECORDS AND ACCOUNTS.**

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

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

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

8. **PERSONNEL.**

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

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

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

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

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

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

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

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

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

10. **CONDITIONAL NATURE OF AGREEMENT.**

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

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

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

- 11.1.1 failure to perform the Project satisfactorily or on schedule; or
- 11.1.2 failure to submit any report required hereunder; or
- 11.1.3 failure to maintain, or permit access to, the records required hereunder; or
- 11.1.4 failure to perform any of the other covenants and conditions of this Agreement.

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

- 11.2.1 give the Grantee a written notice specifying the Event of

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

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

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

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

12. TERMINATION.

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

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

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

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

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

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

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

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

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

17. INSURANCE AND BOND.

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

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

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

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

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

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

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

21. CONSTRUCTION OF AGREEMENT AND TERMS.

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

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

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

EXHIBIT A

SCOPE OF SERVICES

Southeast Land Trust of New Hampshire

Southeast Land Trust of New Hampshire (SELT) will use the grant to assist the City of Rochester in the purchase of a 38-acre parcel in fee (the "Carpenter" property) and SELT's acquisition of conservation easements on the Carpenter property and an adjoining 21 acres of land in Rochester (the "Pallas" property); all 59 acres in the protection area of Somersworth's drinking water source, the Salmon Falls River. SELT will hold the conservation easements. The parcels of land, designated on current tax map as Map 108 /Lot 29 (Carpenter) and Map 108, lots 31 & 32 (Pallas) will be protected in perpetuity, as specified in conservation easement deeds (see Attachments A and B).

EXHIBIT B

GRANT AMOUNT & PAYMENT SCHEDULE

Payment in the amount of \$209,000 shall be made to SELT upon receipt of the following:

1. Survey of the parcels of land.
2. A copy of the appraisal as specified in Env-Dw 1002.22.
3. Title examination as specified in Env-Dw 1002.23.
4. Acceptable stewardship plan for the property that ensures the permanent protection of the water supply.
5. Completed baseline documentation report, which indicates the current condition of the property.
6. Documentation to support the match of \$209,225 provided by SELT and the City of Rochester.
7. The finalized conservation easement deed.

Grantee Initials

Date

OFF
10-14-21

EXHIBIT C

SPECIAL PROVISIONS

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

Grantee Initials gh
Date 10-19-21

CERTIFICATE of AUTHORITY

I, Samuel Reid, President of the Southeast Land Trust of New Hampshire, do hereby certify that:

1. I am the duly elected President of the Southeast Land Trust of New Hampshire;
2. The Southeast Land Trust of New Hampshire has agreed to accept the New Hampshire Department of Environmental Service's Drinking Water & Groundwater Trust Fund grant funds and to enter into a contract with the New Hampshire Department of Environmental Services for the Salmon Falls River Carpenter-Pallas project in Rochester, NH;
3. The Board for the Southeast Land Trust of New Hampshire further authorized the Executive Director to execute any documents which may be necessary for this contract;
4. This authorization has not been revoked, annulled, or amended in any manner whatsoever, and remains in full force and effect as of the date hereof; and
5. **Brian Hart**, Executive Director at the Southeast Land Trust of New Hampshire, has been appointed to and now occupies the office indicated in (3) above.

IN WITNESS WHEREOF, I have hereunto set my hand as the President of the Southeast Land Trust of New Hampshire, on October 14, 2021.

Samuel Reid, President

Samuel Reid, President

**STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM**

On this the 14th day of October, 2021, before me Cathy A. Towle, Notary Public, the undersigned officer, personally appeared Samuel Reid who acknowledged himself to be the President of the Southeast Land Trust of New Hampshire, being authorized so to do, executed the foregoing instrument for the purpose therein contained.

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

Cathy A. Towle

Notary Public Signature

My Commission Expires: 11/18/2025

(Seal)



State of New Hampshire

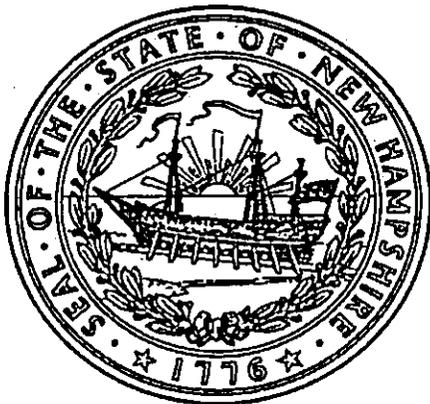
Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that SOUTHEAST LAND TRUST OF NEW HAMPSHIRE is a New Hampshire Nonprofit Corporation registered to transact business in New Hampshire on March 21, 1980. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 64227

Certificate Number: 0005043200



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 16th day of November A.D. 2020.

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

William M. Gardner
Secretary of State

Attachment A – Conservation Easement Deeds

The within conveyance is a transfer to the State of New Hampshire and is therefore exempt from the New Hampshire Real Estate Transfer Tax pursuant to RSA 78-B:2(I) and exempt from the LCHIP surcharge pursuant to RSA 478:17-g(II)a.

**CONSERVATION EASEMENT DEED
AND DEED RESTRICTION**

We, **ZACHARY W. & JOANNE V. PALLAS**, husband and wife, of 118 Crowhill Road, City of Rochester, County of Strafford State of New Hampshire, 03868, (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),

with a **Third Party Right of Enforcement**, as further defined in Section 9 below, therein granted to the **STATE OF NEW HAMPSHIRE** acting through its **DEPARTMENT OF ENVIRONMENTAL SERVICES**, an administrative agency duly organized and existing under the laws of the State of New Hampshire, with a principal place of business at 29 Hazen Drive, City of Concord, County of Merrimack, State of New Hampshire, 03302, (sometimes referred to herein as the "**Third Party Holder**"),

the Conservation Easement (herein referred to as the "Easement") hereinafter described with respect to that certain parcel/area of land (herein referred to as the "Property") being unimproved

land, consisting of approximately thirty three and thirty seven one hundredths (33.37) acres, situated on Crowhill Road in the City of Rochester, County of Strafford, State of New Hampshire, more particularly bounded and described in Appendix "A" attached hereto and made a part hereof and shown on a survey plan (the "Survey Plan") entitled "Conservation Easement Plan for Southeast Land Trust of NH, Land of Zachary W. & Joanne V. Pallas, 118 Crowhill Road, Rochester, N.H. Tax Map 108, Lot 31" prepared by Berry Survey & Engineering, dated July 2, 2021, and recorded at the Strafford County Registry of Deeds as Plan [REDACTED].

Together with the Deed Restriction (hereinafter referred to as the "Deed Restriction") as further defined in Section 19 below, with respect to that certain parcel of land (herein referred to as the "Exclusion Area") adjacent to the Property, with any and all buildings, structures, and improvements thereon, consisting of approximately three and twenty five one hundredths (3.25) acres, situated on Crowhill Road in the City of Rochester, County of Strafford, State of New Hampshire, shown as "Exclusion Area" on the Survey Plan and more particularly bounded and described in Appendix B attached hereto and made a part hereof.

This Easement has been conveyed in part with a financial assistance award from the New Hampshire Drinking Water and Groundwater Trust Fund. Accordingly, the Grantee shall henceforth provide annual stewardship reports to NHDES meeting the requirements set forth in N.H. Administrative Rule Env-Dw 1002.26.

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 Third Party Holder.

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 protection of the quality and sustainable yield of ground water and surface water resources associated with the Property, as the Property lies within the watershed of the Salmon Falls River, a Source Water Protection Area for the City of Somersworth, and of the ecological integrity of said water resources; and
- B. The protection of the natural wildlife habitats on the Property including the wetland and upland habitats thereon including approximately XX (XX) acres of "Highest Ranked Habitat in the State", XX (XX) acres of "Highest Ranked Habitat in the Biological Region", and XX (XX) acres of "Supporting Landscape" as determined by the NH Fish & Game Department's 2020 Wildlife Action Plan; and the protection of any state or federally recognized rare, threatened, or endangered species; and
- C. The conservation and protection of open spaces, particularly the expansion of conservation lands surrounding the Property, including the approximately XX (XX) acre ["XX"] conservation easement held by the Grantee and the approximately XX (XX) acre ["XX"] property owned by the Grantee; and

- D. The scenic enjoyment of the general public as viewed from the approximately XX (XX) feet of undeveloped frontage along Crowhill Road; and
- E. The long-term protection of the Property's capacity to produce economically valuable forest lands including approximately XX (XX) acres of Group IA important forest soils as identified by the United States' Natural Resources Conservation Service.

The above Purposes are consistent with the clearly delineated open space conservation goals as stated in the February 2009 Natural Resources Master Plan of the City of Rochester, which states:

"The overarching goals of the Natural Resources Chapter are to:

- Advocate for protection and conservation of natural resources; and
- Enhance the quality of life for the future; and
- Maintain the functions and services natural resources provide to benefit the public."

And with specific priorities described by said 2009 Master Plan which include:

- Continue the practice of preserving forests and woodlands as criteria for prioritization of land conservation planning and acquisition of conservation lands; and
- Partner with regional land trusts and watershed groups to identify shared goals and priorities for natural resource protection and land conservation; and
- Protect large unfragmented blocks, wildlife corridors, natural communities, and rare, threatened and endangered species as part of land conservation and open space planning; and
- Develop partnerships with local and regional watershed and river stewardship groups to improve and protect the quality of surface waters, i.e. through land conservation, water quality monitoring, implementing best management practices, forest preservation, etc; and
- Develop partnerships with local and regional watershed and river stewardship groups to protect the scenic qualities of rivers and tributaries.

and with New Hampshire RSA Chapter 79-A 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."

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

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. Further, no acts or uses shall occur on the Property that would degrade the water quality such that the standards for public drinking water by NHDES would be threatened or cause an unsustainable quantity of water to be withdrawn.

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. Forestry shall include all forestry and forest management activities performed for commercial or industrial purposes, including barter transactions, and non-commercial timber stand improvement activities, wildlife habitat improvement, or thinning the forest stand to maintain a view.

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.

- a. The following Agricultural riparian buffer zones shall apply for Agricultural activities and operations within and adjacent to wetlands, perennial streams and rivers, hereinafter referred to collectively as "water body or water bodies." Streams and rivers shall be identified as those shown on 7.5 minute United States Geologic Survey Quadrangle maps. Wetlands shall include any wetlands shown on National Wetland Inventory maps, documents/plans that include wetland delineations with said wetland delineations prepared by a licensed wetlands

scientist or other qualified person per RSA 310-A:75, Town wetland inventory maps, NH GRANIT land cover maps, or other sources mutually agreed to by the Grantor and Grantee. A map entitled "Water Resources-Buffer Zones Map", included in the Baseline Documentation Report, designates the approximate locations of the water bodies and riparian buffer zones.

- (i) Agricultural riparian buffers zones shall include one hundred (100) feet from each side of a water body and shall be expanded as necessary to encompass all vegetative communities with slopes greater than 35%, or soils classified as highly erodible that are adjacent to the water body.
- (ii) The distance of the riparian buffer shall be measured from the edge of the normal high water mark of the water body. In areas where there are wetlands contiguous to a stream or river the riparian buffer shall be measured from the upland edge of the wetland.
- (iii) There shall be no Agricultural activities, soil disturbance, planting, vegetation cutting and removal, or application of herbicides or pesticides within the water body and the first twenty-five (25) feet from the normal high water mark or water body edge as defined above. The Grantor may request permission from the Grantee to conduct any of the before stated activities for wildlife habitat improvement purposes, construction of wildlife viewing platforms and maintaining the view from said platforms, or to meet other specific natural resource or ecological goals (e.g., invasive species removal). For wildlife habitat improvements or improvements for natural resource or ecological goals, the Grantor must submit the request to the Grantee as part of the coordinated agricultural management plan or an amendment thereto. For the construction of wildlife viewing platforms, the Grantor shall submit the request to the Grantee as a written plan with scaled drawings indicating the location, size, materials, vegetation to be impacted by the platform and viewing zone, and access to the viewing platform. The Grantee shall first consult with NHDES and either approve, deny, or approve with-conditions the request at their sole discretion.
- (iv) Within the remainder of the Agricultural riparian buffer zone, agricultural methods shall follow best management practices.
- (v) No new roads or agricultural ways shall be constructed within the Agricultural riparian buffer zones, except in circumstances where complying with this provision may result in a greater overall negative environmental impact or would preclude reasonable access to areas suitable to Agriculture. Existing roads, as identified by the Baseline Documentation Report, may be retained and maintained. Any roads or trails within a riparian buffer zone shall be designed and maintained to minimize degradation of water quality and aquatic habitat.

iii. Requirements for Forestry:

- a. 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), or similar successor publications; 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.
- b. The following Forestry riparian buffer zones shall apply for Forestry activities and other tree cutting and removal operations within and adjacent to wetlands, perennial streams and rivers, hereinafter referred to collectively as “water body or water bodies”. Streams and rivers shall be identified as those shown on 7.5 minute United States Geologic Survey Quadrangle maps. Wetlands shall include any wetlands shown on National Wetland Inventory maps, documents/plans that include wetland delineations with said wetland delineations prepared by a licensed wetland scientist or other qualified person per RSA 310-A:75, Town wetland inventory maps, NH GRANIT land cover maps, or other sources mutually agreed to by the Grantor and Grantee. A map entitled “Water Resources-Buffer Zones Map”, included in the Baseline Documentation Report, designates the approximate locations of the water bodies and riparian buffer zones.
- (i) Forestry riparian buffers zones shall include one hundred (100) feet from each side of a water body and shall be expanded as necessary to encompass all vegetative communities with slopes greater than 35%, or soils classified as highly erodible that are adjacent to the water body.
- (ii) The distance of the riparian buffer shall be measured from the edge of the normal high water mark of the water body. In areas where there are wetlands contiguous to a stream or river the riparian buffer shall be measured from the upland edge of the wetland.
- (iii) There shall be no Forestry activities, soil disturbance, tree or vegetation cutting and removal, or application of herbicides or pesticides within the water body and the first twenty-five (25) feet from the normal high water mark or water body edge as defined above. The Grantor may request permission from the Grantee to conduct any of the before stated activities for wildlife habitat improvement purposes, construction of wildlife viewing platforms and maintaining the view from said platforms, or to meet other specific natural

resource or ecological goals (e.g., invasive species removal). For wildlife habitat improvements or improvements for natural resource or ecological goals, the Grantor must submit the request to the Grantee as part of the Forest Management Plan or an amendment thereto. For the construction of wildlife viewing platforms, the Grantor shall submit the request to the Grantee as a written plan with scaled drawings indicating the location, size, materials, vegetation to be impacted by the platform and viewing zone, and access to the viewing platform. The Grantee shall first consult with NHDES and either approve, deny, or approve with conditions the request at their sole discretion.

(iv) Within the remainder of the riparian buffer zone, tree harvest methods shall be limited to single tree or small group selection cuts, leaving a well-distributed, uneven-aged stand of trees.

(v) No new roads or log landings shall be constructed within Forestry riparian buffer zones, except in circumstances where complying with this provision may result in a greater overall negative environmental impact or would preclude reasonable access to areas suitable to Forestry. Existing roads, as identified by the Baseline Documentation Report, may be retained and maintained. Skid trails and log landings shall be kept to the minimum reasonably necessary for tree removal. Any roads, skid trails, and log landings within a riparian buffer zone shall be designed and maintained to minimize degradation of water quality and aquatic habitat.

c. 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:

- maintenance of soil productivity;
- protection of water quality, wetlands, vernal pools 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 or enhancement of native plant and animal species.

d. Any 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.

e. 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 licensed forester or other qualified person at least thirty (30) days prior to the date of harvest.

- f. Said Forest Management Plan shall include a statement of landowner objectives, and shall specifically address:
 - the accomplishment of those Purposes for which this Easement is granted,
 - the goals in Section 2.A.iii.c. above, and
 - water bodies as defined herein, riparian buffer zones and their delineation on a map(s) in the plan and how water bodies and vernal pools will be protected in association with forest management activities including but not limited to road construction and maintenance and implementation of stand prescriptions.
 - g. At least thirty (30) days prior to any Forestry activities, 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.iii. a-f, above, has been prepared in compliance with the terms of this Easement. The Grantee may request the Grantor to submit the Forest Management Plan itself to the 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.
 - h. Forestry activities 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.
 - i. Prior to conducting Forestry activities, in those areas proposed for the forest activities, the riparian buffers shall be clearly marked by a licensed professional forester or other qualified person approved in advance and in writing by the Grantee.
- B. The Property shall not be subdivided, 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, noncommercial outdoor recreational, or noncommercial outdoor 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, boardwalks or sheds; and

- b. Do not cause the total impervious surface coverage of the Property to exceed one percent (1%) of the Property's overall size, or 14,550 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 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 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, 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, noncommercial outdoor recreational or noncommercial outdoor 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.

- E. No outdoor advertising structures shall be displayed on the Property except as desirable or necessary in the accomplishment of the agricultural, forestry, conservation, noncommercial outdoor recreational or noncommercial outdoor educational uses of the Property, and provided such structures are not detrimental to the Purposes of this Easement. No sign on the Property shall exceed 15 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 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 1% of the Property or 14,550 square feet;
 - 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 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 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. No substances then known to be environmentally hazardous waste if discarded or abandoned shall be disposed of, dumped, injected, burned, or buried on the Property, and no such substances shall be stored or applied on the property except in conjunction with any agriculture, forestry, public water supply, conservation, habitat management, noncommercial outdoor educational or noncommercial outdoor educational uses that are

allowed by this Easement. Further, no wastes generated off the Property shall be disposed of, stored, or discharged on the Property.

- 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 not operate or grant permission to operate motorized vehicles on the Property, except as allowed in Section 3. "Reserved Rights" below.
- J. The Property shall in no way be used to satisfy the density, frontage, or setback requirements of any applicable zoning ordinance or land use regulation with respect to the development of any other property.

3. RESERVED RIGHTS

All acts and uses not prohibited in Section 2. "Use Limitations" are permissible provided that such acts and uses do not materially impair the Purposes of this Easement. The Grantor reserves to itself, its successors and assigns, all other customary rights and privileges of ownership, including but not limited to the provisions below.

- A. The Grantor reserves the right to operate motorized vehicles, and permit others to operate said vehicles, for the purposes of maintaining and managing the Property, including but not limited to emergency rescue operations, forestry, agriculture, public water supply, habitat management, non-commercial outdoor recreation management, noncommercial outdoor education management, and to control or remove non-native or invasive species. This provision is an exception to Section I., above.
- B. The Grantor reserves the right to withdraw groundwater on a sustainable yield basis and to remove said groundwater from the Property only for the purpose of providing a public water system, as defined by NH RSA 485:1-a, XV, as it may be amended from time to time. "Sustainable yield" shall mean that rate of annual water withdrawal that can be replenished from the aquifer on an annual basis, based on well recovery rates. Withdrawal or removal of groundwater for private commercial purposes not served by a public water system is expressly prohibited.
 - i. Test Wells: Prior to drilling test wells on the Property, the Grantor shall submit a Test Well Site Plan to the Grantee for review and approval. Said plan shall identify the proposed locations and access for the test wells and identify the steps to be taken to minimize damage to the Property and Purposes of this Easement. The Grantor shall include in the Test Well Site Plan a restoration plan that addresses the impacts associated with the test wells and associated improvements.
 - a. The Grantee shall limit its review of the Test Well Site Plan to the proposed access and restoration plan components and either approve, approve with

conditions, or deny those components of the Test Well Site Plan within thirty (30) days of receipt of the request. The Grantee shall not unreasonably withhold such approval.

- b. The Grantor is encouraged to communicate regularly and openly with the Grantee as it develops its Test Well Site Plan.
 - c. In the event that if after two (2) years from the date of installation of the test wells the Grantor has not submitted a Construction Proposal per Env-Dw 404.02, as may be amended, to the State of New Hampshire, then the Grantor shall initiate the restoration plan and complete it within six (6) months. The Grantor may request extensions from the Grantee for implementing and completing the restoration plan which the Grantee may grant at its discretion.
- ii. Facilities and Improvements: For the purposes hereof, permitted activities in conjunction with a groundwater withdrawal development project shall consist of the installation, maintenance, monitoring, and replacement of test wells, long-term water production wells, monitoring wells, monitoring stations, pumping stations, and ancillary improvements such as but not limited to permeable-surface roads, signs, electric utilities necessary to power the pumps and related equipment, pipes, conduits, and security facilities, but only if they are required to be located on the Property. To the extent that said facilities and improvements must be located on the Property, those facilities and improvements shall, to the maximum extent possible, be located so as to minimize the impact to and disturbance of the Property and the Purposes of this Easement, and are subject to the prior written approval of the Grantee, as outlined below. Other major facilities including, but not limited to, storage tanks, shipping facilities, non-permeable pavement, and office and laboratory facilities for employees shall not be located within the Property.
- a. Prior to submitting a Construction Proposal per Env-Dw 404.02, as may be amended, for approval by the appropriate State of New Hampshire agency, the Grantor shall submit to the Grantee for approval the following information and plans (hereinafter, collectively referred to as "Site Plans") in appropriate format (e.g., documents, maps, plans, specifications, and designs) sufficient to identify the location and design of any proposed facilities or improvements on the Property, including but not limited to temporary or permanent well sites, pumping stations, and ancillary improvements such as but not limited to access ways/roads, signs, electric utilities, pipes, conduits, and security facilities and the provisions to minimize disturbance and impacts to the Property and Purposes of this Easement during and after installation and operation of the ground water withdrawal development project for the public water system.
 - b. The Grantee shall approve, approve with conditions, or deny the proposed Site Plans in writing within sixty (60) days of its receipt and base its decision on the impacts to the Property and the Purposes of this Easement. The Grantee shall not unreasonably withhold such approval.

- c. The Construction Proposal submitted to the State of New Hampshire shall accurately reflect the Site Plans approved by the Grantee.
 - d. Upon completion of the ground water withdrawal development project, the Grantor shall submit an “as built” Site Plan to the Grantee.
 - e. Any proposal to expand, enlarge or relocate facilities and improvements related to groundwater withdrawal shall require the approval of the Grantee in accordance with process and procedure in Section 2.C.ii. above. This provision does not apply to increases in water withdrawal rates or amounts or to maintenance or repair of said facilities and improvements.
 - f. If the groundwater wells and associated facilities and improvements are no longer used and there is no feasible plan for their eventual reuse, the Grantor shall undertake the restoration of the site in consultation with the Grantee.
- iii. Compliance with Law: Activities taken by the Grantor in execution of the groundwater withdrawal right herein shall comply with all federal, state and local requirements, including but not limited to requirements associated with public water supply, water withdrawals, and groundwater discharges, and the Grantor shall obtain any associated and requisite approvals from said agencies and abide by the conditions of said approvals.
 - iv. The Grantor shall provide to the Grantee a copy of any application for renewal, and any subsequent approval by the State, of the groundwater withdrawal permit.

This provision is an exception to Section 2, “Use Limitations” above.

- C. **Commercial Outdoor Educational Activities.** Subject to the following conditions, the Grantor or its designee(s) reserves the right to sponsor and conduct outdoor 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 outdoor 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 outdoor educational activities. The conduct of such commercial outdoor 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.

- D. **Commercial Outdoor Recreational Activities.** Subject to the following conditions, the Grantor or its designee(s) reserves the right to sponsor and conduct commercial outdoor

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 outdoor recreational events. Grantor or its designee(s) reserves the right to collect nominal fees for such sponsored commercial outdoor 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 outdoor recreational activities. The conduct of such commercial outdoor 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

- A. The Grantee 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 or boundary markings (e.g., blazes) to facilitate inspection of the Property and to identify the Property as conservation land protected by the Grantee, said signs or

boundary markings located along the Property's boundaries with each sign not exceeding thirty (30) square inches in size.

- ii. Signs along the Property's maintained public road frontage 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.

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, "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 or mediation does not resolve the disagreement, 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.
- D. Notwithstanding the availability of mediation 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.

- E. In the event of a dispute involving the Third Party Holder, the provisions of paragraph B of this Section 7 shall not apply.

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, “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, “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, “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, "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, "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.
- 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, "Breach of Easement..." against any third party responsible for any actions inconsistent with the provisions of this Easement.

9. THIRD PARTY RIGHT OF ENFORCEMENT

- A. If the Grantee ceases to enforce the Easement conveyed hereby or fails to enforce it within thirty (30) days after receipt of written notice from the Third Party Holder requesting such, then the notifying Third Party Holder shall have all the rights heretofore granted to the Grantee to enforce this Easement and be entitled to recover the costs of such enforcement from the Grantor or Grantee or both.

- B. The interests held by NHDES are assignable or transferable 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. Any holder of an interest in this Easement desiring to transfer or assign its interest shall send written notice describing said intention to all other holders of any interest in this Easement at least thirty (30) days prior to such transfer or assignment taking effect.

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 and said proceeds shall be used in a manner consistent with the Conservation Purposes of this Conservation Easement. 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. The amount of the proceeds to which the Grantee shall be entitled shall be determined in accordance with Section 12.C. below and said proceeds shall be used in a manner consistent with the Conservation Purposes of this Conservation Easement.

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 13, the ratio of the value of the Easement to the value of the Property unencumbered by this Easement shall remain constant.

The amount recovered under Section 12.A. or 12.B. above 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. Each party shall be responsible for covering the expenses of its own actions. The Grantee and the Third Party Holder agree the portion of damages recovered that are attributed to the Easement shall be divided as follows: the Grantee's interest shall be fifty five percent (55%) and the Third Party Holder's interest shall be forty five percent (45%).

(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.

The balance of the amount recovered under Section 12.A. or 12.B. above, after payment of any expenses, shall be divided between the Grantor and the Grantee in proportion to the fair market value, as determined by the appraisal, of their respective interests in that part of the Property extinguished or condemned. The Grantee and the Third Party Holder agree the portion of damages recovered that are attributed to the Easement shall be divided as follows: the Grantee's interest shall be fifty five percent (55%) and the Third Party Holder's interest shall be forty five percent (45%).

13. AMENDMENT

Grantor, Grantee, and Third Party Holder recognize and agree that natural conditions, landscapes, consistent uses, and technologies change over time, and unforeseen or changed circumstances could arise in which an amendment to certain terms or restrictions of this Easement would be appropriate and desirable. To this end, Grantor, Grantee, and Third Party Holder have the right to agree to amendments to this Easement in accordance with the provisions and limitations of this Section, the then-current policies of the Grantee, and applicable state and federal law. Any amendment: (a) shall be consistent with and not detrimental to the Purposes of this Easement; (b) shall not impair the conservation values of the Property protected by this Easement; (c) shall not 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; and, (d) shall not affect the perpetual duration of this Easement or the perpetual protection of its Purposes. Any request by Grantor for an amendment shall be in writing and shall describe the proposed amendment in sufficient detail to allow the Grantee and Third Party Holder to judge the consistency of the request and the proposed activity with the Purposes of this Easement. Nothing in this section shall require Grantee or Third Party Holder to consider or negotiate any proposed amendment. Any amendment shall be executed by the Grantor, Grantee, and Third Party Holder subject to review by the N.H. Attorney General's Office, Charitable Trusts Division as necessary, and shall be recorded in the Strafford County Registry of Deeds.

14. HOLD HARMLESS

The Grantor shall release, hold harmless, defend, and indemnify the Grantee, except as provided for in Section 8.J., from any and all liabilities including but not limited to injuries, losses, damages, judgments, costs, expenses and fees which the Grantee may suffer or incur as a result of, arising out of, or connected with: (A) the activities of the Grantor on the Property, other than those caused by the negligent acts or acts of misconduct by the Grantee; or (B) violation or alleged violation of, or other failure to comply with, any state, federal or local law, regulation or requirement by the Grantor in any way affecting, involving, or relating to the Property.

15. NO MERGER

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

16. GOVERNING LAW

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 especially

in the case of any ambiguity in the meaning or interpretation of any terms or provisions of this Easement.

17. 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 "Benefits and Burdens," above, accepts and records the additional easement.

18. SOVEREIGN IMMUNITY

Nothing herein shall be construed as a waiver of sovereign immunity by the State of New Hampshire, such immunity being hereby specifically reserved. If the interests held by the State of New Hampshire herein are assigned or transferred to a qualified party other than the State of New Hampshire or agency thereof, as allowed by Section 5 above, this provision "Sovereign Immunity" shall not apply to the assignee or transferee.

19. DEED RESTRICTION CONVEYED ON EXCLUSION AREA

For the benefit and in aid of the Easement granted hereby and running therewith, the Grantor hereby also grants to the Grantee the right to enforce the following Restriction with respect to the Exclusion Area, with said Exclusion Area bounded and described in Appendix B:

- A. Division, subdivision, or separate conveyance wholly within the boundaries of the Exclusion Area is prohibited.

Notwithstanding the above, nothing herein shall prevent the Grantor from subdividing or separately conveying said Exclusion Area from the Property.

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 (We) have hereunto set my (our) hand(s) this ____ day of

_____, 2021.

Zachary W. Pallas

Joanne V. Pallas

STATE OF NEW HAMPSHIRE
COUNTY OF STRAFFORD, ss.

On this ____ day of _____, 2021, before me personally appeared **Zachary W. Pallas** and **Joanne V. Pallas**, known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he/she executed the same as his/her free act and deed for the purposes therein contained.

Notary Public/Justice of the Peace
My commission expires:

ACCEPTED: SOUTHEAST LAND TRUST OF NEW HAMPSHIRE

By: _____

Title: Executive Director, Duly Authorized

Date: _____

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM, ss.

On this ____ day of _____, 2021, before me personally appeared **Brian Hart**, known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he/she executed the same as his/her free act and deed for the purposes therein contained.

Notary Public/Justice of the Peace
My commission expires:

THIRD PARTY HOLDER ACCEPTED: STATE OF NEW HAMPSHIRE

Robert R. Scott, Commissioner
New Hampshire Department of Environmental Services

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK, ss.

On this _____ day of _____, 20____, before me personally appeared **Robert R. Scott**, Commissioner of the New Hampshire Department of Environmental Services, known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he/she executed the same as his free act and deed for the purposes therein contained.

Notary Public/Justice of the Peace
My commission expires:

APPENDIX A

The "Property" subject to this Easement is that area of land, consisting of approximately thirty three and thirty seven one hundredths (33.37) acres, situated on Crowhill Road in the City of Rochester, County of Strafford, State of New Hampshire, shown on a Survey Plan entitled "Conservation Easement Plan for Southeast Land Trust of NH, Land of Zachary W. & Joanne V. Pallas, 118 Crowhill Road, Rochester, N.H. Tax Map 108, Lot 31" prepared by Berry Survey & Engineering, dated July 2, 2021, and recorded at the Strafford County Registry of Deeds as Plan , more particularly bounded and described as follows:

Beginning on the southerly sideline of Crowhill Road at a 1" iron pipe found at an exclusion area which is located a distance of two hundred twenty-seven and eighty-nine hundredths (227.89') feet from a ¾" rebar with Surveyor's ID cap set at the southwesterly corner of land now or formerly of the City of Rochester;

Thence running S36°25'41"E along said exclusion area for a distance of three hundred seventy and thirty-six hundredths (370.36') feet to a 1" iron pipe found;

Thence turning and running S88°37'34"E along said exclusion area for a distance of one hundred seventy-eight and ten hundredths (178.10') feet to a ½" rebar set with easement cap;

Thence turning and running N24°17'08"E along said exclusion area for a distance of two hundred seventy-eight and fifteen hundredths (278.15') feet to a ¾" rebar with Surveyor's ID cap set at land of the said City of Rochester;

Thence turning and running S51°08'17"E along land of the said City of Rochester for a distance of two hundred and no hundredths (200.00') feet to an iron bound found;

Thence continuing S51°08'17"E along land of the said City of Rochester for a distance of two hundred three and thirty-eight hundredths (203.38') feet to an iron bound found;

Thence running S51°09'42"E along land of the said City of Rochester for a distance of one hundred seventy-five and eighty-one hundredths (175.81') feet to an iron bound found;

Thence running S51°09'29"E along land of the said City of Rochester for a distance of one hundred forty-two and seventeen hundredths (142.17') feet to an iron bound found at land now or formerly of the Ralph W. Torr Revocable Trust of 2009;

Thence turning and running S50°31'14"W along land of the said Ralph W. Torr Revocable Trust of 2009 and generally along a row of trees with barbed wire for a distance of four hundred nine and seven hundredths (409.07') feet to an iron bound found;

Thence running S34°45'01"W along land of the said Ralph W. Torr Revocable Trust of 2009 and generally along a row of trees with barbed wire for a distance of four hundred eighty-two and ninety-two hundredths (482.92') feet to a 5/8" rebar found;

Thence running S42°35'57"W along land of the said Ralph W. Torr Revocable Trust of 2009 for a distance of ninety-eight and thirty hundredths (98.30') feet to a 5/8" rebar found;

Thence running S37°09'09"W along land of the said Ralph W. Torr Revocable Trust of 2009 and generally along a row of trees with barbed wire for a distance of four hundred seventy-nine and ninety-six hundredths (479.96') feet to a 5/8" rebar found at land now or formerly of Jeffrey and Catherine Taylor;

Thence turning and running N51°01'51"W along land of said Taylor for a distance of one thousand one hundred fourteen and thirty-seven hundredths (1,114.37') feet to a ¾" rebar with Surveyor's ID cap set at the southeasterly sideline of Crowhill Road;

Thence turning and running N38°45'30"E along the southeasterly sideline of the said Crowhill Road for a distance of eight hundred ninety-nine and fifty-two hundredths (899.52') feet to a 1" iron pipe found;

Thence running N39°57'15"E along the southeasterly sideline of the said Crowhill Road for a distance of two hundred seventy-four and ninety-one hundredths (274.91') feet to the point begun / at.

Having an easement area of 1,453,431 Square Feet, 33.37 Acres

MEANING AND INTENDING to describe a portion of the parcel referenced by the City of Rochester as Tax Map 108 Lot 31, that now representing a combination of parcels formerly known as Tax Map 108 Lot 31, Tax Map 108 Lot 32, and Tax Map 224 Lot 7 conveyed by Deed from Zachary W. Pallas and Joanne V. Pallas to themselves, recorded in the Strafford County Registry of Deeds in Book 4957 Page 909 on September 24th, 2021.

APPENDIX B

The Exclusion Area, subject to the Deed Restriction, consists of approximately three and twenty five one hundredths (3.25) acres located in the City of Rochester, County of Strafford, State of New Hampshire, and shown on a Survey Plan entitled "Conservation Easement Plan for Southeast Land Trust of NH, Land of Zachary W. & Joanne V. Pallas, 118 Crowhill Road, Rochester, N.H. Tax Map 108, Lot 31" prepared by Berry Survey & Engineering, dated July 2, 2021, and recorded at the Strafford County Registry of Deeds as Plan , and more particularly bounded and described as follows:

Beginning on the southerly sideline of the said Crowhill Road at a 1" iron pipe found at an exclusion area which is located a distance of two hundred twenty-seven and eighty-nine hundredths (227.89') feet from a ¾" rebar with Surveyor's ID cap to be set at the southwesterly corner of land now or formerly of the City of Rochester;

Thence running N34°55'26"E along the southerly sideline of the said Crowhill Road for a distance of two hundred twenty-seven and eighty-nine hundredths (227.89') feet to a ¾" rebar with Surveyor's ID cap set at land now or formerly of the City of Rochester;

Thence turning and running S51°38'10"E along land of the said City of Rochester for a distance of one hundred twenty and seventy-five hundredths (120.75') feet to an iron bound found;

Thence running S60°47'03"E along land of the said City of Rochester for a distance of three hundred twenty-nine and nine hundredths (329.09') feet to a ¾" rebar with Surveyor's ID cap set;

Thence turning and running S24°17'08"W along an easement area for a distance of two hundred seventy-eight and fifteen hundredths (278.15') feet to a ½" rebar with easement cap set;

Thence turning and running N88°37'34"W along said easement area for a distance of one hundred seventy-eight and ten hundredths (178.10') feet to an iron pipe found;

Thence turning and running N36°25'41"W along said easement area for a distance of three hundred seventy and thirty-six hundredths (370.36') feet to the point begun at.

Having an area of 141,687 Square Feet, 3.25 Acres

The within conveyance is a transfer to a New Hampshire municipality and is therefore exempt from the New Hampshire Real Estate Transfer Tax pursuant to RSA 78-B:2(1) and exempt from the LCHIP surcharge pursuant to RSA 478:17-g(II)a.

CONSERVATION EASEMENT DEED

The **CITY OF ROCHESTER**, a New Hampshire municipal corporation with a place of business and mailing address of 31 Wakefield Street, Rochester, New Hampshire 03867 (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),

with a **Third Party Right of Enforcement**, as further defined in Section 9 below, therein granted to the **STATE OF NEW HAMPSHIRE** acting through its **DEPARTMENT OF ENVIRONMENTAL SERVICES**, an administrative agency duly organized and existing under the laws of the State of New Hampshire, with a principal place of business at 29 Hazen Drive, City of Concord, County of Merrimack, State of New Hampshire, 03302, (sometimes referred to herein as the "**Third Party Holder**"),

the Conservation Easement (herein referred to as the "Easement") hereinafter described with respect to that certain parcel/area of land (herein referred to as the "Property") with any and all buildings, structures, and improvements thereon, consisting of approximately 37.84 acres,

situated on Crowhill Road in the City of Rochester, County of Strafford, State of New Hampshire, more particularly bounded and described in Appendix "A" attached hereto and made a part hereof and shown on a survey plan (the "Survey Plan") entitled "Boundary Survey Plan, Land of John J. Carpenter & Jan C. Maxfield, 104 Crowhill Road, Rochester, NH, Tax Map 108, Lot 29" prepared by Berry Survey & Engineering, dated January 25, 2021, and recorded at the Strafford County Registry of Deeds as Plan _____.

This Easement has been conveyed in part with a \$XX financial assistance award from the New Hampshire Drinking Water and Groundwater Trust Fund. Accordingly, the Grantee shall henceforth provide annual stewardship reports to NHDES meeting the requirements set forth in N.H. Administrative Rule Env-Dw 1002.26.

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 Third Party Holder.

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 protection of the quality and sustainable yield of ground water and surface water resources associated with the Property, as the Property lies within the watershed of the Salmon Falls River, a Source Water Protection Area for the City of Somersworth, and of the ecological integrity of said water resources; and
- B. The protection of the natural wildlife habitats on the Property including the wetland and upland habitats thereon including approximately XX (XX) acres of "Highest Ranked Habitat in the State", XX (XX) acres of "Highest Ranked Habitat in the Biological Region", and XX (XX) acres of "Supporting Landscape" as determined by the NH Fish & Game Department's 2020 Wildlife Action Plan; and the protection of any state or federally recognized rare, threatened, or endangered species; and
- C. The conservation and protection of open spaces, particularly the expansion of conservation lands surrounding the Property, including the approximately XX (XX) acre "XX" conservation easement held by the Grantee and the approximately XX (XX) acre "XX" property owned by the Grantee; and
- D. The scenic enjoyment of the general public as viewed from the undeveloped XX (XX) feet of water frontage along the Salmon Falls River; and
- E. The long-term protection of the Property's capacity to produce economically valuable forest lands including approximately XX (XX) acres of Group IA important forest soils as identified by the United States' Natural Resources Conservation Service.

The above Purposes are consistent with the clearly delineated open space conservation

goals as stated in the February 2009 Natural Resources Master Plan of the City of Rochester, which states:

“The overarching goals of the Natural Resources Chapter are to:

- Advocate for protection and conservation of natural resources; and
- Enhance the quality of life for the future; and
- Maintain the functions and services natural resources provide to benefit the public.”

And with specific priorities described by said 2009 Master Plan which include:

- Continue the practice of preserving forests and woodlands as criteria for prioritization of land conservation planning and acquisition of conservation lands; and
- Partner with regional land trusts and watershed groups to identify shared goals and priorities for natural resource protection and land conservation; and
- Protect large unfragmented blocks, wildlife corridors, natural communities, and rare, threatened and endangered species as part of land conservation and open space planning; and
- Develop partnerships with local and regional watershed and river stewardship groups to improve and protect the quality of surface waters, i.e. through land conservation, water quality monitoring, implementing best management practices, forest preservation, etc; and
- Develop partnerships with local and regional watershed and river stewardship groups to protect the scenic qualities of rivers and tributaries.

and with New Hampshire RSA Chapter 79-A 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.”

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

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. Further, no acts or uses shall occur on the Property that would degrade the water quality such that the standards for public drinking water by NHDES would be threatened or cause an unsustainable quantity of water to be withdrawn.

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. Forestry shall include all forestry and forest management activities performed for commercial or industrial purposes, including barter transactions, and non-commercial timber stand improvement activities, wildlife habitat improvement, or thinning the forest stand to maintain a view.

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.

- a. The following Agricultural riparian buffer zones shall apply for Agricultural activities and operations within and adjacent to wetlands, perennial streams and rivers, hereinafter referred to collectively as "water body or water bodies." Streams and rivers shall be identified as those shown on 7.5 minute United States Geologic Survey Quadrangle maps. Wetlands shall include any wetlands shown on National Wetland Inventory maps, documents/plans that include wetland delineations with said wetland delineations prepared by a licensed wetlands scientist or other qualified person per RSA 310-A:75, Town wetland inventory maps, NH GRANIT land cover maps, or other sources mutually agreed to by the Grantor and Grantee. A map entitled "Water Resources-Buffer Zones Map", included in the Baseline Documentation Report, designates the approximate locations of the water bodies and riparian buffer zones.

- (i) Agricultural riparian buffers zones shall include one hundred (100) feet from each side of a water body and shall be expanded as necessary to encompass all vegetative communities with slopes greater than 35%, or soils classified as

highly erodible that are adjacent to the water body.

- (ii) The distance of the riparian buffer shall be measured from the edge of the normal high water mark of the water body. In areas where there are wetlands contiguous to a stream or river the riparian buffer shall be measured from the upland edge of the wetland.
- (iii) There shall be no Agricultural activities, soil disturbance, planting, vegetation cutting and removal, or application of herbicides or pesticides within the water body and the first twenty-five (25) feet from the normal high water mark or water body edge as defined above. The Grantor may request permission from the Grantee to conduct any of the before stated activities for wildlife habitat improvement purposes, construction of wildlife viewing platforms and maintaining the view from said platforms, or to meet other specific natural resource or ecological goals (e.g., invasive species removal). For wildlife habitat improvements or improvements for natural resource or ecological goals, the Grantor must submit the request to the Grantee as part of the coordinated agricultural management plan or an amendment thereto. For the construction of wildlife viewing platforms, the Grantor shall submit the request to the Grantee as a written plan with scaled drawings indicating the location, size, materials, vegetation to be impacted by the platform and viewing zone, and access to the viewing platform. The Grantee shall first consult with NHDES and either approve, deny, or approve with conditions the request at their sole discretion.
- (iv) Within the remainder of the Agricultural riparian buffer zone, agricultural methods shall follow best management practices.
- (v) No new roads or agricultural ways shall be constructed within the Agricultural riparian buffer zones, except in circumstances where complying with this provision may result in a greater overall negative environmental impact or would preclude reasonable access to areas suitable to Agriculture. Existing roads, as identified by the Baseline Documentation Report, may be retained and maintained. Any roads or trails within a riparian buffer zone shall be designed and maintained to minimize degradation of water quality and aquatic habitat.

iii. Requirements for Forestry:

- a. 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), or similar successor publications; 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.

- b. The following Forestry riparian buffer zones shall apply for Forestry activities and other tree cutting and removal operations within and adjacent to wetlands, perennial streams and rivers, hereinafter referred to collectively as “water body or water bodies”. Streams and rivers shall be identified as those shown on 7.5 minute United States Geologic Survey Quadrangle maps. Wetlands shall include any wetlands shown on National Wetland Inventory maps, documents/plans that include wetland delineations with said wetland delineations prepared by a licensed wetlands scientist or other qualified person per RSA 310-A:75, Town wetland inventory maps, NH GRANIT land cover maps, or other sources mutually agreed to by the Grantor and Grantee. A map entitled “Water Resources-Buffer Zones Map”, included in the Baseline Documentation Report, designates the approximate locations of the water bodies and riparian buffer zones.
- (i) Forestry riparian buffers zones shall include one hundred (100) feet from each side of a water body and shall be expanded as necessary to encompass all vegetative communities with slopes greater than 35%, or soils classified as highly erodible that are adjacent to the water body.
- (ii) The distance of the riparian buffer shall be measured from the edge of the normal high water mark of the water body. In areas where there are wetlands contiguous to a stream or river the riparian buffer shall be measured from the upland edge of the wetland.
- (iii) There shall be no Forestry activities, soil disturbance, tree or vegetation cutting and removal, or application of herbicides or pesticides within the water body and the first twenty-five (25) feet from the normal high water mark or water body edge as defined above. The Grantor may request permission from the Grantee to conduct any of the before stated activities for wildlife habitat improvement purposes, construction of wildlife viewing platforms and maintaining the view from said platforms, or to meet other specific natural resource or ecological goals (e.g., invasive species removal). For wildlife habitat improvements or improvements for natural resource or ecological goals, the Grantor must submit the request to the Grantee as part of the Forest Management Plan or an amendment thereto. For the construction of wildlife viewing platforms, the Grantor shall submit the request to the Grantee as a written plan with scaled drawings indicating the location, size, materials, vegetation to be impacted by the platform and viewing zone, and access to the viewing platform. The Grantee shall first consult with NHDES and either approve, deny, or approve with conditions the request at their sole discretion.

- (iv) Within the remainder of the riparian buffer zone, tree harvest methods shall be limited to single tree or small group selection cuts, leaving a well-distributed, uneven-aged stand of trees.
- (v) No new roads or log landings shall be constructed within Forestry riparian buffer zones, except in circumstances where complying with this provision may result in a greater overall negative environmental impact or would preclude reasonable access to areas suitable to Forestry. Existing roads, as identified by the Baseline Documentation Report, may be retained and maintained. Skid trails and log landings shall be kept to the minimum, reasonably necessary for tree removal. Any roads, skid trails, and log landings within a riparian buffer zone shall be designed and maintained to minimize degradation of water quality and aquatic habitat.
- c. 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:
- maintenance of soil productivity;
 - protection of water quality, wetlands, vernal pools 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 or enhancement of native plant and animal species.
- d. Any 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.
- e. 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 licensed forester or other qualified person at least thirty (30) days prior to the date of harvest.
- f. Said Forest Management Plan shall include a statement of landowner objectives, and shall specifically address:
- the accomplishment of those Purposes for which this Easement is granted,
 - the goals in Section 2.A.iii.c. above, and
 - water bodies as defined herein, riparian buffer zones and their delineation

on a map(s) in the plan and how water bodies and vernal pools will be protected in association with forest management activities including but not limited to road construction and maintenance and implementation of stand prescriptions.

- g. At least thirty (30) days prior to any Forestry activities, 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.iii, a-f, above, has been prepared in compliance with the terms of this Easement. The Grantee may request the Grantor to submit the Forest Management Plan itself to the 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.
 - h. Forestry activities 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.
 - i. Prior to conducting Forestry activities, in those areas proposed for the forest activities, the riparian buffers shall be clearly marked by a licensed professional forester or other qualified person approved in advance and in writing by the Grantee.
- B. The Property shall not be subdivided, 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, noncommercial outdoor recreational, or noncommercial outdoor 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, boardwalks or sheds; and
 - b. Do not cause the total impervious surface coverage of the Property to exceed one percent (1%) of the Property's overall size, or 0.3784 acres; 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 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 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, 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, noncommercial outdoor recreational, or noncommercial outdoor 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.

- 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, noncommercial outdoor recreational, or noncommercial outdoor educational uses of the Property, and provided such structures are not detrimental to the Purposes of this Easement. No sign on the Property shall exceed 15 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 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 1% of the Property or 0.3784 acres;
 - 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 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 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. No substances then known to be environmentally hazardous waste if discarded or abandoned shall be disposed of, dumped, injected, burned, or buried on the Property, and no such substances shall be stored or applied on the property except in conjunction with any agriculture, forestry, conservation, habitat management, noncommercial outdoor recreational, or noncommercial outdoor educational uses that are allowed by this Easement. Further, no wastes generated off the Property shall be disposed of, stored, or discharged on the Property.
- 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 not operate or grant permission to operate motorized vehicles on the

Property, except as allowed in Section 3. "Reserved Rights" below.

- J. The Property shall in no way be used to satisfy the density, frontage, or setback requirements of any applicable zoning ordinance or land use regulation with respect to the development of any other property.

3. RESERVED RIGHTS

All acts and uses not prohibited in Section 2. "Use Limitations" are permissible provided that such acts and uses do not materially impair the Purposes of this Easement. The Grantor reserves to itself, its successors and assigns, all other customary rights and privileges of ownership, including but not limited to the provisions below.

- A. The Grantor reserves the right to operate motorized vehicles, and permit others to operate said vehicles, for the purposes of maintaining and managing the Property, including but not limited to emergency rescue operations, forestry, agriculture, habitat management, noncommercial outdoor recreation management, noncommercial outdoor education management, and to control or remove non-native or invasive species. This provision is an exception to Section 2.I., above.
- B. The Grantor reserves the right to withdraw groundwater on a sustainable yield basis and to remove said groundwater from the Property only for the purpose of providing a public water system, as defined by NH RSA 485:1-a, XV, as it may be amended from time to time. "Sustainable yield" shall mean that rate of annual water withdrawal that can be replenished from the aquifer on an annual basis, based on well recovery rates. Withdrawal or removal of groundwater for private commercial purposes not served by a public water system is expressly prohibited.
 - i. Test Wells: Prior to drilling test wells on the Property, the Grantor shall submit a Test Well Site Plan to the Grantee for review and approval. Said plan shall identify the proposed locations and access for the test wells and identify the steps to be taken to minimize damage to the Property and Purposes of this Easement. The Grantor shall include in the Test Well Site Plan a restoration plan that addresses the impacts associated with the test wells and associated improvements.
 - a. The Grantee shall limit its review of the Test Well Site Plan to the proposed access and restoration plan components and either approve, approve with conditions, or deny those components of the Test Well Site Plan within thirty (30) days of receipt of the request. The Grantee shall not unreasonably withhold such approval.
 - b. The Grantor is encouraged to communicate regularly and openly with the Grantee as it develops its Test Well Site Plan.
 - c. In the event that if after two (2) years from the date of installation of the test wells the Grantor has not submitted a Construction Proposal per Env-Dw 404.02, as

may be amended, to the State of New Hampshire, then the Grantor shall initiate the restoration plan and complete it within six (6) months. The Grantor may request extensions from the Grantee for implementing and completing the restoration plan which the Grantee may grant at its discretion.

- ii. Facilities and Improvements: For the purposes hereof, permitted activities in conjunction with a groundwater withdrawal development project shall consist of the installation, maintenance, monitoring, and replacement of test wells, long-term water production wells, monitoring wells, monitoring stations, pumping stations, and ancillary improvements such as but not limited to permeable-surface roads, signs, electric utilities necessary to power the pumps and related equipment, pipes, conduits, and security facilities, but only if they are required to be located on the Property. To the extent that said facilities and improvements must be located on the Property, those facilities and improvements shall, to the maximum extent possible, be located so as to minimize the impact to and disturbance of the Property and the Purposes of this Easement, and are subject to the prior written approval of the Grantee, as outlined below. Other major facilities including, but not limited to, storage tanks, shipping facilities, non-permeable pavement, and office and laboratory facilities for employees shall not be located within the Property.
- a. Prior to submitting a Construction Proposal per Env-Dw 404.02, as may be amended, for approval by the appropriate State of New Hampshire agency, the Grantor shall submit to the Grantee for approval the following information and plans (hereinafter, collectively referred to as "Site Plans") in appropriate format (e.g., documents, maps, plans, specifications, and designs) sufficient to identify the location and design of any proposed facilities or improvements on the Property, including but not limited to temporary or permanent well sites, pumping stations, and ancillary improvements such as but not limited to access ways/roads, signs, electric utilities, pipes, conduits, and security facilities and the provisions to minimize disturbance and impacts to the Property and Purposes of this Easement during and after installation and operation of the ground water withdrawal development project for the public water system.
 - b. The Grantee shall approve, approve with conditions, or deny the proposed Site Plans in writing within sixty (60) days of its receipt and base its decision on the impacts to the Property and the Purposes of this Easement. The Grantee shall not unreasonably withhold such approval.
 - c. The Construction Proposal submitted to the State of New Hampshire shall accurately reflect the Site Plans approved by the Grantee.
 - d. Upon completion of the ground water withdrawal development project, the Grantor shall submit an "as built" Site Plan to the Grantee.
 - e. Any proposal to expand, enlarge or relocate facilities and improvements related to groundwater withdrawal shall require the approval of the Grantee in accordance

with process and procedure in Section 2.C.ii. above. This provision does not apply to increases in water withdrawal rates or amounts or to maintenance or repair of said facilities and improvements.

- f. If the groundwater wells and associated facilities and improvements are no longer used and there is no feasible plan for their eventual reuse, the Grantor shall undertake the restoration of the site in consultation with the Grantee.
- iii. Compliance with Law: Activities taken by the Grantor in execution of the groundwater withdrawal right herein shall comply with all federal, state and local requirements, including but not limited to requirements associated with public water supply, water withdrawals, and groundwater discharges, and the Grantor shall obtain any associated and requisite approvals from said agencies and abide by the conditions of said approvals.
- iv. The Grantor shall provide to the Grantee a copy of any application for renewal, and any subsequent approval by the State, of the groundwater withdrawal permit.

This provision is an exception to Section 2, above.

- C. The Grantor shall have the right to clear, construct, relocate and maintain trails for pedestrian and non-motorized, low impact outdoor recreational activities within and across the Property.
 - i. All trails shall be consistent with and not detrimental to the Purposes of this Easement and shall conform to best practices recommended by the State of New Hampshire and Appalachian Mountain Club or similar trail-maintaining organization (For reference, see Appalachian Mountain Club, *The Complete Guide to Trail Building and Maintenance*, 2017, 5th edition; and State of New Hampshire, *Best Management Practices for Erosion Control During Trail Maintenance and Construction*, 2017, or similar successor publications).
 - ii. The Grantor shall bear the cost of constructing, maintaining and repairing said trails.
 - iii. Included in this Section 3.B is the right to install benches, trail signage, bridges, culverts and other improvements commonly associated with recreational trail usage.
 - iv. The Grantor shall notify the Grantee in writing at least thirty (30) days before constructing new trails or relocating existing trails.
- D. The Grantor reserves the right, subject to the following conditions and prior written approval of the Grantee, to:
 - i. construct, maintain, repair, and reconstruct one (1) parking area on the Property (referred to hereinafter as "Parking Area"); however, maintenance and repair shall not require Grantee approval; and
 - ii. to enlarge and to modify the Parking Area.

- iii. Said Parking Area shall meet the following conditions:
 - a. Said Parking Area shall be for the sole purpose of providing public access to the Property.
 - b. Said Parking Area shall include appropriate barriers or otherwise be constructed to prevent unauthorized vehicular access to the Property.
 - c. Said Parking Area shall not be artificially illuminated.
 - d. Said Parking Area shall be constructed of a permeable surface.
 - e. Said Parking Area shall be designed and constructed appropriate for the Property and its current and projected use, and shall minimize impacts on the Purposes of this Easement.
 - iv. To exercise the right to construct or reconstruct said Parking Area described in this Section 3.D, the Grantor shall provide written notice to the Grantee at least forty-five (45) days prior to undertaking the proposed activities. Said notice shall include specific details and plans, including but not limited to the proposed activity, location, purpose, and details and timing of the activity. Within thirty (30) days of receipt of the Grantee's written notice and after consideration of the impact of the proposed activity on the Purposes of this Easement, the Grantee shall approve, approve with conditions, or disapprove in writing the proposed activity. The Grantee shall not unreasonably withhold such approval. The Grantor shall secure such approval, as well as necessary local, state and federal permits, prior to commencing any work to construct, reconstruct, or enlarge said Parking Area.
- E. Commercial Outdoor Educational Activities. Subject to the following conditions, the Grantor or its designee(s) reserves the right to sponsor and conduct outdoor 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 outdoor 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 outdoor educational activities. The conduct of such commercial outdoor 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.
- F. Commercial Outdoor Recreational Activities. Subject to the following conditions, the Grantor or its designee(s) reserves the right to sponsor and conduct commercial outdoor 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 outdoor recreational events. Grantor or its designee(s) reserves the right to collect nominal fees for such sponsored commercial outdoor 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 outdoor recreational activities. The conduct of such commercial outdoor 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

- A. The Grantee 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 or boundary markings (e.g., blazes) to facilitate inspection of the Property and to identify the Property as conservation land protected by the Grantee, said signs or

boundary markings located along the Property's boundaries with each sign not exceeding thirty (30) square inches in size.

- ii. Signs along the Property's maintained public road frontage] 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 one (1) informational kiosk that is no more than 8 feet wide by 8 feet high within which the Grantee 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 for said kiosk.

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, "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 or mediation does not resolve the disagreement, 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.
- D. Notwithstanding the availability of mediation 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, “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, “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, “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, "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, "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.
- 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, "Breach of Easement...", against any third party responsible for any actions inconsistent with the provisions of this Easement.

9. THIRD PARTY RIGHT OF ENFORCEMENT

- A. If the Grantee ceases to enforce the Easement conveyed hereby or fails to enforce it within thirty (30) days after receipt of written notice from the Third Party Holder requesting such, then the notifying Third Party Holder shall have all the rights heretofore

granted to the Grantee to enforce this Easement and be entitled to recover the costs of such enforcement from the Grantor or Grantee or both.

- B. The interests held by NHDES are assignable or transferable 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. Any holder of an interest in this Easement desiring to transfer or assign its interest shall send written notice describing said intention to all other holders of any interest in this Easement at least thirty (30) days prior to such transfer or assignment taking effect.

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 and said proceeds shall be used in a manner consistent with the Conservation Purposes of this Conservation Easement. 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. The amount of the proceeds to which the Grantee shall be entitled shall be determined in accordance with Section 12.C. below and said proceeds shall be used in a manner consistent with the Conservation Purposes of this Conservation Easement.

- 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 by an appraisal prepared by a qualified appraiser as of the time of said extinguishment or condemnation. The balance of the amount recovered, after payment of any expenses, shall be divided between the Grantor and the Grantee in proportion to the fair market value, as determined by the appraisal, of their respective interests in that part of the Property extinguished or condemned.

The balance of the amount recovered under Section 12.A. or 12.B. above, after payment of any expenses, shall be divided between the Grantor and the Grantee in proportion to the fair market value, as determined by the appraisal, of their respective interests in that part of the Property extinguished or condemned. The Grantee and the Third Party Holder agree the portion of damages recovered that are attributed to the Easement shall be divided as follows: the Grantee's interest shall be sixty-seven percent (67%) and the Third Party Holder's interest shall be thirty-three percent (33%).

13. AMENDMENT

Grantor and Grantee recognize and agree that natural conditions, landscapes, consistent uses, and technologies change over time, and unforeseen or changed circumstances could arise in which an amendment to certain terms or restrictions of this Easement would be appropriate and desirable. To this end, Grantor and Grantee have the right to agree to amendments to this Easement in accordance with the provisions and limitations of this Section, the then-current policies of the Grantee, and applicable state and federal law. Any amendment: (a) shall be consistent with and not detrimental to the Purposes of this Easement; (b) shall not impair the conservation values of the Property protected by this Easement; (c) shall not 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; and, (d) shall not affect the perpetual duration of this Easement or the perpetual protection of its Purposes. Any request by Grantor for an amendment shall be in writing and shall describe the proposed amendment in sufficient detail to allow the Grantee to judge the consistency of the request and the proposed activity with the Purposes of this Easement. Nothing in this section shall require Grantee to consider or negotiate any proposed amendment. Any amendment shall be executed by the Grantor, Grantee, and Third Party Holder subject to review by the N.H. Attorney General's Office, Charitable Trusts Division as necessary, and shall be recorded in the Strafford County Registry of Deeds.

14. HOLD HARMLESS

The Grantor shall release, hold harmless, defend, and indemnify the Grantee, except as provided for in Section 8.J., from any and all liabilities including but not limited to injuries, losses, damages, judgments, costs, expenses and fees which the Grantee may suffer or incur as a result of, arising out of, or connected with: (A) the activities of the Grantor on the Property, other than those caused by the negligent acts or acts of misconduct by the Grantee; or (B) violation or alleged violation of, or other failure to comply with, any state, federal or local law, regulation or requirement by the Grantor in any way affecting, involving, or relating to the Property.

15. NO MERGER

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

16. GOVERNING LAW

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 especially in the case of any ambiguity in the meaning or interpretation of any terms or provisions of this Easement.

17. 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 "Benefits and Burdens," above, accepts and records the additional easement.

18. SOVEREIGN IMMUNITY

Nothing herein shall be construed as a waiver of sovereign immunity by the State of New Hampshire, such immunity being hereby specifically reserved. If the interests held by the State of New Hampshire herein are assigned or transferred to a qualified party other than the State of New Hampshire or agency thereof, as allowed by Section 5 above, this provision "Sovereign Immunity" shall not apply to the assignee or transferee.

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 _____ day of _____, 2021.

GRANTOR ACCEPTED:

By: _____
Blaine Cox

Title: City Manager, Duly Authorized

Date: _____

STATE OF NEW HAMPSHIRE
COUNTY OF STRAFFORD, ss.

On this _____ day of _____, 2021, before me personally appeared **Blaine Cox**, City Manager of the City of Rochester, 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.

Notary Public/Justice of the Peace
My commission expires:

ACCEPTED: SOUTHEAST LAND TRUST OF NEW HAMPSHIRE

By: _____

Title: Executive Director, Duly Authorized

Date: _____

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM, ss.

On this ____ day of _____, 2021, before me personally appeared **Brian Hart**, known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he/she executed the same as his/her free act and deed for the purposes therein contained.

Notary Public/Justice of the Peace
My commission expires:

THIRD PARTY HOLDER ACCEPTED: STATE OF NEW HAMPSHIRE

Robert R. Scott, Commissioner
New Hampshire Department of Environmental Services

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK, ss.

On this ____ day of _____, 2021, before me personally appeared **Robert R. Scott**, Commissioner of the New Hampshire Department of Environmental Services, known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he/she executed the same as his free act and deed for the purposes therein contained.

APPENDIX A

The "Property" subject to this Easement is that certain parcel/area of land, consisting of approximately 37.84 acres, situated on Crowhill Road in the City of Rochester, County of Strafford, State of New Hampshire, more particularly bounded and described in Appendix "A" attached hereto and made a part hereof and shown on a survey plan (the "Survey Plan") entitled "Boundary Survey Plan, Land of John J. Carpenter & Jan C. Maxfield, 104 Crowhill Road, Rochester, NH, Tax Map 108, Lot 29" prepared by Berry Survey & Engineering, dated January 25, 2021, and recorded at the Strafford County Registry of Deeds as Plan _____, more particularly bounded and described as follows:

Beginning at on the side of Road, at the corner of the Property, at land now or formerly of ;

Thence proceeding a distance of feet, more or less, along said land to at land now or formerly of ;

Thence proceeding xxx a distance of xxx feet, more or less, along said xxx land to a at land now or formerly of ;

Thence the following courses and distances along said xxxx land:

Thence xxx feet along the arc of a curve to the left/right having a radius of xxx feet to a ;

to (point), which is on a tie course of (bearing) xxx feet from (point)

EXCEPTING AND RESERVING THEREFROM

SUBJECT TO

TOGETHER WITH

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

Not homestead property of the Grantor.

Attachment B - Map

Salmon Falls River

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

Total Acres= 59.55
Eligible Acres= 59.55

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

8/11/2020

