



State of New Hampshire
 DEPARTMENT OF NATURAL & CULTURAL RESOURCES
 DIVISION OF PARKS & RECREATION
 BUREAU OF TRAILS

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January 07, 2025

Her Excellency, Governor Kelly A. Ayotte
 and the Honorable Council
 State House
 Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Department of Natural and Cultural Resources, Division of Parks and Recreation, Bureau of Trails to enter into **Retroactive** Trail Use Agreement with Barry J. Kelley (VC#151079), Berlin, New Hampshire in the amount of \$4,800 for continued snowmobile access across their land for a 3-year period, effective upon Governor and Executive Council approval for the period November 1, 2024 through June 30, 2027. **100% Other Funds**

Funds are available in the following account for Fiscal Year 2025, and are anticipated to be available in Fiscal Years 2026, and 2027, upon the continued appropriation of funds in the future operating budget with the authority to adjust encumbrances between fiscal years with the price limitation through the Budget Office, if needed and justified.

03-035-035-351510-35620000, Trails Acquisition

	<u>FY 2025</u>	<u>FY 2026</u>	<u>FY 2027</u>
022-500248 – Rents-Leases Other than State	\$1,600	\$1,600	\$1,600
			Total \$4,800

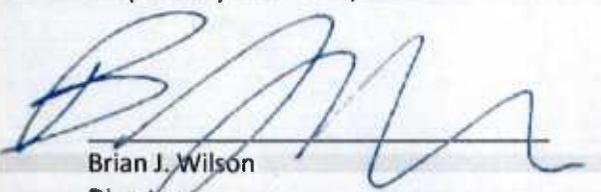
EXPLANATION

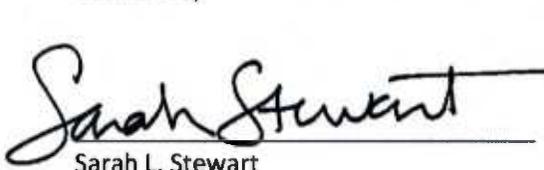
This agreement is **Retroactive** because ongoing communications with the landowner regarding appropriate supporting documentation took longer than anticipated. The Bureau of Trails (Bureau) has worked with the Barry J. Kelley for several years to secure continued access for snowmobile use over and across their land in the Dummer and West Milan, NH. During the negotiation period, trail access was permitted to the public.

The Attorney General's Office has reviewed and approved this agreement as to form, substance, and execution.

Respectfully submitted,

Concurred,


 Brian J. Wilson
 Director


 Sarah L. Stewart
 Commissioner



Department of Natural and Cultural Resources
Division of Parks and Recreation
Bureau of Trails

TRAIL USE AGREEMENT

THIS AGREEMENT made as of the 13th day of June, 2024 pursuant to authority contained under New Hampshire RSA 215-A (Supp.) and by and between Barry J. Kelley, 220 Church Street, Berlin, New Hampshire, 03570, its successors and assigns, (hereinafter "Lessor") and the State of New Hampshire, by its Commissioner, Department of Natural and Cultural Resources, through the Supervisor of the Trails Bureau (hereinafter "Lessee").

1. Term:

The term of this Agreement will be for three (3) years and shall commence on the date of approval of the Governor and Executive Council.

2. Description of Property:

In consideration of the rental and covenants herein contained, the Lessor hereby leases and rents to the Lessee the right to construct and maintain a public trail for use of Snowmobiles over and across property of the Lessor described as follows:

Lot #284 in Dummer, New Hampshire. (5 miles of trails) and all lands owned by the Lessor in the Town of West Milan, New Hampshire on Primary Trail 109.

3. Payment:

The Lessee shall pay a fee of \$4800.00 for the public use of the trail. A payment shall be made in three (3) annual installments of \$1600.00 (for each of 2024-2025, 2025-2026, 2026-2027) on or before November 1 of each year.

Notwithstanding anything to the contrary contained herein, it is understood and agreed that all payments of all sums by the Lessee hereunder are contingent upon availability and continued appropriation of state funds, and if for any reason whatsoever, such funds shall be terminated or reduced or otherwise become unavailable, the Lessee may terminate this lease in whole or in part immediately. However, upon lease termination under this provision, the Lessee will be obligated to close the Trail to public access immediately, and complete close-out of the Trail in a timely manner, to leave the Trail in a secure and stable condition consistent with Best Management Practices.

4. Lessor's Obligations:

4.1 The Lessor hereby permits the Lessee to cut and remove trees, brush and other obstacles from the trail to a width of 12 feet after consultation with Lessor's agent. All hazardous trees, brush leaning into the trail may be cut. The Lessee agrees to pay standard compensation for clearing.

4.2 The Lessor hereby permits the Lessee to install gates and construct passways through fences and stone walls. The Lessee agrees to construct gates and replace fences and not to open said gates and fences before November 1st of each year and shall replace all fences and close all gates on or before April 30 following.

4.3 The Lessor agrees to allow the Lessee to cut and remove standing trees for bridge construction where needed. The Lessee to pay for said timber at the current rates per standard board feet.

4.4 The Lessor agrees not to obstruct this trail between November 1 and April 30 of each year. Minor relocations may be made by mutual agreement, and a reasonable effort will be made to accommodate the Lessor in this regard.

5. Lessee's Obligations:

5.1 The Lessee shall maintain the trail in good and usable condition and shall be responsible for placing and maintaining necessary signs.

5.2 The Lessee agrees regularly to patrol the entire trail during the term of this Lease, and to pick up and dispose of all trash and debris resulting from the use of the trail.

6. Termination

6.1 In the event that the Lessee shall fail to perform any of its obligations hereunder in a timely or satisfactory manner, the Lessor may serve upon the Lessee written notice specifying the nature of the default or breach. If upon the expiration of fifteen (15) days from giving of such notice, the default shall not have been remedied, the Lessor may terminate the lease in whole or in part upon two (2) days' notice of such termination, and upon the expiration of such two (2) days, the lease shall terminate.

6.2 If at any time during the term of this Lease, the Lessor or Lessee chooses to terminate the Lease, then that party shall notify the other party of said termination in writing at least 90-days prior to the effective date of termination.

6.3 Upon termination of this Lease for any reason, Lessee agrees to return the Property in a secure and stable condition consistent with Best Management Practices.

6.4 Upon termination of this Lease Agreement for any reason, Lessor shall provide written acknowledgment that the Property has been properly returned to Lessor in a secure and stable condition

consistent with Best Management Practices and in accordance with the Agreement.

7. Liability Provisions: Sovereign Immunity:

7.1 It is expressly understood that the parties intend this conveyance to be subject to the limitations of liability provisions set forth in New Hampshire RSA 212:34 (Supp.), RSA 215-A:34, and RSA 508:14.

7.2 Lessee shall have no liability for any claims, damages, demands, judgments, fines liabilities, losses and other expenses, including attorneys' fees arising out of or relating to this Agreement directly or indirectly arising from death, personal injury, property damage or other claims arising after the completion of closing out the property in accordance with provisions 6.3 and 6.4.

8. Indemnification

8.1 The Contractor shall indemnify, defend, and hold harmless the State, its officers, and employees from and against all actions, claims, damages, demands, judgments, fines, liabilities, losses, and other expenses, including, without limitation, reasonable attorneys' fees, arising out of or relating to this Agreement directly or indirectly arising from death, personal injury, property damage, or other claims asserted against the State, its officers, or employees caused by the acts or omissions of negligence, reckless or willful misconduct, or fraud by the Contractor, its employees, agents, or subcontractors. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph.

8.2 Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State. This covenant shall survive the termination of this agreement.

9. Choice of Law and Forum

9.1 This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of New Hampshire except where the Federal supremacy clause requires otherwise. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

9.2 Any actions arising out of this Agreement, including the breach or alleged breach thereof, may not be submitted to binding arbitration, but must, instead, be brought and maintained in the Merrimack County Superior Court of New Hampshire which shall have exclusive jurisdiction thereof.

10. Assignments and Sublease

The Lessor agrees not to assign, sublet or otherwise transfer any interest in this lease without the written consent of the Lessee.

11. Amendment:

This lease may be modified, waived or discharged only by a written instrument signed by the parties hereto.

12. Special Provisions:

The State of New Hampshire shall provide the Lessor with a certificate of \$2,000,000.00 liability insurance coverage annually by November 1 of each year.

IN WITNESS WHEREOF, the parties hereto have caused the Agreement to be executed on the date and year above written.

LESSOR

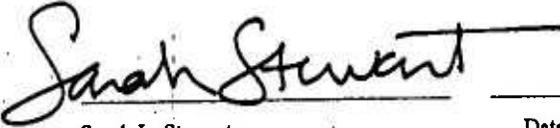

Duly Authorized
Barry Kelley (signature)

Date

6-13-2024

LESSEE

State of New Hampshire
Department of Natural and Cultural Resources


Sarah L. Stewart
Commissioner (signature)

Date

1/10/2025


Sr. Asst. Attorney General

Date

1/15/25

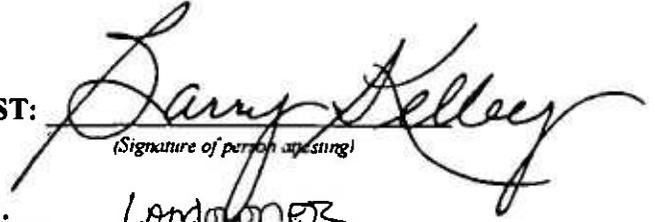
Sole Proprietor Certification of Authority

I, BARRY KELLEY, hereby certify that I am the Sole Proprietor
(Name of person attesting)
of _____ which is a tradename registered with the Secretary of State
(Name of Business)
under RSA 349. I certify that I am the sole owner of my business and tradename.

I further certify that it is understood that the State of New Hampshire will rely on this certificate as evidence the person listed above currently occupies the position indicated and they have full authority to bind the business. This authority shall remain valid for thirty (30) days from the date of this Certificate of Authority.

DATED: 6-13-2024

ATTEST:


(Signature of person attesting)

TITLE:

LANDOWNER
(Title of person attesting)