

THIS IS A NON-CONTRACTUAL
CONVEYANCE AND IS EXEMPT FROM NEW
HAMPSHIRE REAL ESTATE TRANSFER TAX
PURSUANT TO RSA 78-B:2, I

CONSERVATION EASEMENT DEED
AND RIGHT OF WAY

CDC-New Hampshire, LLC, a Delaware limited liability company with a principal mailing address of 431 Office Park Drive, City of Birmingham, County of Jefferson, State of Alabama, 35223 (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 QUITCLAIM covenants, grants in perpetuity to

The TOWN OF DURHAM a duly authorized municipal corporation acting by and through its Conservation Commission, and with the approval of the Durham Town Council, as a governmental body eligible to hold a "conservation easement" within the meaning of NH RSA 477:45-47, with its principal place of business at 15 Newmarket Road, Town of Durham, County of Strafford, State of New Hampshire, 03824, (hereinafter referred to as the "Grantee", which shall, unless the context clearly indicates otherwise, include the Grantee's successors and assigns),

a CONSERVATION EASEMENT (herein referred to as the "Easement") subject to the terms and conditions contained in this instrument with respect to that certain area of land (herein referred to as the "Property") being unimproved forestland and wetland consisting of approximately 22.25 acres, situated on Technology Drive in the Towns of Durham and Lee, County of Strafford, State of New Hampshire, as shown on a plan entitled Proposed Easement Plan for CDC New Hampshire, LLC (Durham Tax Map 9, Lot 10-3), (Lee Tax Map 6, Lot 8-8), Technology Drive, Durham & Lee, New Hampshire, by Doucet Survey, Inc., dated May 24, 2011 and revised June 13, 2012, to be recorded herewith at the Strafford County Registry of Deeds, (hereafter "Plan"), and more particularly bounded and described in Appendix "A" attached hereto and made a part hereof;

and a perpetual non-exclusive easement for the purposes of providing vehicular and pedestrian ingress and egress from Technology Drive to the Property over and across other land of CDC New Hampshire, LLC not subject to the Easement shown on said Plan including, but not limited to the now and hereafter existing paved roads, driveways and parking lots of the real

property owned by the Grantor. . Said ingress and egress shall be limited only to use by official agents of the Grantee in fulfillment of its stewardship rights and obligations as described in Sect. 6.A. below and not for public access,

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

- 740 feet of undeveloped, scenic frontage along Technology Drive and 2,650 feet along the Oyster River;
- approximately 7.5 acres of diverse wetlands, including vernal pools, shallow wooded seep and emergent floodplain marsh and approximately 14.75 acres of floodplain and upland forest consisting of mixed hardwood and softwood forests;
- American Brook Lamprey (*Lampetra appendix*), a New Hampshire State listed endangered species, the Bridled Shiner (*Notropis bifrenatus*), a State listed threatened species, and the Banded Sunfish (*Enneacanthus obesus*), a State listed species of concern, have been found within the stretch of the Oyster River that the Property fronts, according to records at New Hampshire Natural Heritage Bureau;
- habitats recognized by the N.H. Fish and Game Department's Wildlife Action Plan, revised as of 2010 has categorized approximately 50 % of the Property as "Tier 1," containing the "highest ranking habitats by ecological condition in the state," and 37 % as "supporting landscapes...that are important to the highest ranking habitat because of their interactions with those habitats;"
- the enhancement and enlargement of 159 acres of pre-existing, unrelated protected land nearby the Property, including the 14 acre Ellis conservation easement, 71 acres Ford conservation easement, and the 74 acre Demeritt Hill Farm conservation easement;
- 9.9 acres of soils in highest suitability category (Group I) for forest products, as determined by the U.S. Natural Resources Conservation Service;
- the Source Water Protection Area for the UNH/Town of Durham public water supply, a portion of which is found within the entire Property, in addition to which 9.5 acres of the entire Property overlay an identified stratified-drift aquifer; and
- the Oyster River Coastal Conservation Focus Area, a portion of which lies within the entire Property, as determined by Land Conservation Plan for New Hampshire's Coastal Watersheds dated 2006.

The Conservation Easement is a condition of approval by the Town of Durham Planning Board decision dated April 27, 2011 to permit the high-density student housing development on the remainder of the parcel.

1. PURPOSES

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

- A. The assurance that the Property will be retained forever in its predominantly undeveloped

wetland and forested condition;

- B. The protection of the biological integrity of the natural habitats, biological communities and ecosystems of the Property;
- C. The conservation of open spaces, particularly the conservation of the forest land of which the Property consists;
- D. The protection of the quality of ground water and surface water resources on and under the Property;
- E. The scenic enjoyment of the general public; and
- F. The enhancement and enlargement of 159 acres of pre-existing, unrelated protected land that is nearby the Property.

The above Purposes are consistent with the clearly delineated open space conservation goals and/or objectives as stated in the 2000 Master Plan of the Town of Durham, which states:

“The Town has an obligation to protect water quality, including freshwater resources used for public drinking water and as habitat for aquatic and shoreland wildlife;”

and

“Shoreland along the Oyster River, along the Lamprey River, around Great and Little Bays, as well as along other freshwater rivers and streams is a major public resource that is important to the citizens and must be protected;”

and which recommends:

“Expand and strengthen the Durham greenway system through acquisition of conservation easements on important lands either through donation, purchase, or partnership with public and private conservation groups.”

and are also consistent with New Hampshire RSA Chapter 79-A:1 “Declaration of Public Interest,” which states:

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

and are also consistent with the aforesaid Wildlife Action Plan, approved by the U.S. Fish and Wildlife Service in 2006, whose “Strategy 700, Land Protection” states: “Highly threatened and essential habitat resources should be priorities, such as riparian/shoreland habitat, larger unfragmented blocks, and wildlife corridors that connect significant habitat,” and whose “701 Objective” reads, “Protect riparian/shoreland habitat and other wildlife corridors.”

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

2. USE LIMITATIONS

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, commercial, forestry, agricultural and/or residential activities.
- B. Native trees, shrubs, or other plants shall not be harvested, cut, or removed from the existing woodlands except (i) as permitted in Section 3, and (ii) Grantor may remove dead, diseased or damaged trees or those that may have otherwise been harmed as a consequence of natural events as may be reasonable and necessary in order to remove a hazard or prevent the spread of disease or insects.
- C. The Property shall not be subdivided, and none of the tracts which together may comprise the Property shall be conveyed separately from one another.
- D. No temporary or permanent structures or improvements shall be constructed, placed, or introduced onto the Property, including but not limited to dwelling, motor home, camper, residence, cabin, residential driveway, any portion of a septic system, shed, tennis court, swimming pool, athletic field, golf course, storage trailer, dock, tent, tent platform, road, trail, dam, bridge, tower or aircraft landing area, except as necessary to bar and/or prohibit access as described in Paragraph 3A.
- E. No removal, filling, or other disturbances of soil surface, nor any changes in topography, surface or subsurface water systems, wetlands, or natural habitats.
- F. No outdoor advertising structures such as signs and billboards shall be displayed on the Property except as desirable or necessary in the accomplishment of the conservation uses of the Property, or as necessary for public safety, and provided such structures are not detrimental to the Purposes of this Easement. No sign on the Property shall exceed sixteen (16) square feet in size, and no sign shall be artificially illuminated.
- G. There shall be no mining, quarrying, excavation, or removal of rocks, minerals, gravel, sand, topsoil, water, or other similar materials from or on the Property, except in connection with any improvements made pursuant to and consistent with the provisions of Section 2.D. above. No such rocks, minerals, gravel, sand, topsoil, or other similar materials shall be removed from the Property.
- H. There shall be no application, dumping, disposal, injection, burning, or burial on the Property of man-made materials or materials then known to be environmentally hazardous.
- I. The property shall not be used to satisfy the density, open space, frontage, setback, or other requirements of any applicable zoning ordinance, subdivision regulation, or other land use regulation of any governmental unit with respect to the development of any other property.

- J. The Grantor shall mark and maintain the boundaries of the Property as necessary to facilitate inspection and readily identify the Property boundaries. Such marking may include, but not be limited to, painting, small signs or other permanent or semi-permanent monuments.
- K. The Grantor shall not promote the use of the Easement for outdoor recreational activities, motorized or otherwise, and shall not grant permission for trapping, camping, horseback riding, and all types of motorized and/or mechanized recreation such as snowmobiling, all-terrain vehicle use and bike riding, including but not limited to cross-country bikes.
- L. 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.

3. RESERVED RIGHTS OF GRANTOR

All acts and uses not prohibited in Section 2 are permissible provided that such acts and uses do not materially impair the Purposes of this Easement or other significant conservation interests. 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 shall have the right to install gates, barriers, signs, and sight-pervious fences and post all or portions of the Property boundary as necessary to control or exclude access to the Property if the said access will or has degraded the conservation attributes of the Property, is inconsistent with the Purposes of this Easement, or threatens public safety, except that such fences, gates, and signs should be so constructed and installed, where practicable, as to minimize their impact on conservation attributes of the Property and on the dispersal of native wildlife across the property. The Grantor shall provide at least 14 days written notice to the Grantee prior to the installation of any such fences or signs.
- B. Grantor reserves the right, but not the obligation, to prevent the spread or to remove invasive species, and manage the woodlands as may be necessary to replicate or mimic natural processes that maintain the natural communities protected by this Easement and the rare species associated with them. Any vegetative management shall be performed in accordance with a written, coordinated management plan prepared by a licensed professional or qualified person approved in advance and in writing by the Grantee. Said management activities shall be performed in accordance with the then-current scientifically based practices recommended by the University of New Hampshire's Cooperative Extension, by the U.S. Department of Agriculture's Natural Resources Conservation Service, or by other governmental natural resource conservation and management agencies then active. Said management plan shall be approved by the Grantee in advance of any management activities as described below. Notwithstanding paragraph II. H., the use of chemical herbicides and pesticides may be used, provided that it is not detrimental to the drinking water supply, surface and sub-surface water systems. Such vegetative management shall not be detrimental to the Purposes of this Easement.

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

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

5. **BENEFITS & BURDENS**

- A. The burden of the Easement conveyed hereby shall run with the Property and shall be enforceable against all future owners of the Property 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: (i) has among its purposes the conservation and preservation of land and water areas; (ii) agrees to and is capable of protecting the conservation purposes of this Easement; and (iii) 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. To facilitate such inspection and to identify the Property as conservation land protected by the Grantee, the Grantee shall have the right to place signs, each sign shall not exceed twenty-four (24) square inches in size, along the Property's boundaries.
- C. The Grantee, or its designee, shall have the right to install gates, barriers, signs, and sight-pervious fences and post all or a portion of the Property boundary as necessary to control or exclude access to the Property if the Grantee finds said access has substantially degraded the conservation attributes of the Property, or threatens public safety, except that such fences, gates, and signs should be so constructed and installed, where practicable, as to minimize their impact on conservation attributes of the Property and on the dispersal of native wildlife across the property. The costs associated with installation, materials, and maintenance shall be borne by the Grantee. The Grantee shall provide at least 14 days written notice to the Grantor prior to the installation of any such fences or signs.

7. **RESOLUTION OF DISAGREEMENTS**

- A. The Grantor and the Grantee desire that issues arising from time to time concerning the interpretation of the provisions of the Easement, or any use or activity on the Property, shall 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 proposed or actual use, activity, or failure to take action (which together for the purposes of this Section, "Resolution of Disagreements," shall be referred to as the "Activity") complies with the provisions of this Easement, wherever reasonably possible the concerned party shall notify the other party of the perceived or potential problem, and the parties shall explore the possibility of reaching an agreeable resolution by informal dialogue.
- B. If informal dialogue does not resolve a disagreement regarding the Activity, and if the Grantor agrees not to proceed or continue with the Activity pending resolution of the disagreement concerning the Activity, either party may refer the disagreement to mediation by written notice to the other. Within twenty (20) days of the delivery of such a notice, the parties shall agree on a single impartial mediator. Mediation shall be conducted in Durham, New Hampshire, or such other location as the parties shall agree. Each party shall pay its own legal fees and other associated costs, and the costs of mediation shall be split equally between the parties.
- C. If the parties cannot agree upon the selection of a mediator, if all parties agree to bypass mediation, if any party refuses to participate in or continue with mediation, or if the parties are unable to resolve the disagreement, then either party may refer the dispute to binding arbitration by request made in writing and in accordance with New Hampshire RSA 542 as may be amended from time to time. The Grantor and the Grantee shall each choose an arbitrator within twenty (20) days of the delivery of such a request. The arbitrators so chosen shall in turn choose a third arbitrator within twenty (20) days of the selection of the second arbitrator. The arbitrators so chosen shall forthwith set as early a hearing date as is practicable, which they may postpone only for good cause shown. The arbitration hearing shall be conducted in Durham, New Hampshire, or such other location as the parties shall agree. A decision by two of the three arbitrators, made as soon as practicable after submission of the matter, shall be binding upon the parties and shall be enforceable as part of this Easement. Each party shall pay its own legal fees and other associated costs, and the costs of arbitration shall be split equally between the parties.
- D. If the parties do not agree to resolve the dispute by arbitration, or if the parties are unable to agree on the selection of an arbitrator, then either party may bring an action at law or in equity in any court of competent jurisdiction to enforce the terms of the Easement, to enjoin the violation by permanent injunction, and to require the restoration of the Property to its condition prior to the breach and for such damages as appropriate.
- E. Notwithstanding the availability of mediation and arbitration to address disagreements concerning the compliance of any Activity with the provisions of this Easement, if the Grantee believes that some use, activity, or failure to take action of the Grantor or of a third party is causing irreparable harm or damage to the Property, or creates an imminent threat of same, the 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 or threat of same; enforce the terms of this Easement; enjoin any violation by permanent injunction; and require the restoration of the Property to its condition prior to any breach.

8. **BREACH OF EASEMENT – GRANTEE’S REMEDIES**

- A. If the Grantee determines that a violation or breach of this Easement has occurred (which together shall hereinafter be referred to as “breach”), the Grantee shall notify the Grantor in writing of such breach and demand corrective action to cure the breach and, where the breach involves damage, disturbance, or harm (hereinafter referred to as “damage”) to the Property, to restore the portion of the Property so damaged to its prior condition.
- 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, in the Grantor’s name, that are reasonably necessary to repair any damage or to cure such breach, including an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such damage.
- D. If the Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to any conservation attribute 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 the breach or for damage to any conservation attributes protected hereby, including, but not limited to, damages for the loss of scenic, aesthetic, or environmental attributes of the Property. Without limiting the Grantor’s liability therefor, the Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.
- F. The Grantee’s rights under this Section, “Breach of Easement...,” are in addition to the provisions of the 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 conservation attributes protected by this Easement are in immediate danger of irreparable damage, 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 an enforcement action, each party shall bear its own costs. Notwithstanding the foregoing, if the Grantee initiates litigation against the Grantor to enforce this Easement, and if the court determines that the litigation was initiated without reasonable cause or in bad faith, then the court may require the Grantee to reimburse the Grantor's reasonable costs and reasonable attorney's fees in defending the action.
- I. Forbearance by the Grantee to exercise its rights under this Easement in the event of any breach of any term hereof by the Grantor shall not be deemed or construed to be a waiver by the Grantee of: such term or any subsequent breach of the same; any other term of this Easement; or any of the Grantee's rights hereunder. No delay or omission by the Grantee in the exercise of any right or remedy upon any breach by the Grantor shall impair such right or remedy or be construed as a waiver. The Grantor hereby waives any defense of laches or estoppel.
- J. Nothing contained in this Easement shall be construed to entitle the Grantee to bring any action against the Grantor for any damage to, or change in, the Property, or to any person, resulting from causes beyond the Grantor's control, including, but not limited to, unauthorized actions by third parties, natural disasters such as fire, flood, storm, disease, infestation and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant damage to the Property or to any person resulting from such causes. The Grantee and the Grantor reserve the right, separately or collectively, to pursue all legal and/or equitable remedies, as set forth in this Section, "Breach of Easement...", against any third party responsible for any actions inconsistent with the provisions of this Easement, and, further, prior to either party taking any such separate action, the Grantee and Grantor shall first discuss with one another opportunities for taking collective action. However, this paragraph shall not be construed to relieve the Grantor of the obligation of any breach or damage by a tenant, guest of a tenant, employee, contractor or other designee of the Grantor and Grantee shall have the right to enforce against the Grantor for any such breach or damage. Further, this paragraph shall not apply to a Grantor who may reasonably be expected to have knowledge of an impending, or on-going, violation of the terms of this Easement by a trespasser or third party, and who fails to take reasonable and prudent steps to prevent or stop such violation.

9. **PROHIBITION**

Notwithstanding the foregoing, the Grantor and the Grantee shall have no right or power to

agree to any activities that would result in the termination of this Easement or to allow any residential, commercial or industrial structures, or any commercial or industrial activities, not provided for hereinabove.

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, or by prepaid overnight delivery service providing a signed receipt for delivery, to the appropriate address set forth above or at such other address as the Grantor or the Grantee may hereafter designate by notice given in accordance herewith. Notice shall be deemed to have been given when so delivered or so mailed.

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. **HOLD HARMLESS**

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

13. **ENVIRONMENTAL RESPONSIBILITIES**

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

14. **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 14.C. below. In making this grant of Easement, Grantor has considered and acknowledges the possibility that uses prohibited by the terms of this Easement may become more economically viable than the uses specifically reserved by Grantor pursuant to this Easement. It is the intent of both Grantor and Grantee that any such change in economic conditions shall not be deemed to be circumstances justifying the termination or extinguishment of this Easement pursuant to this Section.

- B. **Condemnation.** If all or any part of the Property is taken, in whole or in part, by exercise of the power of eminent domain or is acquired by purchase in lieu of condemnation, whether by public, corporate or other authority, so as to terminate this Easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of their interests in the Property subject to the taking or in lieu purchase and to recover all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered. The amount of the proceeds to which the Grantee shall be entitled, after payment of any expenses, shall be determined in accordance with Section 14.C. below.
- C. **Valuation.** This Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of Sections 14.A and 14.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 in such extinguishment or condemnation, 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.
- D. **Application of Proceeds.** Grantee shall use any proceeds received under the circumstances described in this Section 14 in a manner consistent with the conservation Purposes of this Easement.

15. **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: (i) the conservation purposes of this Easement are not diminished thereby; (ii) a public agency or qualified organization described in the Section "Benefits & Burdens," above, accepts and records the additional easement; and (iii) Grantor has given advance written notice, including copy of proposed additional easement, to Grantee at least sixty (60) days prior to execution.

16. **AMENDMENT**

If, owing to unforeseen or changed circumstances, Grantor and Grantee agree that an amendment to, or modification of, this Easement would be appropriate and desirable, Grantor and Grantee may jointly amend this Easement pursuant to: (i) the provisions and limitations of this section; (ii) the amendment practices recommended by the Land Trust Alliance described in their publication "Amending Conservation Easements: Evolving Practices and Legal Principles" or the then-current Land Trust Alliance publication(s); (iii) the procedures and recommendations provided by the State of New Hampshire, Office of the Attorney General, or any successor agency responsible for State charitable trust requirements; and (iv) applicable state and federal law. Any amendment shall be consistent with the Purposes of this Easement, and shall not impair the conservation attributes of the Property protected by this Easement. No amendment shall affect the qualification of this Easement or the status of the Easement Holder under any applicable laws, including Sections 170(h) of the Internal Revenue Code of 1986, as amended, and NH RSA 477:45-47 as may be amended from time to time, nor shall any amendment affect the perpetual duration of this Easement. Any amendment shall be executed by the Grantor and the Grantee and shall be recorded in the Strafford County Registry of Deeds. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

17. **ENTIRE AGREEMENT**

This instrument sets forth the entire agreement of the parties with respect to this Easement and supersedes all prior discussions, negotiations, understandings, and agreements relating to this Easement, all of which are merged herein.

18. **GOVERNING LAW & INTERPRETATION**

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

19. **MERGER**

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

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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, the parties have executed this instrument through their duly authorized representatives this 26th day of November, 2012.

CDC-New Hampshire, LLC
By: Capstone Development Corp., as its Manager

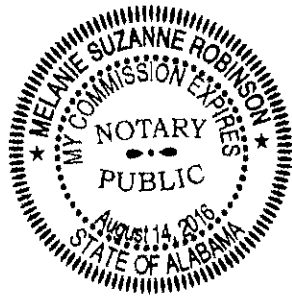
By: [Signature]
Name: JOHN E. VAWTER
As Its: EVP

STATE/Commonwealth of Alabama
COUNTY OF Jefferson

This instrument was acknowledged before me on this 26th day of November, 2012 by John E Vawter, the EVP of Capstone Development Corp., acting in its capacity as Manager of CDC – New Hampshire, LLC. The identity of the subscribing party was determined by (check box that applies and complete blank line, if any):

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

Melanie Suzanne Robinson
Notary Public/Justice of the Peace
My Commission Expires: August 14, 2016



ACCEPTED: TOWN OF DURHAM

By: [Signature]

Todd I. Selig, Administrator
Duly Authorized

Date: 12/13/12

By: [Signature]

John Parry
Chair, Durham Conservation Commission

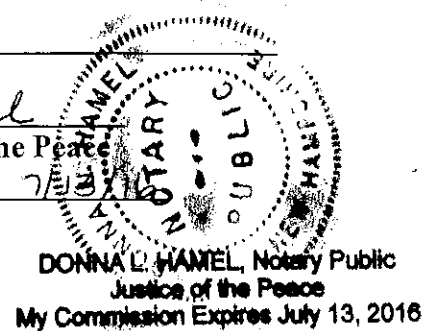
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STATE/Commonwealth of New Hampshire
COUNTY OF Strafford

This instrument was acknowledged before me on this 13th day of December, 2012 by Todd I. Selig, Town Administrator on behalf of the Town of Durham Board of Selectmen. The identity of the subscribing party was determined by (check box that applies and complete blank line, if any):

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

Donna L. Hamel
Notary Public/Justice of the Peace
My Commission Expires: 7/13/16



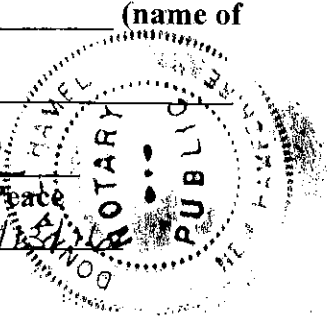
STATE/Commonwealth of New Hampshire
COUNTY OF Strafford

This instrument was acknowledged before me on this 13th day of December, 2012 by John Parry, Chair on behalf of the Town of Durham Conservation Commission.

The identity of the subscribing party was determined by (check box that applies and complete blank line, if any):

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

Donna L. Hamel
Notary Public/Justice of the Peace
My Commission Expires: 7/13/16



DONNA L. HAMEL, Notary Public
Justice of the Peace
My Commission Expires July 13, 2016

APPENDIX A

The "Property" subject to this Easement is that certain areas of land with being unimproved land, consisting of approximately 22.25 acres, situated on Technology Drive in the Town of Durham, County of Strafford, State of New Hampshire, shown on a plan entitled "Proposed Easement Plan for CDC New Hampshire, LLC (Durham Tax Map 9, Lot 10-3), (Lee Tax Map 6, Lot 8-8), Technology Driver, Durham & Lee, New Hampshire," by Doucet Survey, Inc, last revised June 13, 2012, recorded at _____ at the Strafford County Registry of Deeds (hereafter "Plan"), and more particularly bounded and described as follows, with all bearings based on grid north orientation.

PARCEL 1, "The River Open Space Protection Area":

Beginning at a capped rebar on the northerly sideline of land of CDC New Hampshire, LLC at land of PREFCO XXV Limited Partnership, said point being N 70°39'22" W a distance of 467.71' from a concrete bound at the northeasterly corner of land of said CDC New Hampshire, LLC and the southeasterly corner of land of said PREFCO XXV Limited Partnership on the westerly side of Technology Drive (a private road);

Thence running in a clockwise direction around the area herein described the following courses and distances and along other land of CDC New Hampshire, LLC:

S 65°33'04" W a distance of 170.51' to capped rebar;
Thence S 33°06'26" W a distance of 115.89' to capped rebar;
Thence S 75°17'19" W a distance of 91.05' to capped rebar;
Thence N 03°42'34" E a distance of 123.97' to capped rebar;
Thence N 58°21'54" W a distance of 183.00' to capped rebar;
Thence S 80°57'45" W a distance of 92.09' to capped rebar;
Thence S 23°37'27" W a distance of 152.72' to capped rebar;
Thence S 41°08'34" W a distance of 185.02' to capped rebar;
Thence S 35°12'43" E a distance of 108.90' to capped rebar;
Thence S 21°00'19" W a distance of 48.03' to capped rebar;
Thence S 67°53'16" W a distance of 96.47' to capped rebar;
Thence N 51°00'08" W a distance of 144.20' to capped rebar;
Thence S 62°28'20" W a distance of 136.85' to capped rebar;
Thence S 78°50'02" W a distance of 91.82' to capped rebar;
Thence S 77°02'34" W a distance of 202.70' to capped rebar;
Thence S 04°04'02" W a distance of 81.05' to capped rebar;
Thence S 07°22'36" W a distance of 111.13' to capped rebar;
Thence S 46°45'52" E a distance of 123.70' to capped rebar;
Thence S 62°19'08" E a distance of 140.24' to capped rebar;
Thence S 19°26'36" E a distance of 107.72' to capped rebar;
Thence S 26°50'23" W a distance of 194.03' to capped rebar;
Thence S 52°26'04" E a distance of 302.63' to capped rebar on the southerly sideline of land of said CDC New Hampshire, LLC at land of Rose Realty, LLC;

Thence along land of said Rose Realty, LLC the following four courses;

N 78°04'50" W a distance of 98.71' to a white pine tree;
Thence N 77°24'54" W a distance of 281.93' to a tree stump;
Thence N 76°23'11" W a distance of 242.13' to a steel stake at the base of a hemlock tree;
Thence N 76°23'11" W a distance of 47' more or less to the center of the Oyster River at land of Mary Ellen Wilson;

Thence in a general northerly direction (upstream) along the center of the Oyster River and land of said Wilson 2,650' more or less;

Thence away from said river and continuing along land of said Wilson N 17°36'23" E a distance of 137' more or less to a point at land of PREFCO XXV Limited Partnership, said point being S 70°39'22" E a distance of 3.24' from a concrete bound;

Thence along said land of PREFCO XXV Limited Partnership S 70°39'22" E a distance of 1027.93' to the

point of beginning;

Said area lies in both the towns of Durham and Lee and contains approximately 684,600 square feet or 15.7 acres.

PARCEL 2, "Wetlands Protection Open Space Protection Area":

Beginning at a capped rebar on the westerly side of Technology Drive (a private road) at land of CDC New Hampshire, LLC, said point being S 33°48'16" W a distance of 510.78' from a concrete bound at the northeasterly corner of land of said CDC New Hampshire, LLC and the southeasterly corner of land of said PREFCO XXV Limited Partnership on the westerly side of said Technology Drive;

Thence running in a clockwise direction around the area herein described the following courses and distances:
S 33°48'16" W a distance of 609.77' along the westerly side of said Technology Drive;

Thence along other land of CDC New Hampshire, LLC the following courses and distances;

N 05°17'29" W a distance of 40.72' to capped rebar;
Thence N 21°07'20" E a distance of 60.37' to capped rebar;
Thence N 41°13'41" W a distance of 44.08' to capped rebar;
Thence N 80°19'49" W a distance of 138.38' to capped rebar;
Thence S 87°04'04" W a distance of 204.83' to capped rebar;
Thence N 35°42'54" W a distance of 164.68' to capped rebar;
Thence N 27°40'54" E a distance of 38.30' to capped rebar;
Thence N 48°13'55" E a distance of 35.72' to capped rebar;
Thence N 55°55'32" E a distance of 98.68' to capped rebar;
Thence S 84°35'26" E a distance of 174.99' to capped rebar;
Thence N 19°36'01" E a distance of 153.74' to capped rebar;
Thence N 02°07'38" W a distance of 45.14' to capped rebar;
Thence N 57°55'31" E a distance of 92.23' to capped rebar;
Thence S 89°20'14" E a distance of 29.27' to capped rebar;
Thence N 75°17'11" E a distance of 138.82' to capped rebar;
Thence S 54°21'28" E a distance of 240.50' to the point of beginning;

Said area lies in the Town of Durham and contains 235,308 square feet or 5.402 acres.

PARCEL 3, "Vernal Pool":

Beginning at a concrete bound at the southeasterly corner of land of CDC New Hampshire, LLC and the northeasterly corner of land of the Town of Durham (Main Street Cemetery) on the westerly side of Technology Drive (a private road);

Thence running in a clockwise direction around the area herein described the following courses and distances:
N 54°33'24" W a distance of 340.31' along said land of the Town of Durham;

Thence along other land of CDC New Hampshire, LLC the following courses and distances:

N 30°30'31" E a distance of 70.65' to capped rebar;
Thence N 86°22'28" E a distance of 184.05' to capped rebar;
Thence S 39°16'15" E a distance of 207.04' to capped rebar;
Thence S 33°48'16" W a distance of 131.86' to the point of beginning;

Said area lies in the Town of Durham and contains 50,156 square feet or 1.151 acres,

MEANING AND INTENDING to describe a portion of the premises conveyed by Deed from John B. Shea and Candace L. Shea to CDC New Hampshire, LLC, dated July 22, 2011, recorded at said Registry at Book 3940, Page 861

SUBJECT TO:

1. Inchoate Lien for the Land Use Change Tax per Notice recorded in said Registry at Book 1052, Page 94.
2. Matters shown on plan of land entitled "Lot Line Revision Plan for Capstone Companies, Land of William Smith Woodward Revocable Trust of 2002 (Durham Tax Map 9, Lot 10-3) & John B. & Candace L. Shea (Lee Tax Map 6, Lot 8-5), Technology Drive & Old Concord Road, Durham & Lee, New Hampshire", dated May 17, 2011, as prepared by Doucet Survey, Inc., and recorded in the Strafford County Registry of Deeds as Plan #102-11 and Plan #101-12.
3. Riparian rights of others in and to the Oyster River;

and a portion of the premises conveyed by Deed from Edna Frances Harvey Woodward, as Surviving Trustee of the William Smith Woodward Revocable Trust of 2002, and Edna Frances Harvey Woodward as Surviving Trustee of the Edna Frances Harvey Woodward Revocable Trust of 2002, to CDC New Hampshire, LLC, dated July 22, 2011, recorded at said Registry at Book 3940, Page 864

SUBJECT TO:

1. Ad Valorem Taxes for the current tax year, a lien not yet due and payable for which adjustment has been made at closing.
2. Inchoate Lien for the Land Use Change Tax (LUCT) per Notice recorded at Book 1008, Page 443.
3. Easements of record and any other than matters shown on the survey plan of the Property entitled "ALTA/ACSM Land Title Survey for Capstone Companies, Land of William S. & Edna H. Woodward (Durham Tax Map 9, Lot 10-3) & John B. & Candice L. Shea (Lee Tax Map 6, Lot 8-5), Technology Drive, Durham & Lee, New Hampshire" prepared by Doucet Survey dated May 19, 2011 ("Survey Plan") referenced in Exhibit A, including but not limited to the following:
 - a. Any right, if any, of third parties to use the trails as depicted on the Survey Plan.
 - b. Utility Easement to New Hampshire Electric Co., recorded at Book 679, Page 17, but only to the extent applicable to the Property, if at all.
4. Riparian rights of others in and to the Oyster River.

[Not homestead property of the Grantor.]