

THIS IS A TRANSFER FROM A TOWN  
PURSUANT TO NEW HAMPSHIRE RSA 78-B:2I  
AND IS THEREFORE EXEMPT FROM THE NEW  
HAMPSHIRE REAL ESTATE TRANSFER TAX.

**CONSERVATION EASEMENT DEED**  
REVISED 10/27/15

The **TOWN OF DURHAM**, a municipal corporation with a principal place of business at 8 Newmarket Road, Town of Durham, County of Strafford, State of New Hampshire, (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[~~s~~] 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 12 Center Street, PO Box 675, Town of Exeter, County of Rockingham, State of New Hampshire, 03833, having been determined by the Internal Revenue Service to be an income tax exempt, publicly supported corporation, contributions to which are deductible for federal income tax purposes pursuant to the United States Internal Revenue Code, (hereinafter referred to as the "Grantee" which shall, unless the context clearly indicates otherwise, include the Grantee's successors and assigns),

the Conservation Easement (herein referred to as the "Easement") hereinafter described with respect to that certain parcel of land (herein referred to as the "Property") with any and all structures, and improvements thereon, consisting of approximately \_\_\_\_\_ (\_\_\_\_\_) acres, situated off of Wednesday Hill Road in the Town of Durham, 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 entitled "\_\_\_\_\_ " by \_\_\_\_\_ dated \_\_\_\_\_, Revised \_\_\_\_\_ and recorded at the Strafford County Registry of Deeds as Plan # \_\_\_\_\_ (herein referred to as the "Survey").

The Property was acquired in part using funds from the Land and Water Conservation Fund Act of 1965 (Public Law 88-578, 78 Stat 897) State Assistance Program administered through the NH Department of Resources and Economic Development (DRED). In addition to meeting and following the terms of this Easement, the Grantor is responsible for meeting its obligations to DRED and LWCF as contained in its Project Agreement (Project #33-00697) with DRED. Other funding sources used the Property acquisition included the Lamprey Rivers Advisory

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 Town of Durham-University of New Hampshire’s surface and ground water drinking water sources, namely the surface water intake on the Lamprey River which the Property surrounds, and approximately 19 acres of the aquifer from which the Town-UNH water system has a well located a nearby property; and
- B. The protection of the undeveloped 3,500 feet of frontage along the federally designated Wild and Scenic Lamprey River, to which the Property provides access and upon which it fronts; and
- C. The protection of important habitat on the Property including approximately 7 acres of floodplain and a NH Wildlife Action Plan identified Tier 1 wet-meadow/shrub wetland, and the enhancement and enlargement of approximately 1,650 acres of protected or public land which is adjacent to or nearby the Property, said other land including but not limited to the 86-acre Fogg conservation easements held by the Town of Durham, the 245-acre Oyster River Forest owned by the Town of Durham, the 63-acre Misty Meadow Farm conservation easement held by the Town of Lee, and the 50-acre Dunham conservation easement held by the Southeast Land Trust of NH; and
- D. The conservation of open spaces, particularly the conservation of the productive forest land of which the Property consists and of the wildlife habitat thereon including approximately 32.7 acres of NH Fish & Game Department designated “Highest Quality Habitat in the State”, 6.6 acres of “Highest Ranking Habitat in the Biological Region” and 4.1 acres of “Supporting Landscape”; and the long-term protection of the Property’s capacity to produce economically valuable forestry products through the conservation of approximately 32 acres of Group IA Forest Soils and 12.5 acres of Group IB Forest soils; and
- E. The scenic enjoyment of the general public that paddle or boat along the Property’s 3,500 feet of frontage on the Lamprey River and for members of the general public that pass along the Property’s 2,000 feet of frontage on Wednesday Hill Road; and
- F. The protection of the Property for low impact, non-commercial outdoor recreation by the general public compatible with these conservation purposes, and for the education of the general public; and
- G. The prevention of any uses of the Property that will significantly impair or interfere with the Purposes, described above.

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

goals and/or objectives as stated in the Natural Resources Chapter of the 2015 Master Plan update for the Town of Durham, which states “Pursue acquisition of conservation easements or fee title to land protecting critical water resources shown on the Conservation Focus Areas Map”, “Expand and strengthen the Durham greenway system through the acquisition of conservation easements on important lands through donation, purchase, or partnership with public and private conservation groups”, “Work with willing landowners to conserve important lands through donation or sale in fee title or easement. Where possible, create pedestrian connections between conserved lands for pedestrians”; is within a “Lower Lamprey River Conservation Focus Area” identified in the “Land Conservation Plan for New Hampshire’s Coastal Watershed”, 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 Forestry, as described below, and provided that the productive capacity of the Property to yield forest crops shall not be degraded by on-site activities.

i. **Description of Forestry**

- a. **Forestry:** For the purposes hereof, “Forestry” shall include the growing, stocking, cutting, and sale of forest trees of any size capable of producing timber or other forest products, all as not detrimental to the Purposes of this Easement.

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

2. **Non-commercial Forestry:** For the purposes hereof, “Non-commercial Forestry” shall include non-commercial timber stand improvement activities, wildlife habitat improvement, and the small-scale cutting or harvesting of wood products for the domestic use of the Grantor, such as clearing trees to maintain the edge of a field, thinning the forest stand to maintain a view, or cutting firewood for domestic consumption. Non-

commercial Forestry shall not include activities conducted for the contemporaneous production of sale proceeds or other consideration.

- ii. **Requirements for Forestry:** Any and all Commercial and Non-commercial Forestry shall be carried out in accordance with all applicable local, state, and federal laws and regulations, and, to the extent reasonably practicable, in accordance with then-current, generally accepted best management practices for the sites, soils, and terrain of the Property and shall not be detrimental to the Purposes of the Easement. No Commercial or Non-Commercial Forestry shall occur within twenty-five (25) feet of the ordinary high water mark of the Lamprey River. Exceptions to this limitation may be granted by mutual agreement in writing by the Grantor and Grantee. For references on best management practices see:
- “Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire” (J.B. Cullen, 2004); 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.
- iii. **Requirements for Commercial Forestry:** In addition to the requirements outlined in Section 2.A.ii above, Commercial Forestry shall be performed using silvicultural practices that enhance or maintain the value of timber while recognizing that the ecological, aesthetic, wildlife, or other non-timber values are important components of the forest. To the extent reasonably practicable, forestry shall meet the following goals:
- a. The goals are:
- maintenance of soil productivity;
  - protection of water quality, drinking water supply, wetlands, and riparian zones;
  - maintenance or improvement of the overall quality of forest products;
  - conservation of scenic quality and recreational access;
  - protection of significant or fragile natural areas, exemplary natural communities, and rare, threatened and endangered species, including their habitats;
  - protection of significant historic and cultural features; and
  - conservation of native plant and animal species.
- a. Any and all Commercial Forestry shall be performed in accordance with a written Forest Management Plan consistent with this Easement, prepared by a licensed professional forester, or by other qualified person approved in advance and in writing by the Grantee.
- b. Said Forest Management Plan shall have been prepared not more than ten (10) years prior to the date any harvesting is expected to commence. Or, if more than ten (10) years old, the plan shall have been reviewed and updated as required by such a forester or other qualified person at least thirty (30) days prior to the date of

harvest.

- c. 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.above, and
    - water bodies, riparian buffers and their delineation on a map(s) in the plan and how riparian areas will be protected in associations with forest management activities including but not limited to road construction and maintenance and implementation of stand prescriptions.
  - d. At least thirty (30) days prior to any commercial timber harvest, the Grantee shall have received from the Grantor a written certification, signed by a licensed professional forester, or by other qualified person approved in advance and in writing by the Grantee, that the Forest Management Plan, as defined in 2.A.iv, a-d, above, has been prepared in compliance with the terms of this Easement. Grantee may request the Grantor to submit the Plan itself to Grantee within ten (10) days of such request, but acknowledges that the plan's purpose is to guide forest management activities in compliance with this Easement, and that the actual activities will determine compliance therewith.
  - f. Timber harvesting with respect to any Commercial Forestry shall be conducted in accordance with said Plan and be supervised by a licensed professional forester, or by other qualified person approved in advance and in writing by the Grantee.
  - g. In areas used by, or visible to the general public, such forestry shall be carried out, to the extent reasonably practicable, in accordance with the recommendations contained in "A Guide to Logging Aesthetics: Practical Tips for Loggers, Foresters, and Landowners" (Jones 1993), or similar successor publications.
- B. The Property shall not be subdivided and none of the individual tracts which together comprise the Property shall be conveyed separately from one another, except that the lease of any portion of the Property for any use permitted by this Easement shall not violate this provision.
- C. No structure or improvement shall be constructed, placed, or introduced onto the Property, except for structures and improvements which are: i) necessary in the accomplishment of the forestry, conservation, habitat management, or noncommercial outdoor recreational uses of the Property and which may include but not be limited to a road, dam, fence, bridge, or culvert; ~~and ii)~~ not detrimental to the Purposes of this Easement; and iii) any significant ground disturbing activities follow the procedures and requirements of Section 2.J. Notwithstanding the above, there shall not be constructed, placed, or introduced onto the Property any of the following structures or improvements: dwelling, mobile home, cabin, barn, residential driveway, any portion of a septic system, tennis court, swimming pool, tower, athletic field, golf course, or aircraft landing area.
- D. No removal, filling, or other disturbances of soil surface, nor any changes in topography,

surface or subsurface water systems, wetlands, or natural habitat shall be allowed unless such activities:

- i. are commonly necessary in the accomplishment of the forestry, conservation, habitat management, or noncommercial outdoor recreational uses of the Property; and
- ii. do not harm state or federally recognized rare, threatened, or endangered species, or exemplary natural communities, such determination of harm to be based upon information from the New Hampshire Natural Heritage Bureau 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. any significant ground disturbing activities follow the procedures and requirements of Section 2.J.; and

~~iii~~iv. 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 forestry, conservation, or noncommercial outdoor recreational uses of the Property, 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.
- F. There shall be no mining, quarrying, excavation, or removal of rocks, minerals, gravel, sand, topsoil, or other similar materials on the Property, except in connection with any improvements made pursuant to the provisions of sections 2.A., C., D., or E., above, and any such activity that significantly disturbs the ground shall follow the procedures and requirements of section 2.J. No such rocks, minerals, gravel, sand, topsoil, or other similar materials shall be removed from the Property.
- G. There shall be no dumping, injection, burning, or burial on the Property of man-made materials or materials then known to be environmentally hazardous.
- H. No rights-of-way or easements of ingress or egress in favor of any third party shall be created or developed into, on, over, or across the Property without the prior written approval of the Grantee, except those of record as of the execution of this Easement and those specifically permitted in the provisions of this Easement.
- I. There shall be no agriculture, other than Forestry, conducted on the Property.

J. The Grantor shall not operate or grant permission to operate motorized vehicles on the Property, except as allowed in Section 3(A) below.

K. As required under the terms of the LWCF Program funding, the Grantor shall not

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undertake any activity that results in significant ground disturbance unless said activity is approved by NH Department of Resources and Economic Development (DRED) in accordance with the following:

- a. The Grantor shall first submit the proposed activity and location to the NH Natural Heritage Bureau and the NH Department of Historic Resources, or the agency(s) then recognized by the State of New Hampshire as having responsibility for identification and/or conservation of plant and animal species, and/or natural communities, and /or historic resources, for a determination of potential harm to resources said agencies are responsible for safeguarding.
- b. The proposed activity and response from the NHB and DHR shall be provided to the Grantee and DRED, or the Department then recognized by the State as having responsibility for the LWCF Program, and the proposed activity shall be either approved, denied, or approved with conditions by DRED. DRED shall provide its written response to the Grantor and Grantee.
- ~~J-c.~~ Only after securing approval or conditional approval from DRED may the Grantor proceed with the activity in accordance the approval and conditions (if any).

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~~K-L.~~ The Property shall not be posted against, and the Grantor shall keep access to and use of the Property open to the public for, pedestrian and bicycle, non-motorized, non-commercial, outdoor recreational and outdoor educational purposes as will have minimal impact on the Property, such as but not limited to hiking, mountain biking, wildlife observation and cross-country skiing, but not camping. The landowner shall retain the right whether to allow hunting. However, the Grantee shall be under no duty to supervise said access, use, or purpose. The Grantor reserves the right to post the Property against public access to forestland during harvesting or other forest management activities.

### 3. RESERVED RIGHTS

- 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, habitat management, recreational management, and to control or remove non-native or invasive species. This provision is an exception to Section 2.J., above.
- B. The Grantor reserves the right to, or grant a legal right to others to, install, maintain, and/or replace below ground pipes or to undertake ditching, grading, and/or filling with respect to installation of said pipes up to ten (10) feet on either side of the right of way described in the deed recorded in the Strafford County Registry of Deeds in Book 853, Page 252. Said pipes shall be for the transport of drinking water from the Lamprey River through the Property to be used for the Durham-University of New Hampshire public water supply. Any significant ground disturbing activities associated with this reserved right shall follow the procedures and requirements of Section 2.J of this Easement. This provision is an exception to Sections 2.C., 2.D. and 2.H., above.
- C. The Grantor reserves the right to create and maintain trails for low-impact, non-commercial outdoor recreational purposes, provided said trails are consistent with and not

detrimental to the Purposes of this Easement. All trails shall conform to best practices recommended by the State of New Hampshire and Appalachian Mountain Club or similar trail-maintaining organization (see Appalachian Mountain Club, The Complete Guide to Trail Building and Maintenance, 4<sup>th</sup> edition; and State of New Hampshire, Best Management Practices for Erosion Control During Trail Maintenance and Construction, 2004, or similar successor publications).- Any such activity that significantly disturbs the ground shall follow the procedures and requirements of section 2.J of this Easement.

- D. The Grantor must notify the Grantee in writing at least thirty (30) days before any exercise of the aforesaid reserved rights.
- E. The Grantor reserves the right, subject to the following conditions and prior written approval of the Grantee to:
- a. construct, maintain, repair, reconstruct one parking area on the Property (referred to hereinafter as "Parking Area"); however, maintenance and repair shall not require Grantee approval; and
  - b. to enlarge and to modify the Parking Area in accordance with the conditions below.

Said Parking Area shall meet the following conditions:

1. Said Parking Area shall be for the sole purpose of providing public access to the Property.
2. Said Parking Area shall include appropriate barriers or otherwise be constructed to prevent unauthorized vehicular access to the Property.
3. Said Parking Area shall not be artificially illuminated.
4. Said Parking Area shall be constructed of a permeable surface.
5. Said Parking Area shall be designed and constructed to support no more than six (6) parking spaces, appropriate for the Property and its current and projected use, and shall minimize impacts on the Purposes of this Easement.
- 5-6. Any activity that significantly disturbs the ground shall follow the procedures and requirements of section 2.J. of this Easement.

To exercise these rights requiring Grantee approval, 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.



4. NOTIFICATION OF TRANSFER, TAXES, MAINTENANCE

- A. The Grantor agrees to notify the Grantee in writing 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. 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 of which shall not exceed thirty (30) square inches in size, along the Property's boundaries.

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, if the disagreement concerning the Activity has not been resolved by mediation within sixty (60) days after delivery of the notice of mediation, or if the parties are unable to agree on a mediator within ten (10) days after delivery of the notice of mediation, the disagreement may be submitted to binding arbitration in accordance with New Hampshire RSA 542. The parties shall have ten (10) days to accept or refuse binding arbitration. The Grantor and the Grantee shall each choose an arbitrator within twenty (20) days of the delivery of written notice from either party referring the matter to arbitration. The arbitrators so chosen shall in turn choose a third arbitrator within twenty (20) days of the selection of the second arbitrator. The arbitrators so chosen shall forthwith set as early a hearing date as is practicable, which they may postpone only for good cause shown. The arbitration hearing shall be conducted in Exeter, New Hampshire, or such other location as the parties shall agree. A decision by two of the three arbitrators, made as soon as practicable after submission of the matter, shall be binding upon the parties and shall be enforceable as part of this Easement.
- D. If the parties do not agree to resolve the dispute by arbitration, or if the parties are unable to agree on the selection of an arbitrator, then either party may bring an action at law or in equity in any court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation by permanent injunction, to require the restoration of the Property to its condition prior to the breach, and to recover such damages as appropriate.
- E. Notwithstanding the availability of mediation and arbitration to address disagreements concerning the compliance of any Activity with the provisions of this Easement, if the Grantee believes that some action or inaction of the Grantor or a third party is causing irreparable harm or damage to the Property, the Grantee may seek a temporary restraining order, preliminary injunction or other form of equitable relief from any court of competent jurisdiction to cause the cessation of any such damage or harm, to enforce the terms of this Easement, to enjoin any violation by permanent injunction, and to require the restoration of the Property to its condition prior to any breach.

#### 8. BREACH OF EASEMENT – GRANTEE'S REMEDIES

- A. If the Grantee determines that a breach of this Easement has occurred or is threatened, the Grantee shall notify the Grantor in writing of such breach and demand corrective action to cure the breach and, where the breach involves injury to the Property, to restore the portion of the Property so injured to its prior condition.
- B. The Grantor shall, within thirty (30) days after receipt of such notice or after otherwise learning of such breach, undertake those actions, including restoration, which are reasonably calculated to cure swiftly said breach and to repair any damage. The Grantor

shall promptly notify the Grantee of its actions taken hereunder.

- C. If the Grantor fails to perform its obligations under the immediately preceding paragraph B. above, or fails to continue diligently to cure any breach until finally cured, the Grantee may undertake any actions that are reasonably necessary to repair any damage in the Grantor's name or to cure such breach, including an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury.
- D. If the Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation features of the Property, the Grantee may pursue its remedies under this Section, "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. 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: the provisions and limitations of this section; the then-current amendment policies of the Grantee; notification is given to the New Hampshire Attorney General's Office at least thirty (30) days prior to the adoption of the amendment; and applicable state and federal law. Any amendment shall be consistent with the Purposes of this Easement, and shall not impair the conservation attributes of the Property protected by this Easement. No amendment shall affect the qualification of this Easement or the status of the Grantee under any applicable laws, including Sections 170(h) and 501(c)(3) of the Internal Revenue Code of 1986, as amended, and NH RSA 477:45-47 as may be amended from time to time, nor shall any amendment affect the perpetual duration of this Easement. Any amendment shall be executed by the Grantor and the Grantee and shall be recorded in the Rockingham 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.

#### 10. NOTICES

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

above or at such other address as the Grantor or the Grantee may hereafter designate by notice given in accordance herewith. Notice shall be deemed to have been given when so delivered or so mailed.

#### 11. SEVERABILITY

If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid by a court of competent jurisdiction, by confirmation of an arbitration award or otherwise, the remainder of the provisions of this Easement or the application of such provision to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

#### 12. EXTINGUISHMENT & CONDEMNATION

- A. **Extinguishment.** If circumstances arise in the future such as render the Purposes of this Easement impossible or impracticable to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such judicial termination or extinguishment, shall be determined in accordance with Section 12.C. below. In making this grant of Easement, Grantor has considered and acknowledges the possibility that uses prohibited by the terms of this Easement may become more economically viable than the uses specifically reserved by Grantor pursuant to this Easement. It is the intent of both Grantor and Grantee that any such change in economic conditions shall not be deemed to be circumstances justifying the termination or extinguishment of this Easement pursuant to this Section.
- B. **Condemnation.** If all or any part of the Property is taken, in whole or in part, by exercise of the power of eminent domain or is acquired by purchase in lieu of condemnation, whether by public, corporate or other authority, so as to terminate this Easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of their interests in the Property subject to the taking or in lieu purchase and to recover all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered. The amount of the proceeds to which the Grantee shall be entitled, after payment of any expenses, shall be determined in accordance with Section 12.C. below.
- C. **Valuation.** This Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of Sections 12.A and 12.B above, shall have a fair market value which shall be determined 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.

#### 13. 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.

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 \_\_\_\_\_, 2015.

\_\_\_\_\_  
Todd Selig, Durham Town Administrator  
Duly Authorized

STATE OF NEW HAMPSHIRE  
COUNTY OF STRAFFORD, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2015, before me personally appeared Todd Selig, duly authorized Town Administrator for the Town of Durham, 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: \_\_\_\_\_  
Duly Authorized

Date: \_\_\_\_\_

STATE OF NEW HAMPSHIRE  
COUNTY OF ROCKINGHAM, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2015, before me personally appeared \_\_\_\_\_, 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:

## **APPENDIX A**

The "Property" subject to this Easement is that tract of land with any and all structures and improvements thereon situated on Road, so-called, in the Town of , County of , State of New Hampshire, consisting of approximately acres, shown on a plan entitled ", by , last revised , recorded at \_\_\_\_\_ at the County Registry of Deeds (hereafter "Plan"), and 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.]