

COOS COUNTY

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**GRANT OF CONSERVATION EASEMENT**

KNOW ALL MEN BY THESE PRESENTS, that **THE TRUST FOR PUBLIC LAND d/b/a TPL-NEW HAMPSHIRE**, a California public benefit corporation with a place of business at 54 Portsmouth Street, Concord, New Hampshire 03301 (the "Fee Owner" which word shall, unless the context clearly indicates otherwise, include the Fee Owner's legal representatives, successors and assigns), hereby grants to

the **STATE OF NEW HAMPSHIRE**, acting by and through the Department of Resources and Economic Development with an address of 172 Pembroke Road, P.O. Box 1856, Concord, New Hampshire 03302-1856 (the "Easement Holder" which word shall, unless the context clearly indicates otherwise, include the Easement Holder's legal representatives, successors and assigns),

with quitclaim covenants, in perpetuity, the Conservation Easement (the "Easement") hereinafter described with respect to that certain parcel of land (the "Property"), being primarily unimproved land and one hundred seasonal recreational camps, situated in the Towns of Pittsburg, Clarksville and Stewartstown, Coos County, State of New Hampshire, more particularly described in Exhibit A attached hereto and made a part hereof, subject to the matters set forth on Exhibit B attached hereto and made a part hereof. The underlying fee interest in the Property will be held and conveyed subject and subordinate to this Easement.

**PREAMBLE**

The Property is located in the Northern Forest, a 26 million acre area stretching from Maine through New Hampshire and Vermont across northern New York almost to Lake Ontario that is the subject of the Congressionally funded report entitled "Finding Common Ground:—Conserving the Northern Forest" (September, 1994) prepared by the Northern Forest Lands Council and as such has strong regional and multi-state significance.

The Property consists of approximately 146,400 acres which, combined with three natural areas totaling 25,000 acres conveyed to the State and managed for biological diversity by the New Hampshire Fish and Game Department (the "Natural Areas") and 100 acres conveyed to the State and managed by the Department of Resources and Economic Development to enlarge Deer Mountain Campground, forms a contiguous forest block in excess of 171,500 acres.

The Property constitutes the single most important land resource for the tourism and recreational economy of Pittsburg, Coos County, New Hampshire, a community that is dependent on tourism and outdoor recreation for more than half of its economic activity, and the Property is a significant resource for the tourism and recreational economy for the State and region.

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The Property contains outstanding recreational values as a result of a long history of multiple use management including nationally significant cold water fisheries, approximately 150 miles of groomed snowmobile trails, and opportunities for other activities including hunting, hiking, snow-shoeing, and motorized recreation.

Seasonal, recreational camps are a long standing tradition on the Property and help define the unique culture and history of the Northern Forest region within which the Property is located.

The Property contains outstanding water resources including the headwaters of the Connecticut Lakes and Connecticut River, the upper Dead Diamond River watershed, which is the least developed watershed in the State, the Indian Stream corridor, which has extensive riparian wetlands along its length, more than 600 miles of streams, brooks, and tributaries, and numerous remote and largely undeveloped ponds.

The Property is located in the upper Connecticut River watershed and in the Connecticut Lakes subsection of the Northern Appalachian/Acadian ecological region, a region that extends from the western Adirondacks in New York to northern and eastern Maine and adjacent portions of the Canadian Maritime Provinces, the boundary of which is defined by the ecological region's unique climatic, geomorphological, and vegetative characteristics that include diverse wetlands such as bogs, fens, and beaver marshes, and more than 20 rare plant and animal species and rare and exemplary natural communities, including many that are limited to the Northern Appalachian/Acadian ecological region.

The Property contains broad valleys and low mountains, boreal plants and other plants, specifically northern white cedar, black ash, white spruce, and American cranberry, which are generally absent from other conserved areas in the State such as the White Mountain National Forest.

The Property contains more than fourteen different types of bedrock, the majority of which are low grade pelites, which are limited in New Hampshire as well as mafic bedrock, and also contains abundant silt loam soils that are fertile and highly productive and capable of supporting a diverse, ecologically rich and economically productive northern hardwood forest.

The Property contains critical wildlife habitat including lowland Spruce-Fir Forest important for deer wintering areas; early successional hardwood forest important to moose, black bear, American woodcock and ruffed grouse; high elevation Spruce-Fir Forest important for many species including the rare Bicknell's Thrush and the Black-Backed Woodpecker; and extensive riparian areas along streams, brooks and tributaries important for both aquatic and terrestrial species.

The Property is the largest privately-owned, forested property in the State of New Hampshire and has been managed by industrial foresters for at least 50 years and has produced significant volumes of timber, pulpwood and other forest products, providing substantial employment opportunities and contributing to the forest products economy, a major component of the region's economy, for more than 100 years.

A Steering Committee appointed by Governor Jeanne Shaheen and United States Senator Judd Gregg, and composed of legislators, representatives of conservation, tourism, forestry and other interests and local citizens has developed a vision for the Property that reads as follows: "We see the [Property's lands] continuing to provide the many economic, recreation and natural resource benefits they have provided New Hampshire citizens and visitors for generations. These lands will remain as a large block of largely undeveloped productive/working forest while continuing their substantial contribution to the

local and regional culture and economy. Public access for recreation will be assured as will the conservation of ecologically sensitive resources and places.”

2002 New Hampshire Laws Chapter 148 (“Laws Chp 148:”) has made certain funds available for the purchase of the Easement on the Property, and in the Legislative Finding set forth in Laws Chp 148:2, declared:

“that it is in the public interest to acquire fee ownership and conservation easement interests in these lands to ensure that they remain as a largely undeveloped, productive, working forest which also provides public access for recreation and conserves ecologically sensitive areas. The general court also finds that in addition to state capital and general fund appropriations, an effort of this scope requires the contribution of funds from many sources, including the federal government, a private timberland investor, and other private individuals, organizations, and charitable foundations.”

Funds have been made available for the purchase of the Easement from the United States of America through the Forest Legacy Program administered by the Department of Agriculture, United States Forest Service.

The purposes of the Forest Legacy Program, as stated in 16 USCA Section 2103c, are as follows:

“protecting environmentally important forest areas that are threatened by conversion to nonforest uses and, through the use of conservation easements and other mechanisms, for promoting forest land protection and other conservation opportunities. Such purposes shall also include the protection of important scenic, cultural, fish, wildlife, and recreational resources, riparian areas, and other ecological values.”

NOW, THEREFORE, the Easement on the Property consists of the following terms, covenants, restrictions and affirmative rights granted to the Easement Holder, which shall run with and burden the Property in perpetuity, and the Fee Owner and the Easement Holder mutually agree as follows:

1. PURPOSES.

*I.A.* The Easement is hereby granted pursuant to New Hampshire Revised Statutes Annotated 79-A (“RSA”), RSA 227-M, RSA 477:45-47, and 16 USC Section 2103c for the following forest land protection and multiple use conservation purposes (the “Purposes”):

*i.* To conserve open spaces, natural resources and scenic values, particularly the conservation of the 146,400 acres and the productive forest on the Property, for the enjoyment, education, and benefit of the general public; and

*ii.* To sustain traditional forest uses including Forest Management Activities (as defined in Section 2.B) and Permitted Recreational Activities (as defined in Section 5.A); and

*iii.* To conserve waterfront, streams, riparian areas and the quality of groundwater and surface water resources, and to conserve biological diversity, fish and wildlife habitats, rare plants and animals, rare and exemplary natural communities and cultural resources on the Property; and

*iv.* To conserve the unusual natural habitat type known as the "high elevation mountain spruce-fir forest" that supports rare animals and pockets of mature forest stands located above 2,700 feet in elevation; and

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v. To guarantee the Easement Holder's right to permit public access on the Property which will allow the general public to hike, hunt, fish, and trap, snowmobile on Designated Snowmobile Trails (as defined in Section 5.A.v), drive motorized vehicles on Designated Roads (as defined in Section 5.D), and participate in other natural resource-based outdoor recreational activities, natural resource-based outdoor conservation activities, or natural resource-based outdoor conservation education on the Property; and

vi. To retain the Property as an economically viable and sustainable tract of land, conducive to ownership by a private timberland owner or timberland investor, for the production of timber, pulpwood, and other forest products.

*1.B.* These Purposes are consistent with the open space conservation goals and objectives as stated in the Forest Legacy Program as established in 16 USC Section 2103c, which was created "to protect environmentally important private forest lands threatened with conversion to non-forest uses;" with RSA 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;" and with the Land and Community Heritage Investment Program established in RSA 227-M, which was created "to conserve and preserve this state's most important natural, cultural, and historical resources through the acquisition of lands, and cultural and historical resources, or interests therein, of local, regional, and statewide significance."

*1.C.* In Laws Chp 148, the Legislature made certain funds available for the purchase of this Easement. In the legislative findings set forth in Laws Chp 148:2, the Legislature found that "it is in the public interest to acquire fee ownership and conservation easement interests in these lands to ensure that they remain as a largely undeveloped, productive, working forest which also provides public access for recreation and conserves ecologically sensitive areas." The Legislature further found that this Easement must "[p]rovide for continued forest management and timber harvesting . . . , [g]uarantee public access for recreation including, but not limited to, hiking, hunting, fishing, trapping, snowmobiling, and other motorized recreation . . . , [and] [p]rovide for continued vehicular access to major portions of the property over the existing road network." The Fee Owner and the Easement Holder agree that the resolution of any conflicts that arise between the Purposes of this Easement shall acknowledge the Legislature's findings in the context of the Fee Owner's right to conduct Forest Management Activities, wildlife habitat management, and other permitted natural resource-based outdoor recreational activities, natural resource-based outdoor conservation activities, or natural resource-based outdoor conservation education on the Property.

*1.D.* The Fee Owner and the Easement Holder acknowledge and agree that conflicts may arise between the Purposes of this Easement set forth above, that the Purposes are not stated in order of priority or importance, and that the resolution of any conflicts that arise between the Purposes of this Easement shall acknowledge the Fee Owner's right to conduct Forest Management Activities (as defined in and set forth in Section 2) and the Easement Holder's Affirmative Rights (as defined in and set forth in Section 5).

2. USE LIMITATIONS. (The limitations on uses of the Property set forth in this Section 2 are expressly subject to the Reserved Rights set forth in Section 3 and the Affirmative Rights set forth in Section 5.)

2.A. Prohibited and Permitted Uses.

*i.* The Property shall be maintained in perpetuity as open space, as defined in RSA 79-A:2,

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without any residential, industrial or commercial activities being conducted thereon, except Forest Management Activities (as defined in Section 2.B) and those rights specifically reserved or permitted under Sections 2, 3, and 5 of this Easement.

*ii.* The long-term capability of the Property to produce forest products shall not be degraded by on-site activities.

*iii.* No more than ten (10) percent of the Property may be in non-forest uses that are allowed in this Easement.

**2.B. Forest Management Activities.** The term "Forest Management Activities" as used in this Easement shall mean all forest management practices including the cultivation, harvesting, and removal of any and all forest products by any and all current and future harvesting and removal techniques. Forest Management Activities shall include, but not be limited to, the following activities performed by the Fee Owner or its employees, contractors and agents, and the Fee Owner's management of the following activities and resources by the Fee Owner, its employees, contractors and agents:

- i.* Site preparation, including:
  - a.* All standard silvicultural activities associated with site preparation;
  - b.* Clearing for reforestation; and
  - c.* Disposing of harvesting debris and conducting post-harvest or site recovery activities.
  
- ii.* Regeneration, including:
  - a.* All standard silvicultural activities associated with forest stand regeneration including planting.
  
- iii.* Pre-commercial treatments, including:
  - a.* All standard pre-commercial silvicultural treatments necessary for growing forest products;
  - b.* Pruning, girdling, or trimming trees and other vegetation;
  - c.* Trimming, cutting, removing, burning, or otherwise disposing of any trees or vegetation which are diseased, rotten, damaged or fallen; and
  - d.* Conducting fire control and other forest protection activities to prevent or control losses or damage to forest crops or forest products.
  
- iv.* Harvesting, including:
  - a.* All standard commercial silvicultural treatments;
  - b.* Cutting, foraging, and harvesting of trees, forest products, and other vegetation for any purpose or application;
  - c.* Cutting and removing forest products, including but not limited to trees, logs, poles, posts, pulpwood, firewood, chips, seeds, pinestraw, stumps, seed cones, bark, shrubs, other vegetation, biomass, collection of sugar maple sap;
  - d.* Harvesting forest products with domestic animals or mechanical equipment; and
  - e.* Salvaging forest crops or forest products.
  
- v.* Processing, including:
  - a.* Processing forest products with portable or temporary equipment designed for in-woods processing;
  - b.* Removing, loading, and transporting timber and other forest crops and products by any and all means of transportation, including, without limitation, motorized and mechanized

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vehicles and equipment on and over all portions of the Property in accordance with Section 2.D; and

- c. Collection and processing of all sugar maple products from sap collected on the property.
- vi. Construction and Maintenance of Ancillary Structures, including:
  - a. Construction, use, and maintenance of skid trails, skid roads, skidder bridges, log yards (defined as a site used for the collection, storage and processing of logs from multiple harvest areas comprising an area of at least five acres and maintained for at least two years), landing and staging areas, roads (including, without limitation, main gravel haul roads, secondary haul roads, winter haul roads, bridges culverts, and all structures needed to construct such roadways), or other paths, roads, or trails used to provide pedestrian, domestic animal, equipment, and motorized vehicular access to and from and within the Property in order to carry out permitted Forest Management Activities on the Property; and
  - b. Trimming, cutting, removing, or otherwise disposing of any trees or vegetation as is necessary to construct or maintain fire lanes, footpaths, and any roads permitted under this Easement.
- vii. Forest Management and Planning Activities, including:
  - a. Conducting timber cruising, forest crop selection, forest research, and other forest resource evaluation activities;
  - b. Marking timber and performing other activities to identify trees or areas for harvest; and
  - c. Identifying and marking boundaries.
- viii. Other Forest Practices, including:
  - a. Applying in accordance with applicable statutes and regulations herbicides, pesticides, fungicides, rodenticides, insecticides, and fertilizers;
  - b. Prescribed burning;
  - c. Maintenance of existing fields and meadows; and
  - d. Maintaining and improving wildlife habitat.

2.C. Stewardship Goals for the Property. All activities by the Easement Holder and the Fee Owner on the Property shall be balanced to protect the existing multiple uses of the Property in a manner that is consistent with the Purposes of this Easement and achieving the Stewardship Goals set forth below (the "Stewardship Goals"). The Fee Owner's activities shall achieve or progress towards achieving the Stewardship Goals listed in (i) through (xii) below, in a manner and on a timeframe agreed to in the Stewardship Plan (as defined in Section 2.E), and in a manner that supports the Stewardship Goal set forth in (xiii) below. The Easement Holder shall achieve or progress towards achieving the Stewardship Goal set forth in (xiii) below in a manner and on a time-frame agreed to in the Public Access and Recreational Management Plan and the Road Management Plan (as defined in Section 5), and in a manner that supports the Stewardship Goals set forth in (i) through (xii) below:

- i. Maintenance of a sustainable source of timber, pulpwood, and other commodity and non-commodity forest products;
- ii. Maintenance or improvement of the overall quality of forest resources through management that promotes the production of high quality forest resources such as sawlogs and veneer;
- iii. Regeneration of forest stands through silvicultural practices that promote forest types suited to site capability;

iv. Maintenance of forest health through monitoring and control of fire, disease, and insect outbreaks;

v. Long-term maintenance of soil productivity;

vi. Maintenance and protection of biological diversity and integrity through the promotion of a forest that reflects a diversity of stand ages and naturally occurring forest types in a majority of the forest, the conservation of rare and exemplary natural communities and the conservation and enhancement of native plant and animal species and their habitats, including establishment and retention of a range of sizes and types of downed woody debris, snag trees, cavity trees, occasional very large/old trees, and early successional habitats;

vii. Avoidance of the planting or intentional introduction of invasive plant and animal species;

viii. Maintenance of a forest composed predominantly of plant species native to the northeastern United States and prevention, to the extent reasonably possible, of the introduction of non native plant species;

ix. Protection or enhancement of water quality and non-forested wetlands and conservation of forested wetlands, riparian areas and aquatic habitats;

x. Protection of the special ecological and wildlife habitat values of areas located in those areas of the Property above 2,700 feet in elevation (hereinafter the "High Elevation Zones"), including closed canopy spruce-fir forests; fragile, shallow, and highly erodible soils; habitat for wildlife species of special conservation concern; and mature forest stands in such High Elevation Zones;

xi. Conservation of scenic qualities;

xii. Conservation of unique historic archeological and cultural features; and

xiii. Maintenance and enhancement of a range of non-motorized, natural resource-based, outdoor recreational opportunities for the public, as well as maintaining opportunities for snowmobiling on Designated Snowmobile Trails (as defined in Section 5.A), and motorized recreational uses by the public on Designated Roads (as defined in Section 5.D) as agreed to by the parties.

#### 2.D. Standards for Forest Management Activities.

i. Forest Management Activities shall be performed:

- a. in a manner that progresses towards or achieves the Stewardship Goals;
- b. in accordance with the approved Stewardship Plan (as defined in Section 2.E); and
- c. in accordance with then-current, generally accepted best management practices for the sites, soils and terrain of the Property as described in "Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire" (State of New Hampshire, Department of Resources and Economic Development, 1998) and successor documents (hereinafter referred to as "Erosion Control on Timber Harvesting"), a copy of which shall be included in the Baseline Documentation.

ii. In addition, acknowledging the large size of the Property, Forest Management Activities shall be guided by the publication "Good Forestry in the Granite State: Recommended Voluntary Forest Management Practices for New Hampshire" (Division of Forests and Lands, Department of Resources and Economic Development, and Society for the Protection of New Hampshire Forests, 1997) and

successor documents (hereinafter referred to as "Good Forestry in the Granite State"), a copy of which shall be included in the Baseline Documentation.

*iii.* The Fee Owner shall have the right to practice all generally accepted forest management practices allowable under the law to the extent permitted under the terms of this Easement.

*2.E. Stewardship Plan.* The Fee Owner shall manage the Property in a manner that is consistent with this Easement and in accordance with the then-current written and approved forest and land management plan ("Stewardship Plan") signed by a New Hampshire licensed, professional forester or, with advance approval of the Easement Holder, other qualified persons. The initial Stewardship Plan for the Property shall be developed by the Fee Owner and submitted to the Easement Holder for approval on or before two years after closing (the "Initial Stewardship Plan").

*i.* The parties acknowledge that as of the date of this Easement and pending final approval of the Initial Stewardship Plan, the Fee Owner is carrying out Forest Management Activities and other permitted activities on the Property pursuant to an interim Stewardship Plan agreed to by the parties (the "Interim Stewardship Plan"). The acceptance and recording of this Easement shall be evidence that the Interim Stewardship Plan has been approved by the Easement Holder.

- ii.* The Initial Stewardship Plan and each Updated Stewardship Plan (as defined herein) shall:
- a.* Take into consideration the landscape scale of the Property;
  - b.* Employ GIS technology and/or such other land planning tools that are acceptable to the Fee Owner;
  - c.* Be in compliance with the requirements of the Forest Legacy Program administered by the State of New Hampshire at the time of the grant of this Easement; and
  - d.* Without requiring consistency between the plans, review and consider the existing management plan on the 25,000 acre Natural Areas if such plan is available at the time each Stewardship Plan is submitted.

*iii.* The Fee Owner shall submit a new or updated Stewardship Plan to the Easement Holder for its approval not less often than every ten (10) years after the approval date of the last Stewardship Plan ("Update" or "Updated Stewardship Plan").

*iv.* On the date that an Updated Stewardship Plan is approved, it shall become the then-current Stewardship Plan.

*v.* Each Stewardship Plan or Updated Stewardship Plan shall address the manner and the timeframe in which the Fee Owner plans to achieve or progress towards achieving the Stewardship Goals listed in Section 2.C.i through xii and to the extent it implements any recreational or outdoor conservation education rights, the Stewardship Goal set forth in Section 2.C.xiii. The Easement Holder shall be responsible for addressing the Stewardship Goal set forth in Section 2.C.xiii regarding public access in its Public Access and Recreational Use Management Plan.

*vi.* In its discretion, the Fee Owner may also submit to the Easement Holder, for its approval, amendments to the Initial Stewardship Plan or any Updated Stewardship Plan ("Amendments").  
Amendments shall:

- a.* Be subject to the review described in Section 2.E.x but need not address all elements of the Stewardship Plan described in Section 2.E.ix;
- b.* Be required only in the event the Fee Owner proposes Forest Management Activities or recreational uses not addressed in an approved Stewardship Plan;



- c. Be required in the event that the Fee Owner proposes to construct or install any new Fee Owner's Improvements under Section 3.F that are not portable or "temporary" (as described and defined in Section 3.F.i) and have not previously been described in an approved Stewardship Plan;
- d. Not be required in the event that the Fee Owner proposes to construct, install or undertake Fee Owner's Improvements that are necessary to accomplish routine Forest Management Activities generally described in an approved Stewardship Plan, including, without limitation, the creation of skid roads, skid trails, log landings, short spur roads to access landings, and winter roads provided such winter roads are generally described in the Stewardship Plan and more specifically described in the Annual Operation Plan, and the repair of existing trails, roads, culverts and bridges but shall be required in the event that the Fee Owner proposes to construct new all season roads or upgrade of existing roads to all season roads.
- e. Not be required for any change in timing or sequence of treatments within a ten-year cycle described in an approved Stewardship Plan.
- f. Be submitted, in the discretion of the Fee Owner, when proposing an alternative treatment to Compartments (as defined in Section 2.E.ix.a.2) that are substantially damaged by natural causes such as insect infestation, disease, fire, wind or ice.

vii. The Easement Holder agrees to provide data and information regarding the wildlife and rare, threatened or endangered animal species; rare and exemplary natural communities and rare, threatened or endangered plant species; archaeological, historic and cultural resources; and recreational features and facilities under control of the Easement Holder on the Property that it has available to it from time to time to be used in the preparation of the Stewardship Plan or Update.

viii. The Easement Holder agrees to provide, to the extent that it has available to it, the following maps and information to be used in the preparation of the Stewardship Plan:

- a. Maps depicting and describing known habitat features for wildlife, and rare, threatened, or endangered animal species, and supporting data and descriptions;
- b. Maps depicting and describing known rare and exemplary natural communities and rare, threatened, or endangered plant species, and supporting data and descriptions; and
- c. Maps depicting and describing outdoor recreational features including, but not limited to, roads, trails, sheds, pit toilets, parking lots, gatehouses, and Visitor Support Facilities (defined in Section 5.N), and water access areas that may be used by the public.

ix. The Stewardship Plans and Updates shall include at least the following elements listed below:

a. Property Maps:

- 1. Boundary map (acknowledging, however, that the Fee Owner shall not be required to obtain or provide a survey based upon metes and bounds descriptions of tracts or parcels as part of the Stewardship Plan);
- 2. Maps of the units into which the Property will be divided by the Fee Owner for management purposes ("Compartments");
- 3. The SMA Plan (as defined in Section 2.F);
- 4. Any revisions to the SMA Plan that have been provided by the Easement Holder in accordance with Section 2.F;
- 5. Maps depicting forest types including species composition, size class, and stand density;
- 6. Maps depicting surface water resources;
- 7. Maps depicting forest access roads, gates, log yards, and gravel pits;
- 8. Maps, based upon information provided by the New Hampshire Department of Fish & Game, describing known habitat features for wildlife, and rare, threatened, or

- endangered animal species, if such information is provided;
9. Maps, based upon information provided by the New Hampshire Natural Heritage Program, describing known rare and exemplary natural communities and rare, threatened, or endangered plant species, if such information is provided; and
  10. Maps of outdoor improvements including, but not limited to, roads, trails, primitive campsites, lean-to shelters and huts (as defined in Section 3.F), Licensed Sites, maintenance facilities, gatehouses, water access areas, and parking areas that the Fee Owner, its agents, contractors, or permittees maintain or operate on the Property pursuant to Section 3 of this Easement.
- b. Descriptions of the Property including:
1. Descriptions of the forested areas, including forest types, past management history, estimated regional growth rates, general tree quality, insects and disease, future potential, access, and operability, which are based, in part, on the Fee Owner's inventories that shall remain confidential and proprietary to the Fee Owner;
  2. Descriptions of the Compartments;
  3. Descriptions, based upon information provided by the New Hampshire Department of Fish & Game, of known habitat features for wildlife, and rare, threatened, or endangered animal species, if such information is provided;
  4. Descriptions, based upon information provided by the New Hampshire Natural Heritage Program, of known rare and exemplary natural communities and rare, threatened, or endangered plant species, if such information is provided;
  5. Description of improvements including all roads, trails, primitive campsites, lean-to shelters and huts (as defined in Section 3.F), maintenance facilities, gatehouses, water access areas, and parking areas that the Fee Owner maintains or operates on the Property pursuant to Section 3;
  6. Description of geological attributes (topography, soils, aquifers, wetlands, ponds, and streams) as shown on 1:24000 USGS maps or other readily available public sources of information; and
  7. Description of aesthetic resources.
- c. Description and Discussion of Other Considerations Affecting the Fee Owner's Management of the Property including:
1. Forest access road location, design and construction;
  2. Archeological, historic, and cultural resource considerations; and
  3. Adjacent existing conserved lands on the date of this Easement.
- d. Description and Discussion of the Fee Owner's Goals and Objectives for Management of the Property including:
1. Forest management goals and objectives including forest structure and composition goals for the entire Property;
  2. Management objectives and silvicultural objectives for the Compartments;
  3. Management objectives and considerations for wildlife, and rare, threatened, or endangered animal species including, but not limited to, riparian areas, high elevation zones, low elevation spruce-fir forests, known deer wintering areas, early successional habitats and mast stands;
  4. Management objectives and considerations for the conservation of rare and exemplary natural communities, and rare, threatened, or endangered plant species;
  5. Management objectives and considerations for the Fee Owner's Recreational Improvements (as described in section 3.C); and
  6. Management goals for aesthetic resources including consideration of visual impact of

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management activities on the Property from public highways and trails.

- e. Description and Discussion of the Fee Owner's Planned Activities on and Management of the Property including:
  - 1. Forest Management Activities for the time period covered under the Stewardship Plan, including the approximate acreage of each specific silvicultural treatment (using broad treatment categories: for example, thinning, shelterwood treatment, or overstory removal) that is to be applied to each forest type (described by three components: composition (hardwood, softwood, or mixed wood), size class (seedling and sapling, poles, or sawtimber), and density based on percentage of crown closure (100% to 81%, 80% to 61%, 60% to 31%, and 30% to 0%);
  - 2. The Fee Owner's exercise of those Reserved Rights under Section 3 that do not require the consent or approval of the Easement Holder but which impact the Property including, for example, outdoor conservation education programs and the Fee Owner's Improvements under Section 3.F that are not temporary; and
  - 3. The Fee Owner's exercise of those Reserved Rights under Section 3 that require the consent or approval of the Easement Holder, including, for example, water extraction under Section 3.K, and construction of Recreational Improvements under Section 3.C.

x. Approval of Stewardship Plan. The approval process for the Stewardship Plan, Update, and Amendment shall be as follows:

- a. The Easement Holder shall review and approve or disapprove each Stewardship Plan, Update, or Amendment submitted by the Fee Owner within ninety (90) days of the Easement Holder's receipt of the Stewardship Plan, Update, or Amendment.
- b. The receipt of each Stewardship Plan, Update, or Amendment shall be confirmed in writing by the Director of the Division of Forests and Lands.
- c. The 90 day review period may be extended upon the written agreement of both the Easement Holder and the Fee Owner. In acting to disapprove any Stewardship Plan, Update, or Amendment, or any provision thereof, the Easement Holder shall state in writing its reasons, referencing the specific provision or provisions of the Stewardship Plan, Update, or Amendment that it does not approve and how such provision or provisions are inconsistent with the Purposes or Stewardship Goals identified in Sections 1 and 2.C.
- d. If the Stewardship Plan is not approved, the Fee Owner shall respond in writing to the notice and comments provided by the Easement Holder under this Section 2.E.x within ninety (90) days with a proposed revision to the Stewardship Plan or within thirty (30) days with a written explanation of why the Stewardship Plan should be approved as originally proposed. The Fee Owner shall be entitled to meet with the reviewers of the Plan to discuss any reasons for the Stewardship Plan not being approved.
- e. When reviewing any Stewardship Plan, Update, or Amendment, the Easement Holder shall recognize that forest product markets have a great influence on the ability of the Fee Owner to practice Forest Management Activities and to meet timeframes set forth in the Stewardship Plan for progressing toward or achieving Stewardship Goals.
- f. For the purposes of this Section 2.E.x, review and approval of any Stewardship Plan, Update, or Amendment by the Easement Holder shall be undertaken by the Director of the Division of Forests and Lands, in consultation with the Director of the Division of Parks and Recreation and the Executive Director of the New Hampshire Fish and Game Department (or their assignees and/or successor agencies).
- g. The reviewers shall seek the advice of the New Hampshire Natural Heritage Bureau, the Department of Cultural Resources, and the Non-game and Endangered Wildlife Program, or successor programs, and may rely upon the advice and recommendations of other

wildlife experts, conservation biologists, foresters, recreation experts, cultural experts, or other experts as they may select to determine whether the Stewardship Plan, Update, or Amendment would be detrimental to the Purposes and Stewardship Goals identified in Sections 1 and 2.C.

- h. The parties acknowledge that from time to time there may be timing and locational conflicts between Forest Management Activities proposed under a Stewardship Plan and recreational activities proposed under a Public Access and Recreational Management Plan (as defined in Section 5.B). It is expected and acceptable that recreational activities shall be controlled in certain areas for reasonable periods of time in order to allow the Fee Owner to carry out Forest Management Activities. A Stewardship Plan may not be disapproved because of reasonable limitations on recreational activities in order to accommodate harvesting schedules; however, the parties shall make reasonable efforts to cooperate with each other's schedules and priorities.
- i. Provided that the Initial or Updated Stewardship Plan has been submitted and is under review in accordance with the approval process above, the Interim Stewardship Plan and any other Stewardship Plan or amended Stewardship Plan, as provided for in Section 2.E.ii, shall remain in effect until superceded by the Initial Stewardship Plan or an Updated Stewardship Plan.

xi. Annual Operation Plan. By May 1 of each year, the Fee Owner shall submit an operation plan (the "Fee Owner's Annual Operation Plan") describing the planned implementation of the Stewardship Plan for the upcoming year. The Fee Owner's Annual Operation Plan shall be prepared by a New Hampshire licensed, professional forester or other qualified person approved in advance by the Easement Holder who shall certify that the Fee Owner's Annual Operation Plan is consistent with the approved Stewardship Plan and the terms of this Easement.

2.F. Special Management Areas. Certain areas of the Property shall be designated "High Elevation Zones", "Riparian Areas", "Wetlands", "Wildlife Management Areas" (including deer wintering yards and mast stands), "Natural Heritage Areas", and "Cultural Heritage Areas" (collectively, the "Special Management Areas"). The locations of the Special Management Areas on the date of this Easement shall be identified in a plan included in the Baseline Documentation (the "SMA Plan").

i. Additional Special Management Acreage. After the grant of this Easement, the Easement Holder may designate, at its sole discretion, in addition to those locations identified in the Baseline Documentation, up to three thousand (3,000) additional acres (the "Additional Acres") to be included within the Special Management Areas identified on the SMA Plan, to protect cultural and natural resources not identified by the Easement Holder as of the date of this Easement. The location of the Additional Acres shall not unreasonably restrict the Fee Owner's access to any portion of the Property for Forest Management Activities. The Additional Acres shall be designated as follows:

- a. Initial Designation. The Easement Holder may designate the Additional Acres within eighteen months of the date of the grant of this Easement (the "Initial Designation Period") without requiring the consent of the Fee Owner. Upon such designation, the Additional Acres shall be incorporated as an Amendment to the Initial Stewardship Plan. The Easement Holder shall designate the Additional Acres by providing the Fee Owner with a revision to the SMA Plan (which revision shall be included in the Baseline Documentation), at the Easement Holder's expense. Notwithstanding anything to the contrary herein, designation of the Additional Acres shall not permit the Easement Holder to close any existing roads, skid roads or trails or roads constructed by the Fee Owner after the date of this Easement, but prior to designation of the Additional Acres.
- b. Interim Designation. If the Easement Holder has not designated all of the Additional Acres during the Initial Designation Period, the Easement Holder may designate

Additional Acres at any time before the ninth anniversary of the Initial Stewardship Plan (the "Interim Designation Period") and such designation shall become effective and incorporated as an Amendment to the Initial Stewardship Plan if the Fee Owner consents.

- c. Final Designation. If the Easement Holder has not designated all of the Additional Acres during the Initial Designation or Interim Designation Periods, or if the Fee Owner has not consented to a designation during the Interim Designation Period, the Easement Holder may designate the Additional Acres on the ninth anniversary of the Initial Stewardship Plan to become effective and incorporated in the Fee Owner's next Updated Stewardship Plan.

ii. Adjustments. Either the Fee Owner or the Easement Holder may propose to the other party adjustments to the location and/or boundaries of the Special Management Areas, provided, however, that such adjustments shall occur only with the mutual consent of the parties. After any adjustment, certain areas previously designated as Special Management Areas may, with the mutual consent of the parties, no longer be deemed Special Management Areas and other areas may, with the mutual consent of the parties, be deemed Special Management Areas. Any such adjustment or Additional Acreage shall be reflected in an amendment to the SMA Plan of the Special Management Areas included in the Baseline Documentation and shall be incorporated in the Stewardship Plan. No adjustment shall reduce the Special Management Areas total acreage below what it is on the date of this Easement.

iii. Management of Special Management Areas. Special Management Areas shall be managed to protect the natural and/or cultural resource qualities associated with these areas as follows:

- a. In accordance with the Stewardship Goals set forth in Section 2.C;
- b. In compliance with the recommendations of the publication "Good Forestry in the Granite State", as they apply to the qualities to be protected within the Special Management Areas, as more particularly set forth in Sections 1 through 4, and 6.6 of such publication (entitled "Soil Productivity"; "Water Quality, Wetlands and Riparian Areas"; "Habitat"; "Unique and Fragile Areas"; and "Cultural Resources"), provided, however, that the Fee Owner may, with the consent of the Easement Holder, take such actions or pursue such treatments of the Special Management Areas that are not in accordance with such publication if such actions or treatments continue to protect the special qualities of these areas and such actions and treatments are consistent with the Purposes and the Stewardship Goals; and
- c. In accordance with "Erosion Control on Timber Harvesting."

iv. Management of High Elevation Zones and Riparian Areas. The High Elevation Zones and Riparian Areas shall also be managed in compliance with the following additional provisions and restrictions:

- a. High Elevation Zones. For the purposes of this Easement, "High Elevation Zones" shall be defined as all areas on the Property above an elevation of two thousand seven hundred (2,700) feet and as shown in the Baseline Documentation. The Fee Owner may maintain existing roads in High Elevation Zones, but shall not construct new roads in High Elevation Zones, except (i) skid roads (with skid roads defined as an "access cut through the woods for skidding," using the definition from the "Dictionary of Forestry" (Society of American Foresters, 1998)), or (ii) with the prior written consent of the Easement Holder, new roads, provided that such new roads are constructed in areas with slopes less than 25%, can be constructed in a manner that avoids erosion, and are reasonably necessary in the sole discretion of the Easement Holder to access harvestable areas within or outside of the High Elevation Zones.

Timber harvesting and associated Forest Management Activities in High Elevation Zones may occur only in those areas with slopes less than 25%. The Fee Owner shall consult

with the Easement Holder in creating the design, layout, and implementation of all timber harvesting operations in High Elevation Zones. Within those High Elevation Zones with slopes less than 25%, timber harvesting shall, at a minimum, comply with the terms and conditions of the agreement entitled "MOU for High Elevation Forest Management," first enacted October 29, 1996, a copy of which is included in the Baseline Documentation, or its successor agreements or other terms and conditions as may be agreed upon by the Fee Owner and the Easement Holder. Management of Old Growth Forest in High Elevation Zones shall be in accordance with Section 4.8 of the publication "Good Forestry in the Granite State".

- b. Riparian Areas. For the purposes of defining Riparian Areas and guiding Forest Management Activities in accordance with this Easement, the width and location of the Riparian Areas are as depicted on the SMA Plan. The Riparian Areas widths used to develop the SMA are designated below:

Waterbody Type	Riparian Area Width
1 <sup>st</sup> and 2 <sup>nd</sup> Order Streams	100 feet
3 <sup>rd</sup> Order Streams	330 feet
4 <sup>th</sup> Order Streams	660 feet
Ponds <10 acres	100 feet
Great Ponds >10 acres	300 feet
Non-Forested Wetlands <10 acres	100 feet
Non-Forested Wetlands >10 acres	300 feet

The width of Riparian Areas shall be measured upland from the normal high water mark of the water body or wetland edge. Notwithstanding the widths set forth in the chart above, the widths of and management guidelines for Riparian Areas may be modified as appropriate, as agreed to by the Easement Holder and Fee Owner, based upon the specific conditions of the site, including but not limited to, flooding zones, slopes, erodible soils, riparian vegetation communities, and roads. Log yards, landings, and staging areas may be constructed in Riparian Areas in compliance with "Good Forestry in the Granite State" and in compliance with the then current best management practices for the sites, soils and terrains of the Property as described in the "Best Management Practices". No timber harvesting, except in connection with the construction and maintenance of roads, bridges and crossings within Riparian Areas, shall occur in the twenty-five foot wide area measured upland from the normal high water mark of the following Riparian Areas: 3<sup>rd</sup> Order Streams, 4<sup>th</sup> Order Streams, Great Ponds, and Non-Forested Wetlands greater than 10 acres in size (the "No-Cut Riparian Zones"). This section is not to be interpreted as restricting the ability of the Fee Owner to maintain and construct, and with the written consent of the Easement Holder to relocate, roads, bridges and crossings within such Riparian Areas and the No-Cut Riparian Zones as are otherwise permitted in this Easement and in accordance with the Stewardship Plan.

v. Natural Heritage Areas and Cultural Areas. The parties acknowledge that within the Special Management Areas there may be Natural Heritage Areas and Cultural Areas that are fragile and the parties may not wish to highlight their location through permanent boundary markers on the ground, but may wish to mark for reference and guidance in order to avoid damage resulting from the Fee Owner's Forest Management Activities. In order to avoid damage, before the Fee Owner enters the area, and within sixty days after submission of the Fee Owner's Annual Operations Plan (as defined in Section 2.F), the Easement Holder shall temporarily mark, on the ground to the extent not defined by obvious existing features, the boundaries of those Natural Heritage Areas and Cultural Areas that are in the proximity of planned harvesting operations of the Fee Owner. The Fee Owner shall not commence planned harvesting operations in close proximity to areas designated by the Easement Holder as Natural Heritage Areas or Cultural Areas prior to such areas being marked during such sixty day period.

vi. Management of Other Areas. Forest Management Activities in areas outside of the designated Special Management Areas shall be performed in accordance with Section 2.D.

2.G. Additional Forest Management Restrictions. The following restrictions shall apply to all Forest Management Activities:

i. Licensed Forester. All Forest Management Activities shall be supervised by an employee or agent of the Fee Owner who is a New Hampshire licensed, professional forester and/or, with the prior approval of the Easement Holder, other qualified persons, to ensure compliance with the terms and conditions of this Easement.

ii. Harvest Techniques. The Fee Owner and Easement Holder acknowledge that prior to the Easement being imposed, the Property was managed using predominately even-aged and in some areas uneven-aged management techniques. The Fee Owner and Easement Holder further acknowledge that the Fee Owner may continue to manage portions of the property as even-aged stands and that even-aged and uneven-aged forest management techniques are equally appropriate silvicultural practices for achieving the Stewardship Goals for the Property. No liquidation harvest practices (defined as the removal of trees with little or no regard to established silvicultural principles) shall be permitted.

2.H. Subdivision. The Property consists of numerous tracts that are described in the Property description attached as Exhibit A. The individual tracts shall not be subdivided; and the individual tracts, which comprise the Property, shall be conveyed together with the other tracts, except as provided in Section 3.H "Withdrawal of Forest Product Processing and/or Manufacturing Facility".

2.I. Structures. No structure or improvement, including, but not limited to, a dwelling, any portion of a septic system, tennis court, swimming pool, dock, aircraft landing strip, tower, or mobile home, shall be constructed, placed, or introduced onto the Property, except as provided in Section 3 and in Section 5.

2.J. Excavation.

i. The mining, drilling, quarrying, excavation, or removal of rocks, minerals, natural gas, petroleum, gravel, sand, topsoil, or other similar materials shall not be allowed on the Property; nor shall the removal, filling, or other disturbances of soil surface, nor any changes in topography, surface or subsurface water systems, or wetlands, be allowed unless such activities ("Excavation Activities"):

a. are common and necessary in conjunction with the Forest Management Activities, natural resource-based conservation, natural resource-based outdoor conservation education, wildlife habitat management, or the natural resource-based outdoor recreational uses of the Property;

- b. are used for the maintenance, construction, replacement, and repair of roads used by the Fee Owner or the Easement Holder to access the Property whether or not such roads are owned by the Fee Owner or the Easement Holder;
- c. are for Forest Management Activities of the Fee Owner on other adjacent lands owned by the Fee Owner; or
- d. are for the construction of recreational improvements permitted on the Property in accordance with Sections 3 and 5 and specifically including the improvements of and by Licensees for use at the Licensed Sites permitted on the Property in Section 3.J.

ii. In addition, such Excavation Activities shall:

- a. not harm State or federally recognized rare, threatened, or endangered species, or cultural resources. The determination of harm shall be made by the Easement Holder based upon information from the New Hampshire Natural Heritage Inventory and/or the New Hampshire Fish and Game Department, Non-game Program, and the Department of Cultural Resources, or the State agencies then recognized by the State of New Hampshire as having responsibility for identification and/or conservation of such species or resources;
- b. not be detrimental to the Purposes and Stewardship Goals of this Easement as described in Sections 1 and 2.C; and
- c. be in accordance with the Stewardship Plan required in Section 2.E, the Public Access and Recreational Use Management Plan required in Section 5.B, and the Road Management Agreement required in Section 5.F.

iii. Prior to commencement of any such Excavation Activities, all necessary federal, state and local permits and approvals shall be secured.

iv. Except as specifically allowed in this Easement, no rocks, minerals, gravel, sand, topsoil or other similar materials shall be removed from the Property.

2.K. Signage. No new outdoor advertising structures such as signs and billboards shall be displayed on the Property except as specifically permitted under Sections 3 and 5, as desirable or necessary in the accomplishment of the Forest Management Activities, natural resource-based conservation, wildlife habitat management, natural resource-based outdoor conservation education, Permitted Recreational Activities on the Property, or to advertise the land for sale, publicize the Forest Legacy Program, the Land and Community Heritage Investment Program, or to recognize the partnership that created this Easement. Any such sign shall not be detrimental to the Purposes of this Easement. No new sign, except with the mutual consent of the parties, shall exceed eight (8) square feet in size or be artificially illuminated. There shall be no posting of signs to prohibit public pedestrian access to and outdoor recreational use of the Property except as specifically allowed in Sections 3.F.iii.c, 3.G "Signage", and 5.S "Signage".

2.L. Hazardous Materials. There shall be no dumping, spreading, injection, burning, or burial of manmade materials or materials then known to be environmentally hazardous, or of bio-solids, except as specifically provided in connection with the exercise of the Fee Owner's Forest Management Activities, the Fee Owner's Reserved Rights under Section 3, and the Easement Holder's Affirmative Rights under Section 5.

2.M. OHRV Use. Neither the Fee Owner nor the Easement Holder shall use or permit its employees, agents, licensees, contractors, lessees, permittees, or invitees to use "off highway recreational vehicles" not registered for highway use or "all terrain vehicles" as defined by NH RSA 215-A:1 (hereinafter referred to as "OHRVs"), except as specifically provided in Sections 3.E, 3.J.vi, 5.A.iv, and 5.Q.



2.N. Compliance with Law. All activities on the Property shall be performed in accordance with all applicable local, state, and federal laws and regulations.

3. RESERVED RIGHTS.

All acts and uses not prohibited in Section 2 are permissible provided that such acts and uses do not materially impair the Purposes, are consistent with the Stewardship Goals, where applicable are performed in accordance with the approved Stewardship Plan, and comply with all applicable laws and regulations. The Fee Owner retains and reserves all customary rights and privileges of ownership, including the right to conduct, and where specifically stated below, to permit its employees, agents, contractors, licensees, permittees, invitees, and other third parties to conduct, the following activities on the Property (“Reserved Rights”), provided that such acts and uses do not materially impair the Purposes, are consistent with the Stewardship Goals, where applicable are performed in accordance with the approved Stewardship Plan, and comply with all applicable laws and regulations:

3.A. Fee Owner’s Recreational Rights. The right to engage in and permit its employees and invitees to conduct non-commercial natural resource-based outdoor recreational activities, including, but not limited to, camping, hunting, fishing, trapping, hiking, nature study, bird watching, walking, snowshoeing, cross-country skiing, snowmobiling and horseback riding.

3.B. Outdoor Conservation Education. The right to conduct and to permit its employees, agents, contractors, permittees and invitees to conduct non-commercial, natural resource-based outdoor conservation education and programs on the Property, including those programs operated by non-profit organizations.

3.C. Construction of Recreational Improvements and Charging Fees for Commercial Recreational Activities. Without limiting the Permitted Recreational Activities (as defined in Section 5.A.i), and provided that the Fee Owner obtains the prior written approval of the Easement Holder, the right to:

i. construct, install, maintain, and replace, or permit the Fee Owner’s employees, agents, contractors, permittees, or licensees to construct, install, maintain and replace primitive campsites, three-sided lean-to shelters and huts (as defined in Section 3.F), roads, trails, parking areas, and similar recreational improvements (the “Fee Owner’s Recreational Improvements”) for camping, cross-country skiing, equestrian access, bicycling, and other recreational activities as may be approved in advance and in writing by the Easement Holder;

ii. use and permit third parties to use the Fee Owner’s Recreational Improvements; and

iii. charge and collect, or permit the Fee Owner’s employees, agents, contractors, permittees, or licensees to charge and collect, fees for the use of the Fee Owner’s Recreational Improvements.

iv. This right is an exception to Section 2.A “Prohibited and Permitted Uses,” Section 2.J “Excavation,” and Section 2.I “Structures.”

3.D. Fee Owner’s Right to Grant Access on and Across the Property to Others.

i. The right to grant easements to third parties for pedestrian and vehicular access by motorized vehicles, motorized equipment, and other motorized transportation, in common with others, on and over

existing or new roads and trails on the Property to and from adjacent or nearby lands that are owned by either the Fee Owner or others for the purpose of carrying out Forest Management Activities on such adjacent or nearby lands and, with the consent of the Easement Holder, ingress and egress to traditional recreational camps on adjacent or nearby lands. The Fee Owner may accept compensation for the grant of such easements. The Fee Owner shall contribute to the costs of maintaining the Designated Roads associated with such use as set forth in the Road Management Agreement described in Section 5.F and shall reimburse the Easement Holder for any damage resulting from such use as provided in such Road Management Agreement. The Fee Owner shall further indemnify and hold harmless the Easement Holder for any loss suffered by the Easement Holder as a result of any claim against the Easement Holder arising from the use of such easements by third parties, whose right to use the easements derives from the Easement Holder, provided, however, that the Easement Holder may not waive any sovereign immunity with respect to such claim. This right is an exception to Section 2.A "Prohibited and Permitted Uses".

*ii.* The right to allow the Licensees of the Licensed Sites (as defined in Section 3.J) pedestrian and vehicular access (including by snowmobile) in common with others on and over the roads and trails on the Property to the Licensed Sites. Neither the Easement Holder nor the Fee Owner shall have any obligation under this Easement to the Licensees to maintain any roads or trails on the Property for the purpose of access and passage over the Property to the Licensed Sites, which access and passage shall be a Licensee's own risk. If the parties agree that certain Designated Roads will be maintained, the Fee Owner shall contribute to the costs of maintaining the Designated Roads associated with the Licensees' use as set forth in the Road Management Agreement.

### 3.E. Motorized Vehicle Use.

*i.* The right to use, and to permit the Fee Owner's employees, agents, contractors, permittees, and invitees to use motorized vehicles, motorized equipment, and other motorized transportation including, but not limited to, OHRVs, on and across the Property in connection with Forest Management Activities and other management activities. The Fee Owner shall further indemnify and hold harmless the Easement Holder for any loss suffered by the Easement Holder as a result of any claim arising from such use by third parties whose right to such use derives from the Fee Owner; provided, however, that the Easement Holder may not waive any sovereign immunity with respect to such claim.

*ii.* The Fee Owner shall contribute to the costs of maintaining the Designated Roads and Designated Snowmobile Trails that are associated with the Fee Owner's use in the manner described in the Road Management Agreement. In the event of damage to the Designated Roads (as differentiated from normal wear and tear), which is caused by the Fee Owner's exercise of its Reserved Rights, including, without limitation, Forest Management Activities, but excluding any damage to the roads caused by Licensees of Licensed Sites or their invitees, the Fee Owner shall either (a) reimburse the Easement Holder for the expense of repairing such damage, or (b) take such independent actions as are necessary, at Fee Owner's cost and expense, to repair such damage, so that the damaged portion of the Designated Road is repaired in accordance with the specifications included in the then current Road Management Agreement.

### 3.F. Structures, Improvements, Trails.

*i.* The right to develop, construct, maintain, install, replace, repair, relocate and remove, at any time and from time to time, the following improvements as are reasonably necessary for Forest Management Activities and other Reserved Rights: roads, unpaved paths and trails, unpaved parking areas, huts and lean-to shelters (each of which shall have a footprint of impervious surfaces that does not exceed 1,000 square feet and a height that does not exceed one and one-half stories (25 feet)), tent

platforms, dams, culverts, fences, bridges, gates, gatehouses, maple sugar houses and appurtenant facilities for the processing of sap produced on the property, temporary forest management and logging camps utilizing self-contained mobile facilities for temporary housing of persons involved in Forest Management Activities at the Property, temporary storage facilities and temporary sheds for storage of equipment and supplies used in Forest Management Activities at the Property, portable or temporary equipment and structures designed for in-woods processing of forest products including portable generators, portable septic facilities, and wells. "Temporary" for purposes of this Section shall mean that such structures shall be moved or removed within twenty-four months after installation. In addition, the Fee Owner may construct, maintain, install, replace, repair and relocate two permanent facilities, together with utility services associated with such facilities, for the purposes of Forest Management Activities and the administration of the Property each with a footprint of not more than 5,000 square feet and a height of not more than 40 feet. All siting and construction of such permanent facilities shall be performed in accordance with the same conditions as set forth in Section 3.H.ii – iii "Withdrawal of Forest Product Processing and/or Manufacturing Facility". Such structures, improvements and trails shall be referred to as the "Fee Owner's Improvements."

- ii. a.* The Fee Owner shall, in accordance with Section 2.E.ix.e.2, have described in the then current Stewardship Plan, or in an Amendment in accordance with Section 2.E.x, any new Fee Owner's Improvements that the Fee Owner expects to construct or install during the period of such Plan and that are not portable or "temporary" (as described or defined in Section 3.F.i).
- b.* The Fee Owner shall not be required to obtain prior written consent to undertake, or to describe in a detailed manner in a Stewardship Plan, any Fee Owner's Improvements that are necessary to accomplish routine Forest Management Activities when those Activities are generally described in an approved Stewardship Plan, including, without limitation, the creation of skid roads, skid trails, log landings, short spur roads to access landings, and winter roads provided such winter roads are generally described in the Stewardship Plan and more specifically described in the Operations Plan, and the repair of existing trails, roads, culverts and bridges, but not including the construction of new all season roads or upgrades of existing roads to all season roads (which shall be described in accordance with Section 3.F.ii.a), provided that such maintenance occurs in a manner consistent with the Road Management Agreement described in Section 5.F.
- iii.* The Fee Owner shall provide written notice to the Easement Holder thirty days prior to any construction of the Fee Owner's Improvements (including copies of plans of the facilities and maps depicting their general location). No notice shall be required for the following:
  - a.* routine maintenance, including, but not limited to road maintenance (provided that such maintenance occurs in a manner consistent with the Road Management Agreement);
  - b.* the development and maintenance of unpaved paths and trails for routine Forest Management Activities and generally described in an approved Stewardship Plan;
  - c.* other routine activities arising out of Forest Management Activities, including the creation of skid roads and skid trails as described in Section 3.F.ii.b.;
  - d.* the construction or installation of the Fee Owner's Improvements that are portable or temporary as described in Section 3.F.i provided that the approximate locations of such Improvements are described in the Fee Owner's Annual Operation Plan;
  - e.* items already included in the Fee Owner's Annual Operation Plan; and
  - f.* emergency actions required to protect public safety or natural resources, including closure of roads and trails and prohibition of access to portions of the Property, except that notice of such action shall be provided to the Easement Holder immediately and the affected

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road, trail, or portion of the Property shall not remain closed for greater than 48 hours without the approval of the Easement Holder.

iv. The Fee Owner's Improvements, if newly installed or constructed, shall be sited and constructed to the extent possible taking into consideration the function and locational requirements of such improvements and in a manner that in the Easement Holder's reasonable judgment is consistent with the Purposes and Stewardship Goals of this Easement.

v. Trail construction and maintenance shall be carried out in accordance with the then-current, generally accepted best management practices for the sites, soils and terrain of the Property. For references see "Best Management Practices for Erosion Control During Trail Maintenance and Construction" (State of New Hampshire, Department of Resources and Economic Development, Division of Parks and Recreation, Trails Bureau, 1996) or similar successor publications.

vi. This Section is an exception to Section 2.I "Structures" of this Easement and must be performed in accordance with Section 2.J "Excavation."

3.G. Signage. The right to erect, maintain, and replace (subject to the limitations of Section 2.K "Signage") to identify the interest of the Easement Holder or the Fee Owner of the Property, and regulatory signs, including trail and road directions, such as the Easement Holder or Fee Owner of the Property may deem necessary or desirable. To protect human safety, the Fee Owner may post signs in the vicinity of the road construction or timber harvesting operations and prohibit public access in the immediate vicinity of active road construction or timber harvesting operations in accordance with Section 3.F.ii. Such prohibition shall end at the conclusion of those activities and the signs shall be removed.

3.H. Withdrawal of Forest Product Processing and/or Manufacturing Facility. The right to withdraw from the Property subject to this Easement one site (the "Site") on which the Fee Owner or its agents, successors or assigns may construct, develop, maintain, and replace forest product processing and/or manufacturing facilities for the purpose of utilizing forest products, including, and in particular, forest products harvested from the Property. An example of a forest product processing and/or manufacturing facility is a permanent wood processing mill, together with associated structures. Additionally, at the discretion of the Fee Owner, and with the agreement of the Easement Holder, the Fee Owner may also develop an area of the Property (the "Extraction Location") no greater than twenty-five (25) acres in size on which the use shall be limited to the extraction of sand, rock, and gravel for the purpose of development of the Site and development, construction, and maintenance of the associated structures and improvements permitted on the Site pursuant to this Section 3.H. Upon withdrawal of the Site, the Site shall no longer be encumbered by this Easement. The Extraction Location shall remain encumbered by the Easement. The Fee Owner shall exercise this right upon the following terms and conditions:

i. The Site shall be no larger than reasonably necessary to construct and operate the proposed forest product processing and/or manufacturing facilities taking into consideration the possibility of future growth, but under no circumstances shall the Site contain more than one hundred (100) acres of land. In the event that an Extraction Location is developed, the Site shall be no greater than one hundred (100) acres reduced by the area of the Extraction Location.

ii. The Fee Owner may install, construct, maintain and replace, and grant easements to third parties for the installation, construction, maintenance and replacement of utility lines and services on, under and across the Property for the purpose of providing power and communication for the Site and the improvements permitted thereon.

- iii. The Site and/or the Extraction Location shall be located to the extent practicable:
  - a. to protect and mitigate any impact on the Special Management Areas, as defined in Section 2.F "Special Management Areas",
  - b. to mitigate impact on the Property relating to the installation of utility lines by using best efforts to locate the Site as close to US Route 3 as practicable,
  - c. to mitigate impact or limitation on public access to any area of the Property,
  - d. to protect scenic views of the Property from public roads,
  - e. to protect water availability and quality on the Property, and
  - f. to protect wildlife habitat on the Property.

iv. At least one hundred twenty (120) days prior to the Fee Owner's proposed withdrawal of the Site from the restrictions of the Easement, the Fee Owner shall provide the Easement Holder with a plan showing the proposed location of the Site and/or the Extraction Location for Easement Holder's approval, which approval shall not be unreasonably withheld.

- v. The Fee Owner and the Easement Holder shall execute and record a notice of withdrawal (the "Notice of Withdrawal") of the Site from these restrictions. Such notice shall require that:
  - a. The Site be used only for forest products processing and manufacturing;
  - b. The Site shall not be further subdivided once withdrawn; and
  - c. The withdrawal of the Site shall not be effective without the recording of the Notice of Withdrawal with the Coos County Registry of Deeds. Recording shall be at the Fee Owner's expense.

vi. This right is an exception to Section 2.A. "Prohibited and Permitted Uses," Section 2.H "Subdivision," Section 2.I "Structures," and Section 2.J "Excavation."

3.I. Archeological Activities. To conduct or permit third parties to conduct archeological investigation and archeological activities, including survey excavations and artifact retrieval, following submission of an archeological investigation plan to, and receipt of written approval from, the Easement Holder and the State Archeologist of the New Hampshire Division of Historical Resources, Department of Cultural Resources, or appropriate successor. This right is an exception to Section 2.J "Excavation."

3.J. Licensed Sites.

i. The Fee Owner and Easement Holder acknowledge and agree that, on the date of the grant of this Easement, there are one hundred (100) sites (the "Licensed Sites") that have historically been leased or licensed to third parties for recreational camp uses.

- ii. The Baseline Documentation shall include:
  - a. A plan showing the locations of the Licensed Sites;
  - b. Copies of the leases or licenses for the Licensed Sites that are leased or licensed to third parties (the "Licensees") as of the date of the grant (the "Current Licenses");
  - c. Copies of the leases or licenses for those Licensed Sites for which leases or licenses have lapsed as of the date of the grant (the "Lapsed Licenses") (collectively, the "Current Licenses" and the "Lapsed Licenses" shall be referred to as the "Existing Licenses"); and
  - d. A description of the improvements located on the Licensed Sites, including the dimensions and height of such improvements.

iii. The Fee Owner shall have the right to continue to lease or license each of the Licensed Sites for use as a seasonal, recreational camp, subject to the terms and conditions stated below:

- a. The Licensed Sites shall continue to be leased or licensed in accordance with a license or

lease agreement substantially in the form attached hereto as Exhibit C (the "License).

- b. The use of Licensed Sites shall remain seasonal. No Licensed Site may be used as a year-round residence or as a primary residence.
  - c. Licenses or leases may be terminated by the Fee Owner for violation or breach of License provisions or other good cause. However, the Fee Owner shall not extinguish any Licensed Site without permission of the Easement Holder.
  - d. The location and boundaries of a Licensed Site may be relocated, moved or adjusted within the Property, with written permission of the Easement Holder, provided the Easement Holder determines that such relocation is consistent with the Purposes of this Easement. No Licensed Site may be relocated into a Special Management Area or other fragile area.
  - e. A seasonal, recreational camp and appurtenant structures may be constructed, installed, maintained and replaced on each Licensed Site provided that the aggregate footprint of impervious surfaces, inclusive of decks and other structures, shall not exceed 1,000 square feet in area and one and one-half stories (not to exceed 25 feet in height). Appurtenant structures shall include wells, and subsurface wastewater disposal systems, sanitary waste and gray water disposal systems, provided the same are constructed, installed, maintained and replaced in accordance with the License.
  - f. If a Licensed Site contains structures with an aggregate footprint of more than 1,000 square feet of impervious surfaces or exceeds 25 feet in height on the date of this Easement (as documented in the Baseline Documentation), those structures may remain and be maintained, rebuilt or replaced as necessary, however there shall be no increase in impervious surface and height beyond the footprint and height on the date of this Easement.
  - g. All camps, buildings, structures and other facilities, and uses on Licensed Sites must comply with applicable local, State, and federal laws and regulations.
  - h. When camps, buildings, structures and other facilities on the Licensed Sites cease to be used, the Fee Owner may, subject to applicable law and obtaining any necessary permits for such activities, remove or burn and bury any improvements.
- iv. The Easement Holder's right to allow pedestrian access by the public over the Property pursuant to Section 5.I "Access to the Property" shall not include the right to permit access by the public over the Licensed Sites.
- v. The Licensed Sites shall be one acre or less.
- vi. As provided in Section 3.D.ii, the Fee Owner shall have the right to permit the Licensees pedestrian and vehicular access, including by snowmobile, on and over the roads and trails on the Property for the purpose of obtaining access to the Licensed Sites.
- vii. The Fee Owners shall have the right to issue permits to Licensees to cut firewood on the Property for their personal use on the Licensed Sites.
- viii. The Fee Owner shall have the right to establish not more than ten (10) new leased or Licensed Sites on the property (the "Permitted Licensed Sites"). The locations of the Permitted Licensed Sites are subject to the approval of the Easement Holder, which approval shall not be unreasonably withheld. An additional fifteen (15) Licensed Sites may be established and leased and licensed by the Fee Owner subject to the approval of the Easement Holder in accordance with New Hampshire law (the "Approved Licensed Sites").
- ix. At no time shall there be more than one hundred twenty-five (125) Licensed Sites.

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x. All of the provisions of this Section 3.J shall also apply to Permitted Licensed Sites and Approved Licensed Sites.

xi. This right is an exception to Section 2.A "Prohibited and Permitted Uses," and Section 2.I "Structures," and Section 2.J "Excavation."

3.K. Water Resources Extraction. The right to tap any naturally occurring water springs located on the Property for commercial or non-commercial purposes, to install pumps, and to construct structures to protect such springs, pumps, and mechanical equipment, provided that the size of such structures shall be limited to those necessary for the extraction of water, but not for processing, and provided that such removal of water does not permanently lower the water table on the Property or the level of rivers, streams, ponds, lakes, wetlands, and vernal pools on the Property, or affect the Purposes and Stewardship Goals of this Easement, and is addressed and approved by the Easement Holder in the Stewardship Plan. Such activities shall be conducted in accordance with all applicable local, State, and federal laws and regulations. This right is an exception to Section 2.A "Prohibited and Permitted Uses," and Section 2.I "Structures," and Section 2.J "Excavation."

3.L. Use of Hazardous Substances. The right to use and store in appropriate containers hazardous substances generated or used in connection with Forest Management Activities (including, but not limited to, oil, gasoline, pesticides and other chemicals). Upon cessation of the use of such materials, the Fee Owner shall remove such material from the Property at reasonable intervals.

3.M. Notice. Except as specifically provided in this Easement, the Fee Owner shall notify the Easement Holder in writing at least thirty (30) days before any exercise of the Reserved Rights under the following sections: Section 3.F "Structures, Improvements, Trails", Section 3.D "Fee Owner's Right to Grant Access on and across the Property to Others", Section 3.H "Withdrawal of Forest Products Processing and/or Manufacturing Facility", and Section 3.K "Water Resources Extraction".

#### 4. NOTIFICATION OF TRANSFER; TAXES.

4.A. The Fee Owner shall notify the Easement Holder in writing of the name and address of the new owner ten (10) days before the transfer of title to the Property.

4.B. All taxes and assessments are the sole responsibility of the Fee Owner.

#### 5. AFFIRMATIVE RIGHTS AND RESPONSIBILITIES OF THE EASEMENT HOLDER.

5.A. Public Access. The Easement Holder shall be deemed to have an exclusive right and easement to permit and manage pedestrian and vehicular access by the public on and across the Property for Permitted Recreational Activities, as defined below, including the right to limit such access when the Easement Holder deems necessary, all on the terms and conditions set forth in this Section 5:

- i. The term "Permitted Recreational Activities" as used in this Easement shall mean:
  - a. those non-commercial motorized and non-motorized outdoor recreational activities and uses of the Property by the public that are permitted from time to time pursuant to the Public Access and Recreational Use Management Plan described in Section 5.B, including, without limitation, hunting, fishing, trapping, picnicking, swimming, hiking,

cross-country skiing, snowmobiling, nature observation, snowshoeing, and enjoyment of open space;

- b. all uses by the public of the recreational improvements that the Easement Holder may construct under Section 5.N (the "Easement Holder's Recreational Improvements"), provided that such uses are permitted activities under Section 5.A.i.a;
- c. subject to Section 5.A.ii, commercial or non-commercial guiding by third parties for hunting and fishing in accordance with State laws and regulations;
- d. subject to Section 5.A.ii, commercial or non-commercial site-seeing tours by motorized vehicle over the Designated Roads (as defined in Section 5.F), provided that such tour operators shall be permitted to operate only at such times and in such places as are agreed to by the parties in the Public Access and Recreational Use Management Plan;
- e. subject to Section 5.A.ii, commercial or non-commercial outdoor recreational and educational programs and activities offered to the public by third parties, provided that such programs and activities are permitted activities under Section 5.A.i.a and provided that such activities shall only be permitted by the Easement Holder: (i) if commercial, with the prior written consent of the Fee Owner; (ii) at such times and in such places as are agreed to by the parties in the Public Access and Recreational Use Management Plan; and (iii) after obtaining all applicable approvals in accordance with New Hampshire laws and regulations;
- f. subject to Section 5.A.ii, commercial or non-commercial uses of the Easement Holder's Recreational Improvements, provided that such uses are permitted activities under Section 5.A.i.a and provided further that such uses shall only be permitted by the Easement Holder: (i) if commercial, with the prior written consent of the Fee Owner, (ii) (ii) at such times and in such places as are agreed to by the parties in the Public Access and Recreational Use Management Plan; and (iii) after obtaining all applicable approvals in accordance with New Hampshire laws and regulations;
- g. those uses permitted under Sections 3.A, 3.B, and 3.C; and
- h. for purposes of this Section 5, "commercial" shall mean operated by a for-profit entity and "non-commercial" shall mean operated by a charitable or non-profit entity.

ii. If the Easement Holder: (a) issues a special use permit or similar permit that allows a third party to use the Property or any portion thereof for a Permitted Recreational Activity, (b) charges a third party a fee for such party's use of the Property or any portion thereof for a Permitted Recreational Activity, or (c) leases or licenses the operation of a Visitor Support Facility to a third party, then the Easement Holder shall require such third party: (1) to agree in writing to indemnify, release and hold harmless the Easement Holder and the Fee Owner from and against any and all losses, costs, claims, expenses and liabilities (including the cost of defending the same or enforcing this indemnity, including reasonable attorneys' fees) incurred or suffered by the Easement Holder and the Fee Owner on account of any injury to persons or damage to property arising out of such third party's activities on and use of the Property, and (2), when required by the Easement Holder, to carry insurance covering such indemnification obligation in amounts that satisfy the Easement Holder's statutory liability limitations then in effect.

iii. This Easement shall not be interpreted to prevent or prohibit the Fee Owner from permitting its employees, agents, permittees, invitees or Licensees (as defined under Section 3.J "Licensed Sites") access on and across the Property, including for the purpose of engaging in any Permitted Recreational Activities of the Property as defined in this Section.

- iv. The Easement Holder shall have the right to permit the public to use and to operate:
  - a. motor vehicles registered for highway use on the Designated Roads (as defined in Section 5.D), provided that such roads are maintained and repaired by the Easement Holder in



accordance with specifications set forth in the Road Management Agreement described in Section 5.F; and

- b. all Terrain Vehicles (as defined in RSA 215-A:1, I-b, and its subsequent amendments) and mechanized vehicles, including bicycles, on the Designated Roads, provided that (1) such use and the locations of such use are permitted under the Public Access and Recreational Use Management Plan and (2) any repairs necessary as a result of, or damage caused by, such use are made in accordance with the specifications set forth in the Road Management Agreement.

v. Subject to Section 5.O, the Easement Holder shall have the right to permit the public to use and operate snowmobiles on certain designated snowmobile trails on the Property shown on the plan included in the Baseline Documentation and entitled the "Designated Snowmobile Trails". This plan may be amended from time to time to include additional snowmobile trails or the relocation of snowmobile trails upon mutual written agreement of the Fee Owner and Easement Holder. In no circumstances shall the groomed snowmobile trails exceed two hundred fifty (250) miles.

vi. The Easement Holder shall manage any and all access by the public permitted under this Section 5 in accordance with both the then-current Public Access and Recreational Use Management Plan described in Section 5.B and the then-current Road Management Agreement described in Section 5.F and in a manner that is consistent with the Stewardship Plan.

5.B. Public Access and Recreational Use Management Plan. A Public Access and Recreational Use Management Plan (the "Recreation Plan") shall be developed by the Easement Holder, in consultation with the State agencies who have regulatory or programmatic responsibilities for administration or monitoring of the Easement, and submitted to the Fee Owner for approval within two years after the grant of this Easement (the "Initial Recreation Plan"). The parties acknowledge that pending final approval of the Initial Recreation Plan, the Easement Holder shall manage the public's use of the Property in accordance with an interim Public Access and Recreation Management Plan (the "Interim Recreation Plan"). The acceptance and recording of this Easement shall be evidence that the Interim Recreation Plan has been approved by the Fee Owner.

i. The Initial Recreation Plan and each subsequent Recreation Plan shall, with a level of detail consistent with the information provided in the Stewardship Plan:

- a. be consistent with the Purposes, Stewardship Goals, Stewardship Plan, and the Road Management Agreement;
- b. address the manner and the time-frame in which the Easement Holder plans to achieve or progress towards achieving the Stewardship Goal set forth in Section 2.C.xiii; and
- c. include, at minimum, the following elements:
  - 1. The goals and objectives for access by the public and the management of such access;
  - 2. Those recreational uses that will be permitted on the Property;
  - 3. The policies that will govern access by the public and the Permitted Recreational Activities;
  - 4. A narrative description of existing and planned Recreational Improvements, including Visitor Support Facilities and other structures and a description of the use of existing Recreational Improvements during the term of the prior Recreation Plan and any management concerns;
  - 5. A map showing the locations of the Fee Owner's Recreational Improvements, both existing and proposed during the term of the Recreation Plan, which information shall be provided by the Fee Owner, and the Easement Holder's Recreational Improvements,

- both existing and proposed during the term of the Recreation Plan, including, but not limited to, roads, trails and other improvements;
6. A narrative description of and designation through maps of the locations of outdoor recreational features including, but not limited to, roads, trails and other improvements and a description of the use of such recreational features during the term of the prior Recreation Plan and any management concerns;
  7. Examples of conflicts, if any, between recreational activities and other uses of the Property permitted under this Easement, the responses to such conflicts and the process or proposed process for resolving them;
  8. A description of proposed new or additional uses of the Property by the public, proposed responses to such proposed uses, and a process for determining whether such uses are acceptable to the Easement Holder and the Fee Owner;
  9. A description of the methods of collecting, storing, and removing rubbish, garbage, debris and waste materials left by the public use of the Property and a summary of the results of such management during the prior Recreation Plan; and
  10. A monitoring plan of public use on the Property and, specifically in Special Management Areas and in areas that are ecologically fragile or that contain rare and exemplary natural communities, populations of rare species, or natural heritage or cultural features, to ensure that these areas are not degraded or the Purposes of this Easement diminished. A summary of the results of the monitoring during the prior Recreation Plan shall also be included.

*ii.* The Easement Holder, in consultation with the State agencies that have regulatory and programmatic responsibilities for administration or monitoring of the Easement, shall submit a new or updated Recreation Plan to the Fee Owner for its approval not more than every five (5) years after the approval date of the last Recreation Plan (an "Updated Recreation Plan"). An existing plan shall remain in effect until an Updated Recreation Plan is approved. On the date that an Updated Recreation Plan is approved, it shall become the then-current Recreation Plan.

*iii.* The Easement Holder, in consultation with the State agencies that have regulatory and programmatic responsibilities for administration or monitoring of the Easement, may submit to the Fee Owner, for its approval, amendments to the Initial Recreation Plan or any succeeding Recreation Plan ("Amendments"). Amendments shall be:

- a.* Subject to the approval process for the Recreation Plan but need not include all of the Recreation Plan elements described in Section 5.B.i.
- b.* Required if the Easement Holder proposes a new type of recreational activity (or if a recreational activity is limited in location in a prior plan, an expansion of the areas in which such activity is permitted), or a new Recreational Improvement that has not been approved as part of an approved Recreation Plan.

**5.C. Review and Approval Process for Public Access and Recreational Use Management Plan.**  
The review and approval process for each Recreation Plan, Updated Recreation Plan ("Update"), and any Amendments shall be as follows:

*i.* The Fee Owner shall review and approve or disapprove each Recreation Plan, Update, or Amendment submitted by the Easement Holder within ninety (90) days after the Fee Owner's receipt of such Recreation Plan, Update or Amendment.

*ii.* The 90 day review period may be extended upon the written agreement of both the Easement Holder and the Fee Owner. In acting to comment unfavorably on any Recreation Plan, Update or Amendment, or any provision thereof, the Fee Owner shall state in writing its reasons, referencing the

specific provision or provisions of the Recreation Plan, Update or Amendment that it does not approve and how such provision or provisions are inconsistent with the Purposes and Stewardship Goals of this Easement or with the Fee Owner's Stewardship Plan.

*iii.* The Fee Owner shall provide its review and approval or disapproval in writing to the Easement Holder.

*iv.* If the Recreation Plan is not approved, the Easement Holder shall respond in writing to the notice and comments provided by the Fee Owner under this Section 5.C within ninety (90) days with a proposed revision to the Recreation Plan or within thirty (30) days with a written explanation of why the Recreation Plan should be approved as originally proposed. The Easement Holder shall be entitled to meet with the Fee Owner to discuss any reasons for the Recreation Plan not being approved.

*v.* The Interim Recreation Plan and any other subsequent approved Recreation Plan shall remain in effect until superceded by the next approved Recreation Plan.

*5.D. Maintenance and Management of Designated Roads.* The parties agree that the term "Designated Roads" as used in this Easement shall mean those roads shown and marked "Designated Roads" on Exhibit D attached hereto and incorporated herein.<sup>1</sup> The parties agree that the Easement Holder shall have the responsibility of maintaining the Designated Roads as provided in this Section 5.D and Section 5.F "Road Management Agreement" and the Fee Owner shall have the responsibility to contribute to the maintenance of the Designated Roads as provided in Section 3.D "Fee Owner's Right to Grant Access On and Across the Property to Others", Section 3.E "Motorized Use" and Section 5.F "Road Management Agreement". The parties acknowledge, however, that the Easement Holder does not intend and shall not be required to maintain all of the Designated Roads or to open all of the Designated Roads to public use. Instead, the parties agree that the Easement Holder shall:

*i.* Develop, with the Fee Owner, a Five Year Road Management Plan in accordance with Section 5.E.

*ii.* Maintain those Designated Roads: (a) that the Easement Holder permits the public to travel on and over by motorized vehicle during the term of the then current Road Management Agreement (as defined in Section 5.F) and (b) that the Fee Owner has proposed to use for Forest Management Activities or has requested that the Easement Holder maintain in connection with other Reserved Rights of the Fee Owner during the term of the then current Road Management Agreement and the Fee Owner's then current approved Stewardship Plan or annual Operations Plan. The Easement Holder may, but need not, open the roads used for Forest Management Activities to motorized use by the public.

*iii.* Maintain the Designated Roads described in Section 5.D.ii in accordance with specifications set forth and agreed to in the then-current Road Management Agreement.

*iv.* If use of the Designated Roads by motorized or mechanized vehicles other than motor vehicles registered for highway use (for example, use by bicycles, snowmobiles or OHRVs) is permitted

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<sup>1</sup> The parties acknowledge that by a certain deed of even date entitled "Deed of Designated Roads and Reservation of Appurtenant Easement" (the "Deed and Reservation") from the Trust for Public Land to the State of New Hampshire to be recorded after this Conservation Easement, the State owns or will own fee title to the Designated Roads, subject to the terms of this Conservation Easement and the reservations set forth in such Deed of Roads. The parties acknowledge that the intent of the Deed of Reservation is to transfer title to the roads, but to maintain and incorporate certain rights and obligations of the parties with respect to maintenance of the roads that are set forth in this Easement.

in accordance with Section 5.A.iv, the Easement Holder shall be required to repair the Designated Roads to the extent that such use (including plowing and grooming of Designated Roads for use as snowmobile trails) damages the roads, beyond normal wear and tear, and causes the roads not to meet the specifications set forth in the Road Management Agreement.

5E. Five Year Road Management Plan. The parties acknowledge that a long term plan that expresses the Easement Holder's intentions for management and maintenance of the Designated Roads, without binding the Easement Holder or the Fee Owner to the expenditures or uses contemplated by such plan, will be beneficial for both parties. To that end, a Five Year Road Management Plan (a "Five Year Road Plan") shall be developed at five year intervals by the Easement Holder for the review and approval of the parties. The Initial Five Year Road Plan shall be developed along with the Initial Road Management Agreement described in Section 5.F within two years after the grant of this Easement (the "Initial Five Year Road Plan"). The parties acknowledge that pending final approval of the Initial Five Year Road Plan, the Easement Holder shall manage the Designated Roads in accordance with the Interim Road Management Agreement.

- i. The Initial Five Year Road Plan and any subsequent Five Year Road Plan shall:
  - a. be consistent with the Stewardship Plan and the Recreation Plan; and
  - b. include, at a minimum, the following elements:
    1. A map designating those Designated Roads that the Easement Holder and the Fee Owner would like maintained during the term of the Five Year Road Plan (acknowledging, however, that the Plan is solely for planning and budgeting purposes and neither party intends to be bound by the Plan). The maps shall show:
      - A. those roads that the Easement Holder intends to open to the public for travel by motor vehicles registered for highway use,
      - B. those roads that the Easement Holder intends to open for use as groomed Designated Snowmobile Trails;
      - C. those roads that the Easement Holder wishes to open for other motorized and mechanized use in accordance with the Recreation Plan;
      - D. those roads that the Fee Owner would like maintained for Forest Management Activities and other Reserved Rights of the Fee Owner based upon the Fee Owner's estimates about where it will be carrying out such activities during the term of the Stewardship Plan and which of those roads the Easement Holder may open to the public for motorized use; and
      - E. other roads that do not fall within subsections A through D that the Easement Holder or the Fee Owner would like maintained, repaired, or have capital improvements made to during the term of the Five Year Road Plan.
    2. Specifications setting forth the various minimum standards to which the Designated Roads described in Section 5.E.i.b.1 will be maintained during the Five Year Road Plan.
    3. A capital improvement budget for the term of the Five Year Road Plan.
    4. A description of the road maintenance, replacement and/or improvements planned during the term of the Plan (including the replacement, repair and improvement of bridges, culverts and roadway structures) and the intended location and timing thereof, distinguishing where possible, between annual maintenance and repair and capital improvements.
    5. Provisions for gating and road and trail closure, including due to planned maintenance.
    6. A description of the extent to which the Easement Holder plans to use gravel, sand, topsoil and other similar materials in accordance with Section 5.M "Gravel Rights" and the locations from which Easement Holder proposes to remove such materials.

ii. The Easement Holder shall prepare a new or updated Five Year Road Management Plan every five years (an "Updated Five Year Road Management Plan"). The existing Five Year Road Management Plan shall remain effective until the Updated Road Management Plan is approved. On the date that an Updated Five Year Road Management Plan is approved, it shall become the then-current Five Year Road Management Plan. The parties may amend the current Five Year Road Management Plan at any time upon mutual agreement of the parties.

5.F. Road Management Agreement. A Road Management Agreement (the "Initial Road Agreement") shall be prepared by the Easement Holder for review and approval by the parties at the same time as the Easement Holder prepares the Initial Five Year Road Management Plan for review and approval by the parties under Section 5.E. The parties acknowledge that pending final approval of the Initial Road Agreement, the Easement Holder shall manage the Designated Roads in accordance with an interim Road Management Agreement (the "Interim Road Agreement"). The acceptance and recording of this Easement shall be evidence that the Interim Road Agreement has been agreed to by the parties.

- i. The Initial Road Agreement and any subsequent Road Agreement shall:
- a. be consistent with the Stewardship Plan and the Recreation Plan;
  - b. incorporate and be consistent with the principles set forth in this Section 5.E.i.b; and
  - c. include, at a minimum, the elements listed in Section 5.E.i.b.6:
    1. The Road Management Agreement shall provide for maintenance of the Designated Roads that permits long-term use of the road system on the Property and shall acknowledge that both parties are expected to contribute to the costs of maintenance of the Designated Roads in an equitable manner.
    2. The Fee Owner's annual contribution toward the costs for maintenance of the Designated Roads that the Easement Holder commits to maintain under a Road Management Agreement shall be directly related to the use of such Designated Roads by the Fee Owner for all of its Forest Management Activities or exercise of any of its other rights under this Easement or by those using the Designated Roads with the permission of the Fee Owner. The Fee Owner's contribution shall include an agreed upon base cost amount with an additional amount that reflects the usage by the Fee Owner and third parties allowed to use the Designated Roads with the Fee Owner's permission.
    3. The Easement Holder's share of the costs for maintenance of the Designated Roads shall be directly related to the Easement Holder's and the public's use of the Designated Roads.
    4. The Fee Owner shall have the right, but no responsibility, to maintain and reconstruct any of the Designated Roads, provided, however,
      - A. if the Fee Owner maintains Designated Roads that the Easement Holder has committed to maintain under the Road Management Agreement, but which the Easement Holder is unable or has failed to maintain, then the Fee Owner may either:
        - i. maintain such roads to the specifications agreed upon in the Road Management Agreement, in which event the public shall be entitled to access over such roads and the Fee Owner shall be entitled to a credit against its contribution under the Road Management Agreement; or
        - ii. maintain such roads in a manner acceptable to the Fee Owner, in which event the public shall not be entitled to access over such roads and the Fee Owner shall not be entitled to a credit against its contribution under the Road Management Agreement; or

- B.* if the Fee Owner maintains Designated Roads that the Easement Holder has not committed to maintain under the Road Management Agreement, then, unless both parties agree otherwise, the Fee Owner's maintenance of such roads need not be to the specifications agreed upon in the Road Management Agreement, the public shall not be entitled to vehicular access over such roads, and the Fee Owner shall not be entitled to a credit against its contribution under the Road Management Agreement.
5. The Road Management Agreement shall establish mutually agreeable remedies in the event that emergency road work is necessary, the Easement Holder is unable or fails to maintain the Designated Roads in accordance with the Road Management Agreement, or a breach of the Road Management Agreement occurs by either party.
6. The Road Management Agreement shall also include:
- A.* A map or list designating those Designated Roads that the parties agree that the Easement Holder intends to maintain during the term of the Agreement. The maps shall show:
    - i.* those roads that the Easement Holder intends to open to the public for travel by motor vehicle registered for highway use;
    - ii.* those roads that the Easement Holder intends to open for use as groomed Designated Snowmobile Trails;
    - iii.* those roads that the Easement Holder intends to open for other motorized and mechanized use in accordance with the Recreation Plan;
    - iv.* those roads that the Easement Holder intends to maintain for Forest Management Activities and other Reserved Rights of the Fee Owner based upon the Fee Owner's estimates about where it will be carrying out such activities and which of those roads the Easement Holder may to open to the public for motorized use; and
    - v.* other roads that do not fall within (i) through (iv) that the Easement Holder intends to maintain or repair or perform capital improvements on during the term of the Agreement;
  - B.* A description of the road maintenance, replacement and/or improvements planned during the term of the Agreement (including the replacement, repair and improvement of bridges, culverts and roadway structures) and the intended location and timing thereof (recognizing that unforeseen repairs, replacement and improvements will be required and will be managed and responded to in substantially the manner set forth in Exhibit B of the Interim Road Agreement), distinguishing where possible, between annual maintenance and repair and capital improvements;
  - C.* References to the agreed to specifications contained in the Five Year Road Plan;
  - D.* The annual maintenance and operations budget for each year during the term of the Agreement;
  - E.* A capital improvement budget for each year during the term of the Agreement;
  - F.* A listing of road gating and road and Snowmobile Trail closures planned during the term of the Agreement;
  - G.* The parties' agreements regarding the Easement Holder's use of gravel, sand, topsoil and other similar materials in accordance with Section 5.M., including the locations from which Easement Holder may remove such materials.
- ii.* The Easement Holder shall prepare a new or updated Road Management Agreement for review and approval by the parties every two years, commencing two years after the grant of this

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Easement (an "Updated Road Management Agreement"). A draft Road Management Agreement shall be distributed to the parties by May 1st in the years when a new agreement is due, for review at the May Meeting and June Meeting described in Section 5.G, and the parties shall make reasonable efforts to reach agreement on the Updated Road Management Agreement by July 1st of such year. On the date that an Updated Road Management Agreement is agreed to by both parties, it shall become the then-current Road Management Agreement.

- iii.* The Easement Holder or the Fee Owner may submit to the other party for its approval, amendments to the Interim Road Management Agreement, the Initial Road Management Agreement or any succeeding Road Management Agreement ("Amendments"). Amendments, if agreed to by both parties, shall also be deemed amendments to the Five Year Road Management Plan. Amendments shall:
- a.* be required only in the event a party proposes a change in the Designated Roads to be maintained under the Plan;
  - b.* be required in the event that a significant upgrade or repair of a Designated Road is required which was not anticipated in an approved Road Management Agreement and a party requests that such work be included in the budget and the budget and work plan revised accordingly;
  - c.* be required in the event that a party requests that either party's Contribution to road maintenance be amended;
  - d.* not be required for any change in the level of vehicular public access on Designated Roads provided that such access is allowed under this Easement and an approved Recreation Use Plan, and the Designated Roads are maintained to the specifications set forth and agreed to in the Road Management Agreement; or
  - e.* not be required for any closing of a Designated Road for maintenance or safety as long as such actions are allowed under this Easement and an approved Road Management Agreement.

5.G. Operations Plans; Annual Meetings.

*i.* To assist in coordination of each party's planned uses of the Property, the Easement Holder shall submit to the Fee Owner by May 1 of each year an operation plan (the "Easement Holder's Annual Operation Plan") describing the planned implementation of the Recreation Plan for the upcoming year and the Fee Owner shall submit to the Easement Holder by May 1 of each year the Fee Owner's Annual Operation Plan describing the planned implementation of the Stewardship Plan for the upcoming year. Following receipt, each party shall use its best efforts to identify potential issues that should be discussed at the May Meeting or the June Meeting, as defined in Sections 5.G.ii and 5.G.iii.

- ii.* In order to address road issues and conditions as soon as possible after the winter, the Easement Holder and the Fee Owner shall meet annually on a date during the first two weeks May (the "May Meeting") to evaluate the condition of the Designated Roads and to review and discuss:
- a.* planned and necessary work on such roads;
  - b.* the preparation and finalization of budgets for such work in accordance with the Road Management Agreement;
  - c.* the planned uses and coordination of uses of such roads during the upcoming year;
  - d.* the implementation of the Road Management Agreement during the upcoming year; and
  - e.* if a new Road Management Agreement is to be developed during the upcoming year, establishment of a work schedule for preparation and completion of that Agreement.

*iii.* The Easement Holder and the Fee Owner shall meet annually on a date during the first two weeks in June (the "June Meeting") to review and discuss Permitted Recreational Activities and the implementation of the Recreation Plan during the upcoming year, including use of the Designated

Snowmobile Trails, maintenance of the Snowmobile Trails, and the implementation of the Recreation Plan and the Road Management Agreement with respect to the Snowmobile Trails, and the implementation of the Fee Owner's Stewardship Plan during the upcoming year.

*iv.* The parties may hold such other meetings as they agree are necessary on dates and times that are acceptable to both to review and discuss the Road Management Agreement, the Five Year Road Management Plan, the Operations Plans submitted by either party, or a new or Updated Recreation Plan or new or Updated Stewardship Plan.

*5.H. No Independent Right.* No member of the public shall have any independent right to use the Property under this Easement except pursuant to programs and policies established by the Easement Holder in accordance with this Easement.

*5.I. Access to the Property.* The Fee Owner and the Easement Holder acknowledge that the Fee Owner does not guarantee or warrant by the conveyance of this Easement any right of access by the public or the Easement Holder to the Property across lands of others outside the boundaries of the Property, but the Fee Owner grants such non-exclusive access in common with the Fee Owner and others over lands of others in so far as Fee Owner has the right to make such a grant. Notwithstanding anything in this Easement to the contrary, this Easement shall not impair any prescriptive or other right in the Property that may have been acquired by the public or the Easement Holder prior to the date of this Easement, or any other right the public or the Easement Holder may have to use or access the Property pursuant to law. The easements across lands of others that are granted to the Easement Holder under this Easement are not assignable except in connection with the permitted assignment by the Easement Holder of this Easement under the provisions of Section 5.N "Recreational Improvements."

*5.J. Temporary Limitation on Access.* The Fee Owner, in accordance with Section 3.F.iii.f, retains the right to temporarily limit or close access to portions of the Property accessible to the public.

*5.K. Licensed Sites.* The Easement Holder's right and easement to permit and manage access by the public on and across the Property shall not include the right to permit access by the public over the Licensed Sites.

*5.L. Storage and Removal of Rubbish, Garbage, Debris, and Waste Materials Left on the Property by the Public.* The Fee Owner and the Easement Holder shall jointly develop reasonable policies and methods to be described in detail in the Public Access and Recreation Management Plan Agreement for the collection, temporary storage, and removal of any rubbish, garbage, debris, and waste materials left on the Property. In developing these policies and methods, the Easement Holder shall be responsible for the cost of collection, temporary storage, and removal of materials generated by general use by the public and the Easement Holder. The Fee Owner shall be responsible for the cost of collection, temporary storage, and removal of materials generated by the Fee Owner, its members, managers, employees, agents, contractors, permittees, licensees, or invitees. The Fee Owner and the Easement Holder shall cooperate with each other to insure that all such materials will be collected, stored in appropriate containers, and removed from the Property at reasonable intervals.

*5.M. Gravel Rights.* With the consent of the Fee Owner, which shall not be unreasonably withheld, the Easement Holder may utilize reasonable amounts of onsite gravel, sand, topsoil, and similar materials in furtherance of the Easement Holder's rights and obligations under this Section 5 and the approved Recreation Plan and Road Management Agreement, provided, however, that the Fee Owner shall designate from time to time reasonable locations from which the materials may be removed. Such locations and reasonable policies regarding the Easement Holder's use of such locations and materials



shall be set forth in the Road Management Agreement and, if appropriate, the Recreation Plan. The removal of any materials under this section shall be in accordance with Section 2.J "Excavation."

**5.N. Recreational Improvements.** The Easement Holder shall have the right to construct maintain, relocate, and replace if destroyed, and to allow the public to use, structures and improvements (the "Recreational Improvements"), including, but not limited to, trails, dams, bridges, culverts, sheds, pit toilets, parking lots, gatehouses and Visitor Support Facilities (as defined below) on the Property, provided that they are (i) necessary for and commonly used in the accomplishment of the conservation, outdoor conservation education, or outdoor recreational uses of the Property, (ii) not detrimental to the Purposes of this Easement or the Stewardship Goals, and (iii) approved as part of and constructed and maintained in accordance with the Recreation Plan and the Road Management Agreement. For the purposes of this Easement, "Visitor Support Facilities" shall be defined as enclosed shelters, huts and lean-to shelters (each with a footprint of impervious surfaces that does not exceed 1,000 square feet and a height that does not exceed one and one-half stories (25 feet)), and primitive campsites or any improvement for which the State charges a fee. Visitor Support Facilities shall be built only with the prior written consent of the Fee Owner. The following additional terms shall govern the Recreational Improvements:

*i.* In the event that the Easement Holder fails to maintain any and all such structures such that unsafe conditions exist, the Fee Owner has the right to limit or prohibit access by the public to those structures and improvements and the areas in close proximity to them for the purposes of protecting public safety, until such time as the conditions are corrected. The Easement Holder shall be notified within 24 hours of such a closure.

*ii.* The Easement Holder shall remove from the Property any Visitor Support Facilities, except trails or parking lots, which it does not maintain or repair.

*iii.* Trail construction and maintenance shall be carried out in accordance with the then-current, generally accepted best management practices for the sites, soils and terrain of the Property. For references see "Best Management Practices for Erosion Control During Trail Maintenance and Construction" (State of New Hampshire, Department of Resources and Economic Development, Division of Parks and Recreation, Trails Bureau, 1996) or similar successor publications.

*iv.* The Easement Holder may charge a fee for the use of the Visitor Support Facilities after obtaining all necessary approvals in accordance with New Hampshire law.

**5.O. Snowmobile Trail Maintenance and Management.** In accordance with Section 5.A.v, the Easement Holder shall have the right and responsibility to maintain the Designated Snowmobile Trails and manage public use of such trails as provided herein:

*i.* Public Use of the Designated Snowmobile Trails and their construction and maintenance by the Easement Holder shall be governed by the then current Recreation Plan and Road Management Agreement.

*ii.* The majority of the Designated Snowmobile Trails are located on gravel roads, originally constructed for forest management purposes. Annually some portions of the Designated Snowmobile Trails located on roads (including Designated Roads) will be closed to the public and these roads will be used for winter Forest Management Activities. Upon the request of the Fee Owner and with the agreement of the Easement Holder, which agreement shall not be unreasonably withheld, the Easement Holder shall temporarily relocate or close the Designated Snowmobile Trails or portions thereof to the public when Forest Management Activities near or in close proximity to the designated trails or portions thereof would make use of the designated trails or portions thereof hazardous to the public or when the

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Fee Owner will be using roads for Forest Management Activities that are also Designated Snowmobile Trails.

*iii.* In the event the Fee Owner chooses to temporarily relocate the Designated Snowmobile Trails or portions thereof in light of Forest Management Activities, the Fee Owner and the Easement Holder will work together to designate an alternate route to be constructed and maintained at the expense of the Easement Holder.

*iv.* The parties acknowledge that certain Designated Snowmobile Trails may be located on the Designated Roads and agree that any repairs to the Designated Roads that are necessary as a result of such use, or damage to the Designated Roads that is caused by such use, shall be corrected in accordance with the specifications set forth in the Road Maintenance Agreement.

*5.P. Hobby Mineral Collection.* The Easement Holder shall have the right to allow recreational, non-commercial removal of an incidental quantity of rocks and minerals as specimens for hobby mineral collecting. For purposes of this Section, "collecting" shall mean the removal of rocks and minerals from the ground surface using hand tools or the panning of stream gravels. All such activities shall be conducted with only minor digging and loosening of the soil material, and without significant disturbance of the environment or the use of explosives or power equipment. All such activities shall also be conducted in accordance with the Purposes and Stewardship Goals of this Easement, and in such areas as are specified in the Recreation Management Plan. This right is an exception to Section 2.J "Excavation."

*5.Q. Access by Easement Holder.* The Easement Holder and its employees, agents, contractors and permittees shall have reasonable access to, on and across the Property, including with motorized or mechanized vehicles, for such inspection as is necessary for the Easement Holder to determine compliance with and to enforce this Easement and to exercise the rights conveyed hereby, fulfill the responsibilities, and to carry out the duties assumed by the acceptance of this Easement. In addition, the Fee Owner grants the Easement Holder such non-exclusive rights of access over land of others to the Property, in common with the Fee Owner and others, for the purposes described in the preceding sentence in so far as the Fee Owner has the right to make such a grant.

*5.R. Collection of Data.* The Easement Holder and its employees, agents, contractors, and permittees shall have the right to enter the Property for the purpose of collecting data for studies and research for the purposes of understanding the status, trends and distribution of significant natural, ecological, cultural, archeological, recreational and wildlife resources on the Property, provided that (i) the research does not directly interfere with the Forest Management Activities of the Fee Owner, and (ii) any written material or analysis resulting from such studies or research are provided to the Fee Owner. This right of entry shall not entitle the Easement Holder to conduct any research or studies that involve manipulation or modification to the Property. Proprietary information related to economic values, earnings or profits resulting from studies and research shall not be released to the public without the written approval of the Fee Owner.

*5.S. Signage.* The Easement Holder shall have the right to post signs on the Property (subject to the limitations of Section 2.K "Signage") to identify the interest of the Easement Holder and to exercise its rights under this Easement. The Easement Holder shall consult with the Fee Owner with respect to design, size, and location of any signs. The Easement Holder shall have the responsibility to post permanent signs at regular intervals, but at minimum at the beginning of and at intersections along the Designated Roads to advise the public that the Designated Roads are used for Forest Management Activities.

5.T. Water Resources Extraction. With the consent of the Fee Owner and in accordance with the Recreation Management Plan, the Easement Holder may tap any naturally occurring water springs located on the Property for non-commercial purposes, install pumps, and construct structures to protect such springs and mechanical equipment, provided, however, that the size of such structures shall be limited to those necessary for the extraction of water, but not for processing, and provided that such removal does not permanently lower the water table on the Property or the level of rivers, streams, ponds, lakes, and wetlands on the Property, or is detrimental to the Purposes and Stewardship Goals of this Easement. Such activities shall be conducted in accordance with all applicable local, State, and federal laws and regulations. This right is an exception to Section 2.A "Prohibited and Permitted Uses" and to Section 2.J.

5.U. Third Party Certification. If the Fee Owner elects to obtain third party forestry certification of the Property directly from a certification agency operating under the standards established by the Forest Stewardship Council ("FSC") or Sustainable Forestry Initiative ("SFI") or like agencies or their successor organizations, then so long as the Property continues to be certified by such an agency, the Easement Holder may, at its sole discretion, elect to delegate the Stewardship Plan review (Section 2.E) and the Easement monitoring responsibilities with regard to the provisions of this Easement governing Forest Management Activities to the certification agency that certifies that Stewardship Plan. The Director of the Division of Forests and Lands, in accordance with Section 2.E.x, shall approve the Stewardship Plan. Under no circumstances shall such delegation negate the requirement that the Purposes and the Stewardship Goals of the Easement and the requirements of the Forest Legacy Program must be achieved nor shall the Easement Holder relinquish its ability and responsibility to enforce this Easement in accordance with Section 6. In the event of such delegation:

*i.* The Fee Owner shall provide the Easement Holder with a written copy of any third party agency certification from the certification agency prior to conducting Forest Management Activities on the Property unless the Fee Owner is operating pursuant to an approved or Interim Stewardship Plan, in which case the Fee Owner's Forest Management Activities may continue in accordance with such Plan and Fee Owner shall promptly provide the Easement Holder with a copy of such certification upon request.

*ii.* In the event that the certification of the Property is revoked or lapses, the Fee Owner shall notify the Easement Holder in writing of such revocation or lapse within thirty (30) days of the date of the revocation or lapse.

5.Y. Third Party Liability; Statutory Protections from Liability.

*i.* Nothing contained in this Easement shall create any liability on behalf of the Fee Owner or the Easement Holder to any third party or create any right, claim or cause of action on behalf of any party other than the Fee Owner or the Easement Holder and their successors and assigns. Nothing in this Easement shall be interpreted as an assumption of responsibility by, or basis for liability on the part of, the Fee Owner or the Easement Holder for any injury to person or damage to property or loss of life that may be sustained by any person while on the Property pursuant to the Easement or sustained by any person as a result of any entry on or use of the Property. The Fee Owner specifically retains all protections from liability provided under New Hampshire law to private owners of land, including, but not limited to, the protections contained in NH RSA 212:34, RSA 215:34 (II), or RSA 508:14 (or any successor or other statutory or regulatory provision then applicable). The Easement Holder specifically retains all protections from liability provided under New Hampshire law including sovereign immunity. The Easement Holder shall include the Fee Owner as a named insured on the insurance policy that the Easement Holder, through DRED's Bureau of Trails, provides to protect landowners from liability when they allow OHRV recreational trails on their property. The Easement Holder shall have the right to cancel this insurance policy, or any successor policies, at any time; provided, however, if the Easement

Holder receives advance notice of cancellation from the insurance carrier, the Easement Holder shall provide notice of such cancellation to the Fee Owner within seven (7) days after receipt of such notice. If the Easement Holder cancels the insurance coverage, Fee Owner and Easement Holder shall meet no later than fourteen (14) days after the cancellation, and preferably prior to the cancellation, to discuss options for possible protection from liability.

*ii.* At any time that the Fee Owner in its reasonable estimation becomes subject to liability exposure arising from the Easement Holder permitting access by the public on and across the Property pursuant to Section 5 of this Easement, which exposure is the result of amendments by the New Hampshire Legislature to, or New Hampshire judicial interpretation of, the statutory protections afforded to the Fee Owner as of the date of this Easement, the Fee Owner shall notify the Easement Holder in writing, describing the nature of the change in liability exposure (and if prospective, the expected date of the change). If the liability exposure results in an increase in the cost of insurance available to the Fee Owner, the Fee Owner may, with the consent of the Easement Holder and in accordance with all applicable State laws, charge fees to the public accessing the Property by motorized or mechanized vehicles in an amount necessary to reimburse the Fee Owner for such increased costs.

*iii.* In addition, the Fee Owner may also, at its sole option, by written notice, elect at any time to transfer fee title to the Designated Snowmobile Trails to the Easement Holder, subject to a reservation of access on and across such Snowmobile Trails for the benefit of the Fee Owner and its retained lands on the same terms, conditions, and covenants as set forth in Exhibit B of the Deed of Designated Roads and Reservation of Appurtenant Easement from the Grantor to the Grantee of near or even date, except that the Fee Owner shall have no obligation to contribute to the maintenance of the Designated Snowmobile Trails for use as snowmobile trails. For purposes of such a transfer, fee title to the Snowmobile Trails shall be defined as the area consisting of fifteen (15) feet on each side of the side of the centerline of the Snowmobile Trails as shown in the Baseline Documentation. If the Fee Owner so elects, such transfer of title shall take place as a gift from the Fee Owner and without monetary consideration paid by the Easement Holder, after approval by Governor and Executive Council, through the delivery of a deed to the Easement Holder.

## 6. CONSENT OR APPROVAL PRIOR TO UNDERTAKING CERTAIN ACTIONS.

6.A. Notice. The parties acknowledge that under specific circumstances set forth in this Easement, the Fee Owner or the Easement Holder is required to obtain the consent or approval of the other party prior to undertaking certain activities or taking certain rights. The parties acknowledge that the purpose of requiring such consent or approval is to afford each party an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the terms, conditions, Purposes, and Stewardship Goals of this Easement. Unless a greater or lesser period is specifically set forth in this Easement, whenever consent or approval is required for an activity or right, the party seeking consent shall notify the other party in writing when possible ninety (90) days and in no event less than forty-five (45) days prior to the date the party seeking consent intends to undertake the activity or right in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspects of the proposed activity or right in sufficient detail to permit the other party to make an informed judgment of the activity or right as to its consistency with the terms, conditions, Purposes, and Stewardship Goals of this Easement.

6.B. Response. The party receiving notice shall give written response of its determination within forty-five (45) days after the receipt of a written request from the party seeking consent. In the event the party receiving notice fails to respond to a written request from a party seeking consent within forty-five (45) days, the party seeking consent shall contact the other party and the other party shall respond within

ten (10) days or consent shall be deemed given. Consent obtained in one circumstance shall not be deemed or construed to be a waiver for any subsequent activities or rights.

6.C. Failure to Seek Consent or Discontinue Use or Activity. If a party who is required to seek consent or approval in advance of an activity or right fails to do so and does not receive approval after the fact, or if a party does not agree to discontinue the activity or right if the other party has declined to provide consent or approval, the other party may treat such failure to seek consent or approval or to discontinue such activity or right as a breach of this Easement and may seek a remedy for such breach in accordance with Section 7 "Breach of Easement."

## 7. BREACH OF EASEMENT

7.A. Notice of Breach. When a breach of this Easement or conduct by anyone inconsistent with this Easement comes to the attention of either party (the "Noticing Party"), it shall notify the other party (the "Noticed Party") in writing of such breach or conduct, delivered in hand or by certified mail, return receipt requested, and request that the Noticed Party take corrective action to cure the breach.

7.B. Response. The Noticed Party shall, within thirty (30) days after receipt of such notice or after otherwise learning of such breach or conduct, undertake those actions, including restoration, which are reasonably calculated to immediately correct or cure the breach; or to terminate the conduct and, if necessary, to repair any damage; or under circumstances where the violation cannot reasonably be cured within the thirty (30) day period, shall continue diligently to cure the violation until finally cured. The Noticed Party shall promptly notify the Noticing Party of its actions taken under this section.

7.C. Right to Cure. If the Noticed Party fails to take such proper action to cure the breach or terminate the conduct, the Noticing Party shall, as appropriate to the Purposes of this Easement, undertake any actions that are reasonably necessary to cure such breach, to repair any damage, to terminate such conduct. The Noticing Party may, after fifteen (15) days advance written notice to the Noticed Party, bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation by temporary or permanent injunction, to require the restoration of the Property to the condition substantially similar to that which existed prior to the injury, and/or to recover monetary damages for a violation of this Easement. The cost to cure, including the Noticing Party's expenses, court costs, and legal fees shall be paid by the Noticed Party provided that the Noticed Party is directly or primarily responsible for the breach or is otherwise responsible for its correction under the terms of this Easement.

7.D. Breach Caused by Others. Notwithstanding the foregoing paragraphs, this Easement shall not be construed to entitle either party to bring any action against the other party for any breach of this Easement, injury to or change in the Property resulting from causes beyond the other party's control, including, but not limited to, unauthorized actions by third parties, natural disasters such as fire, flood, storm, earth movement, catastrophic insect infestation, disease, acid rain or other airborne pollutants introduced into the atmosphere by third parties, and other natural events, or from any prudent action taken by such party under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

7.E. Non-Waiver Provision. Enforcement against breaches of this Easement shall be at the discretion of the Noticing Party and any forbearance by the Noticing Party to exercise its rights under this Easement in the event of any breach of any term of this Easement by the other party shall not be deemed or construed to be a waiver by the Noticing Party of such term or of any subsequent breach of the same or any other term of this Easement or of any the Noticing Party's rights under this Easement. No delay or

omission by the Noticing Party in the exercise of any right or remedy upon any breach by the other party shall impair such right or remedy or be construed as a waiver.

7.F. Existing Rights of Parties. No affirmative right granted to the Easement Holder and no restriction enforceable against the Fee Owner shall be enlarged, extended, or otherwise altered in any manner adverse to the right, title, and interest of the Fee Owner through prescription, adverse use, waiver, laches or any failure of the Fee Owner to enforce its Reserved Rights under this Easement. The grant of this Easement shall not diminish any prescriptive or other common law or other legal right in the Property that may have been acquired by the Easement Holder or member of the public prior to the date of this Easement.

7.G. Third Party Claims. The Easement Holder and the Fee Owner reserve the right, separately or collectively, to pursue all legal remedies against any third party responsible for any actions detrimental to the Purposes of this Easement.

## 8. DISPUTES

8.A. Non-Binding Arbitration. The Fee Owner and the Easement Holder shall have the right to have any dispute arising under this Easement determined by the Superior Court in Merrimack County or Coos County or submitted to non-binding arbitration in accordance with this Section. In this Section 8, any reference to "arbitration" shall mean non-binding arbitration. The Fee Owner and the Easement Holder agree that arbitration shall not operate to stay any proceedings that either may institute in the Merrimack County or Coos County Superior Court. If either requests that arbitration of a particular matter or matters be undertaken and if that matter is not at the time of the request the subject of an action in the Superior Court or if it does not become the subject of an action in the Superior Court during the course of the arbitration, then the Fee Owner and the Easement Holder shall agree that the matter will be submitted to arbitration. The agreement for arbitration shall be in writing, signed by both the Fee Owner and the Easement Holder, and include a statement of the matter or matters that are the subject of the arbitration.

8.B. Selecting Arbitrators. If arbitration is requested in a manner consistent with Section 8.A, the Fee Owner and the Easement Holder shall each choose an arbitrator within fifteen (15) days of the date of the written agreement for arbitration. These arbitrators shall be notified, in writing, that they have been chosen as arbitrators and that they are required to choose a third arbitrator within fifteen (15) days of the date of the notice. The fees and costs for the three arbitrators shall be agreed to, in writing, by the Fee Owner, the Easement Holder, and the arbitrators. Each party shall pay one-half of the total fees and costs of the arbitrators.

8.C. Scheduling a Hearing. When the three arbitrators have been selected, they shall, with the agreement of the Fee Owner and the Easement Holder, schedule a date or dates for the arbitration hearing as soon as practicable. All three arbitrators shall be present for the arbitration hearing. The arbitration hearing date may only be postponed for good cause accepted by at least two of the three arbitrators.

8.D. Written Decision. A written decision shall be rendered and signed with the agreement of at least two of the three arbitrators. The decision shall be issued within forty-five (45) days after the submission of the dispute and shall be considered the final decision of the arbitrators.

## 9. NOTICES

9.A. Delivering Notice. All notices, requests and other communications, required or permitted 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 overnight mail to the appropriate address first set forth above, or at such other address as the Easement Holder or the Fee Owner may hereafter designate by notice given in accordance with this Section. Notice shall be deemed to have been given on the earlier of when delivered by hand or, if mailed, three (3) business days after mailing. The Fee Owner shall provide the Easement Holder with notification of any activities on the Property that require legal notices to abutters or to the public under New Hampshire law.

9.B. Notice after Transfer. The Easement Holder, in the event of an assignment under Section 14, and the Fee Owner, in the event of a transfer under Section 15, shall provide notice to the other party, providing the name and address of the transferee for purposes of notice under this Section 9. Such notice shall be in recordable form and may be recorded by either party following such transfer.

9.C. Notice Regarding Transfer to Connecticut Lakes Realty Trust. The parties acknowledge that the Trust for Public Land d/b/a TPL-New Hampshire, as the initial Fee Owner and grantor of this Easement, by deed of near or even date to be recorded in the Coos County Registry of Deeds, intends to transfer fee title to the Property, subject to this Easement, to Thomas R. Morrow and Stuart J. McCampbell, as Trustees of the Connecticut Lakes Realty Trust under deed of trust dated March 12, 2002, which trust is recorded in said Registry at Book 990, Page 305. The parties further acknowledge, without need for any further notice of such transfer under Section 9.B or Section 15, that the address for purpose of notice of CLRT, as Fee Owner, shall be: c/o The Lyme Timber Company, 23 South Main St., 3rd Floor, Hanover, New Hampshire 03755.

#### 10. ANNUAL MEETING

The Fee Owner and the Easement Holder agree to use good faith to resolve any disagreements relating to the terms of this Easement and shall meet at least once annually at a date, time, and place convenient for both parties. The annual meeting shall provide an opportunity for the parties to discuss any questions or concerns regarding the Property and the exercise of the rights by either party under this Easement. The parties shall hold additional meetings, such as the meetings provided for in Section 5.G, for such purposes as they deem necessary.

#### 11. SEVERABILITY

If any provision of this Easement, or its application to any person or circumstance, is found to be invalid by a court of competent jurisdiction 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. CONDEMNATION

12.A. Expenses Paid from Damages. Whenever all or part of the Property is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the Easement in whole or in part or whenever all or a part of the Property is lawfully sold without the restrictions imposed in this Easement, in lieu of condemnation or exercise of eminent domain, the Fee Owner and the Easement Holder shall act jointly to recover the full damages resulting from such taking or lawful sale of their respective interests in the Property and the Easement, and all incidental damages resulting therefrom, in accordance with applicable law. All expenses reasonably incurred by the Fee Owner and the Easement Holder in connection with the taking or in lieu purchase shall be paid out of the damages recovered.

12.B. Damages Divided Proportionately. The balance of the land damages recovered (including, for purposes of this Section, proceeds from any lawful sale, in lieu of condemnation, of the Property

unencumbered by the restrictions of the Easement) shall be divided between the Easement Holder and the Fee Owner in proportion to the fair market value, at the time of the execution of this Easement, of their respective interests in that part of the Property condemned. For this purpose, and that of any other judicial extinguishments of this Easement in whole or in part at any time, the Easement Holder's interest shall be the amount by which the fair market value of the Property immediately prior to the execution of this Easement is reduced by the use limitations imposed by this Easement. This value was determined by a mutually agreed upon qualified appraiser licensed in the State of New Hampshire in conformance with the Uniform Appraisal Standards for Federal Land Acquisition and such appraisal determined the purchase price for this Easement. A certificate of the parties attesting as to the fair market value of the Property and the purchase price for this Easement, as determined by such appraisal, shall be included with and maintained in the Baseline Documentation.

*12.C. Use of Easement Holder's Share of Damages.* The Easement Holder shall use its share of the land damages recovered in a manner consistent with Section 18 "Easement Conversion".

*13. ADDITIONAL EASEMENT AND RIGHTS*

The Fee Owner shall not convey, grant, exchange, or otherwise transfer use restrictions, licenses, rights-of-way, or other easements into, on, over, under, or across the Property without the prior written permission of the Easement Holder or except as may be otherwise specifically permitted by this Easement. Such written permission shall be recorded in the Coos County Registry of Deeds. No rights-of-way, easements of ingress or egress, driveways, roads, utility lines or other easements shall be constructed, developed, or maintained into, on, over, under, or across the Property without the prior written permission of the Easement Holder except as may be otherwise specifically permitted in this Easement. The Easement Holder shall grant permission if it determines, in its sole discretion, that any such interest would be consistent with the Purposes of this Easement. Any permitted use, restriction, or easement shall be consistent with the Purposes of this Easement, must be accepted and recorded by a governmental entity described in Section 14 or a qualified organization within the meaning of Section 170(h)(3) of the U.S. Internal Revenue Code of 1986, as amended, and shall be recorded in the Coos County Registry of Deeds.

*14. ASSIGNMENT*

The burden of the Easement 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 a governmental entity, consistent with the Forest Legacy Program (16 USC Section 2103c) and LCHIP (NH RSA 227-M), which entity agrees to and is capable of enforcing the conservation purposes of this Easement. Any such assignee or transferee shall have the like power of assignment or transfer.

*15. SUBSEQUENT TRANSFERS*

Except as specifically provided in Section 2.H, nothing in this Easement shall be construed to prevent the Fee Owner from selling or otherwise conveying or transferring the Property or any in common and undivided interest in the Property to a third party, subject to the terms of this Easement. The Fee Owner agrees to incorporate the terms of this Easement by reference in any deed or other legal instrument by which the Fee Owner divests itself of any interest in all or a portion of the Property, including, but not limited to, a security or leasehold interest. The Fee Owner further agrees to give written notice to the Easement Holder of the transfer of any interest in the Property (excluding the grant of a mortgage imposed on all or any portion of the Property, or the sale of any timber rights through

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timber deeds or stumpage contracts not exceeding ten years in duration on a portion of the Property) at least twenty (20) days prior to the date of such transfer. Any grant of a mortgage, timber rights, stumpage contracts or any other interest in the Property after the date of this Easement is expressly subject to the terms of this Easement and the Fee Owner is responsible for ensuring compliance by such grantee of any such interest in the Property that is less than a fee interest in the Property with the terms of the Easement. The Fee Owner shall provide a complete copy of this Easement to any transferee of any rights in the Property prior to any such transfer and shall provide the Easement Holder with a copy of any transfer documentation upon completion of such transfer and a recordable notice of the name and address of such transferee for purposes of notice as provided in Section 9. The failure of the Fee Owner to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

16. LIMITATION ON AMENDMENT

If circumstances arise under which an amendment to or modification of this Easement would be appropriate, the Fee Owner and the Easement Holder may, by mutual written agreement, jointly amend this Easement provided that no amendment shall be made that will adversely affect the qualifications of this Easement or the status of the Easement Holder under any applicable laws including the Forest Legacy Program (16 USC Section 2103c), the Land and Community Heritage Investment Program (RSA 227-M), and RSA 477:45-47. Any amendment shall be consistent with the Purposes and Stewardship Goals of this Easement and shall not affect its perpetual duration. Any amendment shall be recorded in the Coos County Registry of Deeds after all approvals required by law have been obtained. Nothing in this Section shall require the Fee Owner or the Easement Holder to agree to any amendment or to consult or negotiate regarding any amendment.

17. SALE OR CONVEYANCE

Notwithstanding any other provision in this Easement or of law relating to the disposal of publicly-owned real estate, and in accordance with RSA 227-M:14 under which this Easement is acquired, no deviation in the uses of any resource acquired under this Easement to uses or purposes that are inconsistent with the Purposes of this Easement shall be permitted. The sale, transfer, conveyance or release of any resource asset from the public trust is prohibited except as specifically permitted in this Easement.

18. EASEMENT CONVERSION

The Easement Holder acknowledges that this Easement was acquired with federal funds under the Forest Legacy Program (16 USC Section 2103c) and the interest acquired cannot be sold, exchanged or otherwise disposed of, except as provided in Section 14, unless the United States is reimbursed for the fair market value of the interest in the Property or portion thereof at the time of disposal; provided, however, the Secretary of Agriculture may exercise discretion to consent to such sale, exchange, or disposition upon the State of New Hampshire's tender of equal valued consideration acceptable to the Secretary.

19. BASELINE DOCUMENTATION

The original of the Baseline Documentation is on file at the offices of the State of New Hampshire, Department of Resources and Economic Development, and if such documentation is moved to another agency or office of the State of New Hampshire, the Easement Holder shall notify the Fee Owner and record a notice of the location of the Baseline Documentation in the Coos County Registry of Deeds. The Baseline Documentation consists of descriptions, maps, and other documentation that the Fee

Owner and the Easement Holder acknowledge and agree provide, collectively, the best effort to assemble an accurate representation of the Property as reasonably known by them upon the execution of this Easement, and certain other material referenced in this Easement. The Baseline Documentation is intended to serve as an objective, although not exclusive, information baseline for monitoring compliance with the terms of this Easement.

20. FUTURE ENCUMBRANCES.

The Fee Owner has the right to use the Property as collateral to secure the repayment of debt, provided that lien and terms of any mortgage shall be subordinate to this Easement and the right of the Easement Holder to enforce the terms, restrictions and covenants created under this Easement shall not be extinguished by foreclosure of any mortgage or any publicly or privately placed lien, regardless of date.

21. ESTOPPEL CERTIFICATES.

Upon request by the Fee Owner, the Easement Holder shall, as soon as possible and using its bests efforts to do so within thirty (30) days after receipt of such request, execute and deliver to the Fee Owner, or to any party designated by the Fee Owner, any document, including an estoppel certificate, which certifies, to the best of the Easement Holder's knowledge, the Fee Owner's level of compliance with any obligation of the Fee Owner contained in this Easement and/or otherwise evidences the status of this Easement as may be reasonably requested by the Fee Owner. Such documentation shall describe the condition of the Property, as known by the Easement Holder, as of the date of the Easement Holder's most recent inspection. If the Fee Owner requests more current documentation, the Easement Holder shall conduct an inspection at the Fee Owner's cost, and using its best efforts to do so within forty-five (45) days after receipt of the Fee Owner's written request therefore.

22. BINDING EFFECT.

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

23. STATE LAW CONTROLLING.

The interpretation and performance of this Easement shall be governed by the laws of the State of New Hampshire. In the event that the Fee Owner is a New Hampshire municipality, actions taken under this Easement shall conform to applicable provisions of State law, including the Municipal Budget Law, RSA Chapter 32.

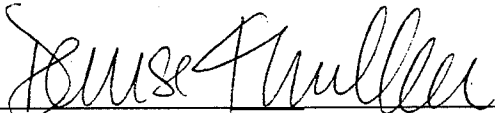
24. HEADINGS.

The headings used in this Easement are for convenience of reference only and shall not operate or be construed to alter or affect the meaning of any of the provisions of this Easement.

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IN WITNESS WHEREOF, we have set our hands this 9<sup>th</sup> day of October, 2003.

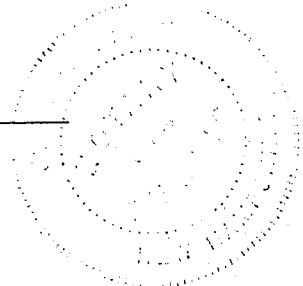
**THE TRUST FOR PUBLIC LAND  
d/b/a TPL-NEW HAMPSHIRE**

By:   
Denise K. Mullane, Regional Counsel  
Duly Authorized

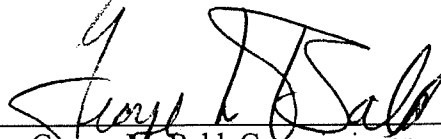
State of New Hampshire  
County of Merrimack

On this 9<sup>th</sup> day of October, 2003, personally appeared Denise K. Mullane, Regional Counsel for The Trust for Public Land, known to me or satisfactorily proven to be the person described in the foregoing instrument, and acknowledged that she was duly authorized and executed the same in the capacity therein stated and for the purposes therein contained and that this instrument was her free act and deed and the free act and deed of said corporation.

  
Notary Public  
My Commission Expires:  
JOHN E. LUCAS, Notary Public  
My Commission Expires January 19, 2005



**THE STATE OF NEW HAMPSHIRE  
DEPARTMENT OF RESOURCES  
AND ECONOMIC DEVELOPMENT**

By:   
George M. Bald, Commissioner  
Duly Authorized

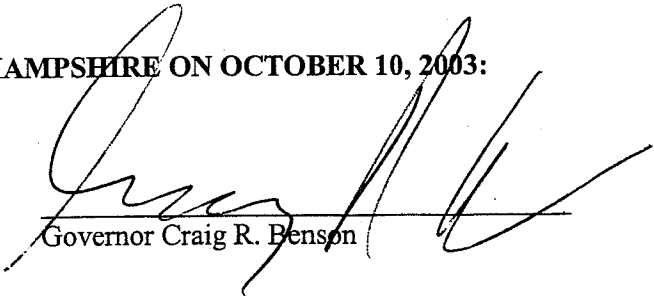
STATE OF NEW HAMPSHIRE  
COUNTY OF MERRIMACK

On this 10<sup>th</sup> day of October, 2003, personally appeared George M. Bald, Commissioner of the Department of Resources and Economic Development, known to me or satisfactorily proven to be the person described in the foregoing instrument, and acknowledged that he was duly authorized and executed the same in the capacity therein stated and for the purposes therein contained and that this instrument was his free act and deed and the free act and deed of said agency.

  
Notary Public Justice of the Peace  
My Commission Expires:

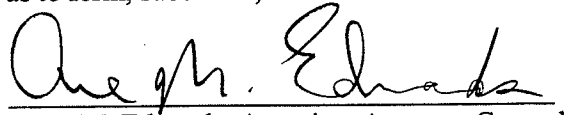
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ACCEPTED BY THE STATE OF NEW HAMPSHIRE ON OCTOBER 10, 2003:



\_\_\_\_\_  
Governor Craig R. Benson

Approved by the Office of the Attorney General as to form, substance, and execution on October 10, 2003



\_\_\_\_\_  
Anne M. Edwards, Associate Attorney General

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