RESOLUTION

AUTHORIZING CITY TO ACCEPT AN EXECUTORY INTEREST IN A CONSERVATION EASEMENT AT THE SULLIVAN FARM PROPERTY

CITY OF NASHUA

In the Year Two Thousand and Eighteen

RESOLVED by the Board of Aldermen of the City of Nashua that the Mayor is authorized to accept an executory interest in a conservation easement at the Sullivan Farm Property located on Coburn Road, by easement deed substantially in the form of the attached.
LEGISLATIVE YEAR 2018

RESOLUTION: R-18-029

PURPOSE: Authorizing City to accept an executory interest in a conservation easement at the Sullivan Farm Property

ENDORSERS: Mayor Jim Donchess

COMMITTEE ASSIGNMENT:

FISCAL NOTE: Funding for the conservation easement is addressed in R-18-027 and R-18-028.

ANALYSIS

This resolution authorizes the City to accept an executory interest in a conservation easement at the Sullivan Farm Property on terms and conditions in the attached easement deed. The Executory interest is described in section 17 of the easement deed.

Funds for the purchase of this conservation easement are addressed by R-18-027 and R-18-028 which are being introduced simultaneously.

Charter §77(f) provides that the Planning Board “shall review and make recommendations to the mayor and board of aldermen on . . . on the purchase and sale of any land by the city.” An executory interest is an interest in land.

Approved as to form: Office of Corporation Counsel

By: [Signature]

Date: April 18, 2018
Cut and paste from ACEP / ALE MINIMUM DEED TERMS FOR THE PROTECTION OF AGRICULTURAL USE Date 4-29-2016.

LCHIP Required language

Definitions- should be consistently referred to throughout

To be updated / Verified

THIS IS A TRANSFER TO AN INSTRUMENTALITY OF THE STATE AND IS EXEMPT FROM THE NEW HAMPSHIRE REAL PROPERTY TRANSFER TAX PURSUANT TO RSA 78-B:2, I. THIS TRANSFER IS ALSO EXEMPT FROM THE LCHIP SURCHARGE PURSUANT TO RSA 478:17-g, II(a).

AGRICULTURAL LAND EASEMENT
(CONSERVATION EASEMENT DEED)

I, KATHERINE WILLIAMS, married, of 70 Coburn Avenue, City of Nashua, County of Hillsborough, State of New Hampshire, 03063 (hereinafter referred to as the "Landowner", which word where the context requires includes the plural and shall, unless the context clearly indicates otherwise, include the Landowner's executors, administrators, legal representatives, devisees, heirs, successors and assigns),

for consideration paid, with WARRANTY covenants, grants in perpetuity to

the SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE FORESTS, a corporation duly organized and existing under the laws of the State of New Hampshire, with a principal place of business at 54 Portsmouth Street, City of Concord, County of Merrimack, State of New Hampshire, 03301-5400, having been determined by the Internal Revenue Service to be an income tax exempt, publicly supported corporation, contributions to which are deductible for federal income tax purposes pursuant to the United States Internal Revenue Code, (hereinafter referred to as the "Easement Holder" which shall, unless the context clearly indicates otherwise, include the Easement Holder's successors and assigns), the CONSERVATION EASEMENT (herein referred to as the "Easement," "Agricultural Land Easement," or "ALE") hereinafter described; and

and to the STATE OF NEW HAMPSHIRE acting through the LAND AND COMMUNITY HERITAGE INVESTMENT PROGRAM with a principal place of business at 13 West Street,
Suite 3, City of Concord, State of New Hampshire, 03301, (hereinafter referred to as the "Primary Executory Interest Holder", or "Executory Interest Holders" when the situation applies to both Executory Interest Holders, which shall, unless the context clearly indicates otherwise, include the Primary Executory Interest Holder's successors and assigns), an Executory Interest in said Easement,

and to the CITY OF NASHUA, a municipal corporation with a principal mailing address of PO Box 2019, Nashua, County of Hillsborough, State of New Hampshire, 03061-2019 (hereinafter referred to as the "Secondary Executory Interest Holder", or the "Executory Interest Holders" when the situation applies to both Executory Interest Holders, which shall, unless the context clearly indicates otherwise, include the Executory Interest Holder's successors and assigns), an Executory Interest in said Easement,

and with a right of enforcement to the United States of America (the United States), acting by and through the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) on behalf of the Commodity Credit Corporation (CCC),

all with respect to that certain area of land (herein referred to as the "Conservation Area") with any and all buildings, structures, and improvements thereon, consisting of ___ acres, situated on Coburn Road and Howe Road in the City of Nashua and Howe Lane in the Town of Hollis, County of Hillsborough, State of New Hampshire, being all of the real property identified on the City of Nashua, New Hampshire, Tax Maps as Map F, Lots 28, 29 and 30, and also on the Town of Hollis, New Hampshire, Tax Maps as Map 33, Lots 10 and 11, and more particularly shown as the "CONSERVATION AREA" on a survey plan entitled "BOUNDARY AND CONSERVATION EASEMENT PLAN, LAND OF KATHERINE," by Surveyor _______ of ________, dated __________, and last revised __________, recorded at the Strafford County Registry of Deeds as Plan # _____ (hereafter "Survey Plan"), more particularly bounded and described in Appendix "A" attached hereto and made a part hereof.

The Conservation Area includes the following recreational, natural habitat, open space, scenic, forestry, agricultural, water supply, and conservation attributes protected by the terms of this Easement:

- CONSERVATION ATTRIBUTES TO BE FILLED IN LATER

This Easement is acquired with funds provided, in part, under the Agricultural Conservation Easement Program (ACEP) 16 U.S.C. Section 3865 et seq. and 7 CFR Part 1468 for the purpose of protecting the agricultural use and future viability, and related conservation values, by limiting nonagricultural uses of the Conservation Area.

Additionally, this Easement is acquired with funds provided, in part, by grants from the Land and Community Heritage Investment Program, the City of Nashua, the Merrimack Conservation Partnership, and the State Conservation Committee Conservation Grant Program. (ADD OTHERS AS THEY MAY COME IN 1772?? Charitable?? Hollis?)

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Baseline conditions of the Conservation Area are set forth in a Baseline Documentation Report, a copy of which is maintained in the files of the Easement Holder, Landowner, and Executory Interest Holders.

SECTION I – PURPOSES

Because of the above described conservation attributes, the Easement hereby granted is pursuant to NH RSA 227-M and NH RSA 477:45-47, exclusively for the following conservation Purposes (herein referred to as the “Purposes”) for the public benefit:

A. The protection of the natural habitat or ecosystem of the Conservation Area; and

B. The conservation of open spaces, particularly the conservation of the productive farm and forest land of which the Conservation Area consists, protection of the Conservation Area’s prime, statewide, or locally significant agricultural soils, and the long-term protection of the Conservation Area’s capacity to produce economically valuable agricultural and forestry products; and

C. The scenic enjoyment of the general public; and

D. The protection of the Conservation Area for passive outdoor recreation by the general public; and

E. The protection of the quality and availability of ground water and surface water resources on and under the Conservation Area.

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

Chapter IV, Section I.C., Conservation and Preservation Goals and Objectives, Objective 2.C:
The City should strive to protect the remaining active agriculture and forest lands in the City, and assist landowners in safeguarding the economic viability of ongoing agricultural and forestry operations,

and Chapter IV, Section III.B.2., Priorities for Future Conservation Effort:
In the northwest quadrant, off of Coburn Avenue, is Sullivan Farm (h), the last remaining active orchard / farmstand in Nashua. The entire property comprises 43.4 acres. If this property is not protected, either through direct purchase or another mechanism, such as a conservation easement, it is likely to be developed, as it has few constraints and is in a developing part of the City,

and consistent with New Hampshire RSA Chapter 79-A:1 “Declaration of Public Interest,” which states: "It is hereby declared to be in the public interest to encourage the preservation of
open space, thus providing a healthful and attractive outdoor environment for work and recreation of the state's citizens, maintaining the character of the state's landscape, and conserving the land, water, forest, agricultural and wildlife resources;" and which also states, relative to the entire Conservation Area being enrolled in the Current Use Assessment Program: “It is further declared to be in the public interest to prevent the loss of open space due to property taxation at values incompatible with open space usage. Open space land imposes few if any costs on local government and is therefore an economic benefit to its citizens. The means for encouraging preservation of open space authorized by this chapter is the assessment of land value for property taxation on the basis of current use”; 

and consistent with NH RSA 227-M which states: “The intent of the Program is 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, in partnership with the state’s municipalities and the private sector, for the primary purposes of protecting and ensuring the perpetual contribution of these resources to the state’s economy, environment and overall quality of life”; 

And consistent with the aforesaid Wildlife Action Plan, approved by the U.S. Fish and Wildlife Service in 2006, whose “Strategy 700, Land Protection” states: “Highly threatened and essential habitat resources should be priorities, such as riparian/shoreland habitat, larger unfragmented blocks, and wildlife corridors that connect significant habitat,” “701 Objective: Protect riparian/shoreland habitat and other wildlife corridors,” and “702 Objective: Protect unfragmented blocks and other key wildlife habitats.”

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

SECTION II – CONSERVATION RESTRICTIONS

Even if the Conservation Area consists of more than one parcel for real estate tax or any other purpose or if it was acquired previously as separate parcels, it will be considered one parcel for purposes of this Easement, and the restrictions and covenants of this Easement will apply to the Conservation Area as a whole.

The terms and conditions of the ALE run with the land and are binding upon the Landowner and Easement Holder and their respective heirs, successors, agents, assigns, lessees, and any other person claiming under them must comply with all terms and conditions of this easement, including the following:

The Conservation Area shall be maintained in perpetuity as open space. Any activities inconsistent with the purposes of the ALE are prohibited. The following activities are inconsistent with the purposes of the ALE and are specifically prohibited, subject to the qualifications stated below:

1. LIMITATIONS ON NON-AGRICULTURAL USES
A. **Subdivision**- Separate conveyance of a portion of the Conservation Area or division or subdivision of the Conservation Area is prohibited, except that the lease of any portion of the Conservation Area for any use permitted by this ALE Easement shall not violate this Section. This provision in no way prohibits the subdivision of the “Area Excluded from the ALE Conservation Easement” as shown on the Survey Plan (herein referred to as the "Excluded Area"), from the Conservation Area, or any subdivision that is wholly within the boundaries of the Excluded Area.

B. **Industrial or Commercial Uses** – Industrial or commercial activities on the Conservation Area are prohibited except for the following, and provided that the productive capacity of the Conservation Area to yield forest and/or agricultural crops shall not be degraded by on-site activities:

i. agricultural production and related uses as described in the ALE Plan; said agricultural production activities being further described and restricted in Sections II. 3. A. and B.; and

ii. the sale of excess power generated in the operation of renewable energy structures and associated equipment or other energy structures that Easement Holder approves in writing as being consistent with the conservation Purposes of this Easement; and

iii. temporary or seasonal outdoor activities or events that do not harm the agricultural use, future viability, and related conservation values of the Conservation Area herein protected; and

iv. commercial enterprises related to agriculture or forestry including but not limited to agritourism, processing, packaging, and marketing of farm or forest products, farm machinery repair, and farm wineries; and

v. small-scale commercial enterprises compatible with agriculture or forestry, including but not limited to cafés, shops, and studios for arts or crafts; and

vi. forest management, processing or sale of forest products produced or partially produced on the Conservation Area in approved buildings; said forestry activities and forest management plan requirements being further described and restricted in Section II. 3. C.

All activities listed above under subsections (i) – (vi) above shall be conducted as described and approved in the ALE Plan referenced in Section II. 3. A. Said activities listed above and described in the ALE Plan shall not harm the agricultural use, future viability, or related Purposes of the Conservation Area.
Any proposed commercial enterprise or small-scale commercial enterprise described in the ALE Plan and as referenced in Section II. 1. B. subsections (iv) and (v) above shall involve products produced on the Conservation Area or products which are produced regionally, such as fruits, vegetables, maple syrup and small craft items, or in the case of farm machinery repair, shall be limited to agricultural and forestry machines used on site or locally, all as not detrimental to the Purposes of this Easement.

C. **Granting of Easements for Utilities and Roads** – No rights-of-way or easements of ingress or egress in favor of any third party shall be created or developed into, on, over, or across the Conservation Area without the prior written approval of the Easement Holder and Executory Interest Holders, except those of record as of the execution of this Easement and those specifically permitted in the provisions of this Easement. Additionally, the granting or modification of easements for utilities and roads is prohibited when the utility or road will adversely impact the agricultural use and future viability, and related conservation values of the Conservation Area as determined by the Easement Holder and Executory Interest Holders in consultation with the Chief of NRCS.

D. **Surface Alteration** – Grading, blasting, filling, sod farming, earth removal or any other activity that will disturb the soil surface or materially alter the topography, surface or subsurface water systems, or wetlands of the Conservation Area is prohibited, except as follows:

i. dam construction in accordance with an ALE plan to create ponds for agricultural use, fire protection, or wildlife enhancement, including enhancement through wetland restoration, enhancement or creation;

ii. erosion and sediment control pursuant to a plan approved by the Easement Holder;

iii. soil disturbance activities required in the construction of approved buildings, structures, roads, and utilities provided that the required alteration has been approved in writing by Easement Holder as being consistent with the conservation Purposes of this Easement;

iv. agricultural activities conducted in accordance with the ALE Plan; or

v. forestry, conservation, habitat management, educational, recreational, or other allowed activities conducted in accordance with the ALE Plan and/or Forest Management Plan.

Said surface alteration shall:

a. not harm state or federally recognized rare, threatened, or endangered species, or exemplary natural communities, such determination of harm to be based upon information from the New Hampshire Natural Heritage Bureau or
the agency then recognized by the State of New Hampshire as having responsibility for identification and/or conservation of such species and/or natural communities; and

b. not be detrimental to the Purposes of this Easement.

Prior to commencement of any such activities, all necessary federal, state, local, and other governmental permits and approvals shall be secured.

E. **Oil, Gas, or Mineral Exploration and Extraction** – Mining or extraction of soil, sand, gravel, oil, natural gas, fuel, coal, or any other mineral substance owned by Landowner as of the date of this ALE or later acquired by Landowner, using any surface mining, subsurface mining, or dredging method, from Conservation Area is prohibited. Provided however, limited mining activities for materials (e.g., sand, gravel, or shale) used for agricultural operations on the Conservation Area is allowed where the extraction of materials used for such agricultural operations is limited, localized, and small with a defined area and acreage identified in EXHIBIT B and does not harm Purposes or the agricultural uses of the Conservation Area.

Said limited mining activities for materials used for agricultural operations shall also be acceptable for forestry, conservation, habitat management, educational, recreational, or other allowed activities conducted in accordance with the ALE Plan and/or Forest Management Plan pursuant to Section II. 3. C. ii. If a third party owns or leases the oil, natural gas, or any other mineral substance at the time this ALE is executed, and their interests have not been subordinated to this ALE, the Landowner must require, to the greatest extent possible, that any oil, natural gas, and mineral exploration and extraction conducted by such third party is conducted in accordance with this paragraph E.

F. **Disposal** – There shall be no dumping, disposal, injection, burning, or burial on the Conservation Area of man-made materials or materials then known to be environmentally hazardous.

2. **Construction on the Conservation Area**
All new structures and improvements must be located within the Building Envelopes, as shown on the Survey Plan, containing approximately _____ acres and described in EXHIBIT B, which is appended to and made a part of the ALE.

Structures must be necessary in the accomplishment of the agricultural, forestry, conservation, habitat management, educational, recreational, or other allowed uses of the Conservation Area and which may include but not be limited to roads, trails, dams, fences, utility lines, bridges, culverts, barns, maple sugar houses, farmstands, ponds or sheds. Notwithstanding the above, there shall not be constructed, placed, or introduced onto the Conservation Area any of the following structures or improvements: dwelling, mobile home, cabin, residential driveway, any portion of a septic system, tennis court, swimming
pool, athletic field, golf course, wireless communication infrastructure, towers, or aircraft landing area.

Landowner shall provide the Easement Holder with forty-five (45) days’ written notice prior to any construction of a permitted improvement with a footprint exceeding two thousand (500) square feet.

A. **Limitation on Impervious Surfaces.** Impervious surfaces will not exceed 2% of the Conservation Area, excluding NRCS-approved conservation practices. Impervious surfaces are defined as material that does not allow water to percolate into the soil on the Conservation Area; including, but is not limited to, buildings with or without flooring, paved areas, and any other surfaces that are covered by asphalt, concrete, or roofs. This limitation does not include public roads or other roads owned and controlled by parties with rights superior to those rights conveyed to Easement Holder by this ALE.

B. **Building Envelope Boundaries** – The boundaries and location of the Building Envelopes may be adjusted if Easement Holder and the Chief of NRCS provide prior written approval of the adjusted boundaries and location. The Building Envelopes may not increase in size and the adjusted Building Envelopes must provide equal or greater protection of the agricultural use and future viability, and related conservation values of the Conservation Area.

C. **Structures Outside Building Envelopes** – Agricultural structures and utilities to serve approved buildings or structures, including on-farm energy structures allowed under Section II. 3. A. i. that neither individually nor collectively have an adverse impact on the agricultural use and future viability and related conservation values of the Conservation Area, may be built outside of the Building Envelope with prior written approval of the Easement Holder provided that the utilities or agricultural structures are consistent with the ALE Plan described in Section II. 3. A. and the utilities are sized only to service and produce energy for the Conservation Area.

D. **New Roads** – New roads may be constructed if they are approved in advance by Easement Holder, within impervious surface limits, and necessary to carry out the agricultural operations or other allowed uses on the Conservation Area. Such new roads are not required to be located within Building Envelopes.

E. **Maintenance of Roads** – Maintenance of existing roads documented on the Baseline Documentation Report is allowed; however, existing roads may not be widened or improved unless widening and improving is within impervious surface limits, approved in advance by Easement Holder, and necessary to carry out the agricultural operations or other allowed uses on the Conservation Area.

F. **Fences** – Fences may be maintained and replaced and new fences installed if they are necessary for agricultural operations on the Conservation Area or to mark boundaries of the Conservation Area. Such fences are not required to be located within Building Envelopes.
G. **Advertising Structures and Signs.** No outdoor advertising structures shall be displayed on the Conservation Area except as commonly necessary in the accomplishment of the agricultural, forestry, conservation, habitat management, or noncommercial outdoor recreational uses of the Conservation Area, or as necessary for public safety, and in any case provided such structures are not detrimental to the Purposes of this Easement. No sign on the Conservation Area shall exceed twenty-five (25) square feet in size.

3. **AGRICULTURE AND FORESTRY**

A. **Agricultural Land Easement Plan.** As required by 16 U.S.C. Section 3865a, agricultural production and related uses of the Conservation Area are subject to an ALE Plan, as approved by NRCS, to promote the long-term viability of the land to meet the ALE purposes. The ALE Plan must also be approved by the Landowner and the Easement Holder. Landowner agrees the use of the property will be subject to the ALE Plan on the Conservation Area.

The ALE Plan is incorporated by reference and must not include any provisions inconsistent with the Purposes of this ALE. The Easement Holder and Landowner agree to update the ALE Plan in the event the agricultural uses of the Conservation Area change. A copy of the current ALE Plan is kept on file with the Easement Holder. Any and all costs associated with said ALE Plan shall be the responsibility of the Landowner.

The Easement Holder must take all reasonable steps to secure compliance with the ALE Plan. In the event of substantial or ongoing noncompliance with the ALE Plan or the requirement to update the ALE Plan, NRCS may notify the Easement Holder. NRCS will give the Easement Holder and Landowner a reasonable amount of time, not to exceed 180 days, to take corrective action. If Easement Holder fails to enforce the terms of the ALE, including, but not limited to compliance with the ALE Plan, the United States may exercise its right of enforcement.

Additionally, any agriculture shall not be detrimental to the Purposes of this Easement. Said agricultural management activities shall be in accordance with the then-current scientifically based practices recommended by the University of New Hampshire’s Cooperative Extension, by the U.S. Department of Agriculture’s Natural Resources Conservation Service, by the New Hampshire Department of Agriculture, Markets, and Food, including but not limited to recommended practices in said NH Department’s “Manual of Best Management Practices (BMPs) for Agriculture in New Hampshire” last revised June 2011 and as may be revised, updated, or superseded from time to time, or by other governmental natural resource conservation and management agencies then active.

i. **On-Farm Energy Production** – Renewable energy production is allowed for the purpose of generating energy for the agricultural and residential needs of the Conservation Area. Renewable energy sources must be built and maintained within impervious surface limits, with minimal impact on the conservation values of the Conservation Area and consistent with the Purposes of the ALE.
B. **Preserving Agricultural Uses.** The provisions of this ALE Deed and associated exhibits will not be interpreted to restrict the types of agricultural operations that can function on the Conservation Area, so long as the agricultural operations are consistent with the long-term viability of the Conservation Area, ALE Plan and ALE Purposes, and do not violate Federal laws, including Federal drug laws. No uses will be allowed that decrease the ALE’s protection for the agricultural use and future viability, and related conservation values of the Conservation Area. Allowed uses of the Conservation Area include, the specific uses allowed in Section II. 1. B. (i)-(vi) and the following activities, subject to the qualifications stated below:

i. Agricultural Production – The production, processing, and marketing of agricultural crops and livestock is allowed provided it is conducted in a manner consistent with the terms of the ALE Plan described in Section II. 3. A.

C. **Forest Management and Timber Harvest** – Forest management and timber harvesting is allowed, provided it is carried out to the extent practicable, in accordance with current, generally accepted best management practices for the sites, soils, and terrain of the Conservation Area. In addition, if the Conservation Area contains 40 contiguous acres of forest or 20 percent of the Conservation Area is forest, and then forest management and timber harvesting must be performed in accordance with a written forest management plan, as further outlined in Section II.3.C.i.b., below. The forest management plan must be prepared by a licensed forester. A forest management plan will not be required for the following allowed noncommercial activities: (i) cutting of trees for the construction of allowed roads, utilities, buildings, and structures on the Conservation Area, (ii) cutting of trees for trail clearing, (iii) cutting of trees for domestic use as firewood or for other domestic uses by Landowner, (iv) removal of trees posing an imminent hazard to the health or safety of persons or livestock, or (v) removal of invasive species.

For the purposes of this Easement, "forestry" shall include but not be limited to: the growing, stocking, cutting, and/or sale of Christmas trees or forest trees of any size capable of producing timber, fiber, or other wood products; precommercial silvicultural activities including but not limited to timber stand improvement; and the construction of roads or other accessways for the purpose of removing timber, fiber, or other wood products from the Conservation Area; and the processing and sale of products produced on the Conservation Area (such as firewood and maple syrup).

**Forestry.** If any forestry is conducted for industrial or commercial purposes, it shall be performed, to the extent reasonably practicable, as hereinafter specified in a manner not detrimental to the Purposes of this Easement and in accordance with the following provisions:

i. **Goals:** Any such forestry shall be performed, to the extent reasonably practicable, in accordance with the following goals:
   • maintenance of soil productivity;
   • protection of water quality, wetlands, and riparian zones;
• maintenance or improvement of the overall quality of forest products;
• conservation of scenic quality;
• protection of significant or fragile natural areas, such as habitat for state or federally recognized rare, threatened, or endangered species, or such as exemplary natural communities, such habitat or communities as identified by the New Hampshire Natural Heritage Bureau, the New Hampshire Fish and Game Department, or the agency then recognized by the State of New Hampshire as having responsibility for identification and/or conservation of such species and/or natural communities;
• protection of established recreational and/or educational features or improvements, such as but not limited to then-existing trails and signage;
• protection of significant historic and cultural features; and
• conservation of plant and animal species.

ii. **Management Plan**: Any such forestry shall be performed in accordance with a written forest management plan ("Management Plan") consistent with this Easement, prepared by a licensed professional forester, or by another qualified person approved in advance and in writing by the Easement Holder. Said Management Plan shall have been prepared not more than ten (10) years prior to the date any harvesting of trees is expected to commence, or shall have been reviewed and updated as required by said forester or other qualified person at least thirty (30) days prior to said date. Landowner shall provide a copy of said Management Plan to the Easement Holder no later than thirty (30) days after preparation or updating, as the case may be, of said Management Plan. See exceptions to the forest management plan requirement in Section II.3.C, above.

The Management Plan shall include:

* A statement of landowner objectives;
* Forest type map showing stands related to the prescriptions provided in the Plan;
* A map showing soil types as determined by the U.S. Department of Agriculture’s Natural Resources Conservation Service (or by another similarly charged successor governmental agency), access roads, wetlands, and surface waters;
* Prescriptions for each described stand, including commercial and non-commercial treatments; and
* Explanation of how wetlands, riparian areas, vernal pools, and soils will be protected in association with road construction, other soil disturbing activities, and the implementation of stand prescriptions;

and shall specifically address:

• the accomplishment of those Purposes for which this Easement is granted; and
• the Goals in Subsection a above; and
At least thirty (30) days prior to harvesting of trees, Landowner shall submit to Easement Holder a written certification, signed by a licensed professional forester, or by another qualified person approved in advance and in writing by the Easement Holder, that such Management Plan has been prepared in compliance with the terms of this Easement. Upon request by the Easement Holder, the Landowner shall submit the plan itself to Easement Holder within ten (10) days of such request. It is acknowledged that the Management Plan’s purpose is to guide forest management activities in compliance with this Easement, and that the actual activities will determine compliance therewith.

iii. **Forest Management Activities**: Any timber harvesting with respect to such forestry shall be conducted in accordance with said Management Plan and shall be supervised by a licensed professional forester, or by other qualified person approved in advance and in writing by the Easement Holder.

The Landowner shall carry out any such forestry in accordance with all applicable local, state, federal, and other governmental laws and regulations, and shall be solely responsible for securing all necessary governmental permits and approvals in association therewith. In addition, any such forestry shall, to the extent reasonably practicable, be conducted in accordance with then-current, generally accepted best management practices for the sites, soils, and terrain of the Conservation Area recommended by governmental natural resource conservation and management agencies then active, including but not limited to recommended practices in “Good Forestry in the Granite State: Recommended Voluntary Forest Management Practices for New Hampshire” (New Hampshire Forest Sustainability Standards Work Team, 1997, revised 2010), or similar successor publications.

4. **PUBLIC ACCESS**

Pursuant to NH RSA 227-M, there is hereby conveyed the right of non-commercial pedestrian access to, on, and across the Conservation Area for hunting, fishing, and transitory passive recreational purposes, but not camping, by members of the public.

i. Landowner may post against or limit such access with prior written approval of the Easement Holder and Executory Interest Holders if such activities become inconsistent with the Purposes for protecting the Conservation Area or when public safety would be at risk.

ii. Notwithstanding the above, Landowner may post against access to active livestock fields, to agricultural cropland during the planting and growing season, and to forest land during harvesting or establishment of plantations, and may temporarily restrict public access during an emergency situation where public safety could be at risk.
iii. However, nothing herein shall prohibit Landowner or Easement Holder from disallowing specific individuals or entities access under lawful court orders or injunctive relief.

iv. Notwithstanding the above, Easement Holder may prohibit access to areas of the property while management activities are underway.

v. The Easement Holder and Executory Interest Holders shall be under no duty to supervise said access, use, or purpose.

SECTION III – GRANTEE’S ADMINISTRATION OF AGRICULTURAL LAND EASEMENT

1. NOTIFICATION OF TRANSFER, TAXES, & MAINTENANCE

A. The Landowner agrees to notify the Easement Holder in writing within ten (10) days of the transfer of title to the Conservation Area, including any change in Trustee for the Conservation Area held in trust.

B. The Easement Holder and Executory Interest Holders shall be under no obligation to maintain the Conservation Area or pay any taxes or assessments thereon.

2. BENEFITS & BURDENS

The burden of the Easement conveyed hereby shall run with the Conservation Area and shall be enforceable against all future owners and tenants in perpetuity. The benefits of this Easement shall not be appurtenant to any particular parcel of land but shall be in gross and assignable or transferable only to the State of New Hampshire, the U.S. Government, or any subdivision of either of them, consistent with Section 170(c)(1) of the U.S. Internal Revenue Code of 1986, as amended, or to any qualified organization within the meaning of Section 170(h)(3) of said Code, which organization: has among its purposes the conservation and preservation of land and water areas; agrees to and is capable of protecting the conservation Purposes of this Easement; and has the resources to enforce the restrictions of this Easement. Any such assignee’s or transferee’s power of assignment or transfer shall be similarly limited.

3. AFFIRMATIVE RIGHTS OF EASEMENT HOLDER

A. Access to Conservation Area. The Easement Holder and the Executory Interest Holders as identified in the Section “Executory Interest” below shall have reasonable access to the Conservation Area and all of its parts for such inspection as is necessary to determine compliance with and to enforce this Easement and exercise the rights conveyed hereby and fulfill the responsibilities and carry out the duties assumed by the acceptance of this Easement.
B. **Signs.** To facilitate such inspection and to identify the Conservation Area as conservation land protected by the Easement Holder, the Easement Holder shall have the right to place signs, each of which shall not exceed twenty-four (24) square inches in size, along the Conservation Area’s boundaries.

C. **Restricting Public Access.** The Easement Holder shall have the rights to post, and to authorize others to post, with prior written approval of the Executory Interest Holders, the Conservation Area against or otherwise limit public access if such access is shown to degrade the conservation attributes of the Conservation Area, to be inconsistent with the Purposes of this Easement, or to threaten public safety. Easement Holder shall provide advance written notice to the Landowner of Easement Holder’s intention to post the Conservation Area.

4. **RESOLUTION OF DISAGREEMENTS**

A. **Dialogue.** The Landowner and the Easement Holder desire that issues arising from time to time concerning the interpretation of the provisions of the Easement, or any use or activity on the Conservation Area, will first be addressed through candid and open communication between the parties rather than unnecessarily formal or adversarial action. Therefore, the Landowner and the Easement Holder agree that if either party becomes concerned whether any proposed or actual use, activity, or failure to take action (which together for the purposes of this Section, “Resolution of Disagreements,” shall be referred to as the “Activity”) complies with the provisions of this Easement, wherever reasonably possible the concerned party shall notify the other party of the perceived or potential problem, and the parties shall explore the possibility of reaching an agreeable resolution by informal dialogue.

B. **Mediation.** If informal dialogue does not resolve a disagreement regarding the Activity, and if the Landowner agrees not to proceed or continue with the Activity pending resolution of the disagreement concerning the Activity, either party may refer the disagreement to mediation by written notice to the other. Within ten (10) days of the delivery of such a notice, the parties shall agree on a single impartial mediator. Mediation shall be conducted in Concord, New Hampshire, or such other location as the parties shall agree. Each party shall pay its own legal fees and other associated costs, and the costs of mediation shall be split equally between the parties.

C. **Arbitration.** If the parties cannot agree upon the selection of a mediator, if all parties agree to bypass mediation, if any party refuses to participate in or continue with mediation, or if the parties are unable to resolve the disagreement, the disagreement may be submitted to binding arbitration in accordance with New Hampshire RSA 542 as that statute may be amended from time to time. Unless the parties agree upon a single arbitrator, the Landowner and the Easement Holder shall each choose an arbitrator within twenty (20) days of the delivery of written notice from either party referring the matter to arbitration. The arbitrators so chosen shall in turn choose a third arbitrator within twenty
(20) days of the selection of the second arbitrator. The arbitrators so chosen shall forthwith set as early a hearing date as is practicable, which they may postpone only for good cause shown. The arbitration hearing shall be conducted in Concord, New Hampshire, or such other location as the parties shall agree. The arbitrator’s decision, or the decision by two of the three arbitrators, as the case may be, made as soon as practicable after submission of the matter, shall be binding upon the parties and shall be enforceable as part of this Easement. Each party shall pay its own legal fees and other associated costs, and the costs of arbitration shall be split equally between the parties.

D. **Legal Action.** Notwithstanding the availability of mediation and arbitration to address disagreements concerning the compliance of any Activity with the provisions of this Easement, if the Easement Holder believes that some use, activity, or failure to take action of the Landowner or of a third party is causing irreparable harm or damage to the Conservation Area, or creates an imminent threat of same, the Easement Holder may seek a temporary restraining order, preliminary injunction or other form of equitable relief from any court of competent jurisdiction to: cause the cessation of any such damage or harm or threat of same; enforce the terms of this Easement; enjoin any violation by permanent injunction; and require the restoration of the Conservation Area to its condition prior to any breach.

5. **BREACH OF EASEMENT – EASEMENT HOLDER’S REMEDIES**

A. **Notification by Easement Holder.** If the Easement Holder determines that a violation or breach of this Easement has occurred (which together shall hereinafter be referred to as “breach”), the Easement Holder shall notify the Landowner in writing of such breach and demand corrective action to cure the breach and, where the breach involves damage, disturbance, or harm (hereinafter referred to as “damage”) to the Conservation Area, to restore the portion of the Conservation Area so damaged to its prior condition.

B. **Performance by Landowner.** The Landowner shall, within thirty (30) days after receipt of such notice or after otherwise learning of such breach, undertake those actions, including restoration, which are reasonably calculated to cure swiftly said breach and to repair any damage. The Landowner shall promptly notify the Easement Holder of its actions taken hereunder.

C. **Failure by Landowner.** If the Landowner fails to perform its obligations under the immediately preceding paragraph B. above, or fails to continue diligently to cure any breach until finally cured, the Easement Holder may undertake any actions, in the Landowner’s name, that are reasonably necessary to repair any damage or to cure such breach, including an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Conservation Area to the condition that existed prior to any such damage.

D. **Easement Holder’s Remedies.** If the Easement Holder, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to
any conservation attribute of the Conservation Area, the Easement Holder may pursue its remedies under this Section, “Breach of Easement...,” without prior notice to the Landowner or without waiting for the period provided for cure to expire.

E. **Damages.** The Easement Holder shall be entitled to recover damages from the party directly or primarily responsible for the breach or for damage to any conservation attributes protected hereby, including, but not limited to, damages for the loss of scenic, aesthetic, or environmental attributes of the Conservation Area. Without limiting the Landowner’s liability therefor, the Easement Holder, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Conservation Area.

F. **Easement Holder’s Rights Additive.** The Easement Holder’s rights under this Section, “Breach of Easement...,” are in addition to the provisions of the above Section “Resolution of Disagreements,” which section shall also apply to any disagreement that may arise with respect to activities undertaken in response to a notice of breach and the exercise of the Easement Holder’s rights hereunder.

G. **Imminent Danger.** The Landowner and the Easement Holder acknowledge and agree that should the Easement Holder determine, in its sole discretion, that conservation attributes protected by this Easement are in immediate danger of irreparable damage, the Easement Holder may seek the injunctive relief described in the above Subsection, “Failure by Landowner,” both prohibitive and mandatory, in addition to such other relief to which the Easement Holder may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The Easement Holder’s remedies described in this Section, “Breach of Easement...,” shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

H. **Costs.** Provided that the Landowner is directly or primarily responsible for the breach, all reasonable costs incurred by the Easement Holder in enforcing the terms of this Easement against the Landowner, including, without limitation, staff and consultant costs, reasonable attorneys’ fees and costs and expenses of suit, and any costs of restoration necessitated by the Landowner’s breach of this Easement shall be borne by the Landowner; and provided further, however, that if the Landowner ultimately prevails in an enforcement action, each party shall bear its own costs. Notwithstanding the foregoing, if the Easement Holder initiates litigation against the Landowner to enforce this Easement, and if the court determines that the litigation was initiated without reasonable cause or in bad faith, then the court may require the Easement Holder to reimburse the Landowner’s reasonable costs and reasonable attorney’s fees in defending the action.

I. **Forbearance by Easement Holder.** Forbearance by the Easement Holder, or Executory Interest Holders, to exercise their rights under this Easement in the event of any breach of any term hereof by the Landowner shall not be deemed or construed to be a waiver by the Easement Holder or Executory Interest Holders of: such term or any subsequent breach.
of the same; any other term of this Easement; or any of the Easement Holder’s or
Executory Interest Holders rights hereunder. No delay or omission by the Easement
Holder or Executory Interest Holders in the exercise of any right or remedy upon any
breach by the Landowner shall impair such right or remedy or be construed as a waiver.
The Landowner hereby waives any defense of laches or estoppel.

J. **Causes Beyond Landowner’s Control.** Nothing contained in this Easement shall be
construed to entitle the Easement Holder to bring any action against the Landowner for
any damage to, or change in, the Conservation Area, or to any person, resulting from
causes beyond the Landowner’s control, including, but not limited to, unauthorized
actions by third parties, natural disasters such as fire, flood, storm, disease, infestation
and earth movement, or from any prudent action taken by the Landowner under
emergency conditions to prevent, abate, or mitigate significant damage to the
Conservation Area or to any person resulting from such causes. The Easement Holder
and the Landowner reserve the right, separately or collectively, to pursue all legal and/or
equitable remedies, as set forth in this Section, "Breach of Easement...", against any third
party responsible for any actions inconsistent with the provisions of this Easement, and,
further, prior to either party taking any such separate action, the Easement Holder and
Landowner shall first discuss with one another opportunities for taking collective action.

6. **NOTICES**

All notices, requests and other communications, required to be given under this Easement
shall be in writing, except as otherwise provided herein, and shall be delivered in hand or
sent by certified mail, postage prepaid, return receipt requested, or by prepaid overnight
delivery service providing a signed receipt for delivery, to the appropriate address set forth
above or at such other address as the Landowner or the Easement Holder may hereafter
designate by notice given in accordance herewith. Notice shall be deemed to have been
given when so delivered or so mailed.

7. **SEVERABILITY**

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

8. **HOLD HARMLESS**

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

9. ENVIRONMENTAL RESPONSIBILITIES AND ENVIRONMENTAL WARRANTY

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

Additionally, Landowner warrants that it is in compliance with, and will remain in compliance with, all applicable Environmental Laws. Landowner warrants that there are no notices by any governmental authority of any violation or alleged violation of, noncompliance or alleged noncompliance with, or any liability under, any Environmental Law relating to the operations or conditions of the Conservation Area. Landowner further warrants that it has no actual knowledge of an undisclosed release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable Federal and State law.

Furthermore, Landowner warrants the information disclosed to Easement Holder, Executory Interest Holders and United States regarding any past violations or non-compliance with Environmental Laws and associated remedial actions, or any past releases of Hazardous Materials and any associated remedial actions is complete and accurate.

Moreover, Landowner hereby promises to hold harmless and indemnify Easement Holder, Executory Interest Holders and the United States against all litigation, claims, demands, penalties and damages, including reasonable attorneys’ fees, arising from or connected with the release or threatened release of any hazardous materials on, at, beneath or from the Conservation Area, or arising from or connected with a violation of any Environmental Laws by Landowner or any other prior owner of the Conservation Area. Landowner’s indemnification obligation will not be affected by any authorizations provided by Easement Holder, Executory Interest Holders or the United States to Landowner with respect to the Conservation Area or any restoration activities carried out by Easement Holder or Executory Interest Holders at the Conservation Area; provided, however, that Easement Holder or Executory Interest Holders will be responsible for any Hazardous Materials contributed after this date to the Conservation Area by Easement Holder or Executory Interest Holders.

“Environmental Law” or “Environmental Laws” means any and all Federal, State, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies, or
requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection, and similar environmental health, safety, building, and land use as may now or at any time hereafter be in effect.

“Hazardous Materials” means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials, and any other element, compound, mixture, solution, or substance that may pose a present or potential hazard to human health or the environment.

10. EXTINGUISHMENT, TERMINATION and CONDEMNATION

The interests and rights under this Agricultural Land Easement may only be extinguished or terminated with written approval of the Easement Holder, Executory Interest Holders and the United States. Due to the Federal interest in this ALE, the United States must review and approve any proposed extinguishment, termination, or condemnation action that may affect its Federal interest in the Conservation Area.

A. Extinguishment. If circumstances arise in the future so as to render the Purposes of this Easement impossible or impracticable to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds from any sale, exchange, or involuntary conversion of all or any portion of the Conservation Area subsequent to such judicial termination or extinguishment, shall be determined in accordance with the Subsection ”Allocation of Proceeds” below. In making this grant of Easement, Landowner has considered and acknowledges the possibility that uses prohibited by the terms of this Easement may become more economically viable than the uses specifically reserved by Landowner pursuant to this Easement. It is the specific and considered intent of both Landowner and Easement Holder and Executory Interest Holders that any such change in economic conditions shall not be deemed to be circumstances justifying the termination or extinguishment of this Easement pursuant to this Subsection “Extinguishment.”

B. Condemnation. If all or any part of the Conservation Area is taken, in whole or in part, by exercise of the power of eminent domain or is acquired by purchase in lieu of condemnation, whether by public, corporate or other authority, so as to terminate this Easement, in whole or in part, Landowner and Easement Holder shall act jointly to recover the full value of their interests in the Conservation Area subject to the taking or in lieu purchase and to recover all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Landowner and Easement Holder in connection with the taking or in lieu purchase shall be paid out of the amount recovered. The amount of the proceeds to which the Easement Holder and Executory Interest Holders shall be entitled,
after payment of any expenses, shall be determined in accordance with the Subsection "Allocation of Proceeds," below.

C. **Allocation of Proceeds.** With respect to a proposed extinguishment, termination, or condemnation action, the Easement Holder, Landowner, Executory Interest Holders and the United States stipulate that the fair market value of the ALE is ___ percent, hereinafter the “Proportionate Share,” of the fair market value of the land unencumbered by this ALE. The Proportionate Share will remain constant over time. The fair market value percentage of ___% was determined by an appraisal of the ALE dated ___ and completed by _____.

If this ALE is extinguished, terminated, or condemned, in whole or in part, then the Landowner must reimburse Easement Holder, the Executory Interest Holders and the United States an amount equal to the Proportionate Share of the fair market value of the land unencumbered by this ALE. The fair market value will be determined at the time all or a part of this ALE is terminated, extinguished, or condemned by an appraisal that meets the Uniform Standards of Professional Appraisal Practice (USPAP) or Uniform Acquisition Standards or Federal Land Acquisition (UASFLA). The appraisal must be completed by a certified general appraiser and be approved by the Easement Holder and the United States.

The allocation of the Proportionate Share between the Easement Holder, Executory Interest Holders and the United States will be as follows: (a) to the Easement Holder or its designee, ___ percent of the Proportionate Share; and (b) to the United States ___ percent of the Proportionate Share; and (c) to the Primary Executory Holder, the Land and Community Heritage Investment Program or its designee, ___ percent of the Proportionate Share; and (d) to the Secondary Executory Interest Holder, the City of Nashua or its designee, ___ percent of the Proportionate Share. Until such time as the Easement Holder, the Executory Interest Holders and the United States receive the Proportionate Share from the Landowner or the Landowner's successor or assign, the Easement Holder and the United States each have a lien against the Conservation Area for the amount of the Proportionate Share due each of them. If proceeds from termination, extinguishment, or condemnation are paid directly to Easement Holder, the Easement Holder must reimburse the United States for the amount of the Proportionate Share due to the United States and the Executory Interest Holders for the amount of the Proportionate Share due to the Executory Interest Holders.

D. **Application of Proceeds.** Easement Holder shall use any proceeds received under the circumstances described in this Section “Extinguishment & Condemnation” in a manner consistent with the conservation Purposes of this Easement.

11. **ADDITIONAL CONSERVATION EASEMENT**

Should the Landowner determine that the expressed Purposes of this Easement could better be effectuated by the conveyance of an additional easement, the Landowner may execute an additional instrument to that effect, provided that: the conservation purposes of this
Easement are not diminished thereby; a public agency or qualified organization described in the Section "Benefits & Burdens," above, accepts and records the additional easement; and Landowner has given advance written notice, including copy of proposed additional easement, to Easement Holder and Executory Interest Holders at least sixty (60) days prior to execution.

12. **AMENDMENT**

This ALE may be amended only if, in the sole and exclusive judgment of the Easement Holder, Executory Interest Holders and United States, by and through the Chief of NRCS, such amendment is consistent with the purposes of this ALE and complies with all applicable laws and regulations. The Easement Holder must provide timely written notice to the Chief of NRCS of any proposed amendments. Prior to the signing and recordation of the amended ALE, such amendments must be mutually agreed upon by the Easement Holder, Landowner, the Executory Interest Holders and United States, by and through the Chief of NRCS. Any purported amendment that is recorded without the written prior approval of the United States, the Easement Holder, or Executory Interest Holders is null and void.

Any amendment shall be consistent with the Purposes of this Easement, and shall not impair the aforementioned conservation attributes of the Conservation Area protected by this Easement. No amendment shall affect the qualification of this Easement or the status of the Easement Holder and Executory Interest Holders under any applicable laws, including Sections 170(h) and 501(c)(3) of the Internal Revenue Code of 1986, as amended, and NH RSA 477:45-47 as may be amended from time to time. Also, no amendment shall affect the perpetual duration of this Easement.

Any amendment shall be recorded in the Strafford County Registry of Deeds. Nothing in this paragraph shall require Landowner or Easement Holder and Executory Interest Holders to agree to any amendment or to consult or negotiate regarding any amendment.

13. **ENTIRE AGREEMENT**

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

14. **GOVERNING LAW & INTERPRETATION**

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

15. **NO MERGER**
The Landowner, Easement Holder and Executory Interest Holders explicitly agree that it is their express intent, forming a part of the consideration hereunder, that the provisions of this Easement are to last in perpetuity, and that, to that end, no conveyance of the underlying fee interest in the Conservation Area to the Easement Holder or any Executory Interest Holder shall be deemed to eliminate this Easement or any portion thereof, under the doctrine of "merger" or any other legal doctrine.

16. **United States Right of Enforcement**

Pursuant to 16 U.S.C. Section 3865 et seq., the United States is granted the right of enforcement that it may exercise only if the terms of the ALE are not enforced by the Easement Holder. The Secretary of the United States Department of Agriculture (the Secretary) or his or her assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if the Easement Holder, or its successors or assigns, fails to enforce any of the terms of this ALE, as determined in the sole discretion of the Secretary. In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement or remedial action related to the enforcement of this Easement from the Landowner, including, but not limited to, attorney’s fees and expenses related to Landowner’s violations. In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement of this Easement from the Easement Holder, including, but not limited to, attorney’s fees and expenses related to Easement Holder’s violations or failure to enforce the easement against the Landowner up to the amount of the United States contribution to the purchase of the ALE. The Easement Holder will annually monitor compliance and provide the United States with an annual monitoring report that documents that the Easement Holder and Landowner are in compliance with the ALE and ALE Plan. If the annual monitoring report is insufficient or is not provided annually, or if the United States has evidence of an unaddressed violation, as determined by the Secretary, the United States may exercise its right of inspection. For purposes of inspection and enforcement of the ALE, the ALE Plan, and the United States Cooperative Agreement with the Easement Holder, the United States will have reasonable access to the Conservation Area with advance notice to Easement Holder and Landowner or Landowner’s representative. In the event of an emergency, the United States may enter the Conservation Area to prevent, terminate, or mitigate a potential or unaddressed violation of these restrictions and will give notice to Easement Holder and Landowner or Landowner’s representative at the earliest practicable time.

17. **EXECUTORY INTEREST**

A. **Right to Enforce.** If the Easement Holder ceases to enforce the Easement conveyed hereby or fails to enforce it within thirty (30) days after receipt of written notice from the STATE OF NEW HAMPSHIRE acting through the LAND AND COMMUNITY HERITAGE INVESTMENT PROGRAM (sometimes herein referred to as the “Primary Executory Interest Holder”) requesting such enforcement, then the Primary Executory Interest Holder shall have all of the rights heretofore granted to the Easement Holder to
enforce this Easement. All reasonable costs of such enforcement shall be paid by the Easement Holder.

If the Easement Holder ceases to enforce this Easement conveyed hereby or fails to enforce it and if the Primary Executory Interest Holder then fails to exercise its rights, responsibilities, and duties under the provisions of this Subsection A. within thirty (30) days after receipt of written notice from the CITY OF NASHUA (sometimes herein referred to as the “Secondary Executory Interest Holder”), then the Secondary Executory Interest Holder shall have all the rights heretofore granted to the Easement Holder to enforce said Easement. All reasonable costs of such enforcement shall be paid by the Easement Holder.

B. **Termination of Easement Holder’s Interest.** In the circumstance of the immediately preceding paragraph A, or in the event the Easement Holder acquires the underlying fee interest in the Conservation Area, the Primary Executory Interest Holder shall then also have the right to terminate the Easement interest of the Easement Holder in the Conservation Area, after providing written notice to the Easement Holder, by recording a notice to that effect in the Registry of Deeds referring hereto. The Primary Executory Interest Holder shall thereupon assume and thereafter have all interests, rights, responsibilities and duties granted to and incumbent upon the Easement Holder in this Easement. All reasonable costs of such termination shall be paid by the Easement Holder. Except that neither Executory Interest Holder shall not have the right to terminate the contingent right granted herein to the United States of America.

If the Primary Executory Interest Holder terminates the interest of the Easement Holder and assumes all interests, rights, responsibilities, and duties granted to and incumbent upon the Easement Holder in this deed, then the Secondary Executory Interest Holder shall assume all such interests, rights, responsibilities, and duties of the Primary Executory Interest Holder as specified in Subsection A. above.

C. **Assignment of Interests.** The interests held by the Primary Executory Interest Holder are assignable or transferable to any party qualified by the State of New Hampshire to become the Primary Executory Interest Holder’s assignee or transferee. Any assignee or transferee shall have like power of assignment or transfer. The interests held by the Secondary Executory Interest Holder are assignable or transferable to any party qualified to become the Easement Holder's assignee or transferee as specified in the Section “Benefits & Burdens,” above. Any such assignee or transferee shall have like power of assignment or transfer. Any holder of an interest in this Easement desiring to transfer or assign its interest shall send written notice describing said intention to all other holders of any interest in this Easement at least thirty (30) days prior to such transfer or assignment taking effect.

18. **General Disclaimer and Landowner Warranty.**
The United States, nor the State of New Hampshire, acting through the Executory Interest Holder, nor the City of Nashua, acting as an Executory Interest Holder, their employees, agents, and assigns disclaim and will not be held responsible for Easement Holder’s or Landowner’s negligent acts or omissions or Easement Holder’s or Landowner’s breach of any representation, warranty, covenant, or agreements contained in this ALE, or violations of any Federal, State, or local laws, including all Environmental Laws including, without limitation, those that give rise to liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs of actions, or sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys’ fees and attorneys’ fees on appeal) to which the United States, or State of New Hampshire, may be subject or incur relating to the Conservation Area. Landowner must indemnify and hold harmless United States, and State of New Hampshire, their employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys’ fees and attorneys’ fees on appeal) to which United States or State of New Hampshire may be subject or incur relating to the Conservation Area, which may arise from, but are not limited to, Landowner’s negligent acts, omissions, or breach of any representation, warranty, covenant, agreements contained in this Agricultural Land Easement Deed or violations of any Federal, State, or local laws, including all Environmental Laws.

19. **No Release From Public Trust**

Notwithstanding any other provision of law, no deviation in the uses of this Conservation Area to uses or purposes not consistent with the purposes of NH RSA 227 M shall be permitted. The sale, transfer, conveyance, or release of this Conservation Area from public trust is prohibited, except as provided in NH RSA 227 M:13.

20. **Subordination**

Any mortgage or lien arising after the date of recording of this Easement shall be subordinated, by operation of law or otherwise, to the terms of this Easement.
The Easement Holder and Executory Interest Holders, by accepting and recording this Easement, agree to be bound by and to observe and enforce the provisions hereof and assumes the rights and responsibilities herein granted to and incumbent upon the Easement Holder and Executory Interest Holders, all in the furtherance of the conservation purposes for which this Easement is delivered.

IN WITNESS WHEREOF, We have hereunto set my hand this _____ day of ______________________, 2018.

____________________________
Katherine Williams

And I, Robert Williams, Husband of the Katherine Williams, hereby release all my rights of homestead and any other interests of mine therein.

____________________________
Robert Williams

STATE NEW HAMPSHIRE
COUNTY OF ________________

This instrument was acknowledged before me on this _____ day of ________________, 201__ by Katherine Williams and Robert Williams. The identity of the subscribing party was determined by (check box that applies and complete blank line, if any):

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

Notary Public/Justice of the Peace

____________________________
(Printed Name, above)
ACCEPTED: UNITED STATES OF AMERICA

The United States of America acting by and through the United States Department of Agriculture, Natural Resources Conservation Service, on behalf of the Commodity Credit Corporation hereby accepts and approves the foregoing Agricultural Easement Deed.

By: ______________________________________

Name: Rick Ellsmore, NH State Conservationist

Duly Authorized

Date: _________________________________

STATE/COMMONWEALTH OF ________________
COUNTY OF ________________

This instrument was acknowledged before me on this ___ day of ________, 2017 by Rick Ellsmore, State Conservationist on behalf of the United States of America. The identity of the subscribing party was determined by (check box that applies and complete blank line, if any):

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

________________________________________
Notary Public/Justice of the Peace

________________________________________
(Printed Name, above)
My Commission Expires: __________
ACCEPTED: STATE OF NEW HAMPSHIRE

By

Dorothy T. Taylor, Executive Director
Land and Community Heritage Investment Program
for the State of New Hampshire

Date

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK, ss.

On this _____ day of ______________, 2017, before me personally appeared Dorothy T. Taylor known to me (or satisfactorily proven) to be the person whose name appears above, and she acknowledged that she executed this document in the capacity indicated above.

__________________________________________
Justice of the Peace/Notary Public

My commission expires:
ACCEPTED: CITY OF NASHUA

By ___________________________________________  _____________________________
James Donchess, Mayor  Date
The City of Nashua

STATE OF NEW HAMPSHIRE
COUNTY OF ______________

This instrument was acknowledged before me on this ___ day of ____________________,
2018 by _____ on behalf of the City of Nashua. The identity of the subscribing party was
determined by (check box that applies and complete blank line, if any):

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

________________________________________
Notary Public/Justice of the Peace

________________________________________
(Printed Name, above)
My Commission Expires: ___________
ACCEPTED: SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE FORESTS

By: ________________________________________________

Name: Jane A. Difley, President / Forester

Duly Authorized

Date: ______________________________________________

STATE OF NEW HAMPSHIRE
COUNTY OF ____________

This instrument was acknowledged before me on this _____ day of _____________, 2017 by Jane A. Difley, President / Forester on behalf of the Society for the Protection of New Hampshire Forests. The identity of the subscribing party was determined by (check box that applies and complete blank line, if any):

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

________________________
Notary Public/Justice of the Peace

________________________
(Printed Name, above)
My Commission Expires: __________
EXHIBIT A

The "Conservation Area" subject to this Easement is that certain area of land being unimproved land, consisting of ____ acres...

LEGAL DESCRIPTION TO BE INSERTED.
EXHIBIT B

The "Building Envelopes" subject to this Easement and described in Section II. 2. of this Easement are TWO certain areas of land, situated …

BUILDING ENVELOPE AREA “A” (Subject to the ALE Conservation Easement)

A certain area of land shown on the Survey Plan as “BUILDING ENVELOPE AREA A, SUBJECT TO THE ALE CONSERVATION EASEMENT, (PORTION OF TAX MAP ___....

BUILDING ENVELOPE AREA “B” (Subject to the ALE Conservation Easement)

A certain area of land shown on the Survey Plan as “BUILDING ENVELOPE AREA B, SUBJECT TO THE ALE CONSERVATION EASEMENT, (PORTION OF TAX MAP ....