

Return to:
Piscataquog Watershed Association
5A Mill Street
New Boston, NH 03070

#875 NH Fish and GAME

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|------------|--------------|
| FEES: | <i>75.31</i> |
| SURCHARGE: | <i>2.00</i> |
| CASH: | <i>0</i> |

CONSERVATION EASEMENT DEED

This CONSERVATION EASEMENT DEED is made this *10th* day of *December*, 2007, by the Town of Weare, with a business address of 15 Flanders Memorial Road, Weare, New Hampshire 03281 (hereinafter referred to as the "Grantor" which word, where the context requires, includes the plural and shall, unless the context clearly indicates otherwise, include the Grantor's executors, administrators, legal representatives, devisees, successors, heirs and/or assigns), in favor of the Piscataquog Watershed Association (hereinafter referred to as the "Grantee" which word shall, unless the context clearly indicates otherwise, includes the Grantee's successors and/or assigns), a voluntary (non-profit) corporation duly organized and existing under the laws of the State of New Hampshire, with a business address of 5A Mill Street, New Boston, New Hampshire 03070, having been determined by the Internal Revenue Service to be a Section 501(c)(3) income tax exempt, publicly supported organization.

WITNESSETH:

WHEREAS, Grantor is the fee simple owner of certain real property, commonly known as the Charles and Ethyl Eastman Conservation Area (hereinafter referred to as the "Property"), located in the Town of Weare, County of Hillsborough, State of New Hampshire, more particularly described in Exhibit A, attached hereto and incorporated by this reference; and

WHEREAS, the Property possesses natural, scenic, open space, wildlife habitat, historical, educational, and recreational values (hereinafter referred to as the "Conservation Attributes") of great importance to Grantor, Grantee, the citizens of Weare, and the citizens of the State of New Hampshire; and

WHEREAS, the Property includes, in particular, 611.484 acres, more or less, of unfragmented land of varying topography that provides excellent habitat for wildlife, which require large tracts of undeveloped land and/or interior forest habitats; and

WHEREAS, the Property contains forest, field, open water, marsh, swamp, and vernal pool habitats of value to native plants and wildlife; and

WHEREAS, the Property abuts thousands of acres of protected land to the north and east, further enhancing its value as habitat for wide ranging and interior forest species; and

WHEREAS, the Property contains portions of a black gum swamp, a type of wetland considered rare in the State; and

WHEREAS, the Property includes relatively extensive south-facing slopes with high wildlife value; and

WHEREAS, the Property abuts John Stark Regional High School, providing an easily accessible outdoor laboratory; and

WHEREAS, the Property offers extensive opportunities for outdoor recreation; and

WHEREAS, Grantor intends, as owner of the Property, to convey to Grantee the right to preserve and protect the Conservation Attributes of the Property in perpetuity; and

WHEREAS, Grantor acquired the Property with funds bonded by the residents of the Town of Weare, by a grant from the New Hampshire Fish and Game Department (hereinafter referred to as the "Contingent Grantee"), by private contributions, and by a grant from the Mildred Hall Trust, a trust managed by Weare residents; and

WHEREAS, Grantor intends that this conveyance be consistent with applicable provisions of New Hampshire RSA 477:45-47 and Section 170(h) of the Internal Revenue Code of 1986 as amended; and

WHEREAS, the Conservation Attributes are consistent with the clearly delineated open space conservation goals and/or objectives stated in the Town of Weare Open Space Plan, dated June 2002, which goals include to: "maintain and expand the landscape-based recreational and educational opportunities"; "promote the permanent preservation .. of woodlands and forests"; and "preserve and protect Weare's natural environment, open spaces and resource base through sound management practices", including the purchase and conservation of identified parcels; and with New Hampshire RSA 79-A which states: "It is hereby declared to be in the public interest to encourage the preservation of open space in the state by providing a healthful and attractive outdoor environment for work and recreation of the state's citizens, by maintaining the character of the state's landscape, and by conserving the land, water, forest, and wildlife resources; and

WHEREAS, Grantee agrees by accepting this conveyance to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the Conservation Attributes of the Property for the benefit of this generation and the generations to come.

NOW THEREFORE, in consideration of the above and the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to the laws of the State of New

Hampshire and in particular New Hampshire RSA 477:45-47, Grantor hereby voluntarily conveys, grants and warrants to Grantee, this conservation easement (hereinafter referred to as the "Conservation Easement") in perpetuity over the Property exclusively for conservation purposes of the nature and character and to the extent herein set forth.

1. **PURPOSES.** The Purposes of this Conservation Easement are to assure that the Property remains in its undeveloped condition and the Conservation Attributes of the Property, as expressed herein, are protected, and to prevent any use of the Property that will significantly impair or interfere with the Conservation Attributes of the Property. Grantor intends that this Conservation Easement will confine the use of the Property to such activities as are consistent with the purposes of this Conservation Easement.

2. **USE LIMITATIONS.** The following limitations of activities and uses are expressly imposed on the Property:

A. The Property shall be maintained in perpetuity as open space and except as otherwise expressly permitted herein, no industrial or commercial use or activity shall be conducted on the Property, except forestry as described below, and agriculture as described in Section 3.C., and provided that the productive capacity of the Property to produce forest crops and sustain wildlife shall not be degraded by such on-site activities.

i. For purposes hereof, "forestry" shall include the growing, stocking, cutting, and sale of forest trees of any size capable of producing timber or other forest products; and the processing and sale of products produced on the Property, all as not detrimental to the purposes of this Conservation Easement.

ii. Forestry for commercial purposes shall be performed, to the extent reasonably practicable, as hereinafter specified in accordance with the following goals, and in a manner not detrimental to the purposes of this Conservation Easement as described in Section 1 above.

- a. The goals are:
 - 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 unique or fragile natural areas;
 - protection of unique historic and cultural features; and
 - conservation of native plant and animal species.
- b. Such forestry shall be performed in accordance with a written forest management plan (hereinafter referred to as the "Plan") consistent with this Conservation Easement, prepared by a licensed professional forester, or by other qualified person approved in advance and in writing by Grantee. The Plan shall have been prepared not more than

ten (10) years prior to the date any harvesting is expected to commence, or shall have been reviewed and updated as required by such a forester or other qualified person at least thirty (30) days prior to said date.

- c. At least forty-five (45) days prior to harvesting, Grantor shall submit to Grantee a written certification, signed by a licensed professional forester, or by other qualified person approved in advance and in writing by Grantee, that the Plan has been prepared in compliance with the terms of this Conservation Easement, together with a copy of such plan, which shall be reviewed by Contingent Grantee to ensure consistency with the Purposes of the Conservation Easement. Both Grantee and Contingent Grantee acknowledge that the Plan's purpose is to guide forest and wildlife habitat management activities in compliance with this Conservation Easement, and that the actual activities will determine compliance therewith.
- d. The Plan shall include a statement of landowner objectives, and shall specifically address:
 - the long-term protection of those values for which this Conservation Easement is conveyed, as described in Section 1 above;
 - the goals in Section 2.A.ii.a above.
- e. Timber harvesting with respect to such forestry shall be conducted in accordance with the Plan and be supervised by a licensed professional forester, or by other qualified person approved in advance and in writing by Grantee.
- f. Such forestry shall be carried out in accordance with all applicable local, state, federal, and other governmental laws and regulations, and, to the extent reasonably practicable, in accordance with then-current, generally accepted best management practices for the sites, soils, and terrain of the Property. For references, see "Best Management Practices for Forestry: Protecting New Hampshire's Water Quality" (UNH Cooperative Extension, Sarah Smith, Ed, 2005), and "Good Forestry in the Granite State: Recommended Voluntary Forest Management Practices for New Hampshire" (New Hampshire Forest Sustainability Standards Work Team, 1997), or similar successor publications.
- g. In areas used by, or visible to, the general public, such forestry shall be carried out, to the extent reasonably practicable, in accordance with the recommendations contained in "A Guide to Logging Aesthetics: Practical Tips for Loggers, Foresters, and Landowners" (Geoffrey Jones, 1993) or similar successor publications.

B. The Property, which consists of 5 lots, shall not be further subdivided or otherwise divided *de facto* into parcels of separate distinct ownership, and may be sold, transferred, devised or conveyed only in its entirety, the existence of multiple lots notwithstanding. Grantor agrees to notify Grantee in writing thirty (30) days before any such transfer of fee simple title to the Property.

C. The Property and any portion thereof shall not be included as part of the gross area of other property not subject to this Conservation Easement for the purposes of determining density, lot coverage, or open space requirements under otherwise applicable laws, regulations or ordinances controlling land use and building density. No development rights which have been encumbered or extinguished by this Conservation Easement shall be transferred to any other lands pursuant to a transferable development rights scheme or cluster development arrangement or otherwise.

D. No building, structure or improvement of any kind, including but not limited to, a dwelling, septic system, cell tower, tennis court, dock, swimming pool, aircraft landing strip, tower, mobile home or commercial structure shall be constructed, placed or introduced onto the Property. Provided, however, that ancillary structures and improvements, including but not limited to, a road, dam, fence, bridge, culvert, barn, or shed, may be constructed, placed or introduced onto the Property, but only as necessary for the accomplishment of the forestry, agriculture, habitat management, low impact, non-commercial, outdoor recreational activities or conservation uses of the Property, and provided that they are not detrimental to the Purposes of this Conservation Easement.

- i. For purposes of this Conservation Easement, "low impact, non-commercial, outdoor recreational activities" include such activities as nature observation, hiking, cross-country skiing, snowshoeing, hunting, fishing, trapping, horseback riding, and bicycling.
- ii. For purposes of this Conservation Easement, "education" shall mean field trip and outdoor instructional use, nature interpretation in the out-of-doors; observation and scientific research in areas related to ecological systems; and environmental conservation, and other such activities that promote a broad understanding of wildlife and natural resource management. Educational activities shall be conducted under the auspices of Grantor acting by and through the Weare Conservation Commission (hereinafter referred to as the "Conservation Commission"). The Conservation Commission may grant permission for educational use of the Property to other parties subject to a written request to and approval by the Conservation Commission for such use. Said request shall specify type and duration of activity. Education uses do not include the building of educational facilities of any type.

E. No removal or other disturbance of the soil surface and no changes in topography, surface or sub-surface water systems, wetlands, or natural habitat shall be allowed that would be likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface waters, or would be likely to harm state or federally recognized rare, endangered, threatened species or species of special concern. Such determination of harm shall be based upon information from Contingent Grantee, or the agency then recognized by the State of New Hampshire as having responsibility for identification and/or conservation of such species. Furthermore, none of the aforementioned activities shall be allowed except as necessary for the accomplishment of the forestry, agriculture, habitat management, low impact outdoor recreational, educational or conservation uses of the Property, and provided that they are not detrimental to the purposes of this Conservation Easement. Prior to the commencement of any such activities, all necessary federal, state and local permits and approvals shall be obtained.

F. No outdoor advertising structure such as signs or billboards shall be displayed on the Property except as necessary for the accomplishment of the forestry, agriculture, habitat management, low impact outdoor recreational, educational or conservation uses of the Property and provided that such structures are not detrimental to the purposes of this Conservation Easement.

G. There shall be no mining, quarrying, excavation or removal of rocks, minerals, gravel, peat, sand, sod, topsoil or other similar materials on the Property, except in connection with any improvements made pursuant to the provisions of paragraphs D or E above. No such rocks, minerals, gravel, peat, sand, sod, topsoil or other similar materials shall be removed from the Property.

H. There shall be no application, dumping, injection, or burial of materials then known to be or suspected of being environmentally hazardous; further, there shall be no dumping or other disposal of other wastes, refuse or debris on the Property, except that which is generated by activities permitted herein.

I. Grantor may not give permission for the use or operation of motorized recreational vehicles on the property. Such vehicles include but are not limited to all-terrain vehicles, motorcycles, dirt bikes, and snowmobiles. Grantor may use such vehicles or grant permission for the use of such vehicles for the accomplishment of the forestry, agriculture, habitat management, or other conservation uses of the property, and as needed for law enforcement, search and rescue operations, or other emergencies.

J. Grantor shall not post the property against public pedestrian access for low impact, non-commercial outdoor recreational activities including but not limited to nature observation, hiking, cross-country skiing, snowshoeing, hunting, fishing, trapping, horseback riding, and bicycling, however, Grantor through its management plan, shall have the right to limit permitted activities in the interests of the public health and safety

or to ensure consistency with the Purposes of this Conservation Easement only with the concurrence of Contingent Grantee.

3. **RESERVED RIGHTS.** Grantor reserves all rights accruing from fee simple ownership of the Property that are not expressly prohibited herein and are not inconsistent with the Purposes of this Conservation Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved:

A. Grantor reserves the right to install and maintain a granite monument dedicated to Charles and Ethyl Eastman, the parents of Mildred Eastman Hall, on land off Route 77, within sight of the highway and of a size and design in keeping with the character of the Property. In order to ensure visibility, the area around the monument and between the monument and the road may be kept mown and otherwise maintained.

B. Grantor reserves the right to erect, install, and maintain informational kiosks and to place and maintain on the Property other signs that relate to recreational use of the Property at such places as may be desirable to foster safe use of the Property and nature appreciation of the Property. Temporary signage relative to use of the Property for educational purposes is also permissible.

C. Grantor reserves the right to create and/or maintain fields for the purpose of wildlife habitat creation and/or enhancement and to allow commercial agriculture for purposes of maintaining said field(s), provided, however, that all agricultural activities are secondary to and in support of the goal of wildlife habitat creation and/or enhancement and, further, that Grantor assumes responsibility to ensure that such activities, whether conducted by itself or a third party, are conducted in such a way as to be consistent with wildlife habitat creation and/or enhancement and with the Purposes of this Conservation Easement.

D. Grantor reserves the right to expand the existing parking area off Pine Hill Road to accommodate not more than twenty (20) vehicles. One (1) parking area may be established at the intersection of the Property and a public highway should Grantor determine such additional parking is necessary, and is subject to review and approval by Grantee as to location, size, drainage, and construction materials, which approval shall be based on consistency of the proposed parking area with the Purposes of this Conservation Easement.

4. **RIGHTS OF GRANTEE.** To accomplish the Purposes of this Conservation Easement, the following rights are conveyed to Grantee:

- i. To preserve and protect the Conservation Attributes of the Property.
- ii. To enter upon the Property at reasonable times in order to monitor compliance with and otherwise enforce the terms of this Conservation Easement, provided Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property.

- iii. To prevent any activity on, or use of, the Property that is inconsistent with the Purposes of this Conservation Easement, and at its discretion to require the restoration of such areas or features of the Property as may be damaged by any inconsistent activity or use, pursuant to Section 6 hereof.
- iv. To conduct educational activities, pursuant to Section 2.D. ii.
- v. To install small conservation signs around the perimeter of the Property for purposes of identifying the Property as a conservation land protected by Grantee.
- vi. To post signs on the Property notifying the public that the Property is not open to use by motorized recreational vehicles should Grantor fail to do so or require assistance.

5. NOTICE OF INTENTION TO UNDERTAKE CERTAIN PERMITTED ACTION.

The purpose of requiring Grantor to notify Grantee prior to undertaking certain permitted activities, such as is provided for in Sections 2 and 3, is to afford Grantee an opportunity to ensure that the activities in question are designed in a manner consistent with the purposes of this Conservation Easement. Unless otherwise indicated, whenever notice is required Grantor shall notify Grantee in writing not less than sixty days (60) prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the Purposes of this Conservation Easement. Where Grantee's approval is required, Grantee shall grant or withhold its approval in writing within forty-five (45) days of receipt of Grantor's written request therefor.

6. ALTERNATE DISPUTE RESOLUTION

A. Grantor and Grantee desire that issues arising from time to time concerning prospective uses or activities in light of the conservation purposes of the Conservation Easement will first be addressed through candid and open communication between the parties rather than unnecessarily formal or adversarial action. Therefore, Grantor and Grantee agree that if a party becomes concerned about the consistency of any proposed use or activity with the Purpose(s) of this Conservation Easement, wherever reasonably possible, the concerned party shall notify the other party of the perceived or potential problem, and explore the possibility of reaching an agreeable resolution.

B. If informal dialogue does not resolve the issue, and Grantor agrees not to proceed with the proposed use or activity pending resolution of the ongoing dispute, either party may refer the dispute to mediation by request made in writing to the other. Within ten (10) days of the receipt of such request, the parties shall agree on a single impartial mediator who shall be an attorney licensed to practice law in New Hampshire or an

experienced land use or land conservation professional, either of whom must have experience with conservation easements. Each party shall pay its own attorneys' fees, and the costs of mediation shall be split equally between the parties.

C. If the parties do not agree to resolve the dispute by mediation, then either party may bring an action at law or in equity in any court of competent jurisdiction to enforce the terms of this Conservation Easement, to enjoin the violation by permanent injunction, and to require the restoration of the Property to its condition prior to the breach and for such damages as appropriate.

D. Notwithstanding the availability of mediation to address disputes concerning consistency of any proposed use or activity with the purposes of this Conservation Easement, if Grantee believes that some action or inaction of Grantor or a third party is causing irreparable harm or damage to the Property, Grantee may seek a temporary restraining order, preliminary injunction, or other form of equitable relief from any New Hampshire court of competent jurisdiction to cause the cessation of any such damage or harm pending resolution of any dispute in accordance with this Section 6.

7. BREACH OF CONSERVATION EASEMENT.

A. If Grantee determines that a breach of this Conservation Easement has occurred or a threat of breach exists, Grantee shall notify Grantor in writing of such breach and demand corrective action to cure the breach; where the breach involves injury to the Property resulting from any use or activity inconsistent with the purposes of the Conservation Easement, to restore the portion of the Property so injured to its prior condition with a plan approved in advance by Grantee.

B. Grantor 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 cure swiftly said breach, terminate said conduct, and repair any damage. Grantor shall promptly notify Grantee of its actions taken under this section.

C. If Grantor fails to take proper action under the preceding paragraph, or fails to continue diligently to cure said breach until finally cured, Grantee may undertake any actions that are reasonably necessary to repair any damage in Grantor's name or to cure such breach, including an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require restoration of the Property to the condition that existed prior to any such injury.

D. Grantee shall be entitled to recover damages for violation of the terms of this Conservation Easement or injury to any conservation values protected thereby, including, but not limited to, damages for the loss of scenic, aesthetic, or environmental values. Without limiting Grantor's liability therefore, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.

E. If Grantee, at its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, Grantee may pursue its remedies under this Section 7 without prior notice to Grantor or without waiting for the period provided for cure to expire.

F. All reasonable costs incurred by Grantee in enforcing the terms of the Conservation Easement against Grantor, including, without limitation, costs and expenses of suit and reasonable attorney's fees, and any costs of restoration necessitated by Grantor's breach of this Conservation Easement shall be borne by Grantor, provided that Grantor is directly or primarily responsible for the breach; and provided further, however, that if Grantor ultimately prevails in a judicial enforcement action, each party shall bear its own costs.

G. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, but not limited to, unauthorized actions by third parties, natural disasters such as fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

H. Grantee and Grantor reserve the right, separately or collectively, to pursue all legal and equitable remedies against any third party responsible for any actions detrimental to the purposes of this Conservation Easement.

I. Any delay or forbearance by Grantee in exercising its rights under this Conservation Easement in the event of any breach of any term thereof shall not be deemed or construed to be a waiver by Grantee of its rights hereunder. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy, or be construed as a waiver thereof. Grantor hereby waives any defense of laches, estoppel, or prescription.

8. **TAXES AND MAINTENANCE.** Grantee and Contingent Grantee shall be under no obligation to maintain the Property or pay any taxes or assessments thereon.

9. **CONDEMNATION.**

A. Whenever all or part of the Property is taken in exercise of eminent domain by public, corporate or other authority so as to abrogate in whole or in part the Conservation Easement conveyed hereby, Grantor and Grantee shall thereupon act jointly to recover the full damages resulting from such taking with all incidental or direct damages and expenses incurred by them thereby to be paid out of the damages recovered.

B. The balance of the land damages recovered (including, for purposes of this subsection, proceeds from any lawful sale, in lieu of condemnation, of the Property unencumbered by the restrictions hereunder) shall be divided between Grantor, Grantee and the Contingent Grantee in proportion to the fair market value, at the time of

condemnation, of their respective interests in that part of the Property condemned. The values of Grantor's and Grantee's interests shall be determined by an appraisal prepared by a qualified appraiser at the time of condemnation.

C. Grantee shall use its share of the proceeds to effect conservation in the Town of Weare in a manner consistent with and in furtherance of one or more of the conservation purposes set forth herein.

10. **BENEFITS, BURDENS AND ASSIGNMENT.** The burden of the Conservation Easement conveyed hereby shall run with the Property and shall be enforceable against all future owners and tenants in perpetuity; the benefits of said Conservation 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, consistently with Section 170(c)(1) of the Internal Revenue Code of 1986, as amended, or to any qualified organization within the meaning of Section 170(h) of said Code and applicable regulations promulgated thereunder, which organization has among its purposes the conservation and preservation of land and water areas and agrees to and is capable of enforcing the conservation purposes of this Conservation Easement. As a condition of such assignment, Grantee shall require that the Purposes that this Conservation Easement is intended to advance, continue to be carried out. Any such assignee or transferee shall have like power of assignment or transfer.

11. **ADDITIONAL CONSERVATION EASEMENT.** Should Grantor determine that the expressed Purposes of this Conservation Easement could better be effectuated by the conveyance of an additional conservation easement, Grantor may execute an additional instrument to that effect, provided that the Purposes of this Conservation Easement are not diminished thereby and that a public agency or qualified organization described in Section 10 above accepts and records the additional conservation easement.

12. **RIGHTS OF CONTINGENT GRANTEE.** If Grantee fails to enforce the Conservation Easement conveyed hereby, which failure continues for sixty (60) days after written notice from the State of New Hampshire, Fish and Game Department, maintaining an address at 11 Hazen Drive, Concord, NH 03301, requesting such enforcement delivered in hand or by certified mail, return receipt requested, then Contingent Grantee shall have the right to enforce this Conservation Easement. All reasonable costs of such enforcement shall be paid by Grantee. In such circumstance, at the option of Contingent Grantee, the Conservation Easement shall vest in, and shall be deemed to have been transferred and conveyed to Contingent Grantee. In order to effectuate such vesting, Contingent Grantee shall record an affidavit with the Hillsborough County Registry of Deeds which shall state: (i) that Grantee has failed to enforce the Conservation Easement for sixty (60) days following written notice from Contingent Grantee, (ii) that the affidavit is made pursuant to the terms and conditions of this Conservation Easement, and (iii) that Grantee's interest in this Conservation Easement has vested in Contingent Grantee. If Grantee ceases to exist or ceases to function as a qualified conservation organization under Section 170(h)(3) of the Internal

Revenue Code of 1986, as amended, then, at the sole option of Contingent Grantee, the Conservation Easement shall vest in, and shall be deemed to have been transferred and conveyed to Contingent Grantee. In order to effectuate such vesting, Contingent Grantee shall record an affidavit with the Hillsborough County Registry of Deeds which shall state: (i) that Grantee has ceased to exist or has ceased to function as a qualified organization under said Section 170(h)(3), as the case may be, (ii) that said affidavit is made pursuant to the terms and conditions of this Conservation Easement, and (iii) that Grantee's interest in this Conservation Easement has vested in Contingent Grantee. The rights conveyed by this Section 15 are assignable and transferable by Contingent Grantee to any party qualified to become Grantee's assignee or transferee as specified in Section 10 above. Any such assignee or transferee shall have like power of assignment or transfer.

13. **SUBSEQUENT TRANSFERS.** Grantor agrees to incorporate the terms of this Conservation Easement in any deed or other legal instrument by which Grantor divests him/herself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least thirty (30) days prior to the date of such transfer. The failure of Grantor to perform any act required by this Section shall not impair the validity or enforceability of this Conservation Easement.

14. **NOTICES.** All notices, requests and other communications, required or permitted to be given under this Conservation Easement, shall be in writing and shall be delivered in hand or sent by certified mail, postage prepaid, return receipt requested to the appropriate address set forth above or at such other address as Grantor and Grantee may hereafter designate by notice given in accordance herewith. Notice shall be deemed to have been given when so delivered or so mailed.

15. **GENERAL PROVISIONS.**

A. **Controlling Law.** The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of New Hampshire.

B. **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed in favor of the conveyance to effect the Purposes of this Conservation Easement. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purpose of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

C. **Severability.** If any provision of this Conservation Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Conservation Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

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

E. Merger. Grantor and Grantee explicitly agree that it is their express intent, forming a part of the consideration hereunder, that the provisions of the Conservation Easement set forth herein are to last in perpetuity, and that to that end no purchase or transfer of the underlying fee interest in the Property by or to Grantee or any successor or assign shall be deemed to eliminate the Conservation Easement, or any portion thereof, granted hereunder under the doctrine of merger or any other legal doctrine.

F. Counterparts. This Agreement may be executed in three (3) or more counterparts, all of which shall constitute but one (1) agreement.

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

Grantee, by accepting and recording this Conservation Easement for itself, its successors and assigns, agrees to be bound by and to observe and enforce the provisions hereof and assumes the rights and responsibilities herein granted to and incumbent upon Grantee, all in the furtherance of the purposes of this Conservation Easement.

IN WITNESS WHEREOF, we have hereto set our hands this 10th day of December, 2007.

**TOWN OF WEARE
Board of Selectmen**

Thomas Clow
Thomas Clow

Donna Osborne
Donna Osborne

Joseph Fiala
Joseph Fiala

Heleen Kurk
Heleen Kurk

Wendy F. Clark
Wendy Clark

State of New Hampshire
County of Hillsborough

Personally appeared on this 10th day of December, 2007, Thomas Clow, Donna Osborne, Joseph Fiala, Heleen Kurk, Wendy Clark, the undersigned officers who acknowledged themselves to be the members of the Board of Selectmen for the Town of Weare and that as such officers, they are duly authorized to execute the foregoing instrument for the purposes therein contained, by signing their names on behalf of the Town of Weare.

Elizabeth McLaughlin
Notary Public/Justice of the Peace
My Commission Expires



PISCATAQUOG WATERSHED ASSOCIATION

Margaret Watkins
Margaret Watkins, Executive Director

State of New Hampshire
County of Hillsborough

Personally appeared on this 4th day of December, 2007, Margaret Watkins who acknowledges herself to be the Executive Director for the Piscataquog Watershed Association, and as such is duly authorized to executed the foregoing instrument for the purposes therein contained.

Elizabeth McNaughten
Notary Public/Justice of the Peace[seal]
My Commission Expires:



STATE OF NEW HAMPSHIRE

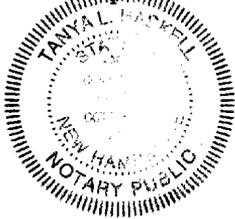
The State of New Hampshire, acting through its Fish and Game Department on this day 12 of Dec., 2007.



Donald S. Clarke, Acting Executive Director

State of New Hampshire
County of Merrimack

Personally appeared before me on this 12th day of December, 2007, Donald S. Clarke, who acknowledges himself to be the Acting Executive Director for the New Hampshire Fish and Game Department, and as such is duly authorized to executed the foregoing instrument for the purposes therein contained, by signing his name on behalf of the State of New Hampshire.





Notary Public/~~Justice of the Peace~~ [seal]
My Commission Expires:

TANYA L. HASKELL, Notary Public
My Commission Expires October 21, 2010

Approved as to form, substance, and execution on this 28 day of December, 2007:



K. Allen Brooks, Assistant Attorney General
State of New Hampshire

EXHIBIT A

The Property over which this Conservation Easement Deed is conveyed consists of five (5) tracts/lots/parcels of land lying between State Routes 114 and 77, in the Town of Weare, County of Hillsborough, and State of New Hampshire, described as follows:

Lot #1 and Lot #2

Meaning and intending to describe the same premises conveyed to the Town of Weare by Frank J. Ferrante and Jennifer P. Ferrante, divorced, recorded in the Hillsborough County Registry of Deeds on July 11, 2006 at Book 7705, Page 1002. The premises consists of 2 (two) parcels of land identified as Lot #1 and Lot #2, both as shown on a plan entitled "Subdivision Plan of Land, Clear Skies Development Company, Weare, NH" prepared by Holden Engineering & Surveying, Inc., and recorded in the Hillsborough County Registry of Deeds on May 19, 1989 as Plan #23378. Lot #1 contains 60.452 acres, more or less, and Lot #2 contains 5.076 acres, more or less.

Lot #3

Meaning and intending to describe the same premises conveyed to the Town of Weare by Frank J. Ferrante and Jennifer P. Ferrante, divorced, recorded in the Hillsborough County Registry of Deeds on July 11, 2006 at Book 7705, Page 1009. The premises consists of one (1) parcel of land identified as Tax Lot 402/32.5, shown on a plan entitled "Subdivision Plan, Tax Lots 402/32.5 & 201/35.1 for Frank & Jennifer Ferrante and The 35.1 Realty Trust, Frank Ferrante Trustee" prepared by Arthur F. Siciliano, Jr., Land Surveyor, and recorded in the Hillsborough County Registry of Deeds on July 10, 2006 as Plan #34854. Lot #3 contains 211.67 acres, more or less.

Lot #4

Meaning and intending to describe the same premises conveyed to the Town of Weare by Frank J. Ferrante, Trustee of the 35.1 Realty Trust, recorded in the Hillsborough County Registry of Deeds on July 11, 2006 at Book 7705, Page 0999. The premises consists of one (1) parcel of land identified as Tax Lot 201/35.1, shown on a plan entitled "Subdivision Plan, Tax Lots 402/32.5 & 201/35.1 for Frank & Jennifer Ferrante and The 35.1 Realty Trust, Frank Ferrante Trustee" prepared by Arthur F. Siciliano, Jr., Land Surveyor, and recorded in the Hillsborough County Registry of Deeds on July 10, 2006 as Plan #34854. Lot #4 contains 148.286 acres, more or less.

Lot #5

Meaning and intending to describe the same premises conveyed to the Town of Weare by Frank Ferrante and Jennifer P. Ferrante, divorced, recorded in the Hillsborough County Registry of Deeds on July 11, 2006 at Book 7705, Page 1006. The premises consists of one (1) parcel of land identified as Tax Lot 402/73, shown on a plan entitled "Corrective Plan, Boundary Survey, Tax Lot 402/73 for Town of Weare" prepared by Arthur F. Siciliano, Jr., Land Surveyor, and recorded in the Hillsborough County Registry of Deeds on May 14, 2007 as Plan #35450. Lot #5 contains 186 acres, more or less.