

Return to:
Piscataquog Land Conservancy
5a Mill Street
New Boston, NH 03070

CONSERVATION EASEMENT DEED

This CONSERVATION EASEMENT DEED is made this _____ day of _____, 2012, by the **Town of Weare**, of 15 Flanders Memorial Road, Town of Weare, County of Hillsborough, State of New Hampshire, hereinafter sometimes 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 Land Conservancy** (hereinafter sometimes referred to as the “Grantee” which word shall, unless the context clearly indicates otherwise, include 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 an address of 5A Mill Street, Town of New Boston, County of Hillsborough, State of New Hampshire 03070, having been determined by the Internal Revenue Service to be a Section 501(c)(3) income tax exempt, publicly supported organization.

This transaction is a donative, non-contractual transfer, and as such is entitled to exemption from the real estate transfer tax pursuant to RSA 78-B:2 IX.

DECLARATIONS AND GRANT

WHEREAS, Parties agree that Grantor is the owner in fee simple of certain real property, being unimproved, consisting of approximately 154.0 acres, more or less, identified as tax map 404 lot 130.1 and tax map 404 lot 127, situated north of Chevey Hill Road 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 (the “Property”); and

WHEREAS, the Property possesses natural, scenic, open space, wildlife habitat, and recreational values (collectively, “Conservation Attributes”) of great importance to the Grantor and the people of Weare; and

WHEREAS, the Property includes, in particular, some 154 acres consisting largely of mixed hardwoods and softwoods, including some hemlock stands; and

WHEREAS, the Property includes a significant portion of a hill, rising over a 1,000 feet; and

WHEREAS, the Property abuts a significant portion of the class VI New Road containing high recreational benefits; and

WHEREAS, the Property contains numerous drainages that flow into a large stream-wetland complex featuring beaver flowages; and

WHEREAS, the Property fronts on Tiffany Hill Road, protecting some 900 feet for scenic enjoyment of the general public; and

WHEREAS, the Property features a dead-end cul-de-sac at the end of Chevey Hill Road that allows for parking and access to the southern portion of the Property; and

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

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

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 grants and conveys to Grantee, with **WARRANTY COVENANTS**, this Conservation Easement in perpetuity over the Property exclusively for conservation purposes of the nature and character and to the extent herein set forth ("Easement"); Grantee agrees by accepting this grant to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the Conservation Attributes of the Property for the public benefit of this generation and the generations to come.

I. PURPOSES. The Purposes of this Easement are to assure that the Property will be retained forever in its open space condition, to assure that 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 integrity of the Conservation Attributes of the Property. Grantor intends that this Easement will confine the use of the Property to such activities as are consistent with these Purposes, more particularly described as follows.

- A. The conservation and protection of open spaces, including the conservation and long-term protection of the forest land of which the Property consists; and
- B. The conservation of the wildlife habitat thereon; and
- C. The scenic enjoyment of the general public; and
- D. The recreational enjoyment of the public by access to forest lands, open lands, wildlife habitat, and other natural resources attributes; and
- E. The protection of the natural habitat of the wildlife, plants, and ecosystems on the Property;

The above Purposes are consistent with and in furtherance of the clearly delineated open space conservation goals and/or objectives stated in the Town of Weare Open Space Plan (June 2002), which goals include to:

- A. Maintain and expand the landscape-based recreational and educational opportunities
- B. Promote the permanent preservation of woodlands and forests
- C. 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."

The easement hereby granted with respect to the Property is as follows:

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.
- B. No industrial or commercial use or activity shall be conducted on the Property, except forestry, as described below, and provided that the productive capacity of the Property to produce forest crops shall not be degraded by such on-site activities.
 - I. For purposes hereof "forestry" shall include the production of plant products for domestic or commercial purposes; the growing, stocking, cutting, and sale of forest trees of any size capable of producing timber or other forest products, all as not detrimental to the Purposes of this Easement. Commercial is defined to mean production, sale, or transportation for value.
 - II. Any commercial forestry on the Property shall be performed under the direction of a New Hampshire licensed forester in accordance with a written management plan appropriate for the sites and soils of the Property and current within ten (10) years of harvest that considers the effects on wetlands and wildlife and incorporates practices applicable to wetlands and wildlife as defined in *Good Forestry in the Granite State: Recommended Voluntary Forest Management Practices* (New Hampshire Forest Sustainability Work Team) or similar successor publications provided by the Grantee.
 - III. At least thirty (30) days prior to any timber harvesting, Grantor shall submit to Grantee a written certification, signed by a licensed professional forester, or by another qualified person who has been approved in advance and in writing by Grantee, that the forestry plan for the Property has been prepared in compliance with the terms of this Easement and proposed harvesting activities conform with the plan.

- IV. 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 recommendation contained in "*A Guide to Logging Aesthetics: Practical Tips for Loggers, Foresters, and Landowners*" (Geoffrey Jones, 1993) or similar successor publications.
- C. The Property shall not be subdivided or otherwise divided *de facto* into parcels of separate distinct ownership, and may be sold, transferred, devised or conveyed only in its entirety.
- D. No building, structure or improvement of any kind, including but not limited to, a dwelling, septic system, tennis court, cabin, residential driveway, dock, swimming pool, aircraft landing strip, tower, mobile home, barn, dam, bridge, or shed, shall be constructed, placed or introduced onto the Property except for structures or improvements that a) are necessary in the accomplishment of the forestry, habitat management, low impact noncommercial outdoor recreational, educational, or conservation uses of the Property, including but not limited to a gravel, dirt, or other permeable-surface road, fence, culvert, barn, or shed, lean-to and b) are not detrimental to the Purposes of this Easement. Any structure with permanent foundations or impermeable flooring requires notice to the Grantee prior to construction pursuant to Section 5 below.
- I. For purposes of this Easement, low-impact, non-commercial, outdoor recreational activities include such activities as hiking, hunting by foot, cross-country skiing, snowshoeing, and horseback riding.
- II. For purposes of this Easement, "education" shall mean field trip and outdoor instructional use, nature observation and interpretation in the out-of-doors, scientific research in areas related to ecological systems and environmental conservation, and other such activities which promote a broad understanding of wildlife and natural resource management. Education uses do not include the building of educational facilities of any type and shall be conducted under the auspices of the Piscataquog Land Conservancy or its permitted successors or assigns, subject to the prior written permission of the Grantor.
- 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 sub-surface waters, or would be likely to harm state or federally recognized rare, endangered, or threatened species or species of special concern or exemplary natural communities. Such determination of harm to species or communities shall be based upon information from the New Hampshire Natural Heritage Inventory 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, habitat management, low-impact, non-commercial outdoor recreational, educational or conservation uses of the Property, and provided that they are not detrimental to the Purposes of this 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, habitat management, low-impact, non-commercial outdoor recreational, educational or conservation uses of the Property and provided that such structures are not detrimental to the Purposes of this Easement.
- G. There shall be no mining, quarrying, excavation or removal of rocks, minerals, gravel, peat, sand, sod, top soil or other similar materials on the Property, except as necessary for improvements made pursuant to the provisions of paragraphs 2.B, D, E, or F above. Removal from the Property of such rocks, minerals, gravel, peat, sand, sod, top soil or other similar materials shall be subject to approval by Grantee; in no case shall such materials be removed from the Property for commercial benefit of Grantor or any other party.
- H. There shall be no application, dumping, injection, or burial of materials then known to be or suspected of being environmentally hazardous or detrimental to the Purposes of this Easement.
- I. No rights-of-way or easements of ingress or egress in favor of any third party shall be created or developed into, on, over, or across the Property without the prior written approval of the Grantee, except those of record as of the execution of this Easement and those specifically permitted in the provisions of this Easement. Grantee may grant permission for any rights-of-way or easements of ingress or egress if it determines, in its sole discretion, that any such rights-of-way, easements of ingress or egress are consistent with the Purposes of this Easement.
- J. Grantor may not give permission for the use or operation of motorized recreational vehicles except snowmobiles on the Property, except as may be necessary for the accomplishment of the forestry, habitat management, or conservation uses of the Property.
- K. Other than as provided in Section 3 B, there shall be no posting to prohibit the public from accessing and using the Property for transitory pedestrian, non-motorized, low impact, non-commercial outdoor recreational purposes. The Grantee shall be under no duty to supervise said access, use, or purpose.
- L. No use shall be made of the Property, and no activity thereon shall be permitted which is or is likely to become inconsistent with the Purposes of this Grant. Grantor and Grantee acknowledge that, in view of the perpetual nature of this Grant, they are unable to foresee all potential future land uses, future technologies and future evolution of the land and other natural resources, and other future occurrences affecting the Purposes of this Grant. Grantee, therefore, in its sole discretion, may determine whether (a) proposed uses or proposed improvements not contemplated by or addressed in this Grant, or (b) alterations to existing uses or structures, are consistent with the Purposes of this Grant.

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

- A. Grantor reserves the right to permit incidental, low-impact commercial recreational uses by others of the Property, such as cross-country skiing and horse-trail riding, provided trails are sited and maintained and uses are conducted in such ways as not to be detrimental to the

Purposes of this Easement, and further, provided no structures are built on the Property in connection with said activities, except for structures to cross streams. This provision is exempt from the notification requirements set forth in Section 5.B below.

- B. To post the Property against access and use for specific purposes, in designated areas, and at certain times of the day and year, specifically including the right to prohibit any and all camping and use of motorized recreational vehicles on the Property. This shall not be construed as the right to post the entire Property against passive, pedestrian access. This provision is an exception to Section 2.K, above, and is exempt from the notification requirements set forth in Section 5.B below.

4. AFFIRMATIVE RIGHTS OF GRANTEE. To accomplish the purposes of this Easement, the following rights are conveyed to Grantee:

- A. To preserve and protect the Conservation Attributes of the Property;
- B. To enter upon the Property at reasonable times in order to monitor compliance with and otherwise enforce the terms of this Easement; provided Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property;
- C. To prevent any activity on, or use of, the Property that is inconsistent with the Purposes of this 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;
- D. To conduct educational activities, pursuant to Section 2. D.II; and
- E. To install small conservation signs around the perimeter of the Property for purposes of identifying the Property as a conservation land protected by the Grantee.
- F. To construct, utilize, and maintain a walking trail or trails on the Property for the purpose of providing non-motorized, passive recreational access to the general public. Such trail(s) shall be located and constructed in an area and manner that is mutually acceptable to the Grantor and the Grantee, and shall not be detrimental to the Purposes of this Easement.

5. NOTICES

- A. All notices, requests and other communications, required or permitted to be given under this 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.
- B. Notices of intention to undertake certain permitted actions: 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 Easement. Unless otherwise indicated, whenever notice is required, Grantor shall notify Grantee in writing not less than sixty (60) days 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 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. RESOLUTION OF DISPUTES

- A. The Grantor and the Grantee desire that issues arising from time to time concerning prospective uses or activities in light of the conservation purposes of the Easement will first be addressed through candid and open communication between the parties rather than unnecessarily formal or adversarial action. Therefore, the Grantor and the Grantee agree that if a party becomes concerned about the consistency of any proposed use or activity with the purpose(s) of this 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 the Grantor agrees not to proceed with the proposed use or activity pending resolution of the on-going 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 and training in mediation. Each party shall pay its own attorneys' fees, and the costs of mediation shall be split equally between the parties.
- C. If the dispute has not been resolved by mediation within sixty (60) days after the delivery of the mediation request, or the parties are unable to agree on a mediator within thirty (30) days after delivery of the mediation request, then, upon the Grantor's continued agreement not to proceed with the disputed use or activity pending resolution, either party may refer the dispute to binding arbitration by request made in writing and in accordance with New Hampshire RSA 542. Within thirty (30) days of the receipt of such request, the parties shall select a single impartial arbitrator to hear the matter. The arbitrator shall be an attorney licensed to practice law in New Hampshire, with experience in conservation easements and applicable training and experience as an arbitrator. Judgment upon the award rendered by the arbitrator may be enforced in any court of competent jurisdiction. The arbitrator shall be bound by, and follow the substantive law of New Hampshire and the applicable provisions of the United States Internal Revenue Code. The arbitrator shall render a decision within thirty (30) days of the arbitration hearing.
- D. If the parties do not agree to resolve the dispute by arbitration, or if the parties are unable to agree on the selection of an arbitrator, then either party may bring an action at law or in equity in any court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation by permanent injunction, and to require the restoration of the Property to its condition prior to the breach and for such damages as appropriate.
- E. Notwithstanding the availability of mediation and arbitration to address disputes concerning consistency of any proposed use or activity with the purposes of this Easement, if the Grantee believes that some action or inaction of the Grantor or a third party is causing irreparable harm or damage to the Property, the Grantee may seek a temporary restraining order, preliminary injunction, or other form of equitable relief from any 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 EASEMENT – GRANTEE’S REMEDIES.

- A. If the Grantee determines that a breach of this Easement has occurred or a threat of breach exists, the Grantee shall notify the 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 this Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by the Grantee. Such notice shall be delivered in hand or by certified mail, postage paid, return receipt requested.
- B. The 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. The Grantor shall promptly notify the Grantee of its actions taken under this section.
- C. If the Grantor fails to take proper action under the preceding paragraph, or fails to continue diligently to cure said breach until finally cured, the Grantee may undertake any actions that are reasonably necessary to repair any damage in the Grantor’s name or to cure such breach, including an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require restoration of the Property to the condition that existed prior to any such injury.
- D. The Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any conservation values protected hereby, including, but not limited to, damages for the loss of scenic, aesthetic, or environmental values. Without limiting the Grantor’s liability therefor, the Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.
- E. If the Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, the Grantee may pursue its remedies under this Section 7 without prior notice to the Grantor or without waiting for the period provided for cure to expire.
- F. The Grantee’s rights under this Section 7 apply equally in the event of either actual or threatened violations of the terms of this easement. The Grantor agrees that the Grantee’s remedies at law for any violation of the terms of this Easement are inadequate and that the Grantee shall be entitled to the injunctive relief described in Section 7.C, both prohibitive and mandatory, in addition to such other relief to which the Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The Grantee’s remedies described in this Section 7 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
- G. Provided that the Grantor is directly or primarily responsible for the breach, and if a court of law determines such responsibility, all reasonable costs incurred by the Grantee in enforcing the terms of the Easement against the Grantor, including, without limitation, costs and expenses of suit and reasonable attorneys’ fees, and any costs of restoration necessitated by the Grantor’s breach of this Easement shall be borne by the Grantor; and provided further,

however, that if the Grantor ultimately prevails in a judicial enforcement action, each party shall bear its own costs. Notwithstanding the above, if Grantee initiates litigation against the Grantor to enforce this Easement, and if the court determines that the litigation was initiated without reasonable cause or in bad faith, then the court may require the Grantee to reimburse the Grantor's reasonable costs and reasonable attorneys' fees in defending the action.

- H. Nothing contained in this Easement shall be construed to entitle the Grantee to bring any action against the Grantor for any injury to or change in the Property resulting from causes beyond the Grantor's control, including, but not limited to, unauthorized actions by third parties, natural disasters such as fire, flood, storm, and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.
- I. The Grantee and the 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 Easement.
- J. Any delay or forbearance by Grantee in exercising its rights under this 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. The Grantor hereby waives any defense of laches, or estoppel.

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

9. BENEFITS, BURDENS AND ASSIGNMENT. The burden of the Easement conveyed hereby shall run with the Property and shall be enforceable against all future owners and tenants in perpetuity; the benefits of said Easement shall not be appurtenant to any particular parcel of land but shall be in gross and assignable or transferable only 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 Easement. As a condition of such assignment, Grantee shall require that the purposes that this Easement is intended to advance continue to be carried out. Any such assignee or transferee shall have like power of assignment or transfer.

10. BASELINE DOCUMENTATION. In order to establish the present condition of the Property and its Conservation Attributes, Grantee has examined the Property and prepared a report (the Baseline Documentation Report) identifying the Property's relevant features and conditions, its improvements, and some of its natural resources. The Baseline Documentation Report has been signed by Grantor and Grantee, thereby acknowledging it to represent accurately the condition of the Property at the date of the conveyance of this Easement, and is filed with Grantee. The parties intend that the Baseline Documentation Report shall be used by Grantee to monitor Grantor's future uses of the Property, the condition thereof, and practices thereon. The parties further agree that, in the event a controversy arises with respect to the condition of the

Property or a particular resource thereof, the parties shall not be foreclosed from utilizing any other relevant document, survey, or report to assist in the resolution of the controversy.

11. ADDITIONAL EASEMENT. Should the Grantor determine that the expressed Purposes of this Easement could better be effectuated by the conveyance of an additional easement, the Grantor may execute an additional instrument to that effect, provided that the purposes of this Easement are not diminished thereby and that a public agency or qualified organization described in Section 9 above accepts and records the additional easement.

12. DISCRETIONARY APPROVALS AND AMENDMENTS

- A. The Grantee's consent for activities otherwise prohibited herein may be given under the following conditions and circumstances. If, owing to unforeseen or changed circumstances, any activity otherwise prohibited or limited by the terms of this Easement is deemed desirable by the Grantor and the Grantee, the Grantee may, in its sole discretion, give permission for such activities, subject to the limitations herein. The Grantor's request for permission shall be in writing and shall describe the proposed activity in sufficient detail to allow the Grantee to judge the consistency of the proposed activity with the Purposes of this Easement. The Grantee may give its permission only if it determines, in its sole discretion, that such activities (i) do not violate the Purposes of this Easement and (ii) either enhance or do not impair any significant conservation interests associated with the Property. Notwithstanding the foregoing, the Grantor and the Grantee shall have no right or power to agree to any activities that would result in the termination of this Easement or to allow any residential, commercial or industrial structures, or any commercial or industrial activities, not provided for above.
- B. If owing to rare unforeseen or changed circumstances Grantor and Grantee agree that an amendment to, or modification of this Easement would be appropriate and desirable, Grantor and Grantee may jointly amend this Easement pursuant to the provisions and limitations of this section, the then current amendment policies of the Grantee, and applicable state and federal law. Any amendment shall be consistent with the Purposes of this Easement, and shall enhance protection of or further clarify, but not impair, the conservation attributes of the Property protected by this Easement. Any Amendment shall not affect the perpetual duration of this Easement, shall not permit any residential, commercial, or industrial development of the Property beyond that permitted by the terms of this Easement on its effective date. The amendment shall not affect the qualification of this Easement or the status of the Grantee under any applicable laws, including Section 170(h) or Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or NH RSA 477:45-47, nor shall the amendment affect its perpetual duration of this Easement. Any such amendment shall be executed by the Grantor and the Grantee and shall be recorded in the Hillsborough County Registry of Deeds. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

13. SUBSEQUENT TRANSFERS. Grantor agrees to incorporate the terms of this 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.

14. SEPARATE PARCEL. The Grantor agrees that for the purpose of determining compliance with any present or future bylaw, order, ordinance, or regulation (within this section referred to as “legal requirements”) of the Town of Weare, the State of New Hampshire, or any other governmental unit, the Property shall be deemed a separate parcel of land and shall not be taken into account in determining whether any land of the Grantor, other than the Property, complies with any said legal requirements. The Property shall not be taken into account to satisfy in whole or in part any of said legal requirements or any area, density, setback or other dimensional standard applicable to such land. Notwithstanding the above, this provision shall not apply to qualification of Grantor’s other land for current use property tax classification.

15. CONDEMNATION/EXTINGUISHMENT

- 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 Easement conveyed hereby, or whenever all or a part of the Property is lawfully sold without the restrictions imposed hereunder in lieu of exercise of eminent domain, the Grantor and the 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 the Grantor and the Grantee in proportion to the fair market value, at the time of condemnation, of their respective interests in that part of the Property condemned. For this purpose and that of any other judicial extinguishment of this Easement, in whole or in part, the values of the Grantor’s and Grantee’s interests shall be determined by an appraisal prepared by a qualified appraiser at the time of condemnation or extinguishment.
- C. The Grantee shall use its share of the proceeds resulting from condemnation or extinguishment in a manner consistent with and in furtherance of one or more of the conservation purposes set forth herein.

16. MERGER. The Grantor and Grantee explicitly agree that it is in their express intent, forming a part of the consideration hereunder, that the provisions of the 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 the Grantee or any successor or assign shall be deemed to eliminate the Easement, or any portion thereof, granted hereunder under the doctrine of merger or any other legal doctrine.

17. GENERAL PROVISIONS.

- A. Controlling Law. The interpretation and performance of this 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 Easement shall be liberally construed in favor of the grant to affect the purposes of this Easement. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this 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 Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this 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 Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.

The Grantee, by accepting and recording this 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 the Grantee, all in the furtherance of the purposes of this Easement.

IN WITNESS WHEREOF, I (we) have hereto set my (our) hand(s)
this _____ day of _____, 2012.

Grantor

Grantor

The State of New Hampshire
County of Hillsborough

On this ____ day of _____, 2012, before me the undersigned officer,
personally appeared _____ and _____ who
acknowledged themselves to be the Board of Selectmen of the Town of Weare, and acting in said
capacity, and being authorized so to do, executed the foregoing instrument on behalf of the Town
of Weare as its voluntary act and deed for the purposes therein contained.

Before me, _____
Notary Public/Justice of the Peace
My commission expires: _____

ACCEPTED: Piscataquog Land Conservancy

By: _____
Paula S. Bellemore, Executive Director
Duly Authorized

The State of New Hampshire
County of Hillsborough

On this ____ day of _____, 2012 before me personally appeared Paula S. Bellemore, Executive Director of the Piscataquog Land Conservancy, and acting in said capacity, and being authorized so to do, executed the foregoing instrument on behalf of the Piscataquog Land Conservancy as its voluntary act and deed for the purposes therein contained.

Before me, _____
Notary Public/Justice of the Peace
My commission expires: _____