

2010 NH FRPP Conservation Easement Deed Template

Deed Template Subject to Review by the Regional Office
of the USDA Office of General Counsel

This conveyance is exempt from the New Hampshire Real
Estate Transfer Tax pursuant to N.H. RSA 78-B:2 I, II

CONSERVATION EASEMENT DEED

(Landowner's Name) and (Landowner's Name) of (Name of Town), New Hampshire, the Grantors, their beneficiaries, heirs, successors, assigns or administrators, for Consideration of \$ (Amount of Money Paid for the Easement) grants with warranty covenants a Conservation Easement in perpetuity to the (Cooperating Entity's Name), a not-for-profit corporation duly organized and existing under the laws of the State of New Hampshire for the public benefit consistent with New Hampshire R.S.A 477:46 and I.R.C. Section 501 (c) (3) with its principal place of business at (Address of the Cooperating Entity) hereinafter referred to as the "Grantee" which shall, unless the context clearly indicates otherwise, include the Grantee's successors and assigns), and the UNITED STATES OF AMERICA ("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 as its interests appear herein the Conservation Easement hereinafter described with respect to that area of land (herein referred to as the "Property") with any and all buildings, structures, and improvements thereon, consisting of approximately (Number of Acres) acres situated in (Name of Town and County), State of New Hampshire, more particularly bounded and described in Appendix "A" attached hereto and made a part hereof and an Executory Interest therein to the TOWN OF (Name of Town), a municipal corporation with its principal mailing address (Address of Town), New Hampshire (hereinafter referred to as the "Executory Interest Holder"), as further described in Section 10 below.

The Grantee and Grantors are hereinafter referred to collectively as the "Parties"

The Conservation Easement granted hereunder is conveyed subject to the Rights of Enforcement of the United States of America. These rights are more fully described in Section 9.

This Conservation Easement is being purchased with funds provided, in part, by the Farm and Ranch Lands Protection Program (hereinafter referred to as "FRPP"), pursuant to 16 U.S.C. 3838h and 3838i. Specifically, the FRPP is providing \$ (Amount of FRPP Funding for the Easement Acquisition) toward the purchase of this Conservation Easement. Under FRPP, the Secretary of the United States Department of Agriculture, through the NRCS acting on behalf of the Commodity Credit Corporation is authorized to provide funding for the purchase of conservation easements for the purpose of protecting agricultural use of the land by limiting non-agricultural uses of the land.

1. PURPOSES

The Conservation Easement hereby granted is pursuant to NH RSA 477:45-47, exclusively for the following conservation Purposes (herein referred to as the “Purposes”) for the public benefit:

- A. To protect the agricultural soils, including (Number of Acres) acres of prime farmland soils, (Number of Acres) acres of unique farmland soils, (Number of Acres) acres of agricultural soils of statewide importance and (Number of Acres) acres of agricultural soils of local importance, the agricultural viability and the agricultural productivity (hereinafter referred to as the “Conservation Values”) of the Property in perpetuity. No activity which shall significantly impair the actual or potential use of the Property for agricultural production shall be permitted. To the extent that the preservation and protection of additional conservation attributes of the Property listed in 1.B., 1.C., and 1.D. are consistent with the primary purpose of protecting the agricultural soils, agricultural viability, and agricultural productivity of the Property in perpetuity, it is also the purpose of this Conservation Easement to protect those additional conservation attributes of the Property, and to such extent, no activity that shall significantly impair those additional conservation attributes of the Property shall be permitted.
- B. The conservation and protection of open spaces, particularly the conservation of the productive farm and forest land of which the Property consists, which includes highly productive forest soils as well as important agricultural soils, and of the wetland and upland wildlife habitat thereon, and the long-term protection of the Property’s capacity to produce economically valuable agricultural and forestry products; and
- C. The enjoyment of the general public of the scenic rural views.
- D. The protection of the Property for outdoor recreation by and/or the education of the general public thereon, as set forth in Section 2.K below.

The specific Conservation Values of the Property are more particularly documented in a Baseline Documentation Report, prepared by Grantee and signed and acknowledged by the Grantors, which establishes the baseline condition of the property at the time of this grant. The Baseline Documentation consists of reports, maps, photographs, and other documentation that the parties agree provide an accurate representation of the Property at the time of this contract, and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this Conservation Easement. The Baseline Documentation Report shall be held by the Grantee and NRCS.

The above Purposes are consistent with the clearly delineated open space conservation goals and/or objectives as stated in the (Date of Master Plan) Master Plan Update of the Town of (Name of Town), which states that “prime/high quality agricultural land” is “highest priority” identified for protection in the Town of (Name of Town) Open Space Plan, and with New Hampshire RSA Chapter 79-A which states: “It is hereby declared to be in the public interest to encourage the preservation of open space, thus providing a healthful and attractive outdoor environment for work and recreation of the State's citizens, maintaining the character of the State's landscape, and conserving the land, water, forest, agricultural and wildlife resources.”

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

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

2. PROHIBITED USES (Subject to the reserved rights specified in Section 3 below)

The Property shall be maintained in perpetuity as open space subject to the following use limitations:

- A. Land Use Prohibition. The Property shall be maintained in perpetuity as open space without there being conducted thereon any residential, industrial or commercial activities except agriculture and forestry or other permitted uses as described in Reserved Rights A., and provided that the future capacity of the Property to produce forest and/or agricultural crops shall not be degraded by on-site activities. Such on-site agricultural and forestry activities shall not cause significant soil erosion or significant pollution or degradation of surface waters, subsurface waters or soil.
- B. Subdivision. The Property shall not be subdivided or conveyed in any form in separate parcels. In connection therewith, the Grantors further covenant and agree not to undertake any action that would have the effect of subdividing or conveying any part of the Property, except that the lease of any portion of the Property for any use permitted by this Conservation Easement shall not violate this provision.
- C. Structures and Improvements. No structure or improvement shall be constructed, placed, or introduced onto the Property, except for structures and improvements which are: i) necessary in the accomplishment of the agricultural, forestry, conservation, or habitat management and which may include but not be limited to a road, dam, fence, utility line, bridge, culvert, barn, maple sugar house, or shed; and ii) not detrimental to the Purposes of this Conservation Easement. Structures and improvements with impervious surfaces shall be located within the Building Envelope designated in Appendix B. Notwithstanding the above, there shall not be constructed, placed, or introduced onto the Property any of the following structures or improvements: dwelling, mobile home, cabin, driveways not necessary for agricultural purposes, any portion of a septic system, tennis court, swimming pool, athletic field, golf course, or aircraft landing area.
- D. Soil Disturbance. No removal, filling, or other disturbances of soil surface, nor any changes in topography, surface or subsurface water systems, wetlands, or natural habitat shall be allowed unless such activities:
 - i. are commonly necessary in the accomplishment of the agricultural, forestry, conservation, or habitat management uses of the Property; and
 - ii. do not harm state or federally recognized rare, threatened, or endangered species, or exemplary natural communities, such determination of harm to be based upon information from the New Hampshire Natural Heritage Bureau or the agency then recognized by the State of New Hampshire as having responsibility for identification and/or conservation of such species and/or natural communities; and
 - iii. are not detrimental to the Purposes of this Conservation Easement.

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

- E. Advertising Structures. No outdoor advertising structures shall be displayed on the Property except as desirable or necessary in the accomplishment of the agricultural, forestry, conservation, or noncommercial outdoor recreational uses of the Property, and provided such structures are not detrimental to the Purposes of this Conservation Easement. No sign on the Property shall exceed 12 square feet in size, and no sign shall be artificially illuminated.
- F. Mining. There shall be no mining, quarrying, excavation, or removal of rocks, minerals, gravel, sand, topsoil, or other similar materials on the Property, except as necessary to carry out the permitted uses herein. No such rocks, minerals, gravel, sand, topsoil, or other similar materials shall be removed from the Property.
- G. Waste Disposal. There shall be no dumping, storage, injection, burning or burial of man-made materials, building demolition materials, construction debris, trash, tires, vehicle bodies or parts or similar materials, or materials known to be hazardous to human health or the environment, and no storage of snow that has been moved or transported onto the Property. However, the storage and spreading of compost, manure, or other fertilizer for use on the Property; the storage of pesticides for use on the Property; the storage of feed for use on the Property; the temporary storage of trash that is generated on the Property in sound receptacles for periodic off-site disposal; or leaving of slash after harvested timber on the Property are permitted, provided however that the aforesaid spreading, storage or leaving of slash is done in accordance with the then-current scientifically based practices recommended by, as appropriate, the University of New Hampshire Cooperative Extension, NRCS, New Hampshire Department of Agriculture, Markets and Food Manual of Agricultural Best Management Practices (BMPs) in the State of New Hampshire and those recommendations (in addition to any and all label requirements) of the United States Environmental Protection Agency, or other government or private, nonprofit natural resource conservation and management agencies then active are permitted.
- H. Rights-of-Way and Easements. No rights-of-way or easements of ingress or egress in favor of any third party shall be created or developed into, under, over, or across the Property except those of record as of the execution of this Conservation Easement Deed and those specifically permitted in the provisions of this Conservation Easement Deed. The Grantors shall not sell, lease, or grant an easement covering any portion of the Property where such sale, lease, or easement is for the purpose of construction and installation of underground or above-ground public utility systems, including, but not limited to, water, sewer, power, fuel, sewerage pumping stations, windmills, commercial satellite dishes, and cellular telephone or other communication towers. The Grantors may install utilities necessary for permitted agricultural structures.
- I. Water Rights. The title to that quantity of water rights necessary for present or future agricultural production on the Property and shall not be transferred, encumbered, leased, sold or otherwise separated from title to the Property.

- J. Impervious Surface. The maximum allowable impervious surface coverage on the Property shall not exceed two percent (2%). (Number of Acres) acres (Number of Square Feet) square feet). The total impervious surface coverage shall include all existing and future structures, driveways, roads, parking facilities and other paved or impervious surfaces, as well as any temporary structures even if the soil surface is not disturbed, including, but not limited to, plastic greenhouses and farm structures with or without a floor. Any such structure, facility or impervious cover shall be subject to this impervious surface limitation unless said structure, facility or impervious surface cover is specifically identified in the NRCS Conservation Plan and is an approved conservation practice, and/or is necessary to be in compliance with the Conservation Plan as determined solely by the NRCS.
- K. Posting. The Property shall not be posted against, and the Grantors shall keep access to and use of the Property open to the public for, non-motorized, non-commercial, outdoor recreational and outdoor educational purposes, such as but not limited to hiking, wildlife observation, cross-country skiing, fishing, and hunting, but not for camping. However, the Grantee shall be under no duty to supervise said access, use, or purpose. The Grantors reserve the right to post the Property against public access to agricultural cropland during the planting and growing season, to lands while being grazed by livestock, and to forestland during harvesting or other forest management activities. **(Applies only if public access is part of easement acquisition; remove if the Grantee has not acquired the right for public access)**
- L. Motorized Vehicle Use. Grantors shall not grant permission for motorized vehicle use on the Property, except as necessary in the accomplishment of the agricultural, forestry, habitat management, law enforcement and public safety, or conservation uses of the Property, provided that no use of motorized vehicles shall create impacts that are detrimental to the productivity of the soils on the Property and the Purposes of this Conservation Easement; however, notwithstanding the foregoing, limited use of snowmobiles on snow, residential and recreational uses permitted by the conservation easement deed is allowed on the Property.

3. RESERVED RIGHTS

A. Agriculture and Forestry. Grantors reserve the right to engage in agriculture and forestry.

i. Definitions. For the purposes hereof, and except as further specified below, “agriculture” and “forestry” shall include but not be limited to a nursery, an orchard, animal husbandry, floriculture, horticulture and the production of plant and animal products for domestic or commercial purposes; for example the growing, stocking, cutting, and sale of Christmas trees or forest trees of any size capable of producing timber or other forest products; and the cutting and sale of products produced on the Property or products which are produced locally (such as fruits, vegetables, maple syrup and small craft items) all as not detrimental to the Purposes of this Conservation Easement. A farm roadside stand (as defined by RSA 21:34-a or successor legislation) is allowed.

ii. Conservation Plan

As required by section 1238I of the Food Security Act of 1985, as amended, the Grantors, their heirs, successors, or assigns, shall conduct agricultural operations on highly erodible land on the Property in a manner consistent with a conservation plan prepared in consultation with NRCS and approved by the (Name of County Conservation District) County Conservation District. This conservation plan shall be developed using the standards and specifications of the NRCS Field Office Technical Guide and 7 CFR part 12 that are in effect on the date of signing of this Conservation Easement Deed. However, the Grantors may develop and implement a conservation plan that proposes a higher level of conservation and is consistent with the NRCS Field Office Technical Guide standards and specifications. NRCS shall have the right to enter upon the Property with advance notice to the Grantors, in order to monitor compliance with the conservation plan.

In the event of noncompliance with the conservation plan, NRCS shall work with the Grantors to explore methods of compliance and give the Grantors a reasonable amount of time, not to exceed twelve months, to take corrective action. If the Grantors do not comply with the conservation plan, NRCS will inform Grantee of the Grantors’ noncompliance. The Grantee shall take all reasonable steps (including efforts at securing voluntary compliance and, if necessary, appropriate legal action) to secure compliance with the conservation plan following written notification from NRCS that (a) there is a substantial, ongoing event or circumstance of non-compliance with the conservation plan, (b) NRCS has worked with the Grantors to correct such noncompliance, and (c) Grantors have exhausted their appeal rights under applicable NRCS regulations.

If the NRCS standards and specifications for highly erodible land are revised after the date of this Grant based on an Act of Congress, NRCS will work cooperatively with the Grantors to develop and implement a revised conservation plan. The provisions of this subsection c. apply to the highly erodible land conservation requirements of the Farm and Ranch Lands Protection Program and are not intended to affect any other natural resources conservation requirements to which the Grantors may be or become subject.

USE iii. if the forests on the parcel will be managed and/or harvested.

iii. Forestry.

Forestry for industrial or 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.

- 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 consistent with this Conservation Easement, prepared by a licensed professional forester, or by some other qualified person approved in advance and in writing by the Grantee. Said plan shall have been prepared not more than ten 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 thirty (30) days prior to harvesting, Grantors shall submit to Grantee a written certification, signed by a licensed professional forester, or by some other qualified person approved in advance and in writing by the Grantee, that such plan has been prepared in compliance with the terms of this Conservation Easement. Grantee may request the Grantors to submit the plan to the Grantee within ten (10) days of such request, but acknowledges that the plan's purpose is to guide forest management activities in compliance with this 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 accomplishment of those Purposes for which this Conservation Easement is granted; and
 - the goals in Section 2.A.iii.a above.
- e. Timber harvesting with respect to such forestry shall be conducted in accordance with said plan and be supervised by a licensed professional forester, or by another qualified person approved in advance and in writing by the Grantee.

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 Erosion Control on Timber Harvesting Operations in New Hampshire” (J.B. Cullen, 1996), 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

- B. Ponds. Grantors reserve the right to create ponds for purpose of agriculture, fire protection or wildlife habitat enhancement in accordance with a plan developed by the NRCS or successor agency. The total surface area, in aggregate, of all existing and created ponds shall not exceed one acre and to the extent possible will be located off of important agricultural soils. The Grantors must notify the Grantee in writing at least thirty (30) days before any exercise of this reserved right.
- C. Archeological Investigations. Grantors reserve the right to permit archaeological investigations on the Property after receiving written approval from the Grantee. Prior to permitting any such investigations, Grantors shall send written notice describing the nature, scope, location, timetable, qualifications of investigators, site restoration, research proposal, and any other material aspect of the proposed activity to the New Hampshire State Archaeologist (or other person or agency then recognized by the State as having responsibility for archaeological resources) for review and comment, and to the Grantee. The Grantors shall request the State Archaeologist (or other person or agency, as above) to consider the proposal, to apply the standards as specified in rules implementing RSA 227-C:7 (Permits Issued for State Lands and Waters) or subsequent rules, and to provide written comments to the Grantors and the Grantee. The Grantee may, in its sole discretion, approve the proposed investigations only if it finds that all of the following conditions are met:
- i. The archaeological investigations shall be conducted by qualified individuals who meet the Secretary of Interior’s Professional Qualification Standards for Archaeology, or subsequent standards, and according to a specific research proposal;
 - ii. The proposed activities will not harm state or federally recognized rare, endangered, or threatened 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
 - iii. The proposed activities will not be materially detrimental to the Purposes of this Conservation Easement;
 - iv. Said field investigation plan shall be reviewed by the Grantee, the Executory Interest Holder and the NRCS for possible impacts to the Purpose of this Conservation Easement; and
 - v. Any area disturbed by any such activities shall be restored to substantially its prior condition within one year after such activities cease.
- D. Access Road. Grantors reserve the right to use for access to the residences and agricultural buildings excluded from this Conservation Easement a road shown as (Name of Road) on the Appendix C, as well as the right to grant others the same restricted use,

but in no event shall such use adversely impact the farmland subject to this Conservation Easement. (This paragraph may be deleted if it does not apply))

- E. Non-developed Passive Recreation and Educational Activities – permitted if it does not impact the soils and the agricultural operations and is consistent with the purpose of the Conservation Easement.
- F. Customary Rural Enterprises – permitted on the Protected Property and in the buildings constructed and maintained for the agricultural use of the Protected Property. Customary rural enterprises that require their own buildings are prohibited.
- G. Agri-tourism – Low impact agri-tourism activities are permitted, such as farm tours, work experiences, field trips, petting zoos, corn mazes, and hay rides.
- H. Oil and Gas Exploration and Extraction – allowed if the method of extraction is from another parcel, or is limited in the number of wells and complies with all local, state and Federal laws and regulations for such activities, the amount of disturbance and access roads meets impervious surface limits and has minimal impact on the Protected Property.

4. NOTIFICATION OF TRANSFER, TAXES, MAINTENANCE

- A. The Grantors agree to notify the Grantee in writing at least 10 days before the transfer of title to the Property.
- B. The Grantee shall be under no obligation to maintain the Property or pay any taxes or assessments thereon.
- C. Grantors agree to incorporate the terms of this Conservation Easement Deed in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the property, including, without limitation, a leasehold interest.

5. BENEFITS AND BURDENS

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 this 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 United States, or any subdivision of either of them, consistent with Section 170(c)(1) of the United States 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 Conservation Easement, and has the resources to enforce the restrictions of this Conservation Easement. Any such assignee or transferee shall have like power of assignment or transfer.

6. AFFIRMATIVE RIGHTS OF GRANTEE

- A. The Grantee shall have reasonable access to the Property and all of its parts for such

inspection as is necessary to determine compliance with and to enforce this Conservation Easement and exercise the rights conveyed hereby and fulfill the responsibilities and carry out the duties assumed by the acceptance of this Conservation Easement.

- B. To facilitate such inspection and to identify the Property as conservation land protected by the Grantee, the Grantee shall have the right to place signs, each of which shall not exceed 24 square inches in size, along the Property's boundaries.

7. RESOLUTION OF DISAGREEMENTS

- A. The Grantors and the Grantee desire that issues arising from time to time concerning uses or activities in light of the provisions of the Conservation Easement will first be addressed through candid and open communication between the parties rather than unnecessarily formal or adversarial action. Therefore, the Grantors and the Grantee agree that if either party becomes concerned whether any use or activity (which together for the purposes of this Section, "Resolution of Disagreements," shall be referred to as the "Activity") complies with the provisions of this Conservation Easement Deed, wherever reasonably possible the concerned party shall notify the other party of the perceived or potential problem, and the parties shall explore the possibility of reaching an agreeable resolution by informal dialogue.
- B. If informal dialogue does not resolve a disagreement regarding the Activity, and the Grantors agree not to proceed or to continue with the Activity pending resolution of the disagreement concerning the Activity, either party may refer the disagreement to mediation by written notice to the other. Within ten (10) days of the delivery of such a notice, the parties shall agree on a single impartial mediator. Mediation shall be conducted in (Name of Town), New Hampshire, or such other location as the parties shall agree. Each party shall pay its own attorneys' fees and the costs of mediation shall be split equally between the parties.
- C. If the parties agree to bypass mediation, if the disagreement concerning the Activity has not been resolved by mediation within sixty (60) days after delivery of the notice of mediation, or if the parties are unable to agree on a mediator within ten (10) days after delivery of the notice of mediation, the disagreement shall be submitted to binding arbitration in accordance with New Hampshire RSA 542. The Grantors and the Grantee shall each choose an arbitrator within twenty (20) days of the delivery of written notice from either party referring the matter to arbitration. The arbitrators so chosen shall in turn choose a third arbitrator within twenty (20) days of the selection of the second arbitrator. The arbitrators so chosen shall forthwith set as early a hearing date as is practicable, which they may postpone only for good cause shown. The arbitration hearing shall be conducted in (Name of Town), New Hampshire, or such other location as the parties shall agree to. A decision by two of the three arbitrators, made as soon as practicable after submission of the matter, shall be binding upon the parties and shall be enforceable as part of this Conservation Easement.
- D. Notwithstanding the availability of mediation and arbitration to address disagreements concerning the compliance of any Activity with the provisions of this Conservation Easement, if the Grantee believes that some action or inaction of the Grantors or a third

party is causing irreparable harm or damage to the Property, the Grantee may seek a temporary restraining order, preliminary injunction or other form of equitable relief from any court of competent jurisdiction to cause the cessation of any such damage or harm, to enforce the terms of this Conservation Easement, to enjoin any violation by permanent injunction, and to require the restoration of the Property to its condition prior to any breach.

E. If the United States exercises its rights under this Conservation Easement Deed, this provision (Section 7.A-D) will not apply.

8. BREACH OF CONSERVATION EASEMENT – GRANTEE’S REMEDIES

A. If the Grantee determines that a breach of this Conservation Easement has occurred or is threatened, the Grantee shall notify the Grantors in writing of such breach and demand corrective action to cure the breach and, where the breach involves injury to the Property, to restore the portion of the Property so injured to its prior condition.

B. The Grantors 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 Grantors shall promptly notify the Grantee of its actions taken hereunder.

C. If the Grantors fail to perform their obligations under the immediately preceding paragraph B. above, or fails to continue diligently to cure any breach until finally cured, the Grantee may undertake any actions that are reasonably necessary to repair any damage in the Grantors’ 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 the restoration of the Property to the condition that existed prior to any such injury.

D. If the Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation features of the Property, the Grantee may pursue its remedies under this Section 8 without prior notice to the Grantors or without waiting for the period provided for cure to expire.

E. The Grantee shall be entitled to recover damages from the party directly or primarily responsible for violation of the provisions of this Conservation Easement Deed or injury to any conservation features protected hereby, including, but not limited to, damages for the loss of scenic, aesthetic, or environmental attributes of the Property. Without limiting the Grantors’ liability therefore, the Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.

F. The Grantee’s rights under this Section 8 apply equally in the event of either actual or threatened breach of this Conservation Easement Deed, and are in addition to the provisions of the Section 7 which section shall also apply to any disagreement that may arise with respect to activities undertaken in response to a notice of breach and the

exercise of the Grantee's rights hereunder.

- G. The Grantors and the Grantee acknowledge and agree that should the Grantee determine, in its sole discretion, that the conservation features protected by this Conservation Easement are in immediate danger of irreparable harm, the Grantee may seek the injunctive relief described in paragraph C of this Section 8 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 Conservation Easement Deed, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The Grantee's remedies described in this Section 8 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
- H. Provided that the Grantors are directly or primarily responsible for the breach, all reasonable costs incurred by the Grantee in enforcing the terms of this Conservation Easement Deed against the Grantors, including, without limitation, staff and consultant costs, reasonable attorneys' fees and costs and expenses of suit, and any costs of restoration necessitated by the Grantors' breach of this Conservation Easement shall be borne by the Grantors; and provided further, however, that if the Grantors ultimately prevail in a judicial enforcement action each party shall bear its own costs. Notwithstanding the foregoing, if the Grantee initiates litigation against the Grantors to enforce this Conservation Easement Deed, 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 Grantors' reasonable costs and reasonable attorney's fees in defending the action.
- I. Forbearance by the Grantee to exercise its rights under this Conservation Easement Deed in the event of any breach of any term thereof by the Grantors shall not be deemed or construed to be a waiver by the Grantee of such term or of any subsequent breach of the same or any other term of this Conservation Easement Deed or of any of the Grantee's rights hereunder. No delay or omission by the Grantee in the exercise of any right or remedy upon any breach by the Grantors shall impair such right or remedy or be construed as a waiver. The Grantors hereby waive any defense of laches or estoppel.
- J. Nothing contained in this Conservation Easement Deed shall be construed to entitle the Grantee to bring any action against the Grantors for any injury to or change in the Property resulting from causes beyond the Grantors' 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 Grantors under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. The Grantee and the Grantors reserve the right, separately or collectively, to pursue all legal and/or equitable remedies, as set forth in this Section 8 against any third party responsible for any actions inconsistent with the provisions of this Conservation Easement Deed.

9. RIGHTS OF ENFORCEMENT OF THE UNITED STATES OF AMERICA

A. Under this Conservation Easement, the United States is granted the right of enforcement in order to protect the public investment. The Secretary of the United States

Department of Agriculture (the Secretary), on behalf of the United States, will exercise these rights under the following circumstances: In the event that the Grantee fails to enforce any of the terms of this Conservation Easement, as determined in the sole discretion of the Secretary, the Secretary and his or her successors or assigns may exercise the United States' rights to enforce the terms of this Conservation Easement through any and all authorities available under Federal or State law.

B. The United States shall have reasonable access to the Property and all of its parts for such inspection as necessary to determine compliance with and enforce the terms of this Conservation Easement Deed, and to exercise the rights conveyed hereby and to maintain Conservation Easement boundaries if the United States desires.

10. EXECUTORY INTEREST (should only be included if there is an executory interest holder)

- A. The Executory Interest Holder shall have reasonable access to the Conservation Easement Property and all of its parts for such inspection as necessary to determine compliance with and enforce the terms of this Conservation Easement Deed if the Grantee ceases to enforce the Conservation Easement Deed as explained further in Section 11.B, below, and to exercise the rights conveyed hereby, to carry out the duties assumed by the Executory Interest Holder and to maintain the Conservation Easement boundaries if the Executory Interest Holder identifies a failure of the Grantee, as described in Section 11.B, below, to maintain such boundaries.
- B. If Grantee ceases to enforce the Conservation Easement conveyed hereby or refuses to enforce it within thirty (30) days after receipt of written notice, delivered in hand or certified mail, return receipt requested, from the Executory Interest Holder, identifying (a) specific breach of conduct; (b) the specific failure on the part of the Grantee to enforce; and (c) requesting such enforcement and the United States declines to exercise its rights set forth at Section 9 above, then said Executory Interest Holder shall have the right to enforce this Conservation Easement, pursuant to Section 8 above. In such circumstance, the Executory Interest Holder shall then also have the right to request that a Court of competent jurisdiction terminate the interest of the Grantee in the Property by filing an action to quiet title in the appropriate Court. If said Court determines that the Grantee has failed to substantially enforce this Conservation Easement, then the rights and obligations under this Conservation Easement shall immediately vest in the Executory Interest Holder who shall then assume all interests and responsibilities granted to the Grantee in this deed. However, any such transfer shall not divest the United States of its Grantee status and the rights granted under the terms of this Conservation Easement Deed.
- C. The interests held by the Executory Interest Holder are assignable or transferable with advance permission of the United States to any party qualified to become the Grantee's assignee or transferee as specified in Section 5. A.above. Any such assignee or transferee shall have like power of assignment or transfer.

11. NOTICES

All notices, requests and other communications, required to be given under this Conservation

Easement Deed shall be in writing, except as otherwise provided herein, and shall be delivered in hand or sent by certified mail, postage prepaid, return receipt requested to the appropriate address set forth above or at such other address as the Grantors or the Grantee may hereafter designate by notice given in accordance herewith. Notice shall be deemed to have been given when so delivered or so mailed.

Notices, requests and other communication shall be directed to:

(Insert Names and Addresses of the Parties)

12. SEVERABILITY

If any provision of this Conservation Easement Deed, 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 Conservation Easement Deed 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.

13. 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 Conservation 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 Grantors 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. Due to the federal interest in this Conservation Easement, the United States must consent to any condemnation action.
- B. The balance of the land damages recovered from such taking or lawful sale in lieu of condemnation or exercise of eminent domain shall be divided between the Grantors, the Grantee, the United States of America, and the Executory Interest Holder, in proportion to the fair market value of their respective interests in that part of the Property condemned. For this purpose, and that of any other judicial extinguishment of this Conservation Easement Deed in whole or in part, the Grantors' interest shall be the amount by which the fair market value of that part of the Property condemned in exercise of eminent domain exceeds the value of the use limitations imposed by the Conservation Easement Deed at the time of the condemnation as determined by an appraisal at condemnation or extinguishment. The Grantors, the Grantee, the United States of America, and the Executory Interest holder agree the portion of damages recovered that are attributed to the Conservation Easement shall be divided as follows: the Grantee's interest shall be __%, the United States' interest shall be __%, and the Executory Interest Holder's interest shall be __%. This percentage value is based on an appraisal dated _____ by _____, an appraiser licensed in the State of New Hampshire, which appraisal determined the purchase price for this Conservation Easement. Any increase in value attributable to improvements made after

the date of the Conservation Easement Deed shall accrue to the party who made the improvements.

- 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.

14. ADDITIONAL CONSERVATION EASEMENT

Should the Grantors determine that the expressed Purposes of this Conservation Easement could better be effectuated by the conveyance of an additional easement, the Grantors may execute an additional instrument to that effect, provided that the conservation purposes of this Conservation Easement are not diminished thereby and that a public agency or qualified organization described in the Section "Benefits and Burdens," above, accepts and records the additional easement. Any easement arising after the date of execution of this Conservation Easement Deed will be subordinated, by operation of law or otherwise to this Conservation Easement.

15. NO MERGER

- A. The Grantors and Grantee explicitly agree that it is their express intent, forming a part of the consideration hereunder, that the provisions of the Conservation Easement Deed 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, the Executory Interest Holder or the United States or any successor or assignee shall be deemed to eliminate these Conservation Easement terms, or any portion thereof, pursuant to the doctrine of "merger" or any other legal doctrine.
- B. In the event the Grantee takes legal title to Grantors' interest in the Property, the Grantee shall commit the monitoring and enforcement of the Conservation Easement to the Executory Interest Holder (or alternatively, to another qualified organization within the meaning of Section 107(h) (3) of the U.S. Internal Revenue Code (1986), which organization has among its purposes the conservation and preservation of land and water areas until Grantee conveys title away to a successor Grantee.

16. COSTS, LIABILITY AND INDEMNIFICATION

Grantors retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property.

- A. *Taxes.* Grantors shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Grant.
- B. *General Indemnification.* Grantors shall indemnify and hold harmless the Grantee and the United States, 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 the Grantee and the United States may be subject or incur relating to the Property, which may arise from, but is not limited to, Grantors' negligent acts or omissions or Grantors' breach of any representation, warranty, covenant, agreements contained in this Deed, or violations of any Federal, State, or local laws, including all Environmental Laws.

- C. Grantors warrant to the best of Grantors' knowledge that Grantors are in compliance with and shall remain in compliance with, all applicable Environmental Laws, except as noted. Grantors warrant that there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with or any liability under any Environmental Law relating to the operations or conditions of the Property.

Grantors warrant that they have no actual knowledge of a release or threatened release of any Hazardous Materials on, at, beneath or from the Property exceeding regulatory limits. Moreover, Grantors hereby promise to indemnify and hold harmless the Grantee and the United States against all costs, 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 Property, or arising from or connected with a violation of any Environmental Laws by Grantors or any other prior owner of the Property. Grantors' indemnification obligation shall not be affected by any authorizations provided by Grantee to Grantors with respect to the Property or any restoration activities carried out by Grantee at the Property; provided, however, that Grantee shall be responsible for any Hazardous Materials contributed after this date to the Property by Grantee.

For the purposes of this section C.,

- i. 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.
- ii. 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 which may pose a present or potential hazard to human health or the environment.

17. TITLE WARRANTY

Grantors warrant that they have good title to the Property and shall defend against all claims that may be made against it; that they have the right to convey this Conservation Easement; and that the Property is free and clear of any encumbrances.

18. SUBORDINATION.

Any mortgage or lien arising after the date of this Conservation Easement Deed shall be subordinated to the terms of this Conservation Easement Deed.

19. BASELINE DOCUMENTATION AND STEWARDSHIP RESPONSIBILITIES OF THE GRANTEE

The Grantee with the cooperation of the grantor has developed a baseline documentation report which documents the values as well as the natural and man-made characteristics of the property.

To facilitate the fulfillment of its responsibilities under this Conservation Easement, the Grantee shall, among its other obligations:

- i. Maintain baseline information and annually monitor the Property in accordance with applicable policies and guidelines, such as the Standards and Practices of the Land Trust Alliance and those required by the United States of America in the Cooperative Agreement by and between the United States of America and the Grantee, dated _____
- ii. Respond to Grantors requests for approvals required under this Conservation Easement Deed; and investigate potential Conservation Easement violations and/or encroachments and responding accordingly; and
- iii. Provide an annual monitoring report to the Executory Interest Holder, to NRCS or its successor agency, or to another agency as instructed by the NRCS or successor agency, indicating compliance with the terms of this Conservation Easement Deed and/or actions necessary for compliance.

Copies of the Baseline Documentation Report shall be held by the Grantee and the NRCS.

20. AMENDMENT

This Conservation Easement Deed may be amended only if in the sole and exclusive judgment of the Grantee and the United States such amendment furthers or is not inconsistent with the Purposes of this Conservation Easement Deed. Any such amendment must be mutually agreed upon by the Grantee, the Grantors and the United States, signed and duly recorded by the parties and comply with all applicable laws and regulations. Grantee must provide to NRCS timely notice in writing of the amendment.

21. CONTROLLING LAWS AND LIBERAL CONSTRUCTION / INTERPRETATION

This Conservation Easement Deed shall be interpreted under the laws of the State of New Hampshire and the United States. Any general rule of construction to the contrary

notwithstanding, this Conservation Easement Deed shall be liberally construed to affect the purposes of the Conservation Easement Deed. If any provision in said Deed is found to be ambiguous, an interpretation consistent with the purposes of said Deed that would render the provision valid shall be favored over any interpretation that would render it invalid.

The Grantee, by accepting and recording this Conservation Easement Deed, agrees to be bound by and to observe and enforce the provisions hereof and assumes the rights and responsibilities herein granted to and incumbent upon the Grantee, all in the furtherance of the conservation purposes for which this Conservation Easement Deed is delivered.

IN WITNESS WHEREOF, We have hereunto set our hands this _____ day of _____, 200__

(Name of First Grantor)

(Name of Second Grantor)

The State of New Hampshire
County of _____

Personally appeared _____ . and, _____
this _____ day of _____, 200__, and respectively acknowledged the foregoing to be their voluntary act and deed.

Before me, _____
Notary Public

My commission expires: _____

ACCEPTED: (Name of Grantee)

By: _____

Title: _____
Duly Authorized

Date: _____

The State of New Hampshire

County of _____

Personally appeared _____
Print Name & Title

of the __ (Name of Grantee) _____, this _____ day of

_____, 200__ and acknowledged the foregoing on behalf of

__ (Name of Grantee) _____

Before me, _____

Notary Public

My commission expires: _____

ACCEPTED: TOWN OF _____ BOARD OF SELECTMEN

By: _____

Title: _____
Duly Authorized

Date: _____

By: _____

Title: _____
Duly Authorized

Date: _____

By: _____

Title: _____
Duly Authorized

Date: _____

The State of New Hampshire
County of _____

Personally appeared _____
Print Name & Title

of the Town of _____ Board of Selectmen, this _____ day of
_____, 200__ and acknowledged the foregoing on behalf of the
Town of _____ Board of Selectmen.

Before me, _____
/Notary Public

My commission expires: _____

The State of New Hampshire
County of _____

Personally appeared _____
Print Name & Title

of the Town of _____ Board of Selectmen, this ____ day of
_____, 200__ and acknowledged the foregoing on behalf of the Town of
_____ Board of Selectmen.

Before me, _____
/Notary Public

My commission expires: _____

The State of New Hampshire
County of _____

Personally appeared _____
Print Name & Title

of the Town of _____ Board of Selectmen, this ____ day of
_____, 200__ and acknowledged the foregoing on behalf of the Town of
_____ Board of Selectmen.

Before me, _____
/Notary Public

My commission expires: _____

ACCEPTANCE OF PROPERTY INTEREST BY THE UNITED STATES OF AMERICA

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

State Conservationist

State of New Hampshire
County of _____

On this ____ day of _____, 200__, before me, the undersigned, a Notary Public in and for the State, personally appeared _____, known or proved to me to be the person whose signature appears above, and who being duly sworn by me, did say that (s)he is the New Hampshire State Conservationist of the Natural Resources Conservation Service, United States Department of Agriculture, and as such is authorized to sign on behalf of the United States of America.,

In witness whereof, I have hereunto set my hand and official seal the day and year first above written.

Notary Public for the State of New Hampshire

APPENDIX A

(Legal Description of Property)

APPENDIX B

(Legal Description of the Building Envelope)

APPENDIX C

(Legal Description of the Access Road)