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Revised 6/23/2003

LCHIP MODEL CONSERVATION EASEMENT

Standard Language

[Owner] of [City or Town], New Hampshire (hereinafter referred to as "**Grantor**" which word includes the plural and shall, unless the context clearly indicates otherwise, include the Grantor's legal representatives, executors, administrators, devisees, heirs, successors and assigns), for consideration paid, with **WARRANTY COVENANTS**, grants in perpetuity to (Town of _____, acting through its Conservation Commission), [Land Trust, a not-for-profit corporation duly organized and existing for the public benefit, consistent with New Hampshire R.S.A. 477: 46,] with its principal place of business at [address, town, state, zip code], (hereafter referred to as the "**Grantee**" which word includes the plural and shall, unless the context clearly indicates otherwise, include the Grantee's successors and/or assigns), and pursuant to New Hampshire RSA chapter 227-M an **EXECUTORY INTEREST** to the State of New Hampshire, acting through the New Hampshire **Land and Community Heritage Investment Authority** (hereinafter referred to at the "**Executory Interest Holder**"), as more fully described below, the following described **Conservation Easement** (hereinafter "**Easement**") on that certain parcel of approximately [] acres hereinafter "**the Premises**," in the Town of [town], County of [county], State of New Hampshire, the land being more particularly bounded and described in "Exhibit A" attached and incorporated hereto [and on a "Plan Showing Property of _____ to be conveyed to _____" and dated _____, prepared by _____ to be recorded in the _____ County Registry of Deeds as if the Plan were attached hereto and made a part hereof.]

This Easement is granted pursuant to New Hampshire RSA 477:45-47 and RSA chapter 227-M exclusively for the following conservation purposes (hereinafter "**Purposes**"):

1. PURPOSES [Add additional purposes specific to property]

A. To protect the Premises from future development, and to conserve and maintain the unique characteristics of the Premises substantially in its present scenic and open space condition, the preservation of which is important to the public and will serve the public interest in a manner consistent with New Hampshire RSA 477:45-47 and RSA chapter 227-M; and

B. To conserve soil productivity and to promote the long-term capacity of the Premises to produce economically valuable forest and/or agricultural products; and

C. To preserve biological diversity, native flora and fauna, and the environments, natural habitats, and ecological processes which support them, as those values exist on the date of this instrument, and as they may evolve in the future; and

D. To preserve the Premises for the scenic enjoyment and the low-impact, non-commercial, outdoor recreational use of the general public for such activities as hiking, wildlife observation, cross-country skiing, fishing and hunting; and

E. To prevent any use or activity on the Premises which would be detrimental to drainage, flood control, water conservation, water quality, and erosion control, or that would or has the potential to impair or interfere with the unique and significant qualities of public benefit and the conservation and preservation values of the Premises.

These purposes are consistent with the Master Plan of the Town of [], together with the policies of the [] Regional Planning Commission, and with New Hampshire RSA 79-A:1 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 by conserving the land, water, forest, agricultural and wildlife resources;”

and with New Hampshire RSA chapter 227-M, which states:

“The intent of the program is to conserve and preserve this state’s most important natural, cultural and historical resources through the acquisition of lands, and cultural and historical resources, or interests therein, of local, regional, and statewide significance, in partnership with the state’s municipalities and the private sector, for the primary purposes of protecting and ensuring the perpetual contribution of these resources to the state’s economy, environment and overall quality of life.”

These significant conservation values are set forth in detail in baseline documentation entitled “Baseline Documentation Report _____” on file with the Grantee.

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

The terms of this Easement are as follows:

2. USE LIMITATIONS

A. The Premises shall be maintained in perpetuity as undeveloped open space. No use shall be made of the Premises which, in the reasonable opinion of the Grantee, is or has the potential to become inconsistent with the Purposes of this Easement.

B. Except as specifically permitted under this Easement, no commercial, industrial or residential activities shall be permitted, and no temporary or permanent structure, facility or improvement, including but not limited to, a dwelling, any portion of a septic system, tennis court, aircraft landing strip, dock, mobile home, vehicle, swimming pool, storage tank, advertising structure or sign, asphalt or concrete pavement, fence, antenna, satellite receiving dish (small rooftop dishes excluded), utility pole, communications facility or tower, conduit, or utility line shall be constructed, installed, placed or allowed to remain on, above or under the Premises.

C. The Premises shall not be subdivided or conveyed in any form except in its entirety. Grantor further covenants and agrees to not undertake any action that would have the effect of subdividing or conveying any part of the Premises.

D. The Premises shall in no way be used to satisfy the requirements of any applicable zoning ordinance or subdivision regulation, including but not limited to density, frontage or open space requirements, with respect to the development of any other property.

E. Under no circumstances shall rocks, minerals, gravel, sand, topsoil, or other similar materials be removed from the premises. Further, no removal, filling, mining, quarrying, dredging or excavation of rocks, minerals, gravel, sand, topsoil, or other similar materials or natural deposits, or other disturbances of the soil surface, nor any changes in topography, surface or subsurface water systems, wetlands, or natural habitat shall be allowed on the Premises unless such activities:

1. Are commonly necessary in the accomplishment of the on-site agricultural, forestry, habitat management, conservation or non-commercial, low-impact, outdoor recreational uses of the Property; and
2. Do not harm state or federally recognized rare or endangered species, such determination of harm to 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; and
3. Are not detrimental to the Purposes of this Easement; and
4. Are initiated and conducted only after all necessary federal, state, local and other governmental permits and approvals are secured.

F. There shall be no placing, dumping, injection, storage or burial on the Premises of trash or debris or other waste, or of materials that are known to be environmentally hazardous, including snow from municipal plowing, construction debris, vehicles or parts. The storage and spreading of compost, manure, or other fertilizer under sound agricultural practices, the storage of feed, the temporary storage of trash in sound receptacles for regular off-site disposal, are permitted.

G. Except those of record, no rights-of-way, easement of ingress or egress, driveways, roads, or utility lines shall be constructed, developed or maintained into, on, over, under, or across the Premises without the prior written approval of Grantee.

3. RESERVED RIGHTS

Notwithstanding the foregoing, Grantor shall retain the right to use the Premises for the **[delete uses below as appropriate]** commercial or non-commercial agricultural and forestry uses, and/or low-impact, outdoor, non-commercial recreational uses described below, provided, however that such on-site uses or activities, along with any structures or improvements as described below that are necessary for and ancillary to such allowed or permitted activities shall not:

- a. Be inconsistent with nor detrimental to the Purposes of this Easement;
- b. Degrade the future capacity of the Premises to produce agricultural and/or forest crops;
- c. Cause significant pollution or degradation of surface or subsurface waters, soil, or soil erosion;
- d. Materially impair the scenic quality of the Premises as viewed from public roads, trails, or waters; or
- e. Degrade the historic and archaeological values, if any.

A. The Grantor retains the right to conduct agricultural activities, including but not limited to, maintenance and use of cultivated fields, pastures and orchards, in accordance with sound agricultural and husbandry practices, together with the right to construct and maintain permeable surface roads necessary for such activities.

1. For the purposes hereof, "agriculture" shall include, animal husbandry, floricultural and horticultural activities, and the production of plant and animal products for domestic or commercial purposes not detrimental to the Purposes of this Easement, including the sale of products which are produced locally (such as fruits, vegetables, maple syrup and small craft items), provided that the products produced off of the Premises do not make up more than 35% of the revenue of the farm stand.

2. Agriculture shall be performed in accordance with a coordinated conservation plan for the sites and soils of the Premises developed utilizing the standards and specifications of the U.S. Natural Resources Conservation Service, or similar successor agency then active. Agricultural management activities shall be in accordance with the then-current, scientifically-based practices recommended by the U.N.H. Cooperative Extension, U.S. Natural Resources Conservation Service, or other government or private, nonprofit natural resource conservation and management agencies then active. Such management activities shall not be detrimental to the Purposes of this Easement, nor materially impair the scenic quality of the Premises as viewed from public roads, trails or waterways.

B. The Grantor retains the right to use the Premises to harvest timber and other wood products, together with the right to construct and maintain permeable surface roads necessary for such activities, provided however such activities are performed consistent with the Purposes of this Easement, as well as the following.

1. For the purposes hereof, "Commercial Forestry" shall include all on-site forestry and forest management activities performed for commercial or industrial purposes, and all such activities related to the preparation, processing, sale, cutting, harvesting, transportation and conveyance of marketable timber grown on the Premises. For the purposes hereof, "Non-commercial Forestry" shall include forestry and the management

of timber for on-site benefits to the Premises and the Grantor, such as public safety, opening a viewshed, clearing trees from the edge of a field or harvesting trees for firewood for the Grantor's residential use.

2. Forestry for industrial or commercial purposes shall be performed, to the extent reasonably practicable, in accordance with the following goals:

- a. Maintenance of soil productivity;
- b. Protection of water quality, wetlands, and riparian zones;
- c. Maintenance or improvement of the overall quality of forest products;
- d. Conservation of scenic qualities especially as viewed from public roads, trails, or waters;
- e. Protection of unique or fragile natural areas;
- f. Protection of unique historic or cultural features;
- g. Conservation of native plant and animal species;
- h. Outdoor recreation by and/or education of the general public, and
- i. Production of forestry or agricultural crops.

3. Forestry for industrial or commercial purposes shall be performed in accordance with a written forest management plan (including updates, amendments, and revisions thereto) submitted to Grantee for review not less than thirty (30) days prior to the date any harvesting is expected to commence ("**commencement date**"). The plan shall be prepared by a licensed professional forester (or other qualified person, said person approved in advance and in writing by the Grantee) and be consistent with this Easement. The plan shall have been prepared not more than ten (10) years prior to the commencement date, otherwise it shall have been reviewed and updated as required by such a forester or approved person at least thirty (30) days prior to the commencement date. The plan shall include a statement of the landowner objectives and shall specifically address the goals stated herein, and the long term protection of those values for which this Easement is granted. Forestry for commercial or industrial purposes shall be supervised by a licensed professional forester or other qualified person approved in advance and in writing by the Grantee.

4. Grantee's approval of forest management plans that may be submitted from time to time shall not be unreasonably withheld or conditioned, so long as such plans comply with the terms of this Easement. If the plan proposes any clear-cutting or substantial conversion, the plan must demonstrate that such conversion is consistent with the terms and Purposes of this Easement, such as to permit the planting of different species of trees, wildlife purposes, or the establishment of agricultural uses, and will continue to be managed accordingly. In the case of a proposed conversion to agricultural use, Grantor shall also submit a coordinated management plan for such use pursuant to Section 3.A to Grantee for review and approval simultaneous to submitting the forest management plan.

5. Forestry activities shall be carried out in accordance with all applicable local, state,

federal and other governmental laws and regulations, and in accordance with the then-current generally accepted best management practices for the sites, soils, and terrain of the Premises. For references, see *Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire*, (J.B. Cullen, 1996), *Good Forestry in the Granite State: Recommended Voluntary Forest Management Practices for New Hampshire*, (N.H. Forest Sustainability Standards Work Team, 1997), or similar successor publications.

6. In areas used by or visible to the general public such forestry activities shall be carried out, to the extent reasonably practicable, in accordance with the recommendations contained in *A Guide to Logging Aesthetics: Practical Tips for Loggers, Foresters, and Landowners*, (Geoff Jones, 1993), or similar successor publications.

C. The Grantor retains the right to construct and maintain one or more dam, fence, trail, bridge, culvert, maple sugar house, shed, or similar structure or facility on the Premises, provided that such structures are ancillary to and used exclusively for on-site agricultural, forestry or low-impact, non-commercial, recreational activities. Construction of barns and similar large structures shall be consistent in style, materials and appearance with existing structures, and shall be approved in writing in advance by the Grantee, which approval shall not be unreasonably withheld or conditioned if determined not detrimental to the Purposes of this Easement.

D. The Grantor retains the right to install and maintain signs that identify and further the agricultural, forestry, conservation, preservation or low-impact, non-commercial recreational uses of the Premises, provided the Purposes of this Easement are not impaired.

E. The Grantor retains right to professionally conduct archaeological activities, including without limitation, survey, excavation and artifact removal, following submission of an archaeological field investigation plan and its approval in writing by Grantee and the State Archaeologist of the New Hampshire Division of Historic Resources (or appropriate successor official).

F. The Grantor reserves the right to post against vehicles, motorized or otherwise, and against hunting on active livestock fields, against access to agricultural cropland during the planting and growing season, and against access to forest land during harvesting or establishment of plantations.

4. AFFIRMATIVE OBLIGATION FOR PUBLIC ACCESS

Pursuant to New Hampshire RSA chapter 227-M, there is hereby conveyed, and Grantor shall permit, public pedestrian access to, on and across the Premises for hunting, fishing, nature observation, hiking, cross-country skiing and similar transitory low-impact, non-commercial, recreational purposes, but not for camping.

5. AFFIRMATIVE RIGHTS OF GRANTEE

A. The Grantee shall have reasonable access to the Premises and all of its parts for such inspection as Grantee finds necessary to determine compliance with and enforce the terms of this Easement, to exercise the rights conveyed hereby and carry out the duties assumed by Grantee with its acceptance of this Easement, and to maintain boundaries if

Grantee desires.

B. The Grantee shall have the right to install and maintain signs that identify and further the conservation or preservation purposes of the Premises, or for identification of conservation partners, provided the Purposes of this Easement are not impaired. With prior written approval of the Executory Interest Holder, the Grantee shall have the right to authorize posting against or otherwise limiting public access if such access is shown to degrade the conservation values of the Premises or is inconsistent with the purposes for protecting the property, or if public safety is threatened.

6. ADDITIONAL EASEMENT

A. Should the Grantor determine that the Purposes of this Easement could be accomplished better by additional easements or restrictions, the Grantor, with prior written approval of both the Grantee and the Executory Interest Holder, may execute an additional instrument to this effect, provided that the conservation and/or preservation purposes of this Easement are not diminished thereby and, further, that a qualified conservation organization or public body pursuant to New Hampshire RSA 477: 46 accepts and records the additional easements or restrictions.

7. NOTIFICATION OF TRANSFER OF TITLE, TAXES, MAINTENANCE OF PROPERTY

A. Grantor agrees to notify the Grantee, its successors or assigns, in writing, at least ten (10) business days prior to the transfer of title of the Premises (or any division of ownership thereof permitted hereby) to any successor in interest, along with the name(s) and address(es) of such successor(s) in interest.

B. In any deed conveying an interest in all or part of the Premises, Grantor shall make reference to this Easement and shall indicate that said Easement provisions are binding upon all successors in interest in the Premises in perpetuity.

C. Grantee shall be under no obligation to maintain the Premises or to pay any taxes, liens or assessments thereon.

8. BENEFITS AND BURDENS

A. In accordance with New Hampshire RSA 227-M:14, notwithstanding any other provision of law relating to the disposal of publicly-owned real estate, no deviation in the uses of any resource asset acquired under the program to uses of purposes not consistent with the purposes of RSA chapter 227-M shall be permitted. The sale, transfer, conveyance or release of any resource asset from the public trust is prohibited except as provided in RSA 227-M:13.

B. The burden of the Easement conveyed hereby shall run with the Premises 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 (a) the State of New Hampshire, the United States of America, or any subdivision of either of them, consistent with Section 170(c)(1) of the U.S. Internal Revenue Code (1986), as amended, which government unit 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; or (b) to any qualified organization within the meaning of Section 107(h) (3) of said Code, 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. Any such assignee or transferee shall have like power of assignment or transfer.

C. If at any time it becomes impossible for the Grantee to ensure compliance with the restrictions and covenants contained herein, or that the Grantee ceases to exist, then Grantee's rights and duties hereunder shall become vested in full and fall upon any other entity as outlined above to which such rights and duties may be awarded by a court of competent jurisdiction under the doctrine of *cy pres*.

9. REQUESTS FOR APPROVAL

A. Where Grantee and/or Executory Interest Holder approval is required, the Grantor shall submit to the Grantee and/or the Executory Interest Holder information (including, but not limited to, documents, maps, plans, specifications, and designs where appropriate) sufficient to identify the proposed activity with reasonable specificity. The Grantor shall not undertake any such activity until approved in writing by the Grantee/Executory Interest Holder or its/their authorized representative(s). The Grantee/Executory Interest Holder reserves the right to consult with governmental agencies, nonprofit conservation or preservation organizations, and/or other consultants or advisors deemed necessary or appropriate by the Grantee/Executory Interest Holder, concerning the appropriateness of any activity proposed under this easement. Grantee/Executory Interest Holder approval shall not be unreasonably withheld or conditioned, but determined pursuant to the Purposes of this Easement.

10. BREACH OF EASEMENTS OR RESTRICTIONS

A. When a breach of this Easement or conduct inconsistent with the terms of this Easement comes to the attention of the Grantee, it shall notify the Grantor in writing of such breach or conduct, delivered by hand or by certified mail. Grantor shall have fourteen (14) days in which to confirm receipt of notification and begin reparation.

B. Grantor shall undertake those actions, including restoration, which are reasonably calculated to swiftly cure said breach or abate such conduct, and to repair any damage, or restore the Premises to its previous condition. Grantor shall also promptly notify Grantee of its actions taken under this provision.

C. Failure by the Grantor to take sufficient and proper action pursuant to the preceding paragraph, shall entitle Grantee to bring an action in a court of competent jurisdiction to enforce the terms of this Easement and to recover any damages provided for by law arising from such non-compliance. Such damages, when recovered, may be applied by Grantee to corrective action on the Premises, if it so chooses. Alternatively or additionally, Grantee may, as appropriate to the Purposes of this Easement, undertake any actions at any time that are reasonably necessary to cure such breach or to repair any damage or to terminate such conduct.

D. Grantor shall reimburse Grantee all reasonable costs, including staff time, attorney and other legal fees and costs, incurred in investigating the non-compliance and in securing its correction, whether the correction was through negotiation and voluntary compliance, litigation, arbitration, or by other means.

E. If a court of law determines that Grantor has failed to comply with this Easement, Grantee shall be entitled to special or general damages as may be ordered by such court in addition to reasonable costs of enforcement, costs and attorneys' fees. In the event such court decides that Grantee initiated litigation in bad faith or without reasonable cause, then Grantee shall reimburse Grantor for any reasonable costs of defending such action, including court costs and attorneys' fees.

F. The parties to this Easement specifically acknowledge that events and circumstances of

non-compliance constitute immediate and irreparable injury, loss, and damage to the Premises and, accordingly may entitle Grantee to such equitable relief, including but not limited to, *ex parte* injunctive relief, as a court of competent jurisdiction may deem just. Remedies described herein are in addition to, and not in limitation of, any other remedies available to Grantee at law, in equity, or through administrative proceedings.

G. The Grantee does not waive or forfeit the right to take action as may be necessary to insure compliance with this Conservation Easement by any prior failure to act and Grantor hereby waives any defense of *laches* with respect to any delay or omission by the Grantee, its successors or assigns, in acting to enforce any restriction or exercise any rights under this Conservation Easement, any such delay or omission shall not impair Grantee's rights or remedies or be construed as a waiver.

11. RESOLUTION OF DISPUTES

A. The Grantor, Grantee, and Executive Interest Holder agree that issues regarding uses or activities on Randall Farm arising from time to time in light of the conservation purposes of the Easement will first be addressed informally through candid and open communication. Therefore, the Grantor, Grantee, and Executive Interest Holder agree that if a party becomes concerned about the consistency of any use or activity with the Purposes of this Easement, wherever reasonably possible, the concerned party shall notify the other parties of the perceived or potential problem, and

explore the possibility of reaching an agreeable resolution.

B. If informal dialogue does not resolve the issue, any party may seek alternative resolution

such as through mediation or arbitration, binding or otherwise (in accordance with New Hampshire RSA chapter 542), or 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 Randall Farm to its condition prior to the breach and for such damages as appropriate.

12. EXECUTORY INTEREST

A. If the Grantee ceases to enforce the Easement conveyed hereby, or fails to enforce it within thirty (30) days after receipt of written notice from the Executory Interest Holder requesting such enforcement, delivered in hand or by certified mail, return receipt requested, then the Executory Interest Holder shall have the right to enforce this Easement. All reasonable costs of such enforcement shall be paid by the Grantee. In such circumstances, the Executory Interest Holder shall then also have the right to terminate the interest of the Grantee in the Premises, subject to Grantee's right to dispute such enforcement as described above, by recording a notice to that effect referring hereto in the Registry of Deeds of the appropriate county, and shall thereupon assume and thereafter have all interests, rights, authority, and responsibilities granted to and incumbent upon the Grantee of this Easement. The interest held by the Executory Interest Holder is assignable or transferable to any party qualified to become the Grantee's assignee or transferee as specified above. Any assignee or transferee shall have like power of assignment or transfer.

The Executory Interest Holder shall have reasonable access to the Premises and all of its parts for such inspection as the Executory Interest Holder finds necessary to determine compliance with and enforce the terms of this Easement, to exercise the rights conveyed by this Easement, to carry out the duties assumed by the Executory Interest Holder, and to maintain boundaries if the Executory Interest Holder desires.

13. CONDEMNATION

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

B. The balance of the land damages recovered (including, for purposes of this subsection, proceeds from any lawful sale, in lieu of condemnation, of the Premises unencumbered by the restrictions hereunder) shall be divided between the Grantor and the Grantee in proportion to the fair market value of their respective interests in the Premises on the date of execution of this Easement. For this purpose, the Grantor and the Grantee agree that the Grantor's interest shall be _____ percent (___%) and the Grantee's interest shall be _____ percent (___%). The value of the Grantee's interest has been determined by an appraisal prepared by a qualified appraiser and a copy of that appraisal has been submitted to the Grantee. Any increase in value attributable to improvements made after the date of the

Conservation Easement shall accrue to the party who made the improvements. The Grantee shall use its share of the proceeds in a manner consistent with and in furtherance of the conservation Purposes of this Easement set forth herein.

14. MERGER

A. Grantor and Grantee agree it is their express intent, forming a part of the consideration hereunder, that the provisions of this Easement set forth herein are to last in perpetuity, and to that end, no conveyance of the underlying fee interest in the premises by or to the Grantee, Executory Interest Holder, or any successor or assign of them, shall be deemed to eliminate these Easement terms, or any portion thereof, pursuant to the doctrine of "merger" or any other legal doctrine.

15. MISCELLANEOUS

A. Invalidation or waiver of any provision hereof shall not affect any other provision of this Easement.

B. By accepting and recording this Easement for itself, its successors and assigns the Grantee agrees to be bound by the provisions hereof and to assume the rights and responsibilities herein provided for and incumbent upon the Grantee, all in furtherance of the conservation and/or preservation purposes for which this Easement is delivered.

Is homestead premises.

IN WITNESS WHEREOF, we hereby set our hands this _____ day of _____, 2003.

GRANTORS:

Witness to Grantor

purposes therein contained. In witness whereof I set my hand and seal.

Justice of the Peace/Notary Public
My commission expires:

Exhibit A

The Premises consists of 436+/- acres and is all of the same lands and premises conveyed to [] dated [] and recorded [] in Book [] at Page [] of the **[Name of County]** Registry of Deeds;

***[EXCLUDING certain portions conveyed away by the following deeds:]

***Reference may be made to a survey prepared by ***

Reference may be made to the above described deeds and records and to the deeds and records referred to therein for a more complete and particular description.

The Premises consists of [] acres and is more particularly described as follows:

EXCEPTING AND EXCLUDING the Excluded Area which is described as follows: All lands and improvements owned by