



**TOWN OF WAKEFIELD, NEW HAMPSHIRE**  
CONSERVATION COMMISSION

2 HIGH STREET  
SANBORNVILLE NH 03872  
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**CONSERVATION COMMISSION & FORESTRY COMMITTEE**

**MEETING NOTICE & AGENDA**

**9 May 2016, 7:00pm, Town Hall**

- A. Call to Order
- B. Introduction of Board Members and seating of alternates as necessary
- C. Review/acceptance of previous meeting minutes
- D. Review of Applications/Approvals
- E. New Board Business
  - 1. Elect Chair and Vice-Chair
  - 2. Pride Day Booth
  - 3. Other
- F. Unfinished Board Business
  - 1. Gage Hill Property
    - a. Develop parking area. Clear trees, set kiosk posts, remove topsoil, place crushed gravel
    - b. Kiosk (Scott Bramer to donate!)
    - c. Trail development (NF to map trail)
    - d. Trail map
    - e. Signage for trails
    - f. Wetland application
  - 2. Detailed audit on conservation properties file
    - a. Audit files
    - b. Revised NRI list and acreage as necessary
  - 3. Union Meadows town properties conservation easements (sort out list by next April)
  - 4. Advertise the Adopt a Conservation Property Program
  - 5. Is a Town Forest considered conserved property OR can it be sold and/or developed? (Only as protected as described in warrant article and/or deed.)
  - 6. Develop a tri-fold of the town's conservation properties
  - 7. Add Jappe conservation property to the conservation file, spread sheet and to the NRI
  - 8. Get the list of 'Working Farms' to add to the NRI (NRF asked John Blackwood on 12/3)
- G. Correspondence received
- H. Public Comment
- I. Set next meeting date 5/23/16
- J. Adjournment

The Conservation Commission and/or Forestry Committee may enter into Non-Public Session, if so voted, under the Terms and Conditions of RSA 91-A:3, II (a) – (e). (if necessary)

## Conservation Commission Meeting Minutes Draft- April 25, 2016

**Present:** Chairman Nate Fogg, Relf Fogg, Steve Brown, Dave Mankus, Dave Tinkham, Tom Dube (7:21 PM) alternate and Donna Martin, alternate.

The meeting was called to order at 7:00 PM, by N Fogg

Dave Tinkham was appointed to sit for T Dube.

➤ **Public**

None

➤ ***Consideration of Minutes***

***3/29/2016***

**R Fogg made a motion for the Wakefield Conservation Commission to accept the minutes of 3/29/2016 as submitted. The motion was seconded by D Tinkham. The vote was 5-0 it passed.**

***4/11/2016***

**R Fogg made a motion for the Wakefield Conservation Commission to accept the minutes of 4/11/2016 as submitted. The motion was seconded by D Tinkham. The vote was 3-0-2 it passed.**

➤ ***Applications/ Approvals***

The Commission reviewed the following applications:

- Shoreland impact permit, Muhammad/Stephanie Cajric, Map 40 Lot 48

### New Board Business

➤ ***MMRG/ Lavender property report***

N Fogg provided the map and file of the Lavender property for the Board to review.

D Tinkham noted he recalled reading in the file language allowing wheeled vehicles on the property that does not contain wells, but he cannot locate it in this information. He noted he would review any paperwork he may have at home as well as go through the file to locate the information.

N Fogg stated that he would review the easement and verify if they are reviewing just the portion in Wakefield. Once he confirms that information, the Commission can set a date to walk the property.

\*Tom Dube joined the meeting.

➤ **Gage Hill**

R Fogg stated that he can start some work on that project after Thursday.

D Tinkham stated he suggested at the last meeting putting a plaque on the kiosk at Gage Hill acknowledging the donor.

N Fogg replied he could look into that as well as the wetland application, he questioned the application fee.

The Commission agreed to use Conservation funds to cover the application fee.

➤ **Pride Day 5/21/2016**

D Mankus questioned if the Conservation Commission has secured their booth.

N Fogg stated he would confirm a booth with the Pride Day co-chair.

➤ **Unfinished Business**

D Tinkham questioned the status of the Union Meadow easement.

N Fogg stated they could do that at the next regular meeting.

➤ **Public Comment**

None.

➤ **Next Meeting**

The date for the next meeting is t/b/a.

Being no further business before the Commission, N Fogg entertained a motion to adjourn.

**S Brown made a motion to adjourn the meeting. The motion was seconded by R Fogg. The vote was 5-0 in favor of the motion.**

The meeting adjourned at 7:50 PM.

Respectfully submitted,  
*Amelia Capone-Muccio*

THIS IS A TRANSFER OF TITLE  
TO AN INSTRUMENTALITY OF  
THE STATE OF NEW HAMPSHIRE  
AND IS EXEMPT FROM THE NEW  
HAMPSHIRE REAL ESTATE  
TRANSFER TAX PURSUANT TO  
RSA 78-B:2(I).

## CONSERVATION EASEMENT DEED

We, the Town of Wakefield, a municipality organized and existing under the laws of the State of New Hampshire, with a mailing address of Too High Street, Sanbornville, New Hampshire 03872, (hereinafter referred to as the "Grantor", which word where the context requires includes the plural and shall, unless the context clearly indicates otherwise, include the Grantor's executors, administrators, legal representatives, devisees, heirs, successors and assigns),

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

the Town of Wakefield Conservation Commission, organized and existing under the laws of the State of New Hampshire, with a mailing address of 2 High Street, Sanbornville, New Hampshire 03872, (the "Grantee" which shall, unless the context clearly indicates otherwise, include the Grantee's successors and assigns),

and with an Executory Interest (as described in Section 9 below) to the **Town of Wakefield**, a municipal corporation organized and existing under the laws of the State of New Hampshire, with a principal place of business at and a mailing address of Town Hall, 2 High Street, Sanbornville, Carroll County, New Hampshire 03872, (sometimes referred to as the "Town" and otherwise referred to as the "Executory Interest Holder"),

the Conservation Easement (herein referred to as the "Easement") hereinafter described with respect to that certain parcel/area of land (herein referred to as the "Property") being unimproved land, consisting of approximately 21 acres, situated off Harmony Drive in the Town of Wakefield, County of Carroll, State of New Hampshire, more particularly bounded and described in Appendix "A" attached hereto and made a part hereof.

## 1. PURPOSES

The 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. The protection of the natural habitat for native plant and animal species, including scarlet tanager, owls, moose and deer; and
- B. The conservation and protection of open spaces, particularly the conservation of the productive forest land of which the Property consists and of the wildlife habitat thereon, and the protection of the undeveloped feet of water frontage along Union Meadows, to which the Property provides access and upon which it fronts, and the long-term protection of the Property's capacity to produce economically valuable agricultural and forestry products; and
- C. The scenic enjoyment of the general public; and
- D. The protection of the Property and the water body of Union Meadows to which it provides access and on which it fronts, for outdoor recreation by and/or the education of the general public, as further defined and limited herein; and
- E. The protection of the quality of ground water and surface water resources on and under the Property, and more specifically Union Meadows, which is a wetland complex of approximately 283 acres that overlies a stratified drift aquifer associated with the Branch River. The Branch River is considered to be the most pristine segment of the upper Piscataqua and Great Bay watersheds and feeds the drinking water supplies and wells of Union, Wakefield, Milton, and Somersworth, New Hampshire. The above Purposes are consistent with the clearly delineated open space conservation goals and/or objectives as stated in the Master Plan of the Town of Wakefield, which states in the Philosophy chapter (2001) to *"preserve the rural character of the town ... we must retain the natural beauty of the town, and that aesthetic features such as viewsheds are as important as physical features such as watersheds... and that keeping our lakes and woods clean and safe are critical, even if we have to limit development to do so"*

and the Land Use Chapter (2002) which states: *"Our rural character is in large part defined by the unfragmented open spaces and every effort must be made for their preservation through outright purchase or conservation easements."*

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 U.S. Internal Revenue Code, Section 170(h).

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

2. USE LIMITATIONS (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. There shall not be conducted on the Property any industrial or commercial activities, except agriculture and forestry, including timber harvesting, as described below, and provided that the productive capacity of the Property to yield forest and/or agricultural crops shall not be degraded by on-site activities.
- i. For the purposes hereof, "agriculture" and "forestry" shall include animal husbandry, floriculture, and horticulture activities; the production of plant and animal products for domestic or commercial purposes; the growing, stocking, cutting, and sale of Christmas trees or forest trees of any size capable of producing timber or other forest products; the construction of roads or other access ways for the purpose of removing forest products from the Property; and the processing and sale of products produced on the Property (such as pick-your-own fruits and vegetables and maple syrup), all as not detrimental to the Purposes of this Easement.
  - ii. Agriculture for industrial or commercial purposes shall be performed, to the extent reasonably practicable, in accordance with a coordinated management plan for the sites and soils of the Property. Said agriculture shall be in accordance with the then-current scientifically based practices recommended by the UNH Cooperative Extension, U.S. Natural Resources Conservation Service, or other government or private, nonprofit natural resource conservation and management agencies then active. Said agricultural activities shall not be detrimental to the Purposes of this Easement, nor materially impair the scenic quality of the Property as viewed from Union Meadows, Harmony Drive and other roads and trails on the Property that may be open to the public.
  - iii. 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 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 Easement, prepared by a licensed professional forester, or by 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, Grantor shall submit to Grantee a written certification, signed by a licensed professional forester, or by other qualified person approved in advance and in writing by the Grantee, that such plan has been prepared in compliance with the terms of this Easement. Grantee may request the Grantor to submit the plan itself to 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 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 easement is granted;
    - the goals in Section 2.A.iii.a above; and
    - the preservation of the forested landscape that is visible from Union Meadows and from Routes 153 and 16, the preservation of the water quality of the Union Meadows and the avoidance of soil erosion and runoff into the Union Meadows.
  - e. Timber harvesting **in accordance with Best Management Practices and RSA 483:B (as amended)**, and such forestry shall be conducted in accordance with above mentioned forestry management plan and be supervised by a licensed professional forester, or by other qualified person approved in advance and in writing by the Grantee.
  - f. Such forestry shall be carried out in accordance with all applicable local, state, federal, and other governmental laws and regulations, and, to the extent reasonably practicable, in accordance with then-current, generally accepted Best Management Practices for the sites, soils, and terrain of the Property. For references, see "Best Management Practices for 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.
  - g. In areas used by, or visible to the general public, such forestry shall be carried out, to the extent reasonably practicable, in accordance with the recommendations contained in "A Guide to Logging Aesthetics: Practical Tips

for Loggers, Foresters, and Landowners" (Geoffrey Jones, 1993) or similar successor publications.

B. The Property shall not be subdivided, except that the lease of any portion of the Property for any use permitted by this Easement shall not violate this provision.

C. 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, habitat management, or noncommercial outdoor recreational uses of the Property 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 Easement.

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, residential driveway, any portion of a septic system, tower, telecommunications and/or wireless communications facility, tennis court, swimming pool, athletic field, golf course, or aircraft landing area.

D. 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, habitat management, or noncommercial outdoor recreational 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 Easement.

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

E. 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 Easement. No sign on the Property shall exceed twelve (12) square feet in size, and no sign shall be artificially illuminated.

- F. There shall be no mining, quarrying, excavation, or removal of rocks, minerals, gravel, sand, topsoil, or other similar materials on the Property, except in connection with any improvements made pursuant to the provisions of sections 2.A., C., D., or E., above. No such rocks, minerals, gravel, sand, topsoil, or other similar materials shall be removed from the Property.
- G. There shall be no dumping, injection, burning, or burial of man-made materials or materials then known to be environmentally hazardous on the Property.
- H. 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.
- I. Subject to the provisions of Section 3. A below, the Property shall not be posted against, and the Grantor shall keep access to and use of the Property open to the public for, pedestrian, non-commercial, outdoor recreational and outdoor educational purposes as will have minimal impact on the Property, such as but not limited to hiking, wildlife observation, cross-country skiing, fishing, snowmobiling on the existing snowmobile trail fronting on Union Meadows, and hunting.
- J. Use of wheeled vehicles and/or camping may be permitted by the Town of Wakefield Board of Selectmen or their designee. Specific guidelines for either previously noted activity shall be prepared prior to either activity being granted permission.
- K. However, the Grantee shall be under no duty to supervise said access, use, or purpose. The Grantor reserves the right to post the Property against public access to, and to forestland during harvesting or other forest management activities.

### 3. NOTIFICATION OF TRANSFER, TAXES, MAINTENANCE

- A. The Grantor agrees to notify the Grantee in writing at least 10 days before the transfer of title to the Property [or any division of ownership thereof permitted hereby].
- B. The Grantee shall be under no obligation to maintain the Property or pay any taxes or assessments thereon.

### 4. BENEFITS AND BURDENS

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 this Easement shall not be appurtenant to any particular parcel of land but shall be in gross and assignable or transferable only to the State of New Hampshire, the U.S. Government, or any subdivision of either of them, consistent with Section 170(c)(1) of the U.S. Internal Revenue Code of 1986, as amended, or to any qualified organization within the meaning of Section 170(h)(3) of said Code, which organization has among its purposes the conservation and preservation of land and water areas, agrees to and is capable of

protecting the conservation purposes of this Easement, and has the resources to enforce the restrictions of this Easement. Any such assignee or transferee shall have like power of assignment or transfer.

## 5. AFFIRMATIVE RIGHTS OF GRANTEE

- A. The Grantee shall have reasonable access to the Property and all of its parts for such inspection as necessary to determine compliance with and to enforce this Easement and exercise the rights conveyed hereby and fulfill the responsibilities and carry out the duties assumed by the acceptance of this Easement.
- B. 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.
- C. There is hereby conveyed the privilege of pedestrian access on and across the Property for walking, hunting, bird watching, and other transitory passive recreational purposes, but not camping or making fires.
- D. The Grantee shall have the right to construct and relocate, after written approval from the Grantor, and to maintain, repair, and replace, all at Grantee's sole expense, the following improvements for the purpose of enhancing the public's outdoor recreational and outdoor educational access to and use of the Property consistent with the provisions of Sections 1.D. and 2.1. above:
  - i. trails, and related structures including but not limited to bridges and boardwalks, for uses specified in Section 2.1. above;
  - ii. signs and/or kiosks for purposes of property identification, safety, outdoor recreation, or outdoor education; and

## 6. RESOLUTION OF DISAGREEMENTS

- A. The Grantor and the Grantee desire that issues arising from time to time concerning uses or activities in light of the provisions 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 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 Easement, wherever reasonably possible the concerned party shall notify the other party of the perceived or potential problem, and the parties shall explore the possibility of reaching an agreeable resolution by informal dialogue.

- B. If informal dialogue does not resolve a disagreement regarding the Activity, and the Grantor agrees 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 Concord, 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 Grantor 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 Concord, New Hampshire, or such other location as the parties shall agree. 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 Easement.
- D. Notwithstanding the availability of mediation and arbitration to address disagreements concerning the compliance of any Activity with the provisions 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 court of competent jurisdiction to cause the cessation of any such damage or harm, to enforce the terms of this Easement, to enjoin any violation by permanent injunction, and to require the restoration of the Property to its condition prior to any breach.

## 7. BREACH OF EASEMENT — GRANTEE'S REMEDIES

- A. If the Grantee determines that a breach of this Easement has occurred or is threatened, the Grantee shall notify the Grantor 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 Grantor 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 Grantor shall promptly notify the Grantee of its actions taken hereunder.
- C. If the Grantor fails to perform its obligations under the immediately preceding paragraph B. above, or fails to continue diligently to cure any breach until finally cured, the 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 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, "Breach of Easement...", without prior notice to the Grantor 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 Easement 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 Grantor's 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, "Breach of Easement...", apply equally in the event of either actual or threatened breach of this Easement, and are in addition to the provisions of the preceding Section, "Resolution of Disagreements," which section shall also apply to any disagreement that may arise with respect to activities undertaken in response to a notice of breach and the exercise of the Grantee's rights hereunder.
- G. The Grantor and the Grantee acknowledge and agree that should the Grantee determine, in its sole discretion, that the conservation features protected by this Easement are in immediate danger of irreparable harm, the Grantee may seek the injunctive relief described in the third paragraph of this Section, "Breach of Easement...", 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, "Breach of Easement...", shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
- H. Provided that the Grantor is directly or primarily responsible for the breach, all reasonable costs incurred by the Grantee in enforcing the terms of this Easement against the Grantor, including, without limitation, staff and consultant costs, reasonable attorneys' fees and costs and expenses of suit, 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 foregoing, if the Grantee initiates litigation against the Grantor to enforce this Conservation 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 attorney's fees in defending the action.

- I. Forbearance by the Grantee to exercise its rights under this Easement in the event of any breach of any term thereof by the Grantor 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 Easement 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 Grantor shall impair such right or remedy or be construed as a waiver. The Grantor hereby waives any defense of laches or estoppel.
- J. 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, disease, infestation 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. The Grantee and the Grantor reserve the right, separately or collectively, to pursue all legal and/or equitable remedies, as set forth in this Section, "Breach of Easement...", against any third party responsible for any actions inconsistent with the provisions of this Easement.

## 8. 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 Town of Wakefield, a qualified organization as specified in the Section "Benefits and Burdens" above (sometimes herein referred to as 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 circumstance, or in the event the Grantee acquires the underlying fee interest in the Property, the Executory Interest Holder shall then also have the right to terminate the Easement interest of the Grantee in the Property by recording a notice to that effect in the Registry of Deeds referring hereto and shall thereupon assume and thereafter have all interests, rights, responsibilities and duties granted to and incumbent upon the Grantee in this Easement.
- B. The interests held by the Executory Interest Holder are assignable or transferable to any party qualified to become the Grantee's assignee or transferee as specified in the Section "Benefits and Burdens" above. Any such assignee or transferee shall have like power of assignment or transfer.

## 9. NOTICES

All notices, requests and other communications, required to be given under this Easement shall be in writing, except as otherwise provided herein, and shall be delivered in hand or sent by certified mail, postage prepaid, return receipt requested to the appropriate address set forth above or at such other address as the Grantor 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.

#### 10. SEVERABILITY

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

#### 11. 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 from such taking or lawful sale in lieu of exercise of eminent domain 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.

#### 12. 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 conservation purposes of this 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.

***The Grantee, by accepting and recording this Easement, 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 Easement is delivered.***

IN WITNESS WHEREOF, We have hereunto set our hands this '\_\_\_ day  
of,20\_\_\_.

County of Carroll - \_\_\_\_\_, SS

Personally appeared the above named \_\_\_\_\_ and made oath that the foregoing is  
his voluntary act and deed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_.

Before me,

Notary-Public/Justice of the Peace  
My Commission Exp. \_\_\_\_\_

Print/Type Name

## APPENDIX A

### **Property Location: Wakefield, New Hampshire**

A certain tract or parcel of land known as Poplar Ridge situated in aforesaid Wakefield, County of Carroll and State of New Hampshire bounded as follows:

On the South by land of Baird B. Plumer, on the East, North and West by land owned and flowed by the Great Falls Manufacturing Company, intending hereby to convey to high-water mark, containing fifteen acres more or less.

For reference alone, and not in derogation of the description above, this parcel known as "Poplar Ridge" is presently abutted by Union Meadows to the North, land now or formerly of Gloria I. Rhodes to the East, land now or formerly of Joseph E. Wadleigh to the South and land now or formerly of Elizabeth Barbour to the South and West.

Meaning and intending to describe and convey same premises conveyed to the grantors herein by deed of Roger Gowen, trustee of North Pole Realty Trust dated June 20, 2003, recorded book 2167, Page 705, Carroll County Registry of Deeds. For further reference see Quitclaim Deed of Marshall H. Fox, Elizabeth Fox, and Deborah Howard to the grantors dated September 28, 2007 recorded here with in the Carroll County Registry of Deeds.

The Property is not homestead property of the Grantors