



New Hampshire Fish and Game Department

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November 27, 2012

His Excellency, Governor John H. Lynch
And the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the New Hampshire Fish and Game Department (NHFG) to accept from the Town of Hooksett a donation of an executory interest in a conservation easement held by Bear-Paw Regional Greenways upon Governor and Council approval to June 30, 2013.

EXPLANATION

The Town of Hooksett has purchased 95.7 acres of land associated with a failed sub-division and has asked NHFG to accept the donation of an executory interest in a conservation easement on the property. The conservation easement is held by Bear-Paw Regional Greenways. The wetlands and Appalachian oak-pine forest on the parcel will provide valuable habitat to wildlife and will remain accessible for public use.

Respectfully submitted,

Handwritten signature of Glenn Normandeau.

Glenn Normandeau
Executive Director

Handwritten signature of Kathy Ann LaBonte.

Kathy Ann LaBonte
Chief, Business Division



STATE OF NEW HAMPSHIRE

Inter-Department Communication

DATE: January 9, 2012

FROM: Evan J. Mulholland
Assistant Attorney General

AT (OFFICE) Department of Justice
Environmental Protection Bureau

SUBJECT: Quimby Mountain Conservation Easement

TO: Richard Cook, Land Agent
Fish & Game Department

I have reviewed, and I approve, for form and substance the draft conservation easement deed for Quimby Mountain from the Town of Hooksett to Bear-Paw Regional Greenways, with the State of New Hampshire as executory interest holder. I will approve for execution once the deed is signed



Evan J. Mulholland

THIS IS A CONVEYANCE TO AN
INSTRUMENTALITY OF THE STATE
OF NEW HAMPSHIRE WHICH IS
EXEMPT FROM THE NEW HAMPSHIRE
REAL ESTATE TRANSFER TAX
PURSUANT TO NEW HAMPSHIRE RSA
78-B:2, I, AND FROM THE LCHIP
SURCHARGE PURSUANT TO RSA
478:17-g, II.

Please return to:
Bear-Paw Regional Greenways
P.O. Box 19
Deerfield, NH 03037

REVISED CONSERVATION EASEMENT DEED

TOWN OF HOOKSETT, a New Hampshire municipal corporation organized under the laws of the State of New Hampshire with a mailing address of 35 Main Street, Hooksett, Merrimack County, New Hampshire 03106 (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, grants in perpetuity to

BEAR-PAW REGIONAL GREENWAYS, a New Hampshire not-for-profit corporation, situated in the County of Rockingham, State of New Hampshire, with a mailing address of Post Office Box 19, Deerfield, New Hampshire 03037 (hereinafter referred to as 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 **STATE OF NEW HAMPSHIRE FISH AND GAME DEPARTMENT** (hereinafter referred to as the "Executory Interest Holder"),

the **CONSERVATION EASEMENT** (herein referred to as the "Easement") hereinafter described with respect to that certain area of land (herein referred to as the "Property") being unimproved land consisting of approximately 95.711 acres situated on Goffstown Road in the Town of Hooksett, County of Merrimack, State of New Hampshire, identified as Lot 2 on Map 22 of the Town of Hooksett Tax Assessment Records, 86.70 acres of which is shown on the plan entitled "Quimby Mountain Subdivision, Hooksett, N.H., Subdivision Plan", dated March 1988, ,

prepared by Costello, Lamasney & de Napoli, Inc., recorded in the Merrimack County Registry of Deeds as Document #11105 on June 20, 1989, and 9.011 acres of which is shown on a plan entitled "Plat of Land, Goffstown Road, Hooksett, NH", dated October 29, 2012, prepared by T.D. Brouillette Land Surveying, to be recorded herewith in the Merrimack County Registry of Deeds, (herein referred to as the "Plan") and more particularly bounded and described in Appendix "A" attached hereto and made a part hereof.

This Revised Conservation Easement Deed is granted and accepted in accordance with the express provisions of Section 16 of the Conservation Easement Deed granted by the Town of Hooksett to Bear-Paw Regional Greenways dated March 14, 2012 and recorded on May 4, 2012 in the Merrimack County Registry of Deeds, Book 3312, Page 1871 and grants an Executory Interest in the Easement (as described in Section 9, below) to the STATE OF NEW HAMPSHIRE FISH AND GAME DEPARTMENT (hereinafter referred to as the "Executory Interest Holder").

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 significant natural habitat identified in the New Hampshire Wildlife Action Plan - the entire Property is classified as "Highest Ranked in the Biological Region";
- B. The protection of land within a 750-acre contiguous block of unfragmented lands;
- C. The conservation and protection of open spaces, particularly the conservation of the productive forestland of which the Property consists and of the wildlife habitat thereon, and the long-term protection of the Property's capacity to produce economically valuable forestry products;
- D. The scenic enjoyment of the general public, including over 900 feet of undeveloped road frontage on Goffstown Road;
- E. The perpetual protection of the quality and sustainable yield of surface water and groundwater resources on and under the Property to safeguard present and future community drinking water supplies, and the environmental values of the Property which are dependent on water quality and quantity.
- F. The preservation of 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;
- G. The preservation of the Property for the scenic enjoyment and the low-impact, non-commercial, outdoor educational or recreational use of the general public for such activities as hiking, wildlife observation, cross-country skiing, fishing and hunting; and

H. The prevention of any use or activity on the Property 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 Property.

The above Purposes are consistent with the clearly delineated open space conservation goals and/or objectives as stated in the 2004 Master Plan of the Town of Hooksett, which states, among its recommendations, the following:

- Target as a goal that 25% of the total land area in Hooksett be set aside in some manner as open space land;
- Explore all possible avenues to fund the preservation of Hooksett's key natural resource assets;

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;

These purposes and the characteristics of the Property are also consistent with the conservation goals of the Grantee, including:

- The protection of conservation land within large contiguous blocks of unfragmented lands in southeastern New Hampshire;
- The protection of forestland;
- The protection of surface waters, groundwater and wetlands; and
- The protection of habitat for native plant and animal species.

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

These Purposes and the significant conservation values they serve are set forth in detail in baseline documentation entitled "Baseline Documentation Report for the Quimby Mountain Property" on file with the Grantee.

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.)

A. The Property shall be maintained in perpetuity as open space without there being conducted thereon any industrial or commercial activities, except forestry, including timber harvesting, as described below, and provided that the capacity of the Property shall not be

degraded by on-site activities.

i. Management activities on the Property, including forestry, shall be performed in accordance with a written management plan ("Stewardship Plan") approved by the Grantee and prepared by a forester licensed by the State of New Hampshire, a certified wildlife biologist, or by another similarly qualified person, said person approved in advance and in writing by the Grantee, in accordance the long-term protection of those Purposes and values for which this Easement is granted, as described in Section 1 above, and with the following goals:

- Maintenance of soil productivity;
- Protection of water quality, wetlands and riparian areas;
- Maintenance or enhancement of wildlife habitat;
- Maintenance or enhancement of the overall quality of forest products;
- Maintenance or enhancement of scenic quality;
- Protection of unique or fragile natural areas;
- Protection of unique historic or cultural features; and
- Conservation of native plant and animal species, and natural communities.

ii. The Stewardship Plan shall include:

- A statement of landowner management objectives consistent with the Purposes and values for which this Easement is granted and the goals specified in Section 2.A.i above;
- Property specific management goals and objectives;
- A boundary map with access roads and natural cover types;
- A description of the natural features of the Property, including land cover, topography, soils, geology, wetlands, streams, and ponds, and wildlife habitat features;
- Identification of plant and wildlife species and natural communities of conservation concern, and how management shall enhance, or avoid detrimental impacts to, said plants, wildlife, and natural communities;
- Recommended management activities; and
- Recommended schedule for implementation of management practices, including a schedule for boundary, road, and trail maintenance.

iii. For the purposes hereof, "forestry" shall include the planting, growing, cutting and sale of forest trees of any size capable of producing timber or other forest products; the production and sale of products produced on the property including Christmas trees and maple syrup; those forest practices employed primarily to enhance or protect wildlife habitat; and the construction of roads or other access ways for the purposes of removing forest products from the Property and for improving non-commercial recreational opportunities.

iv. Forestry on the Property shall be performed in accordance with the Stewardship Plan required by Section 2.A.i. Said plan shall have been prepared not more than ten (10) years prior to the date that any harvesting is expected to commence, or shall have been reviewed and updated at least thirty (30) days prior to said date.

v. At least thirty (30) days prior to the commencement of forestry activities, the Grantor shall submit a written certification to the Grantee, signed by a licensed professional forester or other qualified person, said other person to be approved in advance and in writing by

the Grantee, that the Stewardship Plan has been prepared in compliance with the terms of this Easement. The Grantee may request the Grantor to submit the Stewardship Plan itself to the Grantee for the Grantee's approval within ten (10) days of such request, but acknowledges that the plan's purpose is to guide forestry activities in compliance with this Easement, and that the actual activities on the Property will determine compliance therewith.

vi. Management activities shall be supervised by a licensed professional forester, certified wildlife biologist, or other qualified person approved in advance and in writing by the Grantee.

vii. Management activities shall be carried out in accordance with all applicable local, state and federal laws and regulations, and, to the extent reasonably practicable, in accordance with the 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), *Good Forestry in the Granite State: Recommended Voluntary Forest Management Practices for New Hampshire* (Second Edition, UNH Cooperative Extension, 2010) or similar successor publications.)

viii. No management activity shall be undertaken in a manner that is detrimental to the Purposes of this Easement.

B. The Property shall not be subdivided and none of the individual tracts that together comprise the Property shall be conveyed separately from one another without the prior written approval of the Grantee. The Grantor further covenants and agrees not to undertake any action that would have the effect of subdividing or conveying any part of the Property.

C. No structure or improvement, including, but not limited to, a dwelling (permanent, seasonal or temporary), any portion of a septic system, tennis court, swimming pool, dock, aircraft landing strip, telecommunications and/or wireless communications facility, tower, windmill, or mobile home, shall be constructed, placed or introduced onto the Property. However, ancillary structures and improvements, including, but not limited to, a road, dam, fence, bridge, culvert, maple sugar house, or shed may be constructed, placed or introduced onto the Property only as necessary in the accomplishment of the forestry, conservation, habitat management, or non-commercial outdoor recreational uses of the Property and consistent with the Stewardship Plan required in Section 2.A.i above and provided that they are not detrimental to the Purposes of this Easement. No ancillary structure or improvement may be constructed, placed or introduced onto the Property without the prior review by and written approval of the Grantee. No more than 2% of the Property shall be covered by buildings or other impervious materials.

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 forestry, conservation, habitat management, or non-commercial outdoor recreational uses of the Property consistent

with the Stewardship Plan required in Section 2.A.i above;

ii. Do not harm state or federally recognized rare, threatened or endangered species, 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. 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 such as signs and billboards shall be displayed on the Property except as desirable or necessary in the accomplishment of the forestry, conservation, educational, or non-commercial outdoor recreational uses of the Property, and provided such signs are not detrimental to the Purposes of this Easement.

F. There shall be no mining, quarrying, excavation, or removal of rocks, minerals, gravel, sand, topsoil, water, or other similar materials from the Property, except in connection with any improvements made pursuant to the provisions of Sections 2.A, C, D, or E, above.

G. There shall be no dumping, injection, burning, or burial of manmade materials or materials then known to be environmentally hazardous.

H. Except those of record, and as otherwise allowed within this Easement, there shall be no rights-of-way, easements of ingress or egress, driveways or roads constructed, developed or maintained into, on, over, under, or across the Property without the prior written approval of the Grantee.

I. Surface water and groundwater quality shall be preserved and in no event shall be polluted or degraded by activities on the Property such that the surface or groundwater quality on the Property reaches or violates water quality standards set for public drinking water by the NH Department of Environmental Services, or such agency with the statutory authority to regulate public water supplies at the time.

3. RESERVED RIGHTS

A. The Grantor reserves the right to conduct non-commercial management activities on the Property, including, but not limited to cutting, planting, pruning, and thinning, for the improvement of the forest or wildlife habitat resources of the Property. Such activities shall be consistent with the Stewardship Plan required by Section 2.A.i above and shall not be detrimental to the Purposes of this Easement.

B. Subject to written approval from the Grantee, which approval shall not be unreasonably withheld, the Grantor reserves the right to make, construct, maintain, repair, replace and relocate, at the Grantor's sole expense, one parking area, within 1,100 feet of Goffstown Road, with a

maximum surface area, excluding access driveways thereto, of 5,000 square feet in size, which shall consist of permeable surfaces and shall be constructed with the minimum disturbance necessary.

C. Subject to written approval from the Grantee, the Grantor reserves the right to construct and maintain a structure, picnic area, and/or play area (specifically excluding athletic fields) in the vicinity of the parking area described in Section 3.B intended to further the accomplishment of the non-commercial outdoor educational and/or recreational uses of the Property, provided that its construction and required maintenance are not detrimental to the Purposes of this Easement.

D. The Grantor reserves the right to use motorized, wheeled vehicles to conduct activities on the Property consistent with the Stewardship Plan required by Section 2.A.i above and to conduct activities related to the exercise of its public safety, police, or emergency response responsibilities.

E. The Grantor reserves the right to post against vehicles, motorized or otherwise, and against access to forest land during harvesting or establishment of plantations.

F. The Grantor shall have the right to use and manage the Property for any and all uses consistent with the Purposes and Use Limitations herein, including, but not limited to the right to clear, construct and maintain trails for walking, cross country skiing and other limited low impact, transitory, non-motorized, non-commercial educational and/or outdoor recreational activities within and across the Property, provided said trails are consistent with and not detrimental to the Purposes of this Easement, subject to the following conditions:

- i. The creation of new trails or the relocation of existing trails shall be provided for in the Stewardship Plan required by Section 2.A.i; and
- ii. All trails shall conform to best practices recommended by the Appalachian Mountain Club or similar trail-maintaining organization. (For reference, see The Complete Guide to Trail Building and Maintenance (C. Demrow, D. Salisbury, Appalachian Mountain Club) or similar successor publication.)

G. Subject to written approval from the Grantee and in accordance with a written plan approved by the New Hampshire Department of Environmental Services, the Grantor reserves the right to construct, re-construct, and maintain structures or make other improvements intended to restore wetland functions and values and/or to make wildlife habitat improvements so as to provide enhancement of functions within degraded wetland or riparian systems on the Property, provided that their construction and required maintenance 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.

H. The Grantor reserves the right to have professionally conducted archaeological activities conducted on the Property, including without limitation, survey, excavation and artifact removal, following submission of an archaeological field investigation plan to, and its approval in writing by, the State Archaeologist of the New Hampshire Division of Historic Resources (or appropriate successor official), with written notice to the Grantee. Any such archaeological investigations

shall meet the requirements of 2.D.ii above and be conducted by qualified individuals who meet the Secretary of Interior's Professional Qualification Standards for Archaeology, or subsequent standards. Any area disturbed by any such activities shall be restored to substantially its prior condition within nine (9) months after such activities cease.

I. These reserved rights are exceptions to the use limitations set forth in Section 2 above.

J. The Grantor must notify the Grantee in writing at least thirty (30) days before any exercise of the aforesaid reserved rights in Sections 3.A, 3.B, 3.C, 3.D, 3.E, 3.F, 3.G, and 3.H.

4. AFFIRMATIVE OBLIGATION FOR PUBLIC ACCESS

There is hereby conveyed, and Grantor shall permit, public pedestrian access to, on and across the Property for hunting, fishing, nature observation, hiking, cross-country skiing and similar transitory non-intensive, non-commercial, outdoor recreational purposes, but not for camping.

5. NOTIFICATION OF TRANSFER, TAXES, MAINTENANCE

A. The Grantor agrees to notify the Grantee in writing no later than ten (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.

6. BENEFITS, BURDENS AND ACCESS

A. 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 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.

B. The Grantee shall have reasonable access to the Property and all of its parts 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.

C. The Grantee has the right to install and maintain small unlighted signs visible from public vantage points and along boundary lines for the purpose of identifying the Grantee and informing the public and abutting property owners that the Property is under the protection of this Easement.

7. ALTERNATE DISPUTE RESOLUTION

If the executory interest holder shall become the easement holder, this section shall not apply.

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

B. If informal dialog does not resolve the issue, and the Grantor agrees not to proceed with the proposed use or activity pending resolution of the on-going dispute, either party may refer the dispute to mediation by request made in writing to the other. Within ten (10) days of the receipt of such a request, the parties shall agree on a single impartial mediator who shall be an attorney licensed to practice law in the State of New Hampshire or an experienced land use or land conservation professional, both of whom must have experience with conservation easements and training in mediation. Each party shall pay its own attorneys' fees, and the costs of mediation shall be split equally between the parties.

C. If the dispute has not been resolved by mediation within sixty (60) days after delivery of the mediation request, or the parties are unable to agree on a mediator within thirty (30) days after delivery of the mediation request, then, upon the Grantor's continued agreement not to proceed with the disputed use or activity pending resolution, either party may refer the dispute to binding arbitration by request made in writing and in accordance with New Hampshire RSA 542. Within thirty (30) days of receipt of such a request, the parties shall select a single impartial arbitrator to hear the matter. The arbitrator shall be an attorney licensed to practice law in the State of New Hampshire with experience in conservation easements and applicable training and experience as an arbitrator. Judgment upon the award rendered by the arbitrator may be enforced in any court of competent jurisdiction. The arbitrator shall be bound by and follow the substantive law of the State of New Hampshire and the applicable provisions of the US Internal Revenue Code. The arbitrator shall render a decision within thirty (30) days of the arbitration hearing.

D. If the parties do not agree to resolve the dispute by arbitration, or if the parties are unable to agree on the selection of an arbitrator, then either party may bring an action at law or in equity in any court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation by permanent injunction and to require the restoration of the Property to its condition prior to the breach.

E. Notwithstanding the availability of mediation and arbitration to address disputes concerning the consistency of any proposed use or activity with the purposes of this Easement, if the Grantee believes that some action or inaction of the Grantor or a third party is causing irreparable harm or damage to the Property, the Grantee may seek a temporary restraining order, preliminary injunction or other form of equitable relief from any New Hampshire court of

competent jurisdiction to cause the cessation of any such damage or harm pending resolution of any dispute in accordance with this Section 7.

8. BREACH OF EASEMENT – GRANTEE’S REMEDIES

A. If the Grantee determines that a breach of this Easement has occurred or is threatened by the Grantor, the Grantee shall notify the Grantor in writing of such breach and demand corrective action to cure said breach, and, where the breach involves injury to the Property resulting from any use or activity inconsistent with the purposes of this Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by the Grantee. Such notice shall be delivered in hand or by certified mail, return receipt requested.

B. If the Grantor fails, within thirty (30) days after receipt of such notice or after otherwise learning of such breach or conduct, to undertake those actions, including restoration, which are reasonably calculated to cure swiftly said breach and to repair any damage to the Property caused thereby, or fails to continue diligently to cure such breach until finally cured, the Grantee shall 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.

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

D. The Grantee’s rights under this Section 8 apply equally in the event of either actual or threatened violations of the terms of this Easement. The Grantor agrees that the Grantee’s remedies at law for any violation of the terms of this Easement are inadequate and that the Grantee shall be entitled to the injunctive relief described in Section 8.B, above, 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 8 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

E. Provided that the Grantor is directly or primarily responsible for the breach, and if a court so orders, all reasonable costs incurred by the Grantee in enforcing the terms of this Easement against the Grantor, including, without limitation, costs and expenses of suit and reasonable attorneys’ fees, and any costs of restoration necessitated by the Grantor’s breach of this Easement, shall be borne by the Grantor, provided that the Grantor is directly or primarily responsible for the breach; 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 Easement, and if the court determines that the enforcement action 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.

F. 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 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, estoppel or prescription.

G. 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.

H. 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 8, against any third party responsible for any actions detrimental to the conservation purposes of this Easement.

9. EXECUTORY INTEREST

A. If the Grantee ceases to enforce the Easement conveyed hereby or fails to enforce it within sixty (60) days after receipt of written notice from the State of New Hampshire Fish and Game Department, 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 circumstances, 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 Merrimack County 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 6.A "Benefits, Burdens and Access" above. Any such assignee or transferee shall have like power of assignment or transfer.

10. DISCRETIONARY CONSENT

A. The Grantee's consent for activities otherwise prohibited herein may be given under the following conditions and circumstances. If, owing to unforeseen or changed circumstances, any

of the activities listed in Section 2 are deemed desirable by the Grantor and the Grantee, the Grantee may, in its sole discretion, give permission for such activities, subject to the limitations herein. Such requests for permission shall be in writing and shall describe the proposed activity in sufficient detail to allow the Grantee to judge the consistency of the proposed activity with the purposes of this Easement. The Grantee may give its permission only if it determines, in its sole discretion, that such activities (i) do not violate the Purposes of this Easement and (ii) either enhance or do not impair any significant conservation interests associated with the Property.

B. Notwithstanding the foregoing, the Grantor and the Grantee shall have no right or power to agree to any activities that would result in the termination of this Easement or to allow any residential, commercial or industrial structures, or any commercial or industrial activities, not provided for above.

11. 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.

12. 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.

13. SEPARATE PARCEL

The Grantor agrees that for the purpose of determining compliance with any present or future regulation (other than those governing N.H. Current Use Assessment under RSA 79-A), bylaw, order, or ordinance (within this Section referred to as "legal requirements") of the Town of Hooksett, the State of New Hampshire or any other governmental unit, the Property shall be deemed a separate parcel of land and shall not be taken into account in determining whether any land of the Grantor, other than the Property, complies with any said legal requirements. The Property shall not be taken into account to satisfy in whole or in part any of said legal requirements or any area, density, setback, or other dimensional standard applicable to such land.

14. CONDEMNATION

A. Whenever all or part of the Property is taken in exercise of eminent domain by public, corporate or other authority so as to abrogate in whole or in part the Easement conveyed hereby, or whenever all or a part of the Property is lawfully sold without the restrictions imposed

hereunder in lieu of condemnation or exercise of eminent domain, the Grantor and the Grantee shall thereupon act jointly to recover the full damages resulting from such taking or lawful sale with all incidental or direct damages and expenses incurred by them thereby to be paid out of the damages recovered.

B. The balance of the land damages recovered (including, for purposes of this subsection, proceeds from any lawful sale, in lieu of condemnation, of the Property unencumbered by the restrictions hereunder) shall be divided between the Grantor and the Grantee in proportion to the fair market value of their respective interests in the Property on the date of execution of this Easement. For this purpose and that of any other judicial extinguishment of this Easement, in whole or in part, the Grantee's interest shall be the amount by which the fair market value of the Property immediately prior to the execution of this Easement is reduced by the use limitations imposed hereby. The value of the Grantee's interest shall be determined by an appraisal prepared by a qualified appraiser at the time of condemnation. Any increase in value attributable to improvements made after the date of the Conservation Easement shall accrue to the party who made the improvements.

C. The Grantee shall use its share of the proceeds in a manner consistent with and in furtherance of one or more of the conservation purposes set forth herein on a property located in the Town of Hooksett upon consultation with the Town of Hooksett's Conservation Commission.

15. 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 Section 6.A, above, accepts and records the additional easement.

16. AMENDMENT

In the event that the Property is affected by unusual and unforeseen circumstances and conditions, the Grantor and the Grantee by mutual consent may amend this Easement; provided that the amendment is not inconsistent with the conservation Purposes of this Easement; will not result in a net degradation of the conservation values of the Property; will not affect the enforceability of the Easement; and is accomplished in compliance with New Hampshire RSA 477:45-47 and with sections 170(h) and 501(c)(3) of the Internal Revenue Code of 1986, as amended. Any such amendment shall be recorded in the official land records where the Property is located.

17. STEWARDSHIP RESPONSIBILITIES OF THE GRANTEE

To facilitate the fulfillment of its responsibilities under this Easement, Bear-Paw Regional Greenways shall be responsible for the following (which shall include, but not be limited to):

- A. Provide an annual on-ground monitoring inspection that confirms that the interests acquired as part of this project are being protected and maintained according to the terms of the conservation easement;
- B. Provide annual contact with property owners to inform them of their obligations under the terms of this conservation easement;
- C. Prepare and submit an annual monitoring report to the Grantor and the Executive Interest Holder, which shall contain the following:
- i. Description of the inspection conducted;
 - ii. Description of any physical changes to the property;
 - iii. Description of any contacts made with property owners, including their current name and address information;
 - iv. Description of any conditions or activities on the property, including those which violate or may violate the intent of this conservation easement;
 - v. Explanation of the current status of any previously identified violations and any remedial steps taken; and
 - vi. Any steps to be taken by property owners to bring property into compliance with the terms of the easement (if necessary).
- D. Upon sale of property, Bear-Paw shall contact the new owner and inform them of the provisions of this conservation 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 _____, _____.

ACCEPTED: TOWN OF HOOKSETT TOWN COUNCIL

Town Councilor

STATE OF NEW HAMPSHIRE
COUNTY OF Merrimack, SS

On this ____ day of _____, _____, before me the undersigned officer, personally appeared the Town Councilor of Hooksett who acknowledged the foregoing to be their voluntary act and deed for the purposes therein contained.

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

ACCEPTED: HOOKSETT CONSERVATION COMMISSION

Conservation Commissioner

STATE OF NEW HAMPSHIRE

COUNTY OF _____, SS

On this ____ day of _____, 2012, before me the undersigned officer, personally appeared the Conservation Commissioner of Hooksett who acknowledged the foregoing to be their voluntary act and deed for the purposes therein contained.

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

ACCEPTED: BEAR-PAW REGIONAL GREENWAYS

By: _____

Title: _____
Duly Authorized

Date: _____

By: _____

Title: _____
Duly Authorized

Date: _____

STATE OF NEW HAMPSHIRE
COUNTY OF _____, SS

On this ____ day of _____, _____, before me the undersigned officer, personally appeared _____ and _____ who acknowledged themselves to be officers of Bear-Paw Regional Greenways, and acting in said capacity, and being authorized so to do, executed the foregoing instrument on behalf of Bear-Paw Regional Greenways as its voluntary act and deed for the purposes therein contained.

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

ACCEPTED: STATE OF NEW HAMPSHIRE FISH & GAME DEPARTMENT

By: _____
Glenn Normandeau, Executive Director

Date: _____

STATE OF NEW HAMPSHIRE
COUNTY OF _____, SS

Personally appeared, Glenn Normandeau, Executive Director of the New Hampshire Fish and Game Department, this ____ day of _____, _____, and being duly authorized acknowledged the foregoing on behalf of the State of New Hampshire.

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

Approved as to form, substance and execution by the Office of the Attorney General:

Assistant Attorney General

Approved by the New Hampshire Governor and Executive Council:

Approval Date: _____ Item #: _____

Appendix A

MAP 22, LOT 2
 N/S GOFFSTOWN ROAD
 HOOKSETT, NH
 (WHICH INCLUDES THE OLD TAX LOT 22-2 & ALL OF
 TAX LOT 16-77 THROUGH 16-77-36 ON PLAN 11105)

The Property includes two certain tracts of land situate in Town of Hooksett, County of Merrimack, State of New Hampshire, on the northerly side of Goffstown Road. Tract I is shown on a plan entitled "Quimby Mountain Subdivision, Hooksett, NH, Subdivision Plan", dated March 1988, prepared by Costello, Lomasney & de Napoli, Inc., recorded as Plan #11105 in the Merrimack County Registry of Deeds, and Tract II is shown on a plan entitled "Plat of Land, Goffstown Road, Hooksett, NH", dated October 29, 2012, prepared by T.D. Brouillette Land Surveying, to be recorded herewith in the Merrimack County Registry of Deeds, and more particularly described as follows:

Tract I

Beginning at a concrete bound at the southeast corner of the property on the northerly side of Goffstown Road;

thence N 84° 13'-35" W 195.33 feet to a point;

thence S 81° 29'-17" E 180.78 feet to a concrete bound at the southwest corner of the property on the northerly side of Goffstown Road;

thence N 05° 22'-06" W 525.81 feet to a point;

thence N 05° 22'-07" W 500.64 feet to a point;

thence N 05° 22'-07" E 160.00 feet to a point;

thence N 06° 52'-08" W 180.00 feet to a point;

thence N 05° 52'-08" W 292.31 feet to a point;

thence N 05° 52'-08" W 305.00 feet to a point;

thence N 05° 52'-08" W 235.00 feet to a point;

thence N 05° 35'-02" W 221.54 feet to a point;

thence N 05° 35'-02" W 370.00 feet to a point;

thence N 08° 19'-10" W 53.16 feet to a point;

thence N 06° 03'-02" W 135.10 feet to an iron pipe at the northwest corner of the property;

thence N 48° 55'-52" E 349.64 feet to a point;

thence N 48° 55'-52" E 100.00 feet to a point;

thence N 85° 18'-21" E 42.51 feet to a point;

thence N 85° 18'-21" E 386.80 feet to a point;

thence N 85° 18'-21" E 150.00 feet to a point;

thence N 85° 18'-21" E 160.00 feet to a point;

thence N 85° 18'-21" E 160.00 feet to a point;

thence N 85° 11'-45" E 325.48 feet to a point;

thence N 85° 11'-45" E 82.37 feet to a point;

thence N 85° 11'-45" E 132.97 feet to a point at the northeast corner of the property;

thence S 03° 02'-49" W 388.89 feet to a point;
 thence S 03° 02'-49" W 201.02 feet to a point;
 thence S 02° 27'-47" W 88.99 feet to a point;
 thence S 02° 27'-47" W 195.00 feet to a point;
 thence S 02° 27'-47" W 90.00 feet to a point;
 thence S 05° 54'-24" W 272.51 feet to a point;
 thence S 15° 43'-09" W 272.51 feet to a point;
 thence S 02° 02'-53" W 91.84 feet to a point;
 thence S 02° 02'-53" W 59.79 feet to a point;
 thence S 02° 02'-53" W 275.18 feet to a point;
 thence N 88° 48'-42" W 93.81 feet to a point;
 thence N 82° 08'-21" W 44.81 feet to a point;
 thence N 86° 34'-39" W 176.78 feet to a point;
 thence S 06° 52'-10" E 80.58 feet to a point;
 thence S 06° 52'-10" E 70.00 feet to a point;
 thence S 06° 52'-10" E 30.00 feet to a point;
 thence S 84° 44'-09" W 302.90 feet to a point;
 thence S 84° 40'-29" W 285.67 feet to a point;
 thence S 02° 28'-34" W 145.00 feet to a point;
 thence S 02° 28'-34" W 315.65 feet to a point;
 thence S 04° 05'-10" W 246.03 feet to a point;
 thence S 03° 10'-01" W 221.86 feet to a point;
 thence S 02° 33'-53" W 307.28 feet to a concrete bound on the northerly side of Goffstown Road, said point being the same as the beginning.

MEANING and INTENDING to describe the same premises conveyed in the Tax Collector's Deeds dated June 29, 2002 and recorded at Book 2405, Page 1393 through Book 2405, Page 1429 in the Merrimack County Registry of Deeds. See also Conservation Easement Deed granted by the Town of Hooksett to Bear-Paw Regional Greenways dated March 14, 2012 and recorded on May 4, 2012 in the Merrimack County Registry of Deeds, Book 3312, Page 1871.

Tract II

Beginning at a boulder with a drill hole set on the northerly side of Goffstown Road at the southwest corner of the Tract at land of 20th Skeet Club;
 thence N 05° 48'-39" E 152.08 feet to a drill hole in a pile of stones;
 thence N 05° 48'-39" E 949.42 feet to a ½ inch iron rod at the northwest corner of the Tract;
 thence S 84° 25'-18" E 214.50 feet to a ½ inch iron rod set in a pile of stones;
 thence S 02° 40'-59" E 214.73 feet to a ½ inch iron rod set in a pile of stones;
 thence N 71° 19'-59" E 155.42 feet to a ½ inch iron rod set in a stone wall at land of the Town of Hooksett;
 thence S 04° 28'-57" E 246.53 feet along a stonewall to a drill hole at the end of said stonewall;
 thence S 04° 29'-59" E 527.01 feet to an iron rod on the northerly side of Goffstown Road;

thence S 85° 35'-35" W 217.49 feet along Goffstown Road to a drill hole at the end of a stonewall;

thence N 84° 25'-18" W 208.47 feet along Goffstown Road to a drill hole in the stonewall;

thence N 85° 11'-48" W 103.55 feet to a drill hole set in a boulder on the side of Goffstown Road, said point being the same as the beginning.

MEANING and INTENDING to describe the same premises conveyed in the Tax Collector's Deed dated August 23, 1985 and recorded at Book 1527, Page 404 in the Merrimack County Registry of Deeds. See also Conservation Easement Deed granted by the Town of Hooksett to Bear-Paw Regional Greenways dated March 14, 2012 and recorded on May 4, 2012 in the Merrimack County Registry of Deeds, Book 3312, Page 1871.

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Quimby Mountain Conservation Easement



