

Please Return To
Land and Community Heritage Investment Program
13 West Street, Suite 3
Concord, NH 03301

Grant Agreement

The State of New Hampshire, acting by and through the NH Land and Community Heritage Investment Program (“LCHIP”), and the **GRANT RECIPIENT NAME** (the “Recipient”), in consideration of a grant in the amount of **(\$XXX,XXX)**, and in order to assure that the Conservation Values as described in the Baseline Documentation Report developed and maintained by the Recipient and accepted by LCHIP (hereinafter the “Conservation Values”) of certain real property located in the town(s) of **PROJECT TOWN(S)**, in **COUNTY NAME** County, New Hampshire (the “Property”), and further described in a conservation easement deed (the “Deed”) recorded at the **COUNTY NAME** County Registry of Deeds on _____ at Book _____ Page _____ will be conserved in perpetuity, mutually agree to perform this Agreement in accordance with NH RSA 227-M, the LCHIP *Criteria, Guidelines and Procedures* (the “LCHIP Guidelines”) and all other applicable laws.

OBLIGATIONS OF RECIPIENT

As Recipient of the Grant Award and conservation easement holder, the **RECIPIENT** hereby agrees:

1. to return to LCHIP any grant funds herein provided in the event of:
 - a. a material breach of the terms of this Agreement or material misrepresentations during the application process;
 - b. a material breach of the Conservation Restrictions set forth in the Deed; or
 - c. an uncured cloud on, or failure of, title for any portion of the Property, in proportion to the value of the portion of the Property with defective title;
2. that the Property shall be maintained for the purposes set forth in NH RSA 227-M, and any acts, uses or management activities undertaken on the Property shall not materially impair the Conservation Values of the Property, nor harm state or federally recognized rare, threatened, endangered species or other species of conservation concern, or exemplary natural communities, such determination of harm to be based upon information from the New Hampshire Natural Heritage Inventory or the agency then recognized by the State as having responsibility for identification and/or conservation of such species, nor harm state or federally recognized historical or archeological resources, such determination of harm to be made based upon information from the New Hampshire Division of Historic Resources or the agency then recognized by the State as having responsibility for identification and/or conservation of such resources;
3. that any activities taking place on the Property for which fees are charged shall be consistent with the intent of NH RSA 227-M;
4. to uphold the public’s right of access in accordance with the terms of the Deed and all state and federal laws and regulations applicable to private, non-profit organizations;
5. to carry out easement stewardship activities in accordance with the *LCHIP Guidelines* and with the Standards and Practices for conservation easement stewardship as published by the Land Trust Alliance; which activities shall include:
 - a. Ensuring the exterior boundary lines of the Property are marked and maintained in a manner sufficient to ensure they remain easily distinguishable over a reasonable time;

- b.** conducting an on-the-ground inspection of the Property at least once each calendar year. Said inspection to be conducted so as to reasonably determine that no activities or uses inconsistent with this Agreement, the Deed or the purposes of NH RSA 227-M, are occurring on the Property; and
 - c.** submitting an annual report to LCHIP on or before the reporting deadline established by LCHIP, which report shall contain:
 - i. the date on which the inspection was conducted;
 - ii. a description of the required annual landowner contact;
 - iii. a description of the conditions of the Property and any activities taking place;
 - iv. a description of any physical changes to the Property, whether natural or manmade;
 - v. the name, address and signature of the person(s) conducting the inspection;
 - vi. a map of the route taken in conducting the inspection;
 - vii. photographs of any material observations; and
 - viii. other reasonable information, documentation or other material as may be requested from time to time by LCHIP;
- 6.** to comply with and uphold the terms, restrictions, limitations and other obligations of this Agreement and of the Deed;
- 7.** to take all reasonable steps to proactively investigate and address any challenge, known or suspected, to the purposes and intent of this Agreement and the Deed, and to cure any violation of those terms or that may be discovered;
- 8.** to promptly inform LCHIP in writing of any actions taken to resolve any known or potential violation of the terms of the Deed or this Agreement;
- 9.** that should Recipients approval of any future conveyance, transfer, or encumbrance of the Property be required by the Deed, such approval shall be granted only if:
 - a.** any additional provisions do not conflict with the provisions of this Agreement, the Deed, or NH RSA 227-M;
 - b.** the Conservation Values of the Property and the Purposes of the Deed are not diminished thereby;
 - c.** any easement, mortgage, or lien arising after the date of execution of this Agreement is subordinated, by operation of law or otherwise, to the terms of the Deed; and
 - d.** the Property or any future conservation easement or restrictions placed on the Property are conveyed to and accepted and recorded by the State of New Hampshire, the U.S. Government, or any subdivision of either of them, consistent with Section 170(c)(I) of the U.S. Internal Revenue Code of 1986, as amended, or 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 Purposes of the easement;
- 10.** to provide the names, addresses, and phone number of any successors in title to the Property or any interest in the Property to LCHIP no more than ten (10) days following notification of same;
- 11.** that any materials it produces to promote or publicize the Property, including on-site kiosks,

informational signs, guides or brochures, will include the intent of the following statement: "This property (name may be used) protected with assistance from the NH Land and Community Heritage Investment Program";

12. to place a sign, if provided by LCHIP, at a prominent location on the Property and to accept financial responsibility for the repair, or replacement in-kind of said sign, if requested to do so by LCHIP;

Should a conflict arise between the terms of this Agreement and the terms of the Deed, the terms of the Deed shall control.

LCHIP RIGHT OF ACCESS AND ENFORCEMENT

LCHIP shall have reasonable access to the Property and all of its parts for such inspection as necessary to determine compliance with and enforce the terms of this Agreement and the Deed through any and all authorities under Federal or State Law, and to exercise the rights conveyed thereby and to carry out the duties assumed by LCHIP under this Agreement and the Deed.

AMENDMENT

If circumstances arise under which an amendment to or modification of this Agreement would be appropriate, Recipient and LCHIP may by mutual written agreement jointly amend this Agreement. Any such amendment shall serve to further the protection of the Conservation Values of the Property and the purposes of the Grant Award, shall not permit any private inurement to any person or entity, and shall not adversely impact the overall conservation and natural resource values protected by the Deed and this Agreement.

Nothing in this paragraph shall require Recipient or LCHIP to agree to any amendment or to consult or negotiate regarding any proposed amendment.

ASSIGNMENT

LCHIP may convey, assign, or transfer its rights and obligations under this Agreement to any party qualified by the State of New Hampshire to become LCHIP's assignee or transferee, who shall have like power upon such assignment or transfer.

LCHIP'S REMEDIES

LCHIP may, following reasonable written notice to Recipient, institute suit(s) to enjoin any violation of the terms of this Agreement by ex parte, temporary, preliminary, and/or permanent injunction, including prohibitory and/or mandatory injunctive relief. LCHIP shall also have available all legal and other equitable remedies to enforce Recipient's obligations hereunder.

In the event Recipient is found to have violated any of its obligations under this Agreement, Recipient shall reimburse LCHIP for any costs or expenses incurred in connection with LCHIP's enforcement of the terms of this Agreement, including but not limited to all reasonable court costs, and legal, administrative or other costs.

Exercise by LCHIP of one remedy hereunder shall not have the effect of waiving or limiting any other remedy, and the failure to exercise any remedy shall not have the effect of waiving or limiting the use of any other remedy or the use of such remedy at any other time.

NOTICE FROM GOVERNMENT AUTHORITIES

Recipient shall deliver to LCHIP copies of any notice of violation or lien relating to the Property received by Recipient from any government authority within five (5) days of receipt by Recipient. Upon request by LCHIP, Recipient shall promptly furnish LCHIP with evidence of Recipient's compliance with such notice or lien where compliance is required by law.

SEVERABILITY

This instrument is made pursuant to NH RSA 227-M, but the invalidity of such act or any part thereof shall not affect the validity and enforceability of this Agreement according to its terms, it being the intent of the parties to agree and to bind themselves, their successors, and their assigns in perpetuity whether this instrument be enforceable by reason of any statute, common law, or private agreement in existence either now or hereafter. The invalidity or unenforceability of any provision of this instrument shall not affect the validity or enforceability of any other provision of this instrument or any ancillary or supplementary agreement relating to the subject matter thereof.

INDEMNIFICATION

Recipient hereby agrees to pay, protect, indemnify, hold harmless and defend at its own cost and expense, LCHIP, its agents, trustees, directors, officers and employees, or independent contractors from and against any and all claims, liabilities, expenses, costs, damages, losses, and expenditures (including reasonable attorneys' fees and disbursements hereafter incurred) arising out of or in connection with injury to or death of any person; physical damage to the Property; the presence or release in, on, or about the Property, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any law, ordinance, or regulation as a hazardous, toxic, polluting, or contaminating substance; or other injury or other damage occurring on or about the Property, unless such injury or damage is caused by LCHIP or any agent, trustee, director, officer, employee, or independent contractor of LCHIP.

In the event that Recipient is required to indemnify LCHIP pursuant to the terms of this paragraph, the amount of such indemnity, until discharged, shall constitute a lien on the Property with the same effect and priority as a mechanic's lien. Provided, however, that nothing contained herein shall jeopardize the priority of any recorded lien of mortgage or deed of trust given in connection with a promissory note secured by the Property.

SOVEREIGN IMMUNITY

Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State.

INTERPRETATION

Any rule of strict construction designed to limit the breadth of restrictions on alienation or use of Property shall not apply in the construction or interpretation of this Agreement, and this instrument shall be interpreted broadly to effect its purposes and the restrictions and obligations herein contained.

1. Nothing contained herein shall be interpreted to authorize or permit Recipient to violate any law, ordinance or regulation. In the event of any conflict between any such ordinance or regulation and the terms hereof, Recipient promptly shall notify LCHIP of such conflict and shall cooperate with LCHIP and the applicable governmental entity to accommodate the purposes of both this Agreement and such ordinance or regulation.
2. To the extent that any action taken by LCHIP pursuant to this Agreement gives rise to a claim of breach of contract, Recipient and LCHIP agree that the sole remedy on the part of Recipient shall be reimbursement of actual direct out-of-pocket expenses reasonably incurred by Recipient as a result of such breach and that Recipient shall not have any right to indirect, consequential or monetary damages in excess of such actual direct out-of-pocket expenses.

BENEFIT AND BURDEN

The burden of the obligations conveyed hereby shall run with the Property in perpetuity and shall be deemed to run as a binding servitude with the Property. This Agreement shall extend to and be binding upon the Recipient and LCHIP, their respective successors in interest and all persons hereafter claiming under or through either the Recipient or LCHIP, and the words "Recipient" and "LCHIP" when used herein shall include all such persons. Any right, title, or interest herein granted to LCHIP also shall be deemed granted to each successor and assign of LCHIP and each such following successor and assign thereof, and the word "LCHIP" shall include all such successors and assigns.

NO WAIVER OF RIGHT TO TAKE ACTION

LCHIP does not waive or forfeit the right to take action as may be necessary to insure compliance with this Agreement by any prior failure to act and Recipient hereby waives any defense of laches with respect to any delay or omission by LCHIP in acting to enforce any restriction or exercise any rights under this Agreement or the Deed, and any such delay or omission shall not impair LCHIP's rights or remedies or be construed as a waiver.

COUNTERPARTS

This instrument may be executed in two counterparts, one of which may be retained by Recipient and the other to be retained by LCHIP. In the event of any disparity between the counterparts produced, the counterpart retained by LCHIP shall in all cases govern.

SAMPLE DOCUMENT CE PROJECT SUBJECT TO CHANGE

**ACCEPTED: STATE OF NEW HAMPSHIRE
LAND AND COMMUNITY HERITAGE INVESTMENT PROGRAM**

By _____
Dorothy T. Taylor, Executive Director
Duly authorized

_____ Date

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK, ss.

On this ____ day of _____, 2017, before me personally appeared Dorothy T. Taylor, known to me or satisfactorily proven to be the person whose name appears above, and she acknowledged that she executed this document in the capacity indicated above.

Justice of the Peace/Notary Public

My commission expires:

**FOR GRANT RECIPIENT
RECIPIENT ORGANIZATION**

By _____
AUTHORIZED PERSON NAME AND TITLE
duly authorized

_____ Date

STATE OF NEW HAMPSHIRE
_____ COUNTY, SS.

On this ____ day of _____ 2017, before me personally appeared _____, known to me or satisfactorily proven to be the person whose name appears above, and s/he acknowledged that s/he executed this document in the capacity indicated above.

Justice of the Peace/Notary Public

My commission expires: