

THE SPACE ABOVE IS FOR RECORDING INFORMATION

CONSERVATION EASEMENT DEED

[NAME OF GRANTOR(S)], with a principal place of business at [street name and number], Town/City of _____, County of _____, State of New Hampshire, (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

the Town of Barrington, a municipal corporation, situated in the County of Strafford, State of New Hampshire, acting through its Conservation Commission with the approval of the Board of Selectmen pursuant to NH RSA 36-A:4, with a mailing address of P.O. Box 660, 333 Calef Hwy., Rte. 125, Barrington, New Hampshire 03825, (hereinafter referred to as the "Grantee" which shall, unless the context clearly indicates otherwise, include the Grantee's successors and assigns).

The Conservation Easement (herein referred to as the "Easement") hereinafter described with respect to a certain parcel of land (herein referred to as the "Property") being unimproved land, consisting of approximately 30.646 acres off of the northerly side of Franklin Pierce Highway, also known as Route 9, in the Town of Barrington, County of Strafford, State of New Hampshire, shown as "CONSERVATION EASEMENT" on a plan entitled "Subdivision plan of land of George A. Calef Living Revocable Trust of 2008 (Tax Map 238, Lot 9.1) and A. Harland Calef Revocable Trust (Tax Map 238, Lot 14) and Frederick Drew III & Cheryl Goscinski Drew (Tax Map 238, Lot 16 & 18) for Harbor Street Limited Partnership, Franklin Pierce Highway, Barrington, New Hampshire" by Doucet Survey, Inc. to be recorded in the Strafford County Registry of Deeds ("the Plan"), and more particularly described in Appendix A.

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, including wetlands in the area of the property.
- B. The conservation and protection of open spaces, particularly the conservation of productive forest land of which the Property consists and of the wildlife habitat thereon and for the protection of surrounding undeveloped land.
- C. The protection of the Property for low-impact non-motorized outdoor recreation such as hiking, bird watching, and cross-country skiing by the general public.

The above Purposes are consistent with the clearly delineated open space conservation goals and/or objectives as stated in the March 11, 2004 Master Plan of the Town of Barrington, Chapter 2, Section 2D, regarding preservation of natural resources and open spaces 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, nor shall any motorized vehicle be allowed on said property; nor shall hunting be allowed on said property.
- B. The Property shall not be subdivided.
- 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, 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, 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, tennis court, swimming pool, athletic field, golf course, or aircraft landing area. Such structures are subject to the impervious surface limit set forth at paragraph 2(J) below.
- D. There shall be no cutting of trees on the property unless said trees cause a threat to public

safety or are diseased or constitute an invasive species. Cutting of such trees require the approval of the Barrington Conservation Commission.

- E. 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 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.

- F. No outdoor advertising structures shall be displayed on the Property except as desirable or necessary in the accomplishment of the 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 5 square feet in size, and no sign shall be artificially illuminated.
- G. 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. C., D., or E., above. No such rocks, minerals, gravel, sand, topsoil, or other similar materials shall be removed from the Property.
- H. There shall be no dumping, injection, burning, or burial of any materials not originating on the property.
- I. 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.
- J. The maximum allowable impervious surface coverage on the Property shall not exceed two percent (1%) (approximately 0.3 acres) of the total acreage described in Appendix "A". The total impervious surface coverage shall include but not be limited to all existing and future structures; paved driveways, roads, parking facilities and other paved or impervious surfaces; as well as any temporary structures even if the soil surface is not

disturbed.

3. RESERVED RIGHTS

- A. The Grantor, its successors and assigns, reserves the right to perform grading on the Premises to install and maintain drainage structures and utilities, all as shown on approved plans.
- B. Dead, diseased, unsafe, or fallen trees, saplings, shrubs, or ground cover may be removed by the Grantor. Invasive species may be removed by the Grantor. Approval of the Barrington Conservation Commission shall be required for the exercise of these rights.
- C. The Premises may be used by the public for passive recreation, including cross-country skiing, hiking, and snowshoeing. The Association may, but is not obligated, to construct such trails as are necessary to accomplish these passive recreational purposes. Mountain biking, trail biking and hunting are prohibited as is the use of any motorized recreational equipment. Access to the property by the general public shall be from Route 9.

4. 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.
- B. The Grantee shall be under no obligation to maintain the Property or pay any taxes or assessments thereon.

5. 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.

6. AFFIRMATIVE RIGHTS OF GRANTEE

- A. The Grantee shall have reasonable access to the Property and all of its parts for such inspection as is necessary to determine compliance with and to enforce this 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.

7. 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 may 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.

8. 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.

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 interest 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.

13. 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.

14. AMENDMENT OF EASEMENT

Grantor and Grantee recognize that circumstances could arise that justify amendment of certain of the terms, covenants, or restrictions contained in this Conservation Easement, and that some activities may require the discretionary consent of Grantee. To this end, Grantor and Grantee reserve the right to agree to amendments to this Easement without prior notice to any other party, provided that in the sole and exclusive judgment of the Grantee, such amendment or

discretionary consent furthers or is not inconsistent with the purpose of this grant. Amendments will become effective upon recording at the Strafford County Registry of Deeds, State of New Hampshire, as well as with the Charitable Trust Division of the State of New Hampshire Attorney General's Office.

Notwithstanding the foregoing, the Grantee and Grantor have no right or power to consent to any action or agree to any amendment that would

1. Not clearly serve the public interest or be inconsistent with the easement holder's mission.
2. Result in noncompliance with all applicable federal, state, and local laws.
3. Result in "private inurement" or confer impermissible "private benefit" (as those terms are defined for federal tax law purposes and N.H. RSA 7:19-a).
4. Be inconsistent with the conservation purpose(s) or intent of this easement.
5. Be inconsistent with the documented intent of the donor, grantor, or any direct funding source.
6. Result in a net negative or damaging effect on the relevant conservation values or attributes protected by the easement.
7. Result in termination of this Conservation Easement.
8. Adversely affect the qualification of this Easement or the tax exempt or charitable organization status of the Holder under applicable laws, including Section 170(h) or 501(c)(3) of the Internal Revenue Code, successor provisions thereof, and regulations issued pursuant thereto.

If any of the above are not satisfied, the Grantee and Grantor shall have no authority to and shall not agree to any amendment without first obtaining the approval of the Charitable Trust Unit of the NH Attorney General's Office.

THIS IS A NON-CONTRACTUAL CONVEYANCE PURSUANT TO NEW HAMPSHIRE RSA 78-B:2 AND IS EXEMPT FROM THE NEW HAMPSHIRE REAL ESTATE TRANSFER TAX.

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, I (We) have hereunto set my (our) hand(s) this _____ day of _____, 2013.

Name of Grantor

Name of Grantor

The State of _____

County of _____

Personally appeared _____ and
_____ this _____ day of _____,
20____, and acknowledged the foregoing to be his/her/their voluntary act and deed.

Before me, _____
Justice of the Peace/Notary Public

My commission expires: _____

ACCEPTED: TOWN OF BARRINGTON CONSERVATION COMMISSION

By: _____

Title: _____
Duly Authorized

Date: _____

The State of New Hampshire

County of _____

Personally appeared _____
Print Name & Title

of the Town of Barrington Conservation Commission, this _____ day of

_____, 20____, and acknowledged the foregoing on behalf of the

Town of Barrington Conservation Commission.

Before me, _____
Justice of the Peace/Notary Public

My commission expires: _____

ACCEPTED: TOWN OF BARRINGTON BOARD OF SELECTMEN

By: _____

Title: _____
Duly Authorized

Date: _____

By: _____

Title: _____
Duly Authorized

Date: _____

By: _____

Title: _____
Duly Authorized

Date: _____

The State of New Hampshire
County of _____

Personally appeared _____
Print Name & Title

of the Town of Barrington Board of Selectmen, this _____ day of

_____, 20__, and acknowledged the foregoing on behalf of the

Town of Barrington Board of Selectmen.

Before me, _____
Justice of the Peace/Notary Public

My commission expires: _____

The State of New Hampshire
County of _____

Personally appeared _____
Print Name & Title

of the Town of Barrington Board of Selectmen, this _____ day of
_____, 20____, and acknowledged the foregoing on behalf of the Town of
_____ Board of Selectmen.

Before me, _____
Justice of the Peace/Notary Public

My commission expires: _____

The State of New Hampshire
County of _____

Personally appeared _____
Print Name & Title

of the Town of Barrington Board of Selectmen, this _____ day of
_____, 20____, and acknowledged the foregoing on behalf of the Town of
_____ Board of Selectmen.

Before me, _____
Justice of the Peace/Notary Public

My commission expires: _____

APPENDIX A

A certain parcel of land (herein referred to as the "Property") being unimproved land, consisting of approximately 30.646 acres off of the northerly side of Franklin Pierce Highway, also known as Route 9, in the Town of Barrington, County of Strafford, State of New Hampshire, shown as "CONSERVATION EASEMENT" on a plan entitled "Subdivision plan of land of George A. Calef Living Revocable Trust of 2008 (Tax Map 238, Lot 9.1) and A. Harland Calef Revocable Trust (Tax Map 238, Lot 14) and Frederick Drew III & Cheryl Goscinski Drew (Tax Map 238, Lot 16 & 18) for Harbor Street Limited Partnership, Franklin Pierce Highway, Barrington, New Hampshire" by Doucet Survey, Inc. to be recorded in the Strafford County Registry of Deeds ("the Plan").