

EXHIBIT A
GRANT AGREEMENT

Between the
LAND AND COMMUNITY HERITAGE INVESTMENT PROGRAM
and
TOWN OF STODDARD CONSERVATION COMMISSION

Whereas the Town of Stoddard Conservation Commission (“Recipient”), has been awarded a \$400,000 financial assistance award (the “Grant”) through the New Hampshire Land and Community Heritage Investment Program (“LCHIP”) in support of Recipient’s acquisition of a ~40-acre parcel of land in the Town of Stoddard, State of New Hampshire and more specifically described above (the “Property”) for the purpose of protecting in perpetuity the significant natural habitat, open space, forestry and other conservation attributes of the Property (the “Conservation Attributes”) as described and set forth in a Property Conditions Report prepared and maintained by Recipient with copy provided to and accepted by LCHIP, Recipient hereby agrees to the following grant obligations:

ACQUISITION

Recipient will acquire the Property by Warranty Deed (the “Deed”), which Deed will contain the following recital:

The Property is being acquired by the Grantee in part with a \$400,000 financial assistance grant awarded through the **Land and Community Heritage Investment Program** pursuant to New Hampshire RSA 227-M, which award places continuing obligations on Grantee and restrictions on Grantee’s use of the Property as described in a Grant Agreement (attached hereto as Exhibit A and incorporated herein). Pursuant to RSA 227-M:14, the Property shall be held in public trust. No deviation in the uses of the Property to uses or purposes not consistent with the intent of NH RSA 227-M shall be permitted, and the sale, transfer, conveyance, or release of this Property from public trust is prohibited, except as provided in NH RSA 227-M:13. Pursuant to RSA 227-M:15, the Property shall be open in perpetuity for passive recreational purposes by members of the public, and subject to more restrictions and conditions specifically set forth in the Grant Agreement attached hereto as Exhibit A.

Recipient will record the Deed in the Cheshire County Registry of Deeds.

GRANT OBLIGATIONS

The following Grant Obligations will become effective upon acquisition of the Property by Recipient:

1. PUBLIC TRUST, PUBLIC ACCESS, AND PROPERTY USE

- A. **Public Trust** - Pursuant to RSA 227-M:14 the Property will be held in public trust. No deviation in the uses of the Property to uses or purposes not consistent with the intent of NH RSA 227-M will be permitted, and the sale, transfer, conveyance, or release of this Property from public trust is prohibited, except as provided in NH RSA 227-M:13.
- B. **Public Access** - Pursuant to RSA 227-M:15, the Property will be open to the public in perpetuity for passive recreational purposes. Management of the public's right of access will be conducted in accordance with the Restrictions described in Exhibit B attached hereto.
- C. **Property Maintenance and Use** - The Property will be maintained in perpetuity as open space. Any acts, uses or management activities undertaken on the Property will be consistent with the purposes of NH RSA 227-M and will not materially impair the Conservation Attributes. All permitted uses of and management activities conducted on the Property will be carried out in accordance with the Restrictions described in Exhibit B attached hereto.

2. STEWARDSHIP

- A. Recipient will take all reasonable steps to proactively investigate, address, and cure any challenge, violation, or threat, known or suspected, to the Conservation Attributes and the terms of this Agreement, and will promptly inform LCHIP in writing of any actions taken in carrying out this obligation.
- B. Recipient will insure at least one inspection sufficient to reasonably determine that no activities or uses inconsistent with this Agreement or NH RSA 227-M are occurring on the Property is conducted per calendar year, and that an annual report describing that inspection is submitted to LCHIP in the manner and form stipulated by LCHIP.
- C. Recipient will deliver to LCHIP copies of any notice of violation or lien relating to the Property received from any government authority within ten (10) days of receipt and will promptly furnish LCHIP with evidence of compliance with such notice or lien where compliance is required by law.
- D. Any materials Recipient produces or approves promoting or publicizing the Property, including on-site kiosks, informational signs, guides or brochures, will include the intent of the following statement: "This Property (*or use property name*) protected with assistance from the New Hampshire Land and Community Heritage Investment Program".
- E. Recipient will allow LCHIP to make photographs, drawings, or other representations documenting the Property and to distribute them to magazines, newsletters, or other publicly available publications, or use them to fulfill its charitable and educational purposes, with proper acknowledgment and designation of Recipient.

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

3. FUTURE CONVEYANCE, ENCUMBRANCE

Recipient will not give, grant, sell, convey or otherwise transfer any full or partial interest in the Property without the prior written approval of LCHIP, which approval will not be unreasonably withheld, subject to the following:

- A. **Notice of Intent to Transfer** Recipient will provide LCHIP at least 45-days advance notice of any proposed transfer, said notice to include the name, address, and phone number of the proposed transferee and a copy of the proposed deed.
- B. **Notice of Grant** Reference to the Grant herein described and to NH RSA 227-M:14-15 must be incorporated in any deed transferring a full or partial interest in the Property.
- C. **Transfer to a Qualified Entity** The Property may be transferred to an eligible applicant as defined by RSA 227-M:8 which has among its purposes conservation of land and water resources and which agrees to and has the capacity, including the financial resources and legal authority, to uphold this Agreement (a “Qualified Entity”), conditioned on either of the following:
- 1) With the prior written approval of LCHIP, Recipient must assign this Agreement to the Qualified Entity. Any assignment must take effect upon conveyance of the Property and be recorded in the chain of title at the Cheshire County Registry of Deeds coincident with the deed or other document conveying the Property. Any assignee or transferee will have like power of assignment or transfer; or
 - 2) Recipient must convey the Property subject to perpetual conservation restrictions as defined by NH RSA 477:45-47 and rights of enforcement and access granted to LCHIP. Said restrictions must be consistent with the intent of RSA 227-M and this Agreement, and acceptable to, and approved in advance by, LCHIP.

Failure to comply with the requirements of either subparagraph 3.C.1 or 3.C.2 will be considered a material breach of the Agreement.

- D. **Transfer to an Ineligible Applicant** In accordance with NH RSA 227-M:16, should Recipient sell the Property to any entity not meeting the definition of eligible applicant as defined by NH RSA 227-M:8, then the full amount of LCHIP’s Grant must be returned to LCHIP by Recipient at the time of said transfer. Until such time as LCHIP receives said repayment in full LCHIP will have a lien on the Property for that amount.

Notwithstanding the foregoing, LCHIP may, in limited circumstances, waive repayment of the Grant in the case of a non-contractual transfer of the Property as defined by NH RSA 78-B:1-a to the State of New Hampshire, the U.S. Government, or any subdivision of either of them approved in advance by LCHIP. In accordance with NH RSA 227-M,

repayment of the Grant for any reason, including as described in this section will not have the effect of waiving or in any way limiting the provisions of NH RSA 227-M:14-15.

- E. Encumbrance** Any additional terms, conditions, or restrictions on use of the Property must be consistent with this Agreement and the purposes of NH RSA 227-M. Any application by the Recipient for enrollment in, release from, or other change with respect to N.H. Current Use Assessment under RSA 79-A or N.H. Conservation Restriction Assessment under RSA 79-B, both as may be amended from time to time, will be exempt from this Section 3.

4. REPAYMENT OF LCHIP FINANCIAL ASSISTANCE AWARD

In addition to the provisions of Section 3. "Future Conveyance, Encumbrance" above, the following conditions will require the repayment of all or a portion of the LCHIP Grant:

- A. Condemnation** - In the event all or a portion of the Property is taken by exercise of the power of eminent domain by public, corporate, or other authority so as to abrogate in whole or in part the purposes of the LCHIP Grant, Recipient and LCHIP will act jointly to recover the full damages resulting from such taking (the "Proceeds").

In the circumstances described above, LCHIP will be entitled to a share of any Proceeds recovered by Recipient in an amount proportionate to LCHIP's contribution to the overall cost of acquiring and protecting the Property. Recipient and LCHIP agree therefore that LCHIP shall be entitled to the lesser of XX% of any Proceeds recovered by Recipient and \$400,000, the amount of the LCHIP Grant. Until such time as LCHIP receives its share of the Proceeds from Recipient, LCHIP will have a lien against the Property for the amount of the Proceeds due.

- B. Title** - In the event of an uncured cloud on or failure of title for any portion of the Property, Recipient will return to LCHIP the Grant herein described in proportion to the value of that portion of the Property with defective title.
- C. Material Breach** - LCHIP may require Recipient return all or a portion of the Grant herein described in the event of a material breach of the terms of this Agreement, or a material misrepresentation made during the LCHIP grant application or project execution process.

5. 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 will serve to further the protection of the Conservation Attributes of the Property and the purposes of the grant referred to herein or to accomplish the correction of a clerical error; and will not permit any inurement or impermissible private

benefit to any person or entity. Nothing in this paragraph will require Recipient or LCHIP to agree to any amendment or to consult or negotiate regarding any proposed amendment.

6. LCHIP RIGHT OF ACCESS, ENFORCEMENT AND ASSIGNMENT

- A. Access** - LCHIP will have reasonable access to the Property and all of its parts for such inspection as LCHIP finds necessary to determine compliance with and enforce and defend the terms of this Agreement and to exercise the rights conveyed hereby.
- B. Enforcement** - LCHIP may, following reasonable written notice to Recipient, institute suit(s) to enjoin a violation of the terms of this Agreement by *ex parte*, temporary, preliminary, and/or permanent injunction, including prohibitory and/or mandatory injunctive relief. LCHIP will also have available all legal and other equitable remedies to enforce Recipient's obligations hereunder.
- C. 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 will have like power upon such assignment or transfer.

7. ENFORCEMENT COSTS AND ACTIONS BEYOND RECIPIENT'S CONTROL

In the event LCHIP is the prevailing party in any action against Recipient to enforce or defend the terms of this Agreement or to exercise its rights under this Agreement it is entitled to recover any and all administrative and legal costs associated with any action related to the enforcement or defense of this Agreement or to Recipient's acts or failure to act, including, but not limited to, court costs, mediation and/or arbitration costs, reasonable attorney and consultant fees, staff costs, payments ordered by such court or arbitrator, and other reasonable expenses.

However, if LCHIP initiates action against Recipient to enforce or defend the terms of this Agreement or to exercise its rights under this Agreement, and if the court determines that a material breach has not been established, each party will bear its own costs. Notwithstanding the foregoing, if the court determines that LCHIP acted without reasonable cause or in bad faith, then the court may require LCHIP reimburse the Recipient's reasonable costs incurred in defending the action including, but not limited to, attorney and consultant fees, staff costs, and other reasonable expenses.

Nothing herein will be construed to entitle LCHIP to institute any enforcement proceedings against the Recipient, or to recover costs or attorney's fees from Recipient, for any changes to the Property due to causes beyond the Recipient's control, such as changes caused by fire, flood, storm, earthquake, disease, infestation, the unauthorized wrongful acts of third parties, or any prudent action taken by Recipient under emergency conditions to prevent, abate, or mitigate significant damage to the Property or to any party resulting from such causes and any such occurrence will not be deemed a material breach entitling LCHIP to exercise its right of enforcement hereunder.

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

8. SEVERABILITY AND INTERPRETATION

- A.** This instrument is made pursuant to NH RSA 227-M, but the invalidity of such act or any part thereof will 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 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 will 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.
- B.** Nothing contained herein will 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 will notify LCHIP of such conflict and will cooperate with LCHIP and the applicable governmental entity to accommodate the purposes of both this Agreement and such ordinance or regulation. 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 will be reimbursement of actual direct out-of-pocket expenses reasonably incurred by Recipient as a result of such breach and that Recipient will not have any right to indirect, consequential or monetary damages in excess of such actual direct out-of-pocket expenses.

9. 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, will constitute a lien on the Property with the same effect and priority as a mechanic's lien. Provided, however, that nothing contained herein will jeopardize the priority of any recorded lien of mortgage or deed of trust given in connection with a promissory note secured by the Property.

FOR THE LAND AND COMMUNITY HERITAGE INVESTMENT PROGRAM

By: _____
Paula S. Bellemore, Executive Director
Duly authorized

Date

FOR THE TOWN OF STODDARD

Geoffrey Jones, Town of Stoddard Conservation Commission Chair
duly authorized

Date

Town of Stoddard Board of Selectmen, Chair
duly authorized

Date

Town of Stoddard Board of Selectmen
duly authorized

Date

Town of Stoddard Board of Selectmen
duly authorized

Date

EXHIBIT B

RESTRICTIONS

The Restrictions described herein shall become effective and enforceable upon Recipient's acquisition of the Property.

- 1) The Property will be maintained in perpetuity as open space. Any acts, uses or management activities undertaken on the Property will be consistent with the purposes of NH RSA 227-M and will not materially impair the significant natural habitat, open space, forestry and other conservation attributes referred to herein and described and set forth in a Property Conditions Report prepared and maintained by Recipient with copy provided to LCHIP (hereinafter referred to as the "Conservation Attributes").
- 2) Public Access - Pursuant to RSA 227-M:15, the Property will be open for passive recreational purposes, and the public will have a right of pedestrian access to, on, and across the Property for hunting, fishing, and transitory passive recreational purposes, but not camping, in perpetuity except that Recipient may post against:
 - vehicles, motorized or otherwise,
 - access to forest land during harvesting, establishment of plantations or other active management activities,
 - access to the interior of any buildings on the Property,
 - access by the public during an emergency situation where public safety could be at risk, but only for so long as the emergency situation exists and subject to Recipient providing notice of such temporary posting to LCHIP at the earliest practicable time, and
 - access to locations within the Property that become subject to incidents of problematic or abusive uses or behaviors by said public that are detrimental to the Purposes of this Agreement or significantly impairing of the Conservation Attributes and/or where such access would place the public safety at risk, but only after Recipient obtains LCHIP's prior written approval of such posting for the purpose of managing such issues for a defined period of time as the Recipient and LCHIP may agree. Said problematic or abusive uses or public safety concerns may include but will not be limited to: making of fires, malicious destruction of the Recipient's real or personal property, potential hazards for visitors atypical to a natural and undeveloped setting, or development of unauthorized trails or structures.

LCHIP will have the sole discretion to limit or prohibit passive recreational use of the Property on a case-by-case basis, where such activity would be inconsistent with the purpose for protecting the Property and/or when public safety would be at risk.

Nothing herein will prohibit Recipient from disallowing specific individuals or entities access under lawful court orders or injunctive relief.

Recipient will be under no duty to supervise said public access, use, or purpose except as expressly provided for above and, pursuant to NH RSA 227-M, Recipient will not be liable to any user of this right of access for injuries suffered on the Property unless those injuries are caused by the willful or wanton misconduct of the Recipient.

- 3) Property Management - The Property shall be maintained in perpetuity as open space without there being conducted thereon any industrial or commercial activities except in the accomplishment of forestry or outdoor recreation or education uses (hereinafter “permitted uses”), provided that any acts, uses or management activities undertaken on the Property shall be consistent with the purposes of NH RSA 227-M, shall not materially impair the Conservation Attributes of the Property, and shall not harm state or federally recognized rare, threatened, endangered species or other species of conservation concern, or exemplary natural communities.

All permitted uses of and management activities conducted on the Property shall be carried out in accordance with all applicable local, state, federal, and other laws and regulations, and in accordance with then-current, scientifically-based accepted best management practices for the sites, soils, and terrain of the Property.

- 4) Structures and Improvements - There shall be no structure or improvement constructed, placed, or introduced onto the Property, except those necessary in the accomplishment of the permitted uses and are not materially detrimental to the Conservation Attributes. The existing structures and improvements, as documented in the Property Conditions Report, may be expanded, rebuilt, or removed as necessary in the accomplishment of the permitted uses as long as such expansion or rebuilding is not materially detrimental to the Conservation Attributes. Total impervious surface coverage on the property shall not exceed 5,000 square feet. Any new structures or improvements with a footprint in excess of 200 square feet shall be subject to prior written approval by LCHIP.
- 5) Waste and Material Storage - There shall be no dumping, injection, application, burning or burial of man-made materials, building demolition or construction debris, trash, tires, plowed snow from locations other than the Property, vehicle bodies or parts or similar materials, wastes generated off the Property, or materials known to be environmentally hazardous permitted on the Property.
- 6) Mining, Quarrying, Excavation - No mining, quarrying, excavation, or removal of rocks, minerals, gravel, sand, topsoil, or other similar materials on or from the Property shall be permitted except in the accomplishment of permitted uses, but in no case shall any rocks, minerals, gravel, sand, topsoil, or other similar materials be marketed for sale;

- 7) Disturbance or Alteration of Terrain - There shall be no disturbance of the surface or alteration of the topography of any portion of the Property except in the accomplishment of permitted uses.

EXHIBIT C
NOTICE OF GRANT REQUIREMENT

The property described herein (Property) was acquired pursuant to a monetary grant awarded to the Town of Stoddard New Hampshire, (Grant Recipient). The purpose of this acquisition is to effect the goals of the U.S. Department of Agriculture (USDA) Forest Service's *Community Forest and Open Space Conservation Program* (Community Forest Program or CFP) in accordance with the provisions of Section 7A of the *Cooperative Forestry Assistance Act* (CFAA) of 1978 as amended. Such purposes are to provide public benefits to communities including economic benefits through sustainable forest management, environmental benefits including clean air, water, and wildlife habitat; benefits from forest-based educational programs; benefits from serving as models of effective forest stewardship; and recreational benefits secured with public access; and to acquire private forest lands that are threatened by conversion to nonforest uses. Program delivery is guided by the Community Forest Program regulations (36 CFR Part 230 Subpart A) (published 04/02/2021; 86 FR 17302). In accordance with these regulations the Grant Recipient acknowledges that:

1. This Property was purchased with Federal funds in accordance with the Community Forest Program (36 CFR Part 230 Subpart A) (published 04/02/2021; 86 FR 17302);
2. The legal description for the Property is as set forth and described in this Deed;
3. The address of the Grant Recipient and authorized title holder listed above is:

Town of Stoddard
1450 Route 123N
Stoddard, NH 03464

4. This Property is designated as a 'Community Forest' pursuant to the requirements of the Community Forest Program (CFP);
5. The Grant Agreement with the USDA Forest Service is agreement number 22-DG-11094200-221 and it is kept on file at:

U.S. Forest Service
Eastern Region State, Private, and Tribal Forestry
626 E. Wisconsin Ave.
Milwaukee, WI 53202

6. The Grant Recipient shall ensure that for all land(s) acquired pursuant to this grant is held in perpetuity by an eligible entity as defined by 36 CFR Part 230 (published 04/02/2021; 86 FR 17302) and that the Community Forest will be:
 - (i) managed pursuant to the grant, the Community Forest Plan, and the purpose of the CFP

- (ii) will not be conveyed or encumbered, in whole or in part, to another party without permission and instructions from the awarding agency
 - (iii) will be managed consistent with the purpose of the CFP;
- 7. In the event that the Community Forest is sold or converted to nonforest uses or a use inconsistent with the purpose of the CFP, the Grant Recipient or subsequent Community Forest landowner shall:
 - (1) pay the United States an amount equal to the current sale price or the current appraised value of the parcel, whichever is greater; and
 - (2) not be eligible for additional grants under the U.S. Forest Service Community Forest Program.

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