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609
Dept of
Transportation

Quitclaim Deed

Know All Men By these Presents, that, the State of New Hampshire, whose mailing address is 7 Hazen Drive, P.O. Box 483, Concord, N.H., 03302-0483, acting by and through the Commissioner of the Department of Transportation, and pursuant to the vote by the Governor and Council on November 13, 2002 (Item # 168), and in accordance with the provisions of N.H. REV. STAT. ANN. 228:31 and 4:40 for consideration received, to it in hand before the delivery thereof, from the Town of Hudson, whose address is 12 School Street, Hudson, N.H., 03051, County of Hillsborough, State of New Hampshire, has devised, released and forever QUITCLAIMED, and by these presents, does devise, release and forever quitclaim unto said Town of Hudson, a Municipal Corporation, subject to the easements, conditions and restrictions contained herein:

A certain tract or parcel of land with the buildings thereon situated on the southerly sideline of Kimball Hill Road as now traveled in the Town of Hudson, County of Hillsborough, State of New Hampshire, and referred to as Parcel 5-W as shown on a Plan of Nashua-Hudson 10644, on file in the records of the New Hampshire Department of Transportation.

The parcel, hereinafter "Property," is more fully described in **Exhibit A**, attached hereto as well as found at Book 5472, Pages 660-685 in the Hillsborough County Registry of Deeds, and depicted on **Exhibit B**, attached hereto, and also found at Book 5472, Page 687. The Property is also more fully depicted on the Maynard & Paquette, Engineering Associates, LLC, Plan, pp. 1-4, dated December 9, 2008 and attached hereto as Exhibit C, to be recorded with this deed.

Subject to all existing easements and restrictions, including, but not limited to:

Easements acquired by the State:

Drainage and slope easements through a Notice of Condemnation recorded at Book 2956, page 63, on October 7, 1982

Drainage and slope easements through a deed recorded at Book 3093, page 138 on October 31, 1983

Easements acquired by others:

New England Telephone & Telegraph Co., recorded at Book 2781, page 793, on August 5, 1980

Various easements, including sewer line and drainage easements, to Security Homes, Inc., recorded at Book 5075, pages 1437, 1444, 1449, 1456, 1459, 1463 on December 27, 1988.

Sewer easement to Thurston's Landing Realty Co, recorded at Book 5075, page 1528 on December 27, 1988

Containing 7,222,688 square feet or 165.8 acres, more or less, and meaning and intending to convey the parcel described in an Amended Notice of Condemnation by the State of New Hampshire recorded at the Hillsborough County Registry of Deeds on September 16, 1993, in Book 5472, Page 678.

As a condition of this instrument, the State hereby conveys the parcel described in **Exhibits A and C**, subject to the terms of the following State Conservation and Solid Waste Easements, Town Conservation, and Historic Preservation Easements, under RSA 477:45-47, to the Town of Hudson, said Grantee hereby covenanting to abide by and enforce the Town Conservation and Historic Preservation Easements.

Notwithstanding the State's ownership of this property, any and all sight line, slope, drainage, or utility easements acquired by the State, whether referenced herein or not, are expressly preserved and survive.

1. **DEFINITIONS.** The following terms are defined herein:

A. "Grantor," "State," or "NHDOT" shall mean the State of New Hampshire, by and through its Department of Transportation, its successors or assigns.

B. "State Agency" shall mean the Department of Environmental Services ("DES"), the Division of Historical Resources ("DHR"), their successors or assigns, or any other State Agency conveyed the rights to enforce either the **Town Conservation Easement** and/or the **Historic Preservation Easement**. The respective State Agency and their successors and assigns may also be referred to as an "Easement Holder."

C. "Lead Agency" shall mean the U.S. Army Corps of Engineers, or the N.H. Department of Environmental Services, or their respective successors, as may be assigned the primary responsibility for coordinating the issuance of necessary permits.

D. "Grantee" or "Town" shall mean the Town of Hudson.

E. "Passive Recreation" or "passive recreational uses" shall mean any recreational activities that may be conducted by visitors to the Property, such as hiking, jogging, running, cycling, cross-country skiing, equestrian riding (all of which may occur on trails to be established), field sports, fishing, bird watching, ice skating or other recreational activities that do not require use of motorized vehicles, or invasive development of the property that may require significant excavation, filling, or regrading, or the development and installation of permanent structures, other than kiosks, bandstand, maintenance and storage facilities, associated with this Property outside of Historic Areas as depicted on the Benson's Property Master Plan, a warming hut, playgrounds, one boat launch at the central pond, and/or ancillary structures to provide for human health and safety.

F. "Purchase price" shall be the sum of \$188,000.

G. "State Conservation Areas" shall be one or more areas located on the Property identified by NHDOT where preservation, protection, and enhancement of natural wetlands may occur, or where NHDOT, pursuant to applicable State or Federal standards, establishes artificial wetlands and upland buffer areas for the purposes of restoring or mitigating the loss of wetland habitat on one or more NHDOT highway project(s). It will also consist of the Solid Waste Easement areas, as depicted on Exhibit C, for purposes of monitoring and mitigating the two-landfill areas on the Property.

H. "Commercial" shall mean any use or activity that involves the exchange of cash, goods or services, barter, forgiveness of indebtedness, or any other remuneration in exchange for goods, services, lodging, meals, entertainment in any form, or the right to occupy space over a period of time. Provided, however, that the Town may establish and maintain reasonable commercial uses such as a museum, concessions, amphitheater, admission charges, gift shop and other related activities, subject to DHR review and approval, used to fund, maintain, enhance or promote the Benson Park, the Town Conservation Easement and Town Historical Preservation Easement.

I. "Roads" shall mean any and all dirt, gravel, or paved corridors intended for use by motorized vehicles located on the Property.

J. "Trails" shall mean any and all dirt, gravel, or paved corridors intended for use by pedestrians, animals, and non-motorized vehicles.

K. "South Field" shall mean that area depicted on the Benson's Property Master Plan as the South Field. Said area also encompassing the solid waste easement area A, as shown at Exhibit C.

L. "Amphitheater Area" shall mean the area depicted on the Benson's Property Master Plan as the Amphitheater Area and including the pond adjacent thereto known as Swan Lake.

M. "Passive Recreation Area" shall mean those areas depicted on the Benson's Property Master Plan and primarily noted as being the Ravine area, Gorilla House, and North Field. Said Passive Recreation Area being located between the Historic Benson Area, Amphitheater area and the South Field as is shown within the Benson's Property Master Plan.

N. "Cultural Uses" shall mean the providing of entertainment, artistic displays, concerts, movies, plays, theatrical performances and other events of a similar nature.

O. "Benson's Property Master Plan" shall mean a Master Plan Report prepared by Vanasse Hangen Bruslin, Inc., Bedford, NH dated March 6, 2002. Said report having been prepared for the New Hampshire Department of Transportation and the Benson's Committee of the Town of Hudson, New Hampshire.

2. PURPOSES AND OBJECTIVES

A. The Town acknowledges that the State acquired the Property through eminent domain after a finding of public necessity, that the State paid for the property utilizing public funds for the purpose of mitigating environmental impacts associated with the Nashua-Hudson Circumferential Highway, that the Property continues to remain viable for establishment of State Conservation zones for the Nashua-Hudson Circumferential Highway, as well as other highway projects undertaken by the State as may be approved by the applicable Lead Agency, and that the mitigation activities for which the property was acquired have not been completed. Additional mitigation activities are currently active on the Property.

B. The State acknowledges that the Town views this property as important to the Town for its open space, as well as for preservation and protection of conservation needs, historic preservation of identified properties, and passive recreational opportunities, and that those opportunities can, in many cases, exist concurrently, yet subject to the State's mitigation needs.

C. The Town acknowledges that **State Conservation Areas** shall be established on the Property both before and after conveyance pursuant to Section 3. The Town agrees to cooperate with the State on mitigation activities, and the State agrees, pursuant to Section 3.C.5, to minimize impacts to the **Historic Preservation Easements**, the Amphitheater area, Ravine area and SouthField areas, as well as passive recreation activities established by the Town. The Town also acknowledges that mitigation impacts may occur within these areas, and that access to all or part of the Property may be temporarily restricted or eliminated in furtherance of those objectives.

D. To further these objectives, the entire **Property** is subject to a **Town Conservation Easement**. Also in furtherance of the objectives the property is subject to **Historic Preservation Easements**, Solid Waste Easements A and B; and the State Conservation Easement, as depicted on the Maynard & Paquette Plan found at Exhibit C, as well as individually described by course and distance at Exhibits D through H. The State shall retain the State Conservation Easement over that portion of the property, which is, approximately 33.241 acres in size, and identified in Exhibits C and H. The **Town Conservation and Historic Preservation Easements**, as well as the Solid Waste Easements shall be subject to the **State Conservation Easement**, until extinguished in whole or in part by the provisions hereof. Activities undertaken by the State pursuant to the State Conservation Easement, which include activities in the Solid Waste Easement Areas, take priority over all uses within the area burdened

by the State Conservation and Solid Waste Easements.

E. The **Town Conservation Easement and Historic Preservation Easement** are granted exclusively for the following conservation and historic preservation purposes (the "Purposes") including those listed in Sections 4 and 5 below:

1) To assure that the Property will be retained in a predominantly natural, forested, and open space condition;

2) To protect and conserve the native biological diversity and natural habitats as occurring on the Property, including but not limited to the conservation values or interests of the Property described above;

3) To preserve, conserve, and compatibly manage the Property for the protection of water quality;

4) To sustain the Property's open spaces for the enjoyment, education, and benefit of the general public;

5) To identify, preserve and protect, historically significant archaeological resources and artifacts located on the Property.

6) To provide for public passive recreational uses of the Property, exclusive of motorized and mechanized access on designated roads.

7) To protect important, local cultural and historical structures identified as a **Historic Structure**, and protection of historically significant horticulture and landscape architecture.

8) To provide for cultural, educational and historical enjoyment and uses.

F. Purposes are also further discussed in a *Memorandum of Agreement* between the State and the Town, dated August 22, 2001, attached as Exhibit I

G. The above Purposes are consistent with the clearly delineated conservation policy of the State of New Hampshire, as set forth in RSA Chapter 79-A, which states: "It is hereby declared to be in the public interest to encourage the preservation of open space in the state by providing a healthful and attractive outdoor environment for work and recreation of the state's citizens, by maintaining the character of the state's landscape, and by conserving the land, water, forest, and wildlife resources," and to yield a significant public benefit in connection therewith. The Purposes are also consistent with RSA 227-C:1-a.

H. To further these Purposes, access for the State, DHR and any Lead Agency to enter and inspect the premises subject to the easements shall not be restricted.

I. The following general provisions apply to the State Conservation Easement and Solid Waste Easements, the Town Conversation Easement and the Historic Preservation Easements:

Access. In the event that the State needs to restrict access to the Historic Preservation Easements, the South Field, Ravine and the Amphitheater areas, that it shall do so with the least disruption to said areas and for the shortest possible time in light of the activities which need to be undertaken by the State. In the event that access to said areas needs to be interrupted or restricted, the State shall give the Town advanced written notice of the scope and estimated length of said restrictions.

Signage. No commercial outdoor advertising structures such as signs and billboards shall be erected or displayed on the Property. Tasteful, interpretive, directional, memorial, donative and instructive signage may be erected and displayed on the property consistent with the Town's permitted uses of the same.

3. STATE CONSERVATION EASEMENT

A. Purpose. Pursuant to this retained easement, the State will establish State Conservation Areas as designated in the March 2002 Hudson 10623Q Mitigation Plan and the Nashua-Hudson 10644 Mitigation Report, as they may be developed or amended. Monitoring shall be performed by the State in accordance with the Nashua-Hudson 10644 Final Environmental Impact Statement, the DES Wetlands Bureau Dredge and Fill Permit, and the US Army Corps of Engineers Section 404 Permit. State Conservation Areas may be established for the projects identified above, or for any other Department of Transportation project within Rockingham and/or Hillsborough County(ies) for which additional mitigation on this Property is acceptable and approved by the Lead Agency.

B. Priority. The State reserves for itself, and in priority over the **Town Conservation Easement** in Section 5, and the **Historic Preservation Easement** in Section 4, a **State Conservation Easement** to perform mitigation activities, as well as activities in the Solid Waste Easement Areas. The **State Conservation Easement** shall apply to any project that the State or a Lead Agency may deem necessary or desirable for mitigating environmental impacts for highway construction projects undertaken by or on behalf of NHDOT. All State Conservation Areas shall be constructed within the State Conservation Easement area, excepting any site or watercourse work reasonably necessary to achieve the project objectives. The State agrees that after the date of this conveyance to the Town, that the State will endeavor to avoid materially or significantly impacting the Historic Preservation Easements, the Amphitheater Area, the Ravine Area or the South Field area, excluding the Solid Waste Easement Area A, by further mitigation projects. Furthermore, the State agrees that to the extent practical, it will attempt not to materially or significantly impact the Passive Recreation Area by future mitigation projects.

C. Scope. The **State Conservation Easement** shall include the State's right to excavate, fill or regrade the Property, planting of grasses, trees, shrubs, or wetlands plants, and the establishment of insect, wildlife, or fish in one or more identified State Conservation Area(s), subject to the limitation on mitigation activities within the **Historic Preservation Easements** as defined in Section 3.C.5, the Amphitheater Area, the Ravine Area or the South Field areas identified in Section 4.D.2.

1) Collection and Impoundment of Water. The State may collect surface waters in the State Conservation Area, and may change or allow to be changed the subsurface water level on the Property.

2) Restrictions on Access. The State will endeavor and cooperate with the Town to maintain as much access as practicable to the Property outside of active State Conservation Areas, as may be defined by the State, but expressly reserves the right to restrict access to any or all areas of the Property in order to further mitigation efforts. In the event that the State needs to restrict access to the Historic Preservation Easements, the South Field and the Amphitheater area, that it shall do so with the least disruption to said areas and for the shortest possible time in light of the activities which need to be undertaken by the State. In the event that access to said areas needs to be interrupted or restricted, the State shall give the Town advanced written notice of the scope and length of said restrictions.

3) Establishment of Temporary Access. The State may establish temporary roads, paths, or other points or routes of access to further mitigation activities. Provided, however, that any temporary access and restrictions placed upon the Historic Preservation Easements, the South Field, Ravine or the Amphitheater areas shall be coordinated with the Town.

4) Access to Entire Property. The State, acting directly, or through an agent, contractor, or subcontractor, may traverse and travel the entire Property at any time in any vehicle, motorized or otherwise, deemed necessary or desirable to further activities undertaken pursuant to the State Conservation and Solid Waste Easements. State Employees or agents of the State performing work, tests or construction within the Property shall so far as practicable, provide reasonable notice to the Town or the Park Manager as to said activities.

5) Limitation on Mitigation Activities. While the State shall endeavor so far as practicable from establishing mitigation in, or permanently altering or impacting the Historic Preservation Easements, the South Field, Ravine and Amphitheater Area(s), the State expressly reserves the right to impact these Area(s) as may be reasonably necessary to further mitigation objectives and purposes. The State may divert water in whole or in part through these Areas as may be necessary. Any impact to these Areas shall be reviewed by DHR to determine if a historically appropriate option exists, to mitigate any resulting impacts, and to determine if an archaeological survey is necessary. Furthermore, to the extent practical, the State shall attempt to avoid establishing mitigation in or permanently altering or impacting the Passive Recreation Area.

D. Components. There are no separate components within the State Conservation Easement, except for the solid waste easement areas. Prior to the commencement of any mitigation activities, the State shall identify boundaries for each State Conservation Area where activity will occur. The State shall define State Conservation Areas based on the area it deems necessary for the construction and establishment of the mitigation project, including any areas for storage of equipment, materials, and supplies.

E. Ownership of Easement. The State Conservation Easement and Solid Waste Easements have been retained by the NHDOT, and may be transferred as provided in Section 3.H.

F. Maintenance Responsibility. The State shall bear all costs and liabilities associated with the construction and monitoring of any State Conservation areas constructed, created, or preserved on the Property. The timing and scope of mitigation activities, including remediation of existing landfills as shown on Exhibit C and depicted as Solid Waste Easements A and B, shall be conducted subject to appropriation and contract approval by Governor & Council, or by pre-approved existing contracts. Without waiving its sovereign immunity, the State will require any contractors or subcontractors retained by it to perform work on its behalf to provide insurance and indemnification in the same manner as on any other State project.

G. Approval of Projects within State Conservation Area. The State shall seek approval from the relevant Lead Agency before conducting any mitigation activities under the State Conservation Easement. The Town shall have no regulatory role in approval of State mitigation projects, other than input and comment as if the Property continued to be owned in fee simple absolute by the State. If the Town shall attempt to assert regulatory jurisdiction on any area subject to the State Conservation Easement, the State shall have the right to be exercised in the State's sole discretion, to exercise its Right of First Repurchase pursuant to Section 7.

H. Transferability of Easement. The State Conservation Easement may not be transferred to any other party, other than to the Town, and only in the manner as provided below:

1) Partial Release of State Conservation Easement. Upon completion of all necessary or desired mitigation activities within a State Conservation Area, including monitoring activities, the State may, in its exclusive and absolute determination, partially release its **State Conservation Easement** with respect to part or all of the Property by recordation at the appropriate registry of deeds, one or more **Release of State Conservation Easement** for the Property, identifying the area(s) where the State's State Conservation easement has been exhausted. The State's **State Conservation Easement** rights shall not expire or terminate except with recordation of a **Partial Release of State Conservation Easement**. Any **Partial Release of State Conservation Easement** shall apply only to that portion of the Property identified in that document.

2) Final Release of State Conservation Easement. Upon completion of all mitigation activities and monitoring, as evidenced by the recordation of a **Final Release of State Conservation Easement**, the State shall have no further obligation or liability with respect to the land subject to the State Conservation easement waiver. After a **Release of State Conservation Easement**, the **Town Conservation Easement** and **Historic Preservation Easement** shall forever apply to the Property and take precedence.

I. State is Not Liable To The Town for Changes Arising From Mitigation. The State shall not be liable for any compensation or damages arising from any existing, presently proposed, or future contemplated mitigation, construction or monitoring activities on this property whatsoever, including changes to water table, subsidence of the soil, changes in topography, view, landscape, changes in vegetation, introduction of animals, insects, etc.

4. HISTORIC PRESERVATION EASEMENT

A. Purpose. Historic preservation restrictions placed on Historic Structures and the surrounding areas as depicted in Exhibit C, identified as the Historic Preservation Easements as the Office (at approximately 1 acre more or less) and the Hazelton Barn (at approximately 1.7 acres more or less) are intended to preserve the overall significance and integrity, including architectural, historical and archaeological values, of the structures, setting and landscaping associated with the former Benson's Wild Animal Farm.

B. Priority. The **Historic Preservation Easement** shall be subject to the rights reserved by the State in the **State Conservation Easement** contained in Section 3, limited by Section 3,C.5.

C. Scope. The **Archaeology** component shall apply to the entire Property, exclusive of the Solid Waste Easement areas, as depicted on the Maynard & Paquette Plan of December 9, 2008, at Exhibit C.

D. Components. The Historic Preservation Easement shall have two components: **Archaeology, and Historic Structures.**

1) Archaeology.

a. Express Right to Conduct Archaeological Study. The DHR, acting through the State Archaeologist, shall review all ground disturbing activities on the Property transferred under this deed, and shall have the right to conduct archaeology-related activities on any ground disturbing activity deemed necessary or desirable within the impact area. Archaeological research may extend beyond the identified impact area if artifacts are discovered at the bounds of the identified area.

b. Discretionary Right to Archaeological Study. The NHDOT, in conjunction with DHR, reserves the right to permit archaeological investigations on the Property after receiving written approval of the Town, said approval shall not be unreasonably withheld. Prior to permitting any such investigations, the State shall send written notice to the State Archaeologist (or other agency or official then recognized with authority and responsibility for archaeological resources) for review and comment, and to the Town, such notice describing the nature, scope, location, timetable, qualifications of investigators, site restoration, research proposal, other material aspects of the proposed activity, and methods to apply the standards as specified in RSA 227-C:7, or rules promulgated there under as may be amended from time to time, and to provide written comments to the State and the Town. The State and Town shall request the State Archaeologist (or other person or agency, as above) to consider the proposal, to apply the standards as specified in rules implementing RSA 227-C:7 (*Permits Issued for State Lands and Waters*), and to provide written comments to the Grantor and Grantee. The Town may, with respect to the areas subject to the Historic Preservation Easement, in its sole discretion, approve the proposed investigations only if it finds that all of the following conditions are met:

(1) The archaeological investigations shall be conducted by qualified individuals, as defined pursuant to 36 C.F.R. Section 61, and according to a specific research proposal;

(2) The proposed activities will not harm State or federally recognized rare,

endangered, or threatened species; and

(3) The proposed activities will not be materially detrimental to the purposes of these Easements.

2) Historic Structures.

a. Maintenance. The Town shall endeavor to preserve and maintain all Historic Structures identified herein, including but not limited to the footprint of any structures identified herein and any other ancillary structures associated with the structures. These provisions shall apply to any location where a structure may be relocated. The Town may install and maintain lighting, plumbing, sound systems, irrigation, sanitary facilities, and electrical systems, for the purposes related to these Easements, subject to Sections 4.D.2.c. and 4.H. and also as required by other local, state and federal laws.

b. Repair and Rehabilitation. As repairs and rehabilitation of the historic structures are necessary, the Town will use the *Secretary of the Interior's Standards for Rehabilitation* (as codified in 36 CFR 67) as a guide. These standards are more specifically applied to the three structures subject to this preservation easement and detailed in the historic structures reports on the Hazelton Barn, the B&M Railroad Depot, and the Benson's Office and Kitchen, completed for the Town in 2003.

For purposes of this easement, rehabilitation is defined as the process of returning a structure to a state of utility, through repair or alteration, which makes possible an efficient contemporary use while preserving those portions and features of the property that are significant to its historic, architectural and cultural value. All changes to the structures subject to this preservation easement will be in the spirit of contributing to the public purpose of protecting and preserving the structures, and also as required by local, state, and federal legislation for the public benefit.

c. Approval Required. No alterations shall be made to existing Historic Structures without the prior written consent of the DHR, its successors or assigns, and subject to the Town Conservation Easement, without the consent of the Lead Agency, except for:

(1) ordinary repair and maintenance to conserve architectural and historical values, significance and integrity; or

(2) actions to mitigate a casualty or other emergency promptly reported to DHR and the relevant Lead Agency.

d. Protected Historic Structures:

(1) Hazelton Barn, so called. Character-defining features of the barn date from the 19th and early 20th centuries and include structural systems and foundations, and foundation remnants associated with the barn and former buildings within the Historic Bensons Area as depicted on the Benson's Property Master Plan. Its current overall form of design, materials and craftsmanship retain a high level of integrity both from its period of construction and during its

use by John T. Benson.

(2) Railroad Depot. The depot is closely associated with both the history of the area and the history and development of Benson's Wild Animal Farm. It possesses substantial integrity of form, materials and layout. Early finishes and materials may remain underneath more modern wall surfaces. The Railroad Depot may be relocated; if relocated the building shall be placed on a historically compatible foundation.

(3) Benson's Office and Kitchen Wing. These buildings were among the earliest structures built by John T. Benson on the site and today relate most closely to his vision for the park. The exteriors of both are relatively unchanged, as are the overall form and materials. The interiors also retain integrity, beneath a layer of post-1950 additions.

E. Standards for Reviewing Compliance with the Historic Preservation Easement.

1) The Grantor shall consider and apply, and the Grantee agrees to comply with, the following reference standards in reviewing or performing any changes to or other transfer of property rights affecting one or more components of the Historic Preservation Easement:

a. *Standards for Rehabilitation and Guidelines for Rehabilitation of Historic Buildings* (1995 rev. ed.), as may be promulgated by the Secretary of the Interior, and amended from time to time, shall be followed as a guide. As noted in 4.D.3).b. and below, historic structure reports (2003) on the Hazelton Barn, the Railroad Depot, and the Benson's Office and Kitchen Wing serve as baseline documentation for treatments and recommendations based on the *Standards*.

b. To the extent that the *Standards* are silent, other standards established by recognized historic preservation organizations acceptable to the DHR or its successors or assigns.

2) Baseline documentation that establishes the appearance, condition, significance and integrity of the Historic Structures and the Historic Area, as depicted on the Benson's Property Master Plan, at the former Benson's Wild Animal Farm is archived at DHR and is made a part of these preservation restrictions:

a. Benson's Wild Animal Farm Area Form, Area A-28, 1992-97.

b. Historic Building Documentation, Hazelton Barn, Kitchen/Office Complex, Elephant House, Animal Exhibit and Benson's Barn, NH State No. 536 A-F, 1998.

c. Individual Inventory Forms, Benson Office/Food Service Building (#HUD0009), Hudson Center Railroad Station (#HUD0008), and Bush Hill Road Barn (AKA Hazelton Barn, #HUD0007), 2001.

d. Benson's Historic Structures Reports, The Hazleton Barn, B&M Railroad Depot, Benson's Office and Kitchen, 2003.

e. The condition of the buildings and property as of the date of the transfer of title to the

Town shall be considered the baseline for evaluating the Town's responsibilities herein.

F. Ownership and Transferability of Easement. The Historic Preservation Easement shall be retained and enforced by the NHDOT and DHR, but may be freely transferred, with the consent of the Town, to any other State agency or private organization for historic preservation purposes as may be deemed necessary or desirable by the State. Such consent by the Town shall not be unreasonably withheld.

G. Maintenance Responsibility. The Town agrees to assume the total costs of continued maintenance, repair, and administration of areas subject to the Historic Preservation Easement, or Historic Structures as described in Section 4.D.2.d. The Town shall maintain the premises at all times and shall keep the premises in a state of good repair, and shall not allow the appearance of the premises to deteriorate in any meaningful way. Nothing herein shall prohibit the Town from seeking financial assistance from any sources available to the Town.

H. Approval of Projects within the Easement Areas. The Grantee shall notify the Grantor, in writing, when proposing any activities within the Historic Preservation Easement area, with the exception of D.2).c. (1) and (2), at least sixty (60) days in advance of the start of work, in sufficient detail for the Grantor to make a reasoned judgment as to their appropriateness. The Grantor shall review the proposal and approve, disapprove, or approve with modifications the work in writing within thirty (30) days of the receipt of the notice. Approval by the Grantor shall not be unreasonably withheld. Absence of the Grantor's notification within thirty (30) days shall constitute approval. Only work approved by the Grantor shall be undertaken. The Grantee shall permit the Grantor access during the conduct of such work to insure its proper performance.

I. Red Barn and the Old Woman in the Shoe. Notwithstanding any other provision to the contrary, the Town may rebuild the so-called Red Barn in its original location and the Town, in its discretion, may restore and retain the so-called Old Woman in the Shoe structure. Furthermore, the Town, in its discretion, may relocate to the property another historically compatible and appropriate barn.

J. Access through Historic Preservation Easement "Hazelton Barn." Any access through the "Hazelton Barn" Historic Preservation Easement by the State, the Town, or any agents thereof shall be restricted to speeds not more than 10 m.p.h until such time as the stabilization of the "Barn's" foundation and structure occurs.

5. TOWN CONSERVATION EASEMENT

A. Purpose. The Town Conservation Easement placed on this property is intended to preserve the overall significance and integrity of the natural habitats of the property, and to encourage and maintain their beneficial functions and conservation values as open space, wildlife habitat, wetland mitigation and natural areas, and landscaping associated with the Property's use as Benson's Wild Animal Farm.

B. Priority. The **Town Conservation Easement** shall be subject to the rights reserved by the State in the **State Conservation Easement** contained in Section 3, and shall apply in concert

with the **Historic Preservation Easement** where both easements apply. The **Town Conservation** and **Historic Preservation Easement** shall be construed as to best effectuate the purposes of both Easements.

C. Scope. The Town Conservation easement shall apply to the entire Property.

D. Restricted Actions on Parcel.

1) Residential, Industrial, or Commercial Activities. The Property shall be maintained in perpetuity as wildlife habitat, natural area, and open space without there being conducted thereon any residential, industrial, or commercial activities, except as provided for in Section 3 and 4. This restriction does not prevent the Town from using the property for educational, cultural and historic purposes. Without limiting the generality of such uses, the Town may establish a museum, museum shop, amphitheater, caretaker's residence, kiosks, bandstand, maintenance facilities, sanitary facilities, and such other amenities as may be compatible with the Town's uses of the property and subject to the Historic Preservation Easement and/or Town Conservation Easement.

2) Subdivision. The Property shall not be subdivided or otherwise divided into or treated as parcels of separate distinct ownership and may only be sold, transferred, or conveyed by the entirety, unless approved by the State.

3) Access and Utility Easements. No rights-of-way or easements of ingress or egress shall be conveyed, and no utility lines shall be constructed or developed into, on, over, under, or across the Property without the prior written permission of the State and any Easement Holder, and only if such use is consistent with the declared Purposes.

4) Structures. No new structure, building or improvement, including, but not limited to, a dwelling, tennis or other recreational court, swimming pool, aircraft landing strip, asphalt or concrete pavement, dam, bridge, antenna, personal wireless service facility, utility pole, conduit, line, tower, manufactured home, or any other temporary or permanent structure or facility shall be placed or constructed within the areas subject to the **Town Conservation Easement**, except as is otherwise provided for in this deed. This provision shall not prohibit the Town from rebuilding the Red Barn in its original location. The parties agree that the Town may rebuild the Red Barn (historically also known as the Benson's Barn) in its original location. In addition, existing water control structures may be repaired, modified or replaced. Said actions related to water control structures shall be coordinated and approved for compliance with wetland mitigation activities anticipated or undertaken by the State. This provision shall not limit the Town's rights to use the property for educational, recreational, cultural and historic purposes per Section 5.D.1.

5) Grazing. There shall be no grazing of domestic animals.

6) Hunting. Hunting and trapping shall not be allowed on the premises without the joint written permission of the State and Town. Notwithstanding any restrictions imposed by the Town hunting may not be restricted when directed by the Department of Fish & Game, the US Fish & Wildlife Service, or any other applicable State or federal agency, for purposes of limiting or controlling wildlife population(s), or for purposes of eradicating wildlife borne diseases or

ailments.

7) Introduction of Species. There shall be no planting, broadcasting, or intentional introduction on the Property of any genetically modified, transgenic or replicated organisms or any exotic species which are defined as species which are not native to the northeast region of the United States, except if the State and the Town determine and mutually agree in advance of such planting, broadcasting, or other introduction that the action will have a beneficial ecological effect and will be consistent with the purposes of this Easement. Any such planting, broadcasting, or other introduction shall be described to the State in writing.

8) Fertilizers and Biocides. There shall be no use of fertilizers, pesticides or biocides, including but not limited to insecticides, fungicides, rodenticides, and herbicides. Provided, however, that the State and the Town may agree upon the use of fertilizers and biocides on a case by case basis to deal with specific issues that may arise during the management and maintenance of the property.

9) Dumping. There shall be no storage, injection, burning, spreading, placing or dumping of ashes, trash, garbage, sludge, landfill, dredging spoils, or other man-made material, hazardous substance, or toxic waste, nor any placement of storage tanks in, on, or under the Property. Subject to appropriation and Governor & Council approval, the State shall be responsible for the clean up of existing refuse and the landfill sites at the property and for the proper disposal of any solid and/or hazardous wastes located therein.

10) Pollution and Disturbance of Water Bodies, Wetlands, and Subsurface Water. There shall be no polluting, altering, depleting or extraction of water from, natural water courses, lakes, ponds, marshes, subsurface water, or any other water bodies on the Property, and no altering or manipulating the natural hydrologic regime, including the timing, duration, frequency, magnitude, or extent of hydrological processes such as natural flooding or drying, except as provided for in Section 3. This shall not preclude the use of water flow devices on beaver dams to protect roads, however the design and use of such devices shall be done in a manner that causes the least amount of disruption practicable to the natural hydrologic regime. Provided, however, that the Town shall be allowed to repair, replace, and manage the ponds in the Amphitheater/Ravine area, as depicted in the Benson's Property Master Plan, and that are otherwise located within the passive recreation area. Provided that such management, repair and replacement do not materially interfere with the State's rights to provide for wetland mitigation. Also provided that the Town may reestablish the existing stream on the Property by removing the culvert structure, provided the stream remains within the existing streambed, or alternative location in the Amphitheater/Ravine area, with approval of DES and DHR as required by law.

11) Dredging, Filling, Roadwork, and Changes in Topography. There shall be no ditching, draining, diking, filling, excavating, dredging, quarrying, mining, drilling, or removal of topsoil, sand, gravel, rock, water, gas, petroleum, minerals, peat, or other materials, nor the building of new roads or trails for motorized use, or regarding or other changes in topography of the land in any manner, except as part of the **State Conservation Easement**, or for the maintenance, repair or reconstruction of existing roads and trails, and also except as provided for in Section 3 and 4. The Town shall not divert watercourses, except as provided in Section 4.

The Town shall not use the Property for establishment of any mitigation associated with any Town project.

12) Development Rights. The Property shall not be used in any manner to satisfy the density requirements of any applicable zoning ordinance or subdivision law with respect to the development of any other property.

13) Building or Upgrading of Roads. There shall be no building of new roads or improvement or upgrading of existing roads to a higher functional classification. The Town may maintain, repair, and improve existing roads (solely for purposes of maintenance and emergency access) consistent with their functional status, and, if necessary, relocate roads, with approval by the NHDOT, DHR, and other relevant State Agencies. This right shall include establishing and maintaining culverts, bridges, and any other ancillary structures necessary for the maintenance, repair, and relocation of the roads. This right shall not include the right to remove gravel from the Property to use on the roads. Any gravel removal is subjected to review by DHR for impact to archaeological resources under Sections 2.E.5 and 4.D.1. No gravel shall be moved outside the boundaries of the Property, however, gravel may be brought onto the Property for road maintenance, repair, and relocation.

14) Wildlife Habitat Management Operations. Wildlife habitat management operations shall be supervised by a professional wildlife biologist or forester employed or engaged by the State or by the Town, and shall comply with the review and approval process for management operations on State-owned lands. If the property ceases to be in Town ownership, then wildlife habitat management operations shall be supervised by a licensed professional forester or certified professional wildlife biologist. All trees to be harvested must be marked by, or the habitat management operation must be laid out by, the professional forester or biologist.

15) Maintenance Vehicles. The Town may use motor vehicles reasonably necessary for the practice of conservation, wildlife habitat management, research, law enforcement, search and rescue, and for exercising any of the Town's rights under this Deed.

16) Property Restoration. The Town may restore to a naturally and native vegetated condition any former building sites or other areas altered by human activity within the area depicted as Historic Area, on the Benson's Property Master Plan subject to DOT/DHR approval.

17) Trails. The Town may clear, construct, and maintain new trails, and to maintain, repair, relocate, and temporarily or permanently close trails. The location and use of trails to be constructed or maintained shall be consistent with the Purposes of this Easement and shall be approved by the State and other State Agencies. Pedestrian trails shall not exceed ten (10) feet in total width maintained clear of obstacles.

18) Parking Areas. The Town may construct and maintain parking areas outside of the Historic Preservation Easements, for the purpose of accommodating the passive recreational and educational uses of the Property with approval by NHDOT, DHR, and other relevant State Agencies. The location, size and design of any new parking areas shall be designed to minimize negative ecological impacts, and shall not be detrimental to the Purposes of these Easements. In

planning and carrying out its mitigation projects, the State shall (to the extent practicable) attempt to avoid materially or substantially impacting the above referenced public parking areas.

19) Structures to Guide Access. The State retains the right to install gates, barriers, signs, boardwalks, observational blinds and fences necessary to guide and control public access and use away from **State Conservation Areas**. The Town may install gates, barriers, signs, boardwalks, observational blinds and fences necessary to guide and control public access and use, provided such structures are designed and constructed to minimize the impact to the conservation and scenic nature of the Property.

20) Water Control Structures. The NHDOT retains the right to control, maintain, repair, and reconstruct water control structures existing at the time of these Easements provided such activity is described in and conducted in accordance with the applicable approvals by DES and DHR. In addition, the Town may restore and manage water control structures in coordination and approval with the State's wetland mitigation plans.

21) Town Policies. The Town may establish ordinances, policies, rules, and regulations to further the use of the Property pursuant to these Easements. No policy shall be effective to restrict the State access or activities to the Property for purposes established in the **State Conservation Easement**. The Town shall be allowed to establish reasonable admission policies and hours of use for the property including the Historic Benson's Area, Amphitheater area, and South Field area.

22) Tree and Vegetation Cutting.

a. Limited Tree Cutting Allowed. Trees and other vegetation may only be cut or removed for the purpose of establishing, restoring, or maintaining wildlife habitat and control of invasive species, as defined by NH Department of Agriculture rules and regulations, or for purposes of public safety, provided that such activities do not damage or destroy known or documented occurrences of rare species or exemplary natural communities; and except as provided for in Sections 3 and 4 and as may be necessary to maintain approved passive recreational, cultural and educational uses.

b. Standards. Cutting or removal of trees and other vegetation shall be performed in compliance with the Purposes of these Easements and in accordance with then current, generally accepted best management practices for the sites, soils and terrain of the Property as described in *Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire* (N. H. Department of Resources and Economic Development, 1998); and in accordance with the recommended practices contained within *Good Forestry in the Granite State: Recommended Voluntary Forest Management Practices for New Hampshire*" (N.H. Department of Resources and Economic Development, Division of Forests and Lands, and Society for the Protection of New Hampshire Forests, 1997); *Best Management Practices for Roadside Invasive Plants* (N.H. Department of Transportation, 2008 ; RSA 430:55 and N.H. Department of Agriculture, Markets and Foods, N.H. Admin. Rule Agr 3800 or similar successor or other publications as may be mutually agreed to by the State and the Town.

23) Compliance with State and Federal Law. This quitclaim deed and the easements contained herein shall be interpreted and construed so as to allow the Town to be in compliance (where required) with applicable Federal or State law. Furthermore, as may be required by State or Federal Law, accommodations for persons with disabilities, for parking and access by pedestrians and motor vehicles may be provided by the Town within the Historic Benson Area, Amphitheater area, and South Field area. Any improvements or modifications to provide additional access within Historic Structures or Historic Preservation Easements shall be reviewed and approved by DHR.

E. Limited Uses. The Town may use the Property to initiate and maintain non-commercial cultural, historical, passive recreational, or educational purposes, including nature-oriented and preservation-related activities, that do not adversely impact wetlands, State Conservation Areas within the **State Conservation Easement**, or areas subject to the **Historic Preservation Easement**, and are in accordance with all applicable laws and regulations. Except for catering or temporary food service or similar activities that are attendant and subordinate to specific events permitted by the Board of Selectmen, no fixed or permanent commercial activities will be allowed on the Property, unless otherwise approved by the State, the Town, and DHR. Provided, however, that the Town may establish a museum, museum shop, kiosks, bandstand, sanitary facilities, amphitheater, maintenance facilities, caretaker's residences, and other amenities to provide cultural, passive recreational, educational and historical uses compatible with the Historic Preservation Easement and/or Town Conservation Easement.

F. Ownership of Easement. The **Town Conservation Easement** is retained and enforced by the NHDOT.

G. Maintenance Responsibility. The Town shall bear all responsibility for budgeting and performing any maintenance or upkeep responsibilities within the Town Conservation Easement, except for any State Conservation Areas for which access has been restricted by the State

H. Approval of Projects within Easement Area. Any projects undertaken by the Town in the **Town Conservation Easement** area must be approved in advance by NHDOT, as well as any other applicable Federal, State and local authorities. NHDOT may reject any proposed work as inconsistent or incompatible with intended mitigation activities. The Town expressly acknowledges that the NHDOT will endeavor, to the full extent practical, to advise the Town of any known mitigation impacts before approval of any proposed Town projects. The Town acknowledges that previously approved and completed improvements may need to be modified or removed as mitigation activities proceed, and that any modification or removal shall be without compensation by the State.

I. Transferability of Easement. The **Town Conservation Easement** shall be retained by the NHDOT, but may be freely transferred, without consent of the Town, to any other State Agency or qualified conservation organization identified in Section 12 as may be deemed necessary or desirable. The State and any subsequent Easement Holder(s) shall notify the Town of any transfer.

6. INDEMNIFICATION.

A. The Town agrees to defend, indemnify, and hold harmless the State of New Hampshire, its officers and employees, from and against any and all claims, liabilities, or penalties brought or assessed against the State, its officers or employees, or the Town, its officers or employees, by or on behalf of any person, on account of, based on, resulting from, arising out of (or which may be claimed to arise out of), the privileges granted by this Deed, or any injury, losses, damages, judgments, costs, expenses, and fees which the State may suffer or incur as a result of or arising out of the monitoring or management activities of the Town or its agents on the Property with respect to the Town Conservation Easement and/or the Historic Preservation Easement.

B. Neither the State nor the Town shall be liable for the others attorneys' fees, court costs, expert fees, or other expenses associated with any court proceedings related to this Property.

C. If the Town seeks to limit or prevent the State's mitigation activities pursuant to the State Conservation Easement, the Town shall be liable to the State for attorneys' fees, court costs, expert fees, and any increased expenses arising from delays incurred on the mitigation activity.

7. STATE RIGHT OF REPURCHASE OPTION.

If, for any reason the State needs or desires to reacquire title to all or part of the Property for purposes the State deems necessary or desirable to accomplish any activities related to its State conservation Easement, the State may reacquire ownership of all or part of the Property.

a. If for any reason the State needs to or desires to repurchase title to that portion or portions of the Property utilized exclusively for wetland mitigation, it may do so. The price to be paid by the State for such Property shall not exceed the "Purchase Price".

b. If the State needs or desires to reacquire title to the Benson's Historic Preservation Easements, the south field area, the amphitheater, the passive recreation area, or such other portions of the Property where the Town has invested monies, made improvements, or has made expenditures in kind related thereto, then in such case the State shall pay to the Town the fair market value for such property as compensation for the reacquisition.

c. The State will seek a voluntary transfer from the Town, requesting transfer of title within 30 days for the necessary area(s).

d. The Town shall be obligated to execute a Quitclaim Deed to the State within said 30 days of being requested to do so. Provided, however, that if the amount of compensation has not been mutually agreed upon, the parties shall submit the issue of just compensation as provided above, to the New Hampshire Board of Tax and Land Appeals or to the Hillsborough County Superior Court pursuant to the provisions of RSA 498-A (or any successor provision thereto).

e. Upon completion of necessary or desirable mitigation activities, and should the State desire to sell said Property, the Town shall have a right of first refusal to reacquire the Property from the State.

8. RIGHT OF FIRST REFUSAL. The State, consistent with RSA 4:40, III reserves onto itself the right to repurchase the Property in case the Town shall ever seek to sell the Property.

9. STATE'S RIGHT TO ACCESS PROPERTY. The State reserves onto itself the right to utilize a point of access, located on Kimball Hill Road located at Station 142+10 as shown on Sheet 7 of NH DOT Hudson Project #2432-C, as the primary and principal point of access to obtain access to the entire Property. The State and the Town may agree on alternative points of access as may be appropriate. The State has the right to enter the Property on foot or in motorized vehicles at all times for the purposes of:

A. Inspecting the Property to determine if the Town is complying with the Purposes and terms of these Easements;

B. Enforcing the terms of these Easements;

C. Taking any and all actions with respect to the Property as may be necessary or appropriate, with or without order of court, to remedy or abate violations hereof;

D. Making scientific and educational observations and studies; and

E. Construction, monitoring and management as described in the **State Conservation Easement**.

10. RIGHT OF PUBLIC ACCESS SHALL BE UNRESTRICTED. As a condition of approval for sale to the Town, the Property will, subject to the **State Conservation Easement**, forever be open to all residents of the State of New Hampshire, and shall not be limited or regulated by the Town of Hudson in any manner with respect to providing additional access, opportunities or reduced fees for residents from the Town. The Town shall be allowed to maintain opening and closing hours of operation for the property and the improvements therein.

11. DISCRETIONARY CONSENT. The State's consent for activities otherwise prohibited in this Easement, or for any activities requiring State's consent under this Easement, may be given under the following conditions and circumstances:

A. If, owing to unforeseen or changed circumstances, any of the prohibited activities listed in these Easements are deemed desirable by the State and the Town, the State may, in its sole discretion, give permission for such activities, subject to the limitations herein.

B. Such requests for permission, and permission for activities requiring the State's consent under this Easement, shall be in writing and shall describe the proposed activity in sufficient detail to allow the State and any other Easement Holders to judge the consistency of the proposed activity with the Purposes of this Easement.

C. The State, acting through one or more State Agencies, may give its permission only if it determines, in its sole discretion, that such activities:

1) do not violate the Purposes of this Easement; and

2) either enhance or do not significantly impair the conservation, historic, recreational, cultural, educational or archaeological values or interests of the Property as defined herein.

D. Notwithstanding the foregoing, the State and Town 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 in this Easement.

E. In order to facilitate the granting of consents/approvals required throughout this deed, The State shall contact in writing the Town, through the offices of the Board of Selectmen or its successors.

The Board of Selectmen shall be required to respond to the State's request in writing within a period of not more than thirty (30) days, expressing its consent or objection.

F. In cases where the Town requires the consents/approval of the State or one of its agencies, it shall contact the State or its agencies in writing as follows:

1) New Hampshire Department of Transportation with regard to issues involving the State Conservation Easement or the Town Conservation Easement

2) DHR with regard to issues involving the Historic Preservation Easement

The State or its agencies shall be required to respond to the Town's request in writing within a period of not more than thirty (30) days, expressing its consent or objection.

G. In all cases where the State or the Town is requested to grant its consent or approval to an action by the other party, each party shall act in good faith and endeavor to cooperate in carrying out the purposes and intent of this quitclaim deed and the easements, as defined herein.

12. BENEFITS AND BURDENS

A. The burden of the State Conservation, Town Conservation and Historic Preservation Easements conveyed hereby shall run with the Property and shall be enforceable against all future owners and tenants in perpetuity. Enforcement of the Easements shall be as provided in Laws 1973, Ch. 391 and Laws 1979, Ch. 301, as codified at RSA 477:45 - 47, as may be amended from time to time. The benefits of these Easement shall not be appurtenant to any particular parcel of land but shall be in gross and assignable or transferable only to a qualified organization within the meaning of Section 170(h)(3) of the Internal Revenue Code of 1986, as amended, which organization has among its purposes the conservation and preservation of land and water areas and historical and archaeological resources, and agrees to and is capable of enforcing the Purposes of this Easement. Any such assignee or transferee shall have the like power of assignment or transfer.

B. The State retains the right to give, sell, or otherwise convey its rights under the Town

Conservation Easement and the **Historic Preservation Easement** to a governmental agency, or to another qualified conservation organization as that term is defined in Section 170(h)(3) of the Internal Revenue Code of 1986 (or any successor section) and the regulations promulgated thereunder, which is organized and operated primarily for one of the conservation purposes specified in Section 170(h)(4)(A) of the Internal Revenue Code, provided such conveyance is subject to the terms of this Easement and provided that written notice is given to the Town.

13. BREACH OF EASEMENT

A. When a breach of these Easements, or conduct by anyone inconsistent with these Easements, comes to the attention of the State or the Town, it shall notify the other party in writing of such breach or conduct, delivered in hand or by certified mail, return receipt requested.

B. The party so notified shall have thirty (30) days after receipt of such notice to undertake those actions, including restoration, which is reasonably calculated to swiftly cure the conditions constituting the breach and to notify the State or the Town thereof as the case may be.

C. If the Town or State fails to take such curative action, the other party, its successors or assigns, may undertake any actions, at law or in equity, including injunctions and other actions, that are reasonably necessary to cure such breach and restore the Property, and the cost thereof, shall be paid by the breaching party, provided that said party is determined to be directly responsible for the breach of the agreement.

D. Enforcement of the terms of this Easement shall be at the discretion of the State and any other Easement Holder and any forbearance to exercise its rights under this Easement in the event of any breach of any term of this Easement by the Town shall not be deemed or construed to be a waiver by the State of such term or of any subsequent breach of the same or any other term of this Easement or of any of the State's rights under this Easement.

E. The State and the Town reserve the right, separately or collectively, to pursue all legal remedies against any third party responsible for any actions detrimental to the Purposes of these Easements.

14. MERGER LIMITATION. The State and the Town agree that terms of this Easement shall survive any merger of the fee and easement interest in this Property in any other party.

15. LIMITATION ON AMENDMENT. If circumstances arise under which an amendment to or modification of this Easement may be appropriate, the State and the Town may, by mutual written agreement, jointly amend these Easements provided that no amendment shall be made that will adversely affect the qualifications of these Easements or the status of any State Agency or Easement Holder under any applicable laws including RSA 477:45-47. Any amendment shall be consistent with the Purposes of this Easement and shall not affect its perpetual duration.

16. SEVERABILITY. If any provision of the State Conservation, Town Conservation, or Historic Preservation Easement is found to be invalid by a court of competent jurisdiction, the

remainder of the provisions of the Easements shall not be affected thereby.

17. **STATE LAW CONTROLLING.** The terms of and any disputes arising from this Deed shall be interpreted in accordance with New Hampshire law, and shall be resolved within the Superior Court.

TO HAVE AND TO HOLD the said premises, with all the privileges and appurtenances thereunto belonging to the said Grantee, to them, their heirs, and assigns forever.

IN WITNESS WHEREOF The State of New Hampshire has caused its name to be set and its seal to be hereunto affixed by the Commissioner of The Department of Transportation, duly authorization and executed this 31, day of December, 2008.

Signed, Sealed and Delivered
in the presence of:

THE STATE OF NEW HAMPSHIRE

Commissioner
Department of Transportation

STATE OF NEW HAMPSHIRE,
MERRIMACK, SS.

December 31, A. D., 2008

On this 31 day of December, 2008, before me,
David J. Brillhart, the undersigned officer, personally appeared by
Commissioner of the Department of Transportation, and that as such Commissioner, being
authorized so to do, executed the foregoing instrument for the purposes therein contained, by
signing the name of the State of New Hampshire as the Commissioner of the Department of
Transportation.

IN WITNESS WHEREOF I have hereunto set my hand and seal.

Notary Public/Justice of the Peace
My Commission Expires:

CYNTHIA A. POOLE
Notary Public - NH
My Commission Expires January 24, 2012

AMENDED EXHIBIT "A"

(Land of Arthur J. Provencher)

A certain tract or parcel of land with the buildings thereon situated in the Town of Hudson, County of Hillsborough, State of New Hampshire, more particularly bounded and described as follows:

Beginning at a point on the southerly side of Central Street and the westerly side of Kimball Hill Road where the same intersect, thence;

1. S 84°40' 23" E a distance of 121.36' to a point, thence;
2. S 80°05' 57" E a distance of 112.94' to a point, thence;
3. S 73°44' 02" E a distance of 78.39' to a point, thence;
4. N 85°48' 13" E a distance of 45.66' to a point, thence;
5. N 86°43' 26" E a distance of 28.08' to a point, thence;
6. S 75°04' 19" E a distance of 46.53' to a point, thence;
7. S 80°05' 47" E a distance of 85.30' to a point, thence;
8. S 19°02' 46" E a distance of 186.01' to a point, thence;
9. S 16°31' 33" E a distance of 49.57' to a point, thence;
10. S 17°14' 25" E a distance of 128.13' to a point, thence;
11. N 24°19' 26" E a distance of 270.00' to a point, thence;
12. By a curve to the right, having a radius of 537.96', a distance of 174.34' to a point of tangent, thence;
13. S 37°20' 25" E a distance of 160.86' to a point, thence;
14. By a curve to the left, having a radius of 798.94' a distance of 294.92' to a point of tangent, thence;

15. S $58^{\circ}29' 24''$ E a distance of 238.76' to a point, thence;
16. By a curve to the right, having a radius of 638.11', a distance of 34.27' to a point of tangent, thence;
17. S $56^{\circ}24' 46''$ E a distance of 85.60' to a point, thence;
18. By a curve to the left, having a radius of 265.02', a distance of 207.59' to a point of tangent, thence;
19. N $78^{\circ}42' 28''$ E a distance of 49.36' to a point, thence;
20. By a curve to the left, having a radius of 638.11', a distance of 113.58' to a point of tangent, thence;
21. S $19^{\circ}14' 29''$ E a distance of 60.66' to a point, thence;
22. S $79^{\circ}17' 01''$ E a distance of 33.69' to a point, thence;
23. S $52^{\circ}28' 46''$ E a distance of 23.84' to a point, thence;
24. S $39^{\circ}18' 22''$ E a distance of 111.92' to a point, thence;
25. S $13^{\circ}40' 17''$ E a distance of 25.99' to a point, thence;
26. S $08^{\circ}06' 03''$ E a distance of 110.48' to a point, thence;
27. S $73^{\circ}59' 14''$ E a distance of 18.39' to a point, thence;
28. S $22^{\circ}55' 44''$ E a distance of 92.45' to a point, thence;
29. S $14^{\circ}27' 58''$ E a distance of 69.61' to a point, thence;
30. S $15^{\circ}09' 33''$ E a distance of 95.84' to a point, thence;
31. S $23^{\circ}47' 13''$ E a distance of 106.56' to a point, thence;

32. S 04°40' 52" E a distance of 61.97' to a point, thence;
33. S 03°39' 36" E a distance of 55.17' to a point, thence;
34. S 11°08' 11" E a distance of 68.59' to a point, thence;
35. S 09°17' 15" E a distance of 47.46' to a point, thence;
36. S 14°14' 01" E a distance of 145.43' to a point, thence;
37. S 01°47' 25" E a distance of 109.88' to a point, thence;
38. S 03°53' 53" E a distance of 55.81' to a point, thence;
39. S 02°25' 16" W a distance of 101.05' to a point, thence;
40. S 14°44' 56" W a distance of 65.86' to a point, thence;
41. S 10°58' 18" W a distance of 134.76' to a point, thence;
42. S 08°42' 34" W a distance of 65.61' to a point, thence;
43. S 08°25' 45" E a distance of 32.37' to a point, thence;
44. By a curve to the left, having a radius of 240.02', a distance of 197.14' to a point of tangent, thence;
45. S 61°41' 05" E a distance of 163.82' to a point, thence;
46. By a curve to the right, having a radius of 190.02', a distance of 20.40' to a point of compound curve, thence;
47. By a curve to the right, having a radius of 50.00', a distance of 99.25' to a point of tangent, thence;
48. S 58°12' 00" W a distance of 434.77' to a point, thence;

49. By a curve to the right, having a radius of 125.00', a distance of 23.80' to a point of tangent, thence;
50. S 69°06' 30" W a distance of 176.27' to a point, thence;
51. By a curve to the right, having a radius of 125.00', a distance of 116.78' to a point of tangent, thence;
52. N 57°21' 53" W a distance of 317.59' to a point, thence;
53. N 49°26' 09" W a distance of 407.00' to a point, thence;
54. S 46°31' 03" W a distance of 834.59' to a point, thence;
55. S 46°45' 05" W a distance of 351.75' to a point, thence;
56. S 52°45' 02" W a distance of 92.31' to a point, thence;
57. S 49°32' 20" W a distance of 120.54' to a point, thence;
58. S 43°12' 10" W a distance of 88.91' to a point, thence;
59. S 17°16' 36" W a distance of 76.42' to a point, thence;
60. S 48°55' 50" W a distance of 51.34' to a point, thence;
61. S 54°07' 54" W a distance of 136.08' to a point, thence;
62. S 50°29' 25" W a distance of 52.62' to a point, thence;
63. N 54°03' 42" W a distance of 31.45' to a point, thence;
64. N 47°18' 46" W a distance of 24.02' to a point, thence;
65. N 39°08' 02" W a distance of 36.55' to a point, thence;

66. N 22°19' 57" W a distance of 40.23' to a point,
thence;
67. N 08°48' 03" W a distance of 36.66' to a point,
thence;
68. N 03°26' 59" W a distance of 57.92' to a point,
thence;
69. N 23°49' 59" W a distance of 243.37' to a point,
thence;
70. N 28°14' 15" W a distance of 207.84' to a point,
thence;
71. N 25°17' 52" W a distance of 191.59' to a point,
thence;
72. N 22°13' 55" W a distance of 274.43' to a point,
thence;
73. N 23°55' 23" W a distance of 169.30' to a point,
thence;
74. N 26°41' 35" W a distance of 109.78' to a point,
thence;
75. N 39°39' 24" W a distance of 85.27' to a point,
thence;
76. N 40°01' 28" W a distance of 133.65' to a point,
thence;
77. N 41°01' 25" W a distance of 156.12' to a point,
thence;
78. N 40°24' 46" W a distance of 287.52' to a point,
thence;
79. N 47°30' 27" E a distance of 135.54' to a point,
thence;
80. N 47°59' 02" E a distance of 261.22' to a point,
thence;
81. N 49°45' 41" E a distance of 170.35' to a point,
thence;
82. N 43°27' 53" E a distance of 120.93' to a point,
thence;

83. N 49°23' 38" E a distance of 287.47' to a point, thence;
84. N 48°07' 18" E a distance of 140.90' to a point, thence;
85. N 48°16' 29" E a distance of 165.00' to a point, thence;
86. N 52°24' 19" E a distance of 430.68' to a point, thence;
87. By a curve to the left, having a radius of 3977.68', a distance of 235.19' to a point of tangent, thence;
88. N 31°54' 02" W a distance of 230.17' to a point, thence;
89. By a curve to the left, having a radius of 727.42', a distance of 125.65' to a point of tangent, thence;
90. S 53°36' 25" W a distance of 432.91' to a point, thence;
91. N 40°23' 19" W a distance of 208.66' to a point, thence;
92. N 87°01' 25" W a distance of 108.20' to a point on the southerly side of Central Street, thence;
93. N 53°39' 51" E a distance of 272.43' along the southerly side of Central Street, thence;
94. N 56°21' 08" E a distance of 618.90' along the southerly side of Central Street to the point of beginning.

Containing 7,222,688 square feet or 165.8 acres.

Meaning and intending to describe Lot 25/Map 20 as shown on a Plan entitled, "Overall Consolidation & Subdivision Plan, Lot 25/Map 20 Lot-1-1/Map 21, Thurston's Landing (West), Bush Hill Road, Hudson, NH", prepared for Thurston's Landing Realty Co. by Maynard & Paquette, Inc., dated November, 1987, and recorded in the Hillsborough County Registry of Deeds, Plan #22834.

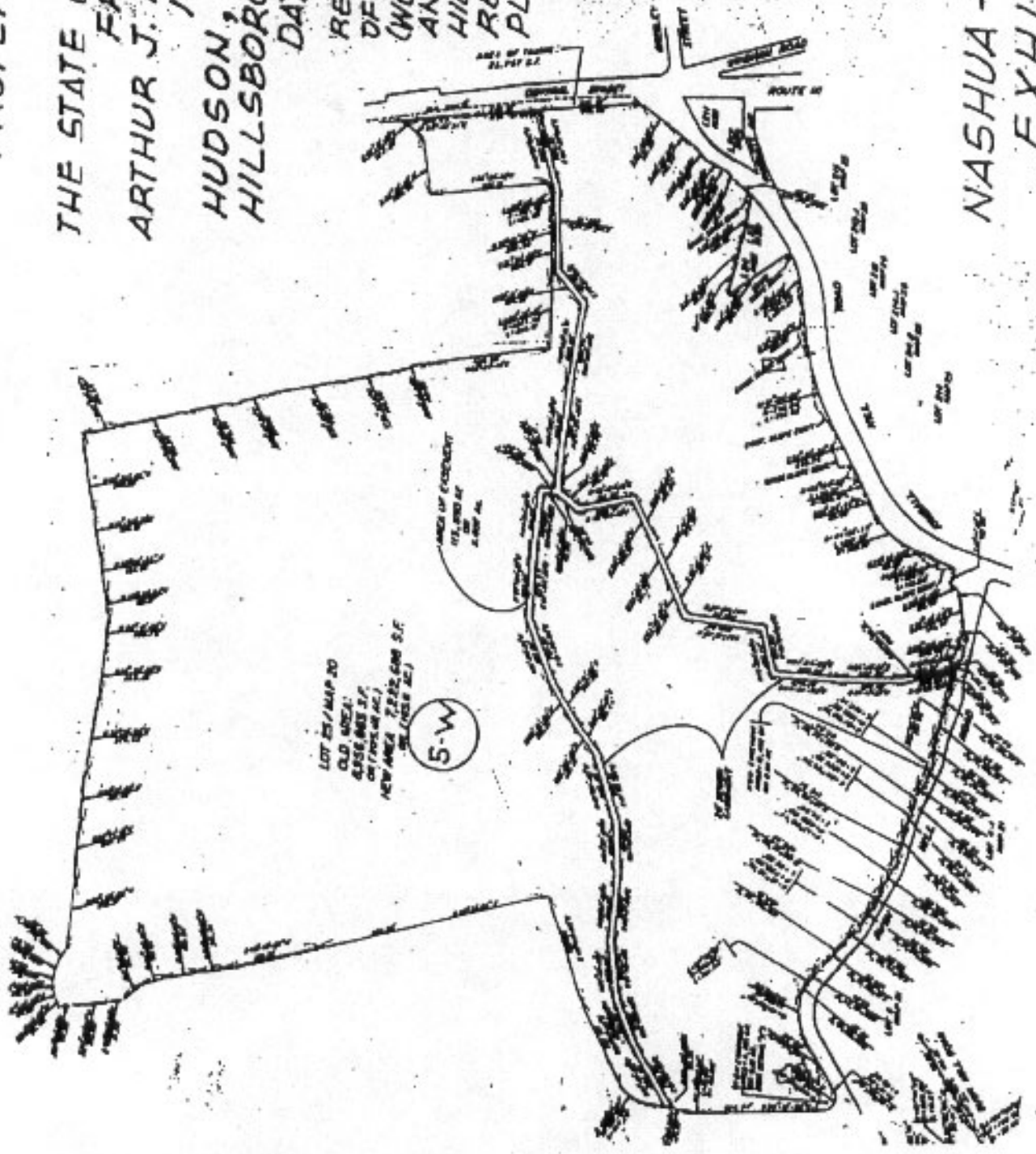
Subject to sewer, slopes, right-of-way and drainage easements conveyed by Arthur J. Provencher to Security Homes, Inc., dated December 23, 1988 and recorded in Hillsborough County Registry of Deeds, Book 5075, Pages 1437, 1449, 1456 and 1459 respectively, and a sewer and drainage easement to

Thurston's Landing Realty Co., dated October 17, 1988, recorded in Book 5075, Page 1528. See also a consent and authorization agreement between Arthur J. Provencher and Security Homes, Inc., dated December 23, 1988, recorded in Book 5075, Page 1463.

All of the above easements and agreements relate to public facilities in place or to be constructed and eventually to be deeded or accepted by the Town of Hudson.

PROPERTY ACQUIRED
BY
THE STATE OF NEW HAMPSHIRE
FROM
ARTHUR J. PROVENCHER
IN
HUDSON, NEW HAMPSHIRE
HILLSBOROUGH COUNTY
DATE: JUNE 30, 1992

REDUCED FROM PLAN
OF THURSTON'S LANDING
(WEST) DATED NOV '87
AND RECORDED IN THE
HILLSBOROUGH COUNTY
REGISTRY OF DEEDS
PLAN NO. 22834



NASHUA-HUDSON, 10644
EXHIBIT "B"