

## ROAD MANAGEMENT AGREEMENT

This Road Management Agreement (the “Agreement”) dated as of the \_\_\_\_ day of \_\_\_\_\_, 2013, is by and between The *CONNECTICUT LAKES REALTY TRUST*, a Trust formed pursuant to Agreement dated March 12, 2002 and recorded in the Registry of Coos County, New Hampshire , 5A Riberolle St., P.O. Box 155, Wellsboro, PA 16901 (hereinafter, “Landowner,” which word shall, unless the context clearly indicates otherwise, include the Landowner’s successors and assigns), and the STATE OF NEW HAMPSHIRE, acting by and through the Department of Resources and Economic Development with an address of 172 Pembroke Road, P.O. Box 1856, Concord, New Hampshire 03302-1856 (hereinafter, the “State,” which word shall, unless the context clearly indicates otherwise, include the State’s successors and assigns).

### RECITALS

Whereas, Landowner has granted a Conservation Easement to the State on certain lands in Coos County, New Hampshire (the “Property”) by easement deed (the “Conservation Easement”);

Whereas, Section 5.E of the Conservation Easement requires the Fee Owner and the Easement Holder to enter into a Road Management Agreement with respect to the maintenance and management of certain roads on the Property subject to the Conservation Easement (the “Designated Roads”);

Whereas, Landowner has conveyed the Designated Roads to the State by a deed , subject to the Conservation Easement and a reserved easement for the benefit of Landowner, its successors and assigns (the “Deed and Reservation”);

Whereas, the Deed and Reservation provides, *inter alia*, that the State, as Easement Holder under the Conservation Easement, shall continue to carry out certain obligations under the Conservation Easement with respect to the Road Management Agreement although it has become the fee owner of the Designated Roads;

Whereas, the parties wish to set forth in this Agreement their mutual agreement with respect to the maintenance and management of the Designated Roads, and acknowledge that this initial Agreement, as set forth in the Conservation Easement, is to be updated, amended and modified from time to time as provided in the Conservation Easement;

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties acknowledge and agree as follows:

1. Definitions. Unless specifically defined in this Agreement, capitalized terms, including the term “Designated Roads,” “Licensees,” “Licensed Sites,” and “Road Maintenance” shall have the meaning set forth in the Conservation Easement and the Deed and Reservation.
2. Term. As set forth in the Conservation Easement, the term of this Agreement shall be five years, commencing upon the execution of this Agreement.

3. Use of Designated Roads. The parties' respective rights to use and to permit others to use the Designated Roads are set forth in the Conservation Easement and the Deed and Reservation and such rights are not affected by this Agreement. Pursuant to the easement the parties, by mutual agreement, may add or remove segments of Designated Roads. Designated Roads for the term of this agreement are those shown on Exhibit B.

4. Maintenance of Designated Roads; Specifications. During the term of this Agreement, the State agrees to maintain the Designated Roads described below in accordance with the specifications attached as Exhibit A (the "Specifications") and to repair and improve such roads in accordance with the Specifications on a schedule agreed to by the parties:

- (a) The roads shown on Exhibit B and designated "Designated Roads"
- (b) The roads shown on Exhibit C and designated "Road Closed to Public Vehicle Use."
- (c) The roads shown on Exhibit B that are located on lands owned by third parties over which the State holds easements for ingress and egress to the Property ("Third Party Roads").

5. Access by Public over Road System. During the term of this Agreement, the State may permit the public to travel at certain times by motor vehicles registered for highway use over the Designated Roads shown on Exhibit C and marked "Open Roads" or "Seasonal Use Roads". The State will close to public travel by motor vehicle all Designated Roads that are not marked "Open Roads" or "Seasonal Use Roads" on Exhibit C. Exhibit C may be amended from time to time with agreement of the parties. As the parties agree, the State shall install a lock system on all gates at the State's expense. The Landowner shall be provided with keys or combinations permitting access to all gates. Keys or combinations shall also be provided to all necessary law enforcement and emergency services entities. The Landowner shall inform the State contact person designated in Section 20 of any party other than itself or its employees to whom it provides keys or combinations. If roads are not gated, but are closed to public access, the State shall post signs indicating that the roads are closed. The State shall also post signs at regular intervals on all Open Roads and Seasonal Use Roads that are used for Forest Management Activities, at minimum at the beginning of and at intersections of roads, reminding the public of such use. The State shall be responsible for the management of the public's use of the roads and may regulate use of and access to the Open Roads and the Seasonal Use Roads by the public (which for the purpose of this Section 5 shall also include the Licensees of Licensed Sites and their invitees) at any time in accordance with the terms of the Conservation Easement. Notwithstanding the previous sentence, the Landowner shall have a right to access any Designated Road as needed subject to the provisions of Section 14.

6. Motorized Recreational Use; Designated Snowmobile Trails; Damage from Motorized Recreational Use. During the term of this Agreement, when conditions permit, the State intends to permit the public to use the Designated Roads shown on Exhibit D for use as groomed Designated Snowmobile Trails. The parties acknowledge that Exhibit D may change annually and shall agree upon the original version of Exhibit D by November 1, 2013 and then annually by September 1 of each subsequent year of this agreement.. If the State permits use of the

Designated Roads (whether or not such roads are described in Section 4) by motorized or mechanized vehicles other than registered motor vehicles (for example, use by bicycles, snowmobiles or OHRVs), the State agrees to repair the Designated Roads to the extent that such use (including plowing and grooming of Designated Roads for use as snowmobile trails) damages the roads (as differentiated from normal wear and tear) and causes the roads not to meet the Specifications.

7. Planned Maintenance, Replacement and Improvements. A description of the road maintenance, replacement and/or improvements that the parties agree to and that the State plans to perform during the term of this Agreement (including the replacement, repair and improvement of road beds, ditch lines, bridges, culverts and roadway structures), allocated between capital improvement and routine maintenance, and the intended location and timing of such work is attached as Exhibit E. The parties acknowledge that circumstances beyond either party's control may cause the need to amend Exhibit E, with agreement, in accordance with the priorities established in Exhibit A.

8. Annual Maintenance and Operations Budgets. The annual maintenance and operations budget for the first year of this Agreement is attached as Exhibit F. The Estimated Annual Maintenance and Operations Budget for each subsequent year of this Agreement shall be drafted by October 1<sup>st</sup> and finalized by the following June 1<sup>st</sup>.

9. Annual Capital Improvement Budgets. The annual capital improvement budget for each of the years of this Agreement is attached as Exhibit G. Notwithstanding the foregoing provision of this Section, given the parties' mutual understanding that there is substantial continued maintenance needed to the Designated Roads as a result of the timber management and public road use, the parties agree that during the term of this Agreement, capital improvements will be covered in the Annual Maintenance and Operations Budget as road rehabilitation work or as emergency repairs, whichever is applicable. The State shall also hold out the interest funds from the Road Maintenance Endowments from FY 2005 and FY 2006 and keep them in escrow for use for capital improvement projects during the time of this agreement.

10. Use of Landowner's Gravel. A depiction of the location of the gravel pits on the Property from which the State may remove sand and gravel for road maintenance work is set forth in Exhibit H.

11. Landowner's Right to Maintain. The Landowner shall have the right to, but no legal or financial responsibility, to maintain and reconstruct any of the Designated Roads, provided, however, (i) if the Landowner maintains Designated Roads that the State has agreed to maintain under Section 4 of and Exhibit E, subject to the priorities established in Exhibit A, to this Agreement, but which the State is unable or has failed to maintain, then the Landowner may, after notice to the state, either (a) maintain such roads to the Specifications, in which event the public shall be entitled to access by registered motor vehicle over such roads and the Landowner shall be entitled to a credit against its Road Contribution as defined in Section 13; or (b) maintain such roads in a manner acceptable to Landowner, but not to Specifications, in which event the public shall not be entitled to vehicular access over such roads and the Landowner shall not be entitled to a credit against its Road Contribution, or (ii) if the Landowner maintains Designated Roads that the State has not agreed to maintain under Section 4 of and Exhibit E to this

Agreement, then, unless both parties agree otherwise, the Landowner's maintenance of such roads need not be to the Specifications, the public shall not be entitled to vehicular access over such roads, and the Landowner shall not be entitled to a credit against its Road Contribution.

12. Contributions. Acknowledging that the State cannot bind future Legislatures to expend funds for maintenance of all or a portion of the Designated Roads, the parties acknowledge and agree that the State and the Landowner expect that each party will contribute to the maintenance of the Designated Roads, and that the Landowner's payments will be based on its use and the use of those Persons Accessing Through Landowner as defined in Section 15(a), and may change over time depending upon the nature of the Landowner's use of the Designated Roads and that the State's payments will be based on its and the public's use and may change over time depending on the nature of that use.

13. Landowner's Contribution to Maintenance Expense. The Landowner shall contribute toward the State's expense of maintaining the Designated Roads and the Third Party Roads that are described in Section 4 by paying to the State annually a Base Amount (the "Base Amount") in the amount of Twenty-Five Thousand Dollars (\$25,000) per annum, to be paid on or before May 1<sup>st</sup> of each year, and an additional amount (the "Usage Fee") in the amount of One Dollar and Forty Cents (\$1.40) per cord of timber removed from the Property, to be paid on or before July 1<sup>st</sup> of each year (the Base Amount and the Usage Fee are referred to herein, collectively, as the "Road Contribution"). The Usage Fee for each year shall be due in arrears and based upon the amount of timber removed from the Property during the fiscal year of April 1 to March 31 prior to the date when due. The Road Contribution shall be remitted to the Commissioner of the Department of Resources and Economic Development at the address set forth in paragraph 20 of this Agreement.

14. Damage to Designated Roads. In the event of damage to the Designated Roads (as differentiated from normal wear and tear), which is caused by the Landowner's exercise of its Reserved Rights under the Conservation Easement and the Deed and Reservation (including, without limitation, Forest Management Activities, but excluding any damage to the roads caused by Licensees of Licensed Sites or their invitees), the Landowner shall either (i) reimburse the State for the expense of repairing such damage, or (ii) take such independent actions as are necessary, at Landowner's cost and expense, to repair such damage, such that the damaged portion of the Designated Road is repaired in accordance with the Specifications. Similarly, in the event of damage to the Designated Roads, which is caused by or in connection with the State's exercise of its rights under the Conservation Easement and the Deed and Reservation (including, without limitation, damage caused by the public, but excluding any damage to the roads caused by the Licensees of Licensed Sites or their invitees), the State shall take such actions, at the State's cost and expense, as are necessary to repair such damage, such that the damaged portion of the Designated Road is repaired in accordance with the Specifications.

15. Use by Landowner's Agents, Contractors, Invitees, Permittees, Landowners and Third Parties under Easements.

(a) Maintenance Expense Associated with Use. As provided in the Conservation Easement and the Deeds and Reservation, the Landowner may permit the following persons to use the Designated Roads, whether or not they are open to motorized or mechanized use by the

public: (i) the Landowner's agents, contractors, invitees and permittees; (ii) the Licensees of Licensed Sites and their invitees, subject however to Section 5 which allows the State to regulate such use in order to avoid damage to roads; and (iii) third parties who the Landowner grants easements for access (collectively, (i) through (iii) are referred to herein as "Persons Accessing Through Landowner"). The parties agree that the Base Fee paid by the Landowner under Section 6 shall include routine use by the persons listed above under (i) and (ii); however, if the Landowner enters into new licenses or leases or grants easements for access to third parties in accordance with the Conservation Easement, the Road Contribution shall be increased in accordance with the formula set forth on Exhibit I to reflect the increase in use of the Designated Roads.

(b) Damage. In the event of damage to the roads (as differentiated from normal wear and tear) that is directly tied to the use by the Landowner or Persons Accessing Through Landowner (excluding damage caused by the Licensees or their invitees), as between the State and the Landowner, the Landowner shall be responsible for the costs and expenses incurred to correct such damage. In the event of such damage, the State or, if the Landowner elects to do so, the Landowner shall take such actions as are necessary to repair such damage, such that the damaged portion of the Designated Road is repaired in accordance with the Specifications. Nothing herein shall prevent the Landowner from requiring the party responsible for causing the damage to reimburse the Landowner. Nothing herein shall prevent the State from requiring a Licensee or its invitee responsible for causing damage to reimburse the State.

16. Additional Rules and Regulations regarding Use and Management of the Designated Roads. The parties agree to the additional rules and regulations regarding use and management of the Designated Roads are set forth on Exhibit J.

17. Use of Funds by State.

(a) Dedicated Account. The State shall establish two dedicated accounts for the receipt of the Landowner's Road Contribution: a dedicated escrow account for annual maintenance expenses, which may be currently expended or reserved for expenditure on annual maintenance in future years (the "Dedicated Maintenance Account") and a dedicated escrow account for Capital Expenditures, which may be currently expended on Capital Expenditures or reserved for expenditure on capital expenditures in future years, but which may not be used for routine maintenance (the "Dedicated Capital Account"). The State shall deposit at most, 100% of the annual Base Amount and, at most, seventy-five percent (75%) of the annual Usage Fee in the Dedicated Maintenance Account. The State shall deposit a minimum of 10% of the annual Usage Fee in the Dedicated Capital Account. At the State's discretion, all or a portion of the funds held in the Dedicated Maintenance Account may at any time or from time to time be transferred to the Dedicated Capital Account. Notwithstanding the foregoing provisions of this section, the parties agree that during the term of this Road Management Agreement, the State may expend the entire Road Contribution on routing maintenance and need not deposit any portion of the Road Contribution in the Dedicated Capital Account. For the purposes of this section "Capital Expenditures" shall mean any structure or repair in excess of \$25,000 or anticipated to have a life span of greater than 10 years.

(b) Remedy in the Event Funds are not Appropriated. The parties acknowledge that the Landowner's Road Contribution is intended to cover only a portion of the annual expenses necessary to maintain the Designated Roads and that, during the term of this Agreement, the parties expect (given current usage of the Designated Roads by the Landowner and the public) the contribution of each party to be approximately equivalent. In the event that the Legislature does not appropriate biennially an amount for maintenance of and Capital Expenditures on the Designated Roads that is equal to the Landowner's Road Contribution, the State may draw down the full amount in the Dedicated Maintenance Account; however, the State must replace the amount expended within two years. In addition, if the State fails to perform the work described in Exhibit E, the Landowner may, but shall not be required to, pay for such work to be performed. If the Landowner makes such expenditures, the Landowner shall be entitled to a credit against amounts due as its Road Contribution for the next year and any succeeding years, if applicable, until the Landowner is reimbursed for such expenditures (with the result that the Landowner may, if such credit exceeds the Landowner's Road Contribution otherwise due for the year, withhold such Road Contribution).

18. Minor and Emergency Road Work; Unanticipated Major Road Work.

(a) In the event that the Landowner discovers minor emergency road work or damage that prohibits passage by forestry vehicles (such as road bed repair or replacement of a culvert) on the roads identified in Exhibits B & C, subject to the priorities for road work established in Exhibit A, which (1) requires correction on an immediate or emergency basis in order to permit the Landowner or its Persons Accessing Through Landowner to carry out harvesting and /or transportation of timber, and (2) costs less than \$5,000 per repair, the Landowner may make such repairs, in its sole discretion, provided that the Landowner (i) provides advance notice to the State of the need for such work and (ii) the State has either not responded or has responded that it is unable to perform such work within forty-eight hours after delivery of such notice. If the Landowner has complied with the conditions of the preceding sentence, the Landowner may undertake such work and credit such expenditures against amounts otherwise owed to the State as the Road Contribution (and the State may then move such credited amount, if available, to the Dedicated Maintenance Account from the Dedicated Capital Account) , provided that invoices for such work are provided to the State promptly after such work is performed and the condition, repair, and the cost of repair is otherwise documented (including photographs of the road condition requiring repair).

(b) In the event that major emergency road damage occurs that prohibits passage by forestry vehicles (such as major wash-outs or bridge damage) on the roads identified in Exhibits B & C, and repair of such damage was not anticipated in this Agreement, either party may propose an amendment to this Agreement in accordance with the Conservation Easement. In addition, in the event that such damage to the roads (1) requires correction on an immediate or emergency basis in order to permit the Landowner or Persons Accessing Through the Landowner to carry out harvesting or timber transportation activities on the Property, and (2) is expected to cost less than \$25,000 to repair, the Landowner may repair such damage provided that the Landowner (i) provides advance written notice to the State of the need for such work and (ii) the State has either not responded, or has responded that is unable to commence performance of such work within fifteen days after delivery of such notice. If the Landowner has complied with the

conditions of the preceding sentence, the Landowner may make such repairs up to an aggregate cost of \$25,000 and may credit such expenditures against amounts otherwise owed to the State as the Road Contribution (and the State may then move such credited amount, if available, from the Dedicated Capital Account to the Dedicated Maintenance Account), provided that invoices for such work are provided to the State promptly after such work is performed and the condition, repair, and the cost of repair is otherwise documented (including photographs of the road condition requiring repair). In addition, with the consent of the State, the Landowner may make additional Road Contributions, in excess of amounts otherwise due under Section 13, so that emergency road work may occur immediately and such additional contributions shall be credited against future Road Contributions on a schedule acceptable to the parties.

19. Dispute Resolution; Remedy for Breach. In the event of a breach in the terms of this Agreement, each party shall have the benefit of and shall be entitled to seek a remedy in accordance with the process set forth in and the provisions of Sections 6, 7, and 8 of the Conservation Easement, which are hereby incorporated in this Agreement as if fully set forth herein.

20. Notice. The State and the Landowner shall each designate one or more contact people for such party. Each party shall designate a person who shall be responsible for administration of this Agreement on behalf of such party, and shall designate a person to receive notice and, if appropriate, respond to requests for emergency work under Section 17(a) of this Agreement. All notices, demands and other communications hereunder shall be in writing (except for notices under Section 17(a), which may be by telephone, with a written confirmation of such notice by facsimile on the same date) and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the third business day after mailing if mailed to the party to whom notice is to be given by first class mail, postage prepaid, certified, return receipt requested, addressed as follows:

To the State:

For Administrative Issues:

Chris Gamache, Chief

State of New Hampshire, Department of Resources and Economic Development

Division of Parks and Recreation

Bureau of Trails

172 Pembroke Road

P.O. Box 1856

Concord, NH 03302-1856

Telephone: (603) 271-3254

For Road Work Needs:

Sandy Young, Regional Supervisor

Great North Woods Region

Pittsburg, NH 03592

Telephone: (603) 538-7607 or (603) 538-6965

To the Landowner:

Matt Sampson  
c/o The Forestland Group  
5A Riberolle St.  
P.O. Box 155  
Wellsboro, PA 16901

Either party may change the address to which its future notices shall be sent by giving the other party notice of the new address in the manner described herein.

21. Miscellaneous.

(a) Rights and Obligations; Counterparts; Validity. The rights and obligations hereunder shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. This Agreement may be simultaneously executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all of which together shall constitute one and the same instrument. As used in this Agreement, the singular number shall include the plural, the plural the singular, and the use of the masculine shall include where appropriate the feminine and neuter. If any provision of this Agreement is determined to be invalid or unenforceable, it shall not affect the validity or enforcement of the remaining provisions hereof.

(b) Governing Law. This Agreement shall be interpreted, construed and enforced according to the laws of the State of New Hampshire.

(c) Third Party Liability. Nothing contained in this Agreement shall create any liability on behalf of the Landowner or the State to any third party or create any right, claim or cause of action on behalf of any party other than the Landowner or the State and their respective successors and assigns. Nothing in this Agreement shall be interpreted as an assumption of responsibility by, or basis for liability on the part of, the Landowner or State for any injury to person or damage to property or loss of life that may be sustained by any person while on the Property subject to this Agreement or sustained by any such person as a result of any entry on or use of the Property. The State and the Landowner reserve all defenses available to either of them under New Hampshire law including sovereign immunity.



IN WITNESS WHEREOF, \_\_\_\_\_, duly authorized \_\_\_\_\_ of the Connecticut Lakes Realty Trust and \_\_\_\_\_, duly authorized \_\_\_\_\_ of the State of New Hampshire, Department of Resources and Economic Development, have executed this Road Management Agreement this \_\_\_\_ day of \_\_\_\_\_, 2013.

Connecticut Lakes Realty Trust

By: \_\_\_\_\_

Title: \_\_\_\_\_

Matt Sampson  
Duly Authorized

STATE OF NEW HAMPSHIRE

By: \_\_\_\_\_

Title: \_\_\_\_\_

Jeffrey J. Rose  
Commissioner  
Duly Authorized

List of Exhibits

Exhibit A	Specifications
Exhibit B	Map depicting roads to be maintained during term of Agreement and referenced as “Designated Roads”
Exhibit C	Map depicting roads to be open to the public and referenced as “Proposed Road and Gate Management for Public Vehicle Use”
Exhibit D	Map depicting Designated Roads that are Groomed Designated Snowmobile Trails to be completed by September 1, 2007, and September 1 of each subsequent year
Exhibit E	Description of planned annual road maintenance, replacement and improvements . Maps referenced as “Five Year Maintenance Plan Roadside Mowing Schedule” and Five-Year Maintenance Plan Road Grading Schedule Part A”. Maps from 2007-2012 plan included for reference but Mowing and Grading will be done where needed to coordinate with forest management activities.
Exhibit F	Estimated Annual Operations Budgets to be completed by November 1, 2013 for the second year of the Agreement and to be finalized by June 2014
Exhibit G	Estimated Capital Improvements Budget for FY 2014-2015 Initial
Exhibit H	List of Gravel Pits
Exhibit I	Method for adjustment to Road Contribution for (i) New Leases; (ii) Easement Grants to Third Parties for Forest Management Uses and (iii) other Reserved Rights impacting maintenance of Designated Roads
Exhibit J	Additional Rules and Regulations for Use [not prepared for this Agreement]

## **Exhibit I**

### Method for adjustment to Road Contribution for (i) New Leases; (ii) Easement Grants to Third Parties for Forest Management Uses and (iii) other Reserved Rights impacting maintenance of Designated Roads

1. In the event that the Landowner grants easements for access to third parties in accordance with the Conservation Easement during the term of this Agreement, where such easements involve the off public highway hauling of timber, the Usage Fee shall be increased by \$.05 per ton per mile carried over the Designated Roads by such third parties (based upon records submitted by the third parties to the Landowner). The parties will also agree upon a mutually acceptable increase in the Base Fee or the Usage Fee in the event that an easement granted to a third party results in a significant increase in the passage of passenger vehicles over the Designated Roads.
  
2. If the Landowner enters into new Leases in accordance with the Conservation Easement during the term of this Agreement, there shall be no change in the Usage Fee, but the annual Base Fee shall be increased by \$42.00 for each new Lease.
  
3. If the Landowner exercises Reserved Rights under the Conservation Easement during the term of this Agreement, other than Forest Management Activities and those described in paragraphs 1 and 2 above, and the exercise of those rights results in increased usage of the Designated Roads that are being maintained during the term of this Agreement, the parties agree to amend this Agreement to provide for an increase in the Usage Fee and/or the Base Fee to reflect the increased cost of maintaining the roads resulting from such usage.

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