# MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (the “MOU”) is entered into as of the \_\_\_\_\_ day of June, 2002, by and among NEW ENGLAND FORESTRY FOUNDATION, INC., a Massachusetts charitable corporation with its principal office and mailing address at (“NEFF”) and LAND TRUST, INC., a nonprofit corporation with its principal office and mailing address at (“LT”).

WITNESSETH:

WHEREAS, LT is a land trust formed to acquire interests in land for conservation and open space uses in\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_;

WHEREAS, NEFF is a land conservation organization with experience negotiating with private landowners for the conservation of forest-based land ownerships;

WHEREAS, NEFF has experience managing land conservation projects, including fundraising for land conservation from individuals, corporations and foundations;

WHEREAS, LT and NEFF wish to cooperate and assist one another in a multi-phase land protection effort in the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ region of \_\_\_\_\_\_\_\_\_\_\_\_\_County, initially pursuing the acquisition of several tracts of land encompassing approximately \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ acres (hereinafter, the “\_\_\_\_\_\_\_\_\_\_ Project” or the “Project”);

WHEREAS, LT and NEFF, by near or even date, will execute an Option Agreement (the “\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Agreement”) between LT and NEFF, as Buyers, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as Seller, pursuant to which the Buyers shall have the opportunity to exercise the option by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

WHEREAS, in order to purchase the Property, LT and NEFF must raise significant funds, including, without limitation, option consideration, , the purchase price, closing costs, endowment stewardship, legal expenses, fundraising expenses, and staff costs (collectively, the “Project Costs”);

WHEREAS, LT and NEFF wish to set forth their understanding of their roles in pursuing the Farm Cove Project in this Memorandum of Understanding (the “MOU”);

NOW THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the parties agree that:

1. **Cooperative Fundraising Effort.** During the term of this MOU, the parties shall engage in a cooperative fundraising effort to raise the Project Costs necessary to acquire the Properties. Each entity shall raise funds independently, but cooperatively. Contributions received by each organization shall be reflected on the books of the receiving organization. All money raised by each organization for the Project shall be used for the Project unless the project is terminated, in which case, restricted funds shall be used in accordance with the terms of each donor’s gift. Money raised shall first be applied to the Project unless donor specifies otherwise.
2. **Independent Organizations.** The parties shall remain independent non-profit organizations and the relationship between them under this MOU shall be as cooperating entities and not as partners. Each organization shall remain responsible for its own routine operating expenses not associated with the Project.
3. **Project Director.** LT shall designate a member of its Board of Directors to serve as the LT Project Director and the principal contact for day-to-day decisions of LT regarding the Project. NEFF shall designate a member of its Board of Directors or staff to serve as the NEFF Project Director and the principal contact for day-to-day decisions of NEFF regarding the Project.
4. **Project Budget**. A budget shall guide all management and financial decisions regarding the Project. The initial budget for the Project is attached hereto and incorporated herein as Exhibit A (the “Budget”) and by approval of this Agreement is deemed approved by each party. The Project Director of either entity may recommend from time to time amendments to the Budget, which shall be submitted by each party’s Project Director to its Board for approval (unless such Board delegates approval authority to the Project Director to approve changes in the Budget). No amendment shall take effect until approved by both parties. Upon request by one party to the other, with at least thirty days advance notice, the Finance Committees of each Board, shall meet to review budgetary issues concerning the Project.
5. **Staff Costs.** NEFF shall be responsible for raising and funding the NEFF staff costs incurred in connection with the Project. LT shall be responsible for raising and funding the LT staff costs incurred in connection with the Project. NEFF agrees to make a grant of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_toward the initial staff costs of LT to be incurred in connection with the Project.
6. **Budget Development, Financing, Accounting and Financial Reporting**. The parties will manage the funds raised by each organization as follows:
   1. **Accounting for Contributions.** Each party shall establish and maintain two separate Fidelity Brokerage accounts, or other similar stock accounts for the Project under their respective federal tax identification numbers, of which one account shall be designated and restricted to funds received for acquisition costs of the Properties and one account shall be designed and restricted to funds received for general project expenses, including staff costs. Funds shall be received, booked, recorded and reported to each party in accordance with Exhibit A attached hereto.
   2. **Expenditures of Contributions from General Project Expense Account.** The parties shall use their best efforts to equally fund expenses outlined in the budget equally from funds held by each organization, but recognize that the contributions received by each organization may be unequal in amount. The Project Directors shall consult with each other prior to expenditures of funds held by it (but no approval of the other party shall be required). It shall be presumed that expenditures of contributions from the acquisition account shall be used at closing.
   3. **Tax Reporting**. The Form 990 filed by each party with the Internal Revenue Service for the taxable period covered by the Project shall report the operations of the Project in a manner that is consistent with the operations and accounting for the Project described in this MOU and applicable tax laws..
7. **Term of MOU; Termination.** This MOU shall commence upon execution by both parties and shall terminate three months after the closing of the Property and the overall easement, unless earlier terminated by either party upon thirty days notice. All covenants and agreements shall survive termination of the MOU.
8. **Acquisition.** If the Project Costs are raised in full and the Property is acquired in accordance with the terms of the Option Agreement, the parties agree that LT shall hold a fee interest in the Property and shall, at closing of the acquisition of the Properties, convey a conservation easement to NEFF in substantially the form attached hereto as Exhibit B. The deed to LT and the conservation easement to NEFF shall each provide that in the event that LT (i) no longer wishes or is able to maintain the responsibilities of ownership of the Properties, (ii) attempts to transfers the property to a third party without the approval of NEFF, which approval shall not be unreasonably withheld, or (iii) ceases to exist and/or to be in good standing with the State of \_\_\_\_\_\_, NEFF shall have the right to acquire the fee interest in the property for one dollar. Further, if NEFF shall cease to exist or wish to transfer the property to another entity, said transfer shall only take place to a conservation organization whose purpose is conservation of forestlands in the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ region.
9. **Amendments and Waivers.** Neither this MOU nor any term hereof may be changed, waived, discharged or terminated orally or in writing, except that any term of this MOU may be amended and the observance of any such term may be waived (either generally or in a particular instance and either retroactively or prospectively) with (but only with) the written consent of all parties hereto.
10. **Miscellaneous.** This MOU shall be construed and enforced in accordance with the laws of \_\_\_\_\_\_\_\_\_. This MOU embodies the entire agreements and understandings between the parties and supersede all prior agreements and understandings relating to the subject matter hereof. All of the terms of this MOU, whether so expressed or not, shall be binding upon, and inure to the benefit of, the respective personal representatives, successors and assigns of the parties. All of the Exhibits to this MOU are made a part of this MOU as though set forth in full herein. The headings in this MOU are for convenience of reference only, and shall not limit or otherwise affect the meaning hereof. This MOU may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[SIGNATURES ARE ON THE FOLLOWING PAGE.]

***IN WITNESS WHEREOF,*** the parties have executed this MOU on the date first above written.

WITNESS:

NEW ENGLAND FORESTRY FOUNDATION, INC.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: By:

Its: Director of Land Protection

LAND TRUST, INC.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: By:

Its: President