

THIS IS A TRANSFER TO AN INSTRUMENTALITY OF THE STATE AND IS EXEMPT FROM THE NEW HAMPSHIRE REAL PROPERTY TRANSFER TAX PURSUANT TO RSA 78-B:2, I

### **CONSERVATION EASEMENT DEED**

**Bradley R. Jones**, 18 Winnicutt Road, Stratham, County of Rockingham, State of New Hampshire (hereinafter referred to as the "Grantor" which word where the context requires includes the plural and shall, unless the context clearly indicates otherwise, include the Grantor's executors, administrators, legal representatives, devisees, heirs, successors, and assigns),

for consideration paid, with warranty covenants, grants in perpetuity to

the **Rockingham County Conservation District**, a subdivision of the State of New Hampshire (RSA 432:12), a "qualified organization" within meaning of Section 170 (b)(1) of Internal Revenue Service Code of 1986, as amended, and a governmental body eligible to hold a "conservation easement" within meaning of NH RSA 477:45-47, with principal offices at and a mailing address of 110 North Road, Brentwood, New Hampshire, (hereinafter referred to as the "Grantee" which word shall, unless the context clearly indicates otherwise, include the Grantee's successors and assigns), and an Executory Interest to the **Town of Stratham**, a municipal corporation, situated in the County of Rockingham, State of New Hampshire, acting through its Conservation Commission pursuant to NH RSA 36-A:4, with a mailing address of 10 Bunker Hill Avenue, Stratham, New Hampshire 03885, (hereinafter referred to as the "Executory Interest Holder"),

the Conservation Easement (herein referred to as the "Easement") hereinafter described with respect to that certain parcel of land (herein referred to as the "Property") with any and all buildings, structures, and improvements thereon situated on the south side of Winnicutt Road, in the Town of Stratham, County of Rockingham, State of New Hampshire, (as shown on a Plan entitled "Conservation Easement Plan" drawn for Bradley R. Jones and dated March 2007 recorded herewith) (hereinafter referred to as the Plan) more particularly bounded and described in Appendix "A" attached hereto and made a part thereof.

#### **1. PURPOSES**

The Easement hereby granted is pursuant to NH RSA 477:45-47, exclusively for the following conservation purposes:

- A. The preservation and conservation of open spaces, particularly the conservation of the 34.42 acres of productive farm and/or forest land of which the land area subject to the Easement granted hereby consists, and of the wildlife habitat on the property, and the scenic enjoyment of the general public.
- B. These purposes are consistent with the clearly delineated open space conservation goals and/or objectives stated in the August, 1998 Master Plan of the Town of Stratham ("the Master Plan"), in Chapter 7 (Resource Conservation and Preservation): "Although Stratham's natural features still exist in abundance, past development has inevitably resulted in the loss of some resources, especially open spaces and active agricultural land. Careful attention must be given to future development so that further losses to both the natural and cultural environment are minimized and that the essential qualities that make Stratham the community it is remain intact;" and the clearly delineated open space conservation goals and/or objectives as stated in Chapter 8 (Existing and Future Land Use) of the Master Plan, which states that "[t]he protection of open space in Stratham is necessary and desirable for a variety of reasons....".
- C. With New Hampshire RSA Chapter 79-A:1 which states in pertinent part: "It is hereby declared to be in the public interest to encourage the preservation of open space, thus providing a healthful and attractive outdoor environment for work and recreation of the state's citizens, maintaining the character of the state's landscape, and conserving the land, water, forest, agricultural and wildlife resources."

All of these purposes are consistent and in accordance with the US Internal Revenue Code, Section 170(h).

The Easement hereby granted with respect to the property is as follows:

2. **USE LIMITATIONS** (Subject to reserved rights specified in Section 3 below)

- A. The Property shall be maintained in perpetuity as open space without there being conducted thereon any industrial or commercial activities, except agriculture and forestry, and provided that the productive capacity of the Property to produce forest and/or agricultural crops shall not be degraded by onsite activities.
  - i. For the purposes hereof, "agriculture" and "forestry" shall include animal husbandry, floricultural, and horticultural activities; the production of plant and animal products for domestic or commercial purposes; the growing stocking, cutting and sale of Christmas trees or forest trees of any size capable of producing timber or other forest products; and the processing and sale of products produced on the Property (such as pick-your-own fruits and vegetables and maple syrup).
  - ii. Agriculture and forestry on the Property shall be performed, to the extent reasonably practicable, in accordance with a coordinated management plan for the sites and soils of the Property. Forestry and agricultural management activities shall be in

accordance with the then current scientifically based practices recommended by the University of New Hampshire Cooperative Extension, U. S. D.A. Natural Resources Conservation Service, or other government or private, nonprofit natural resource conservation and management agencies then active.

- B. The Property shall not be subdivided or conveyed in any form in separate parcels. The Grantor further covenants and agrees to not undertake any action that would have the effect of subdividing or conveying any part of the Property.
- C. No structure or improvement including, but not limited to, a dwelling, any portion of a septic system, telecommunications and/or wireless communication facility, tower, tennis court, swimming pool, or mobile home, shall be constructed, placed, or introduced onto the Property. However, ancillary structures and improvements including but not limited to, an unpaved road, trail, dam, fence, bridge, culvert, or shed may be constructed, placed, or introduced onto the Property only as necessary in the accomplishment of agricultural, forestry, conservation, or non-commercial outdoor recreational uses of the Property and provided that they are not detrimental to scenic and wildlife habitat protection purposes of this Easement.
- D. No removal, filling, or other disturbances of soil surface, nor any changes in topography, surface or subsurface water systems, wetlands, or natural habitat shall be allowed unless such activities:
  - i. are commonly necessary in the accomplishment of agricultural management, conservation, habitat management, forest management, or non-commercial outdoor recreational or educational uses of the Property; and
  - ii. do not harm state or federally recognized rare, threatened, or endangered species, such determination of harm to be based upon information from the NH Natural Heritage Inventory or agency recognized by the State of New Hampshire as having responsibility for identification and/or conservation of such species; and
  - iii. are not detrimental to scenic and wildlife habitat protection purposes of this Easement.
  - iv. prior to commencement of any such act, all necessary federal, state, and local permits and approvals shall be secured.
- E. No outdoor advertising structure such as signs and billboards shall be displayed on the Property except as desirable or necessary in the accomplishment of agriculture, conservation, forestry, or non-commercial outdoor recreation or education uses of the Property, and provided such signs are not detrimental to the purposes of this Easement.
- F. There shall be no mining, quarrying, excavation, or removal of rocks, minerals, gravel, sand, topsoil, or other similar materials on the Property, except in connection with any improvements made pursuant to the provisions of Sections 2. A, C, D or E above. No such rock, minerals, gravel, sand, topsoil, or similar materials shall be removed from the Property except for spoil pursuant to Section 3.A.

G. There shall be no dumping, storage, injection, burning or burial of man-made materials, building demolition or construction debris, trash, tires, vehicle bodies or parts or similar materials, solid or hazardous waste or any other material known to be hazardous to human health or the environment including snow from municipal plowing, construction or demolition debris. The production, storage, spraying (including night spraying) and spreading of pesticides, feed, compost, manure, or other fertilizer under sound agricultural practices; the storage of pesticides; the storage of feed; or leaving of slash after harvested timber, are permitted in accordance with any and all label requirements, an approved Conservation Plan and with the then-current scientifically based practices recommended by the UNH Cooperative Extension, U.S. Natural Resources Conservation Service, New Hampshire Department of Agriculture, Markets and Food and those recommendations (in addition to any and all label requirements) of the U.S. Environmental Protection Agency, or other government or private, nonprofit natural resource conservation and management agencies then active. Neither the Grantee nor the Executory Interest Holder shall impose pesticide storage regulations, or have oversight or monitoring responsibilities imposed by this Conservation Easement Deed concerning pesticide storage, beyond the regulations and responsibilities of the agencies listed above, or their successors.

3. RESERVED RIGHTS

- A. Grantor reserves the right to create ponds for the purpose of agriculture, fire protection or wildlife habitat enhancement in accordance with a plan developed by the USDA Natural Resources Conservation Service or other similar agency then active.
- B. Grantor reserves the right to post against hunting, fishing and/or public access or not to post as Grantor may desire from time to time.
- C. Grantor reserves the right to permit or to forbid the use of motorized recreational vehicles of all kinds, as Grantor may desire from time to time.
- D. Grantor reserves the right to construct, manage, use, and maintain trails as public foot paths and signs associated with such trails.
- E. With respect to those rights reserved under 3.A and 3.D above, the Grantor must notify Grantee in writing thirty (30) days before any exercise of the aforesaid reserved rights, and consult with the Grantee after such notification.

4. NOTIFICATION OF TRANSFER, TAXES, AND MAINTENANCE

- A. Grantor agrees to notify Grantee in writing twenty-one (21) days before transfer of title to the Property.
- B. Grantee shall be under no obligation to maintain the Property or pay any taxes or assessments thereon.

5. BENEFITS, BURDENS, AND ACCESS

- A. The burden of the Easement conveyed hereby shall run with the Property and shall be enforceable against all future owners and tenants in perpetuity; the benefits of this Easement shall not be appurtenant to any particular parcel of land but shall be in gross and assignable or transferable only to the State of New Hampshire, the United States Government, or any subdivision of either of them, consistent with Section 170(c)(1) of the US Internal Revenue Code of 1986, as amended, or to any qualified organization within meaning of Section 170(h)(3) of said code, which organization has among its purposes the conservation and preservation of land and water areas and agrees to and is capable of enforcing the conservation purposes of this Easement. Any such assignee or transferee shall have like power of assignment or transfer.
- B. The Grantee shall have reasonable access to the Property and all of its parts for such inspection as is necessary to determine compliance with and to enforce this Easement and exercise the rights conveyed hereby, fulfill the responsibilities, and carry out the duties assumed by the acceptance of this Easement.
- C. The Grantee shall have the right to install and maintain signs that identify and further the conservation or preservation purposes of the Property, or for identification of conservation partners, provided the purposes of this easement are not impaired.

6. BREACH OF EASEMENT

- A. When a breach of this Easement, or conduct by anyone inconsistent with this Easement, comes to the attention of the Grantee, it shall notify the Grantor in writing of such breach of conduct, delivered in hand or by certified mail, return receipt requested.
- B. The Grantor shall, within 30 days after receipt of such notice or after otherwise learning of such breach or conduct, undertake those actions, including restoration, which are reasonably calculated to cure swiftly said breach, or to terminate said conduct, and to repair any damage. The Grantor shall promptly notify the Grantee of its actions taken under this section.
- C. If the Grantor fails to take such proper action under this preceding paragraph, the Grantee shall, as appropriate to the purposes of this deed, undertake any actions that are reasonably necessary to cure such breach or to repair any damage in the Grantor's name or to terminate such conduct. The cost thereof, including the Grantee's expenses, court costs, and legal fees, shall be paid by the Grantor, provided that the Grantor is directly or primarily responsible for the breach.
- D. If the Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate damage to the Property, or to prevent action or potential action which is determined to be inconsistent with the stated purposes of this easement, the Grantee may pursue any of its remedies under this Section 6, without prior notice to the Grantor or without waiting for the period provided for cure to expire.

- E. Nothing contained in this Easement shall be construed to entitle the Grantee to bring any action against the Grantor for any injury to or change in the Property resulting from causes beyond the Grantor's control, including, but not limited to, unauthorized actions by third parties, natural disasters such as fire, flood, storm, and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.
- F. The Grantee and the Grantor reserve the right, separately or collectively, to pursue all legal remedies against any third party responsible for any actions detrimental to the conservation purposes of this Easement.
- G. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by the Grantor shall impair Grantee's rights or remedies or be construed as a waiver.

**7. NOTICES**

All notices, requests, and other communications, required or permitted to be given under this Easement shall be in writing, except as otherwise proved herein, and shall be delivered in hand or sent by certified mail, return receipt requested to the appropriate address set forth above or at such other address as the Grantor or the Grantee may hereafter designate by notice given in accordance herewith. Notice shall be deemed to have been given when so delivered or so mailed.

**8. SEVERABILITY**

If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid by a court of competent jurisdiction, by confirmation of an arbitration award or otherwise, the remainder of the provisions of this Easement or the application of such provision to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

**9. EXECUTORY INTEREST**

- A. If Grantee ceases to enforce the Easement conveyed hereby or refuses to enforce it within thirty (30) days after receipt of written notice, delivered in hand or certified mail, return receipt requested, from the Executory Interest Holder, identifying (a) specific breach of conduct; (b) the specific failure on the part of Grantee to enforce; and (c) requesting such enforcement, then said Executory Interest Holder shall have the right to enforce this Easement by undertaking such actions, including restoration, which is reasonably calculated to cure said breach, or to terminate said conduct, and to repair any damage. In such circumstance, the Executory Interest Holder shall then also have the right to request that a Court of competent jurisdiction terminate the interest of the Grantee in the Property by filing an action to quiet title in the appropriate Court. If said Court determines that the Grantee has failed to substantially enforce this Easement, then the rights and obligations

under this Easement shall immediately vest in the Executory Interest Holder and shall then assume all interests and responsibilities granted to the Grantee in this deed.

- B. The interests held by the Executory Interest Holder are assignable or transferable to any party qualified to become the Grantee's assignee or transferee as specified in Section 5. A. above. Any such assignee or transferee shall have like power of assignment or transfer.

10. CONDEMNATION

- A. Whenever all or part of the Property is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate in whole or in part the Easement conveyed hereby, the Grantor and the Grantee shall thereupon act jointly to recover the full damages resulting from such taking with all incidental or direct damages and expenses incurred by them thereby to be paid out of the damages recovered.
- B. The balance of the land damages recovered from such taking or lawful sale in lieu of condemnation or exercise of eminent domain) shall be divided among the Grantor, the Grantee and the Executory Interest Holder in proportion to the fair market value of their respective interests in that part of the Property condemned. For this purpose, and that of any other judicial extinguishment of this Easement in whole or in part, the Grantor's interest shall be the amount by which the fair market value of that part of the Property condemned in exercise of eminent domain exceeds the value of the use limitations imposed by the Easement Deed at the time of the condemnation as determined by an appraisal at condemnation or extinguishments. For this purpose, the Grantor, the Grantee, and the Executory Interest Holder agree that the percent of the balance of the land damages recovered that are attributed to the conservation easement will be distributed as follows: The Grantor's interest shall be zero percent (0%), the Grantee's interest shall be zero percent (0%), and the Executory Interest Holder's interest shall be one hundred percent (100%). Any increase in value attributable to improvements made after the date of the Conservation Easement shall accrue to the party who made the improvements.
- C. The Grantee and Executory Interest Holder shall use its share of the proceeds in a manner consistent with and in furtherance of one or more of the conservation purposes set forth herein.

11. ADDITIONAL EASEMENT

Should the Grantor determine that the expressed purposes of this Easement could better be effectuated by the conveyance of an additional easement, the Grantor may execute an additional instrument to the effect, provided that the conservation purposes of this Easement are not diminished thereby and that a public agency or qualified organization described in Section 5. A., above, accepts and records the additional easement.

## 12. ALTERNATE DISPUTE RESOLUTION

- A. The Grantor and the Grantee desire that issues arising from time to time concerning prospective uses or activities in light of the conservation purposes of the Easement will first be addressed through candid and open communication between the parties rather than unnecessarily formal or adversarial action. Therefore the Grantor and the Grantee agree that if a party becomes concerned about the consistency of any proposed use or activity with the purpose(s) of this Easement, wherever reasonably possible, the concerned party shall notify the other party of the perceived or potential problem, and explore the possibility of reaching an agreeable resolution.
- B. If informal dialogue does not resolve the issue, and the Grantor agrees not to proceed with the proposed use or activity pending resolution of the on-going dispute, either party may refer the dispute to mediation by request made in writing to the other. Within ten (10) days of the receipt of such a request, the parties shall agree on a single impartial mediator who shall be an attorney licensed to practice law in New Hampshire or an experienced land use or land conservation professional, both of which must have experience with conservation easements and training in mediation. Mediation shall be conducted in Exeter, New Hampshire. Each party shall pay its own attorneys' fees and the costs of mediation shall be split equally between the parties.
- C. If the dispute has not been resolved by mediation within sixty (60) days after delivery of the mediation request, or the parties are unable to agree on a mediator within thirty (30) days after delivery of the mediation request, then, either party may refer the dispute to binding arbitration by request made in writing and in accordance with New Hampshire RSA 542. Within thirty (30) days of the receipt of such a request, the parties shall select a single impartial arbitrator to hear the matter. The arbitrator shall be an attorney licensed to practice law in New Hampshire with experience in conservation easements and applicable training and experience as an arbitrator. Judgment upon the award rendered by the arbitrator may be enforced in any court of competent jurisdiction. The arbitrator shall be bound by and follow the United States Internal Revenue Code. The arbitration shall be conducted in Exeter, New Hampshire.
- D. If the parties do not agree to resolve the dispute by arbitration, or if the parties are unable to agree on the selection of an arbitrator, then either party may bring an action at law or in equity in any court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation by permanent injunction, and to require the restoration of the Property to its condition prior to the breach and for such damages as appropriate.
- E. Notwithstanding the availability of mediation and arbitration to address disputes concerning the consistency of any proposed use or activity with the purposes of this Easement, if the Grantee believes that some action or inaction of the Grantor or a third party is causing irreparable harm or damage to the Property, the Grantee may seek a temporary restraining order, preliminary injunction or other form of equitable relief from

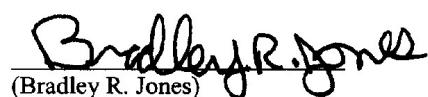
any New Hampshire court of competent jurisdiction to cause the cessation of any such damage or harm pending resolution of any dispute in accordance with this Section 12.

**13. MERGER**

The Grantor and Grantee explicitly agree that it is their express intent, forming a part of the consideration hereunder, that the provisions of the Easement set forth herein are to last in perpetuity, and that to that end no purchase or transfer of the underlying fee interest in the Property by or to the Grantee or any successor or assignee shall be deemed to eliminate the Easement, or any portion thereof, granted hereunder under the doctrine of "merger" or any other legal doctrine.

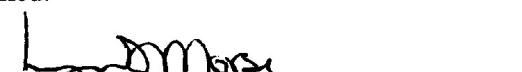
The Grantee, by accepting and recording this Easement, agrees to be bound by and to observe and enforce the provisions hereof and assumes the rights and responsibilities herein granted to and incumbent upon the Grantee, all in the furtherance of the conservation purposes for which this Easement is delivered.

**IN WITNESS WHEREOF**, Grantor has hereunto set his hand this 26<sup>th</sup> day of April, 2007.

  
(Bradley R. Jones)

STATE OF NEW HAMPSHIRE  
COUNTY OF ROCKINGHAM, ss

On this 26<sup>th</sup> day of April, 2007, before me personally appeared Bradley R. Jones, known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same as his free act and deed for the purposes therein contained.

  
Lynn D. Morse  
Notary Public/Justice of the Peace  
My Commission Expires: 2/6/2012

ACCEPTED: ROCKINGHAM COUNTY CONSERVATION DISTRICT

By: Cynthia W. Smith  
Cynthia W. Smith  
Title: Chairman  
Duly Authorized  
Date: 4-26-07

STATE OF NEW HAMPSHIRE  
COUNTY OF ROCKINGHAM, ss

On this 26<sup>th</sup> day of April, 2007, before me personally appeared Cynthia W. Smith, of Rockingham County Conservation District, known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing instrument, and acknowledged that she executed the same as her free act and deed for the purposes therein contained.

Lynn D. Morse  
Notary Public/Justice of the Peace  
Lynn D. Morse  
My Commission Expires: 2.6.2012

ACCEPTED BY THE EXECUTORY  
INTEREST HOLDER: **TOWN OF STRATHAM**

By: Martin Wool  
Martin Wool  
Title: Chair, Board of Selectmen  
Duly Authorized  
Date: 4/26/07

STATE OF NEW HAMPSHIRE  
COUNTY OF ROCKINGHAM, ss

On this 26<sup>th</sup> day of April, 2007, before me personally appeared Martin Wool, of Town of Stratham, known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same as his free act and deed for the purposes therein contained.

Lynn D. Morse  
Notary Public/Justice of the Peace  
My Commission Expires: 2.6.2012  
Lynn D. Morse

## APPENDIX A

The "Property" subject to this Easement is that tract of land, with any and all structures and improvements thereon, situated on Winnicutt Road, in the Town of Stratham, County of Rockingham, State of New Hampshire and identified in Town of Stratham tax records as Map 3 Lot 14, consisting of approximately 34.420 acres, more or less, shown on plan of land entitled "Conservation Easement Plan" as Drawn for Bradley R. Jones, March 21, 2007 prepared by Beals Associates P.L.L.C., One Hampton Road, Bldg B, Suite 309, Exeter, NH 03833, recorded in the Rockingham County Registry of Deed as Plan D-34672 on 4.26.2007 (hereinafter the "Plan").

A certain tract or parcel of land shown on the Plan as "Cons. Ease." being more particularly bounded and described as follows:

Beginning at a stone wall on the south side of said Winnicutt Road, at the northwest corner of said Easement, as shown on the Plan and thence turning and running southerly along said Winnicutt Road along the arc of a curve to the right having a radius of 883.25 feet a distance of 56.58 feet to a point;

Thence South  $72^{\circ} 47' 25''$  East a distance of 496.90 feet along said Winnicutt Road and along said stone wall to a point;

Thence South  $22^{\circ} 26' 16''$  West a distance of 485.00 feet to a point;

Thence South  $64^{\circ} 05' 34''$  East a distance of 605.77 feet to a point;

Thence North  $30^{\circ} 37' 25''$  East a distance of 485.00 feet to a point;

Thence South  $59^{\circ} 22' 35''$  East a distance of 357.11 feet along said Winnicutt Road to a point;

Thence South  $31^{\circ} 06' 10''$  West a distance of 115.70 feet to a point;

Thence South  $31^{\circ} 06' 10''$  West a distance of 99.90 feet to a point;

Thence South  $58^{\circ} 53' 50''$  East a distance of 112.68 feet to a point;

Thence South  $34^{\circ} 29' 04''$  West a distance of 513.37 feet to a drill hole set in a stone wall;

Thence South  $35^{\circ} 00' 02''$  West a distance of 505.46 feet along said stone wall to a drill hole in said stone wall;

Thence North  $76^{\circ} 05' 39''$  West a distance of 220.49 feet along said stone wall to a drill hole;

Thence North 76° 09' 34" West a distance of 1234.71 feet along said existing fence to a point;  
Thence North 53° 35' 06" West a distance of 62.31 feet to a point;  
Thence North 62° 46' 25" East a distance of 686.38 feet to a point;  
Thence North 30° 32' 25" East a distance of 218.00 feet to a point;  
Thence North 1° 57' 35" East a distance of 558.00 feet to a point;  
Thence North 17° 32' 35" East a distance of 288.13 feet to the point of beginning.

The Property subject to the Conservation Easement consists of 34.420 acres, more or less as shown on the Plan.