

Bill - Town of
Stratham

BK 4838 PG 0216

MAIL TO

Return to:

Rockingham County Conservation District

110 North Road

Brentwood NH 03833

ROCKINGHAM COUNTY
REGISTRY OF DEEDS

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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**, (hereinafter referred to as RCCD, which term shall include RCCD's successors and assigns), 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, **and the United States, acting by and through the Secretary, U.S. Department of Agriculture**, (hereinafter referred to as the United States, USDA or NRCS which terms shall include assigns), and an Executory Interest to **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.

This Conservation Easement is being purchased with funds provided, in part, by the Farm and Ranch Lands Protection Program (FRPP), 16 U.S.C. 3838h and 3838i specifically, the FRPP is providing \$305,000.00 toward the purchase of this Easement. Under FRPP, the Secretary of Agriculture, acting through the United States Department of Agriculture Natural Resources Conservation Service or successor agency (USDA or NRCS) is authorized to purchase conservation easements for the purpose of protecting topsoil by limiting non-agricultural uses of the land.

1. PURPOSES

The primary purpose of this Easement is to protect the agricultural soils, including prime, statewide and locally important agricultural soils, agricultural viability, and agricultural productivity of the Property in perpetuity. No activity which shall significantly impair the actual or potential use of the Property for agricultural production shall be permitted. To the extent that the preservation and protection of the additional conservation values of the Property referenced above is consistent with the primary purpose of protecting the agricultural soils, agricultural viability, and agricultural productivity of the Property in perpetuity, it is also the purpose of this Easement to protect those additional conservation values of the Property, and to such extent, no activity which shall significantly impair those additional conservation values of the Property shall be permitted. 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 24.031 acres of productive prime, statewide and locally important, and unique soils, farm and 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 as 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. As required by section 1238I of the Food Security Act of 1985, as amended (16 U.S.C. 3838i), the Grantor, his heirs, successors, or assigns, shall conduct all agricultural operations on the Protected Property in a manner consistent with a conservation plan prepared in consultation with NRCS and approved by the Conservation District. This conservation plan shall be developed using the standards and specifications of the NRCS Field Office Technical Guide and 7 CFR Part 12 that are in effect on the date of signing of this easement deed. However, the Grantor may develop and implement a conservation plan that proposes a higher level of conservation and is consistent with the NRCS Field Office Technical Guide standards and specifications.
 - B. The NRCS shall have the right to enter upon the Property, with advance notice to the Grantor, in order to monitor compliance with the Conservation Plan. In the event of noncompliance with the conservation plan, NRCS shall work with the Grantor to explore methods of compliance and give the Grantor a reasonable amount of time, not to exceed twelve months, to take corrective action. If the Grantor does not comply with the conservation plan, NRCS will inform the RCCD of the Grantor's noncompliance. The RCCD shall take all reasonable steps (including efforts at securing voluntary compliance and, if necessary, appropriate legal action) to secure compliance with the conservation plan following written notification from NRCS that (a) there is a substantial, ongoing event or circumstance of noncompliance with the conservation plan, (b) NRCS has worked with the Grantor to correct such noncompliance, and (c) Grantor has exhausted its appeal rights under applicable NRCS regulations.
 - C. If the NRCS standards and specifications for highly erodible land are revised after the date of this Easement Deed based on an Act of Congress, NRCS will work cooperatively with the Grantor to develop and implement a revised conservation plan. The provisions of this section apply to the highly erodible land conservation requirements of the Farm and Ranch Lands Protection Program and are not intended to affect any other natural resources conservation requirements to which the Grantor may be or become subject.
 - D. 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 but not be limited to 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), all as not to be detrimental to the Purposes of this Easement. Thirty-five percent (35%) of product sales in dollar volume for each calendar year shall have been produced on the Property.
 - ii. Agriculture and forestry on the Property shall be performed in accordance with a conservation and forest 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. The Grantor will be required to develop a conservation plan for the Property defining as best as is reasonably possible the agricultural and forestry activities. The Grantor will ensure the conservation plan for agricultural activities will be updated at least every five years if not sooner, and the management plan for forestry activities shall be updated every fifteen years if not sooner, and will be developed in consultation with the RCCD, the State of New Hampshire Department of Agriculture, Markets and Food, a NH Licensed professional forester and the U.S. Natural Resources Conservation Service. Management activities shall not materially impair the scenic quality of the Property as currently viewed from public waterways, great ponds, public roads, or public trails.
- E. 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.
- F. 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, aircraft landing strip, shall be constructed, placed, or introduced onto the Property. However, ancillary structures and improvements including but not limited to, a road, trail, dam, fence, bridge, culvert, or shed may be constructed, placed, or introduced onto the Property only as necessary in the accomplishment of agriculture, forestry or conservation uses of the Property and provided that they are not detrimental to scenic and wildlife habitat protection purposes of this Easement. Such structures are subject to the impervious surface limit set forth at paragraph 2.L. below.
- G. The Grantor shall retain all water rights necessary for present or future agricultural production on the Property and shall not transfer, encumber, lease, sell or otherwise separate such quantity of water rights from title to the Property.

- H. 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 practices, conservation, habitat management, forest management, 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;
 - iii. are not detrimental to the protected soils or scenic and wildlife habitat protection purposes of this Easement; and
 - iv. prior to commencement of any such act, all necessary federal, state, and local permits and approvals shall be secured.
- I. 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 or forestry uses of the Property, and provided such signs are not detrimental to the purposes of this Easement. Signs shall not exceed ten square feet.
- J. There shall be no mining, quarrying, excavation, or removal of rocks, minerals, gravel, sand, topsoil, water, hydrocarbons or other similar materials on the Property, except in connection with any improvements made pursuant to the provisions of Sections 2. D, F, G and H 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. The mining of hydrocarbons is strictly prohibited for any purpose.
- K. 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 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. The RCCD shall have no pesticide storage regulations or oversight responsibilities beyond those of the agencies listed above.
- L. The maximum allowable impervious surface coverage on the Easement parcel shall not exceed one acre (43,560 square feet). The total impervious surface coverage shall include all existing and future structures, driveways, roads, parking facilities and other paved or impervious surfaces, as well as any temporary structures even if the soil surface

is not disturbed, including, but not limited to, plastic greenhouses and farm structures with or without a floor. Any such structure, facility or impervious cover shall be subject to this impervious surface limitation unless said structure, facility or impervious surface cover is specifically identified in the NRCS conservation plan and is an approved conservation practice, and/or is necessary to be in compliance with the conservation plan as determined solely by the NRCS.

- M. Motorized vehicles, except as required to conduct farming operations, or for fire protection and safety, are prohibited.

3. RESERVED RIGHTS

- A. Grantor reserves the right to create ponds for 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. The total surface area, in aggregate, of all existing and created ponds shall not exceed one acre and to the extent possible will be located off of important agricultural soils.
- 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 stockpile and compost stumps, tree and brush limbs and similar unpainted, untreated biodegradable materials generated from farm activities on the Property, including but not limited to poultry manure. The Grantor also reserves the right to stockpile and compost materials from locations other than the Property ("off-site") provided such materials from off site which are introduced to the Property are limited to manure and associated animal bedding, tree and brush limbs and other non processed plant or tree materials, including but not limited to woodchips. The total volume of materials introduced from off-site locations shall not exceed more than one half of the volume of materials generated from onsite. Any other compost materials from off-site and not specifically listed above will be allowed only if contained in the NRCS conservation plan. All compost materials shall be maintained in a sanitary manner.
- D. Grantor reserves the right to convert forest land to cultivated land or pasture land. The conversion of land use/land cover shall be conducted in accordance with an NRCS conservation plan.
- E. Grantor reserves the right to lease out agricultural land for agricultural use to one or more parties.
- F. Grantor reserves the right to construct, manage, use, and maintain unpaved trails as public foot paths and signs associated with such trails and to the extent possible will be located off of important agricultural soils.

G. Grantor reserves the right to install, pave and maintain a driveway access from Winnicutt Road leading to the Excluded Area as shown on the Plan and further described in Appendix B attached hereto and made a part thereof.

H. With respect to those rights reserved under 3.A., F. and G. above, the Grantor must notify RCCD in writing thirty (30) days before any exercise of the aforesaid reserved rights, and consult with the RCCD after such notification.

4. NOTIFICATION OF TRANSFER, TAXES, AND MAINTENANCE

A. Grantor agrees to notify RCCD in writing twenty-one (21) days before transfer of title to the Property.

B. RCCD or the United States shall be under no obligation to maintain the Property or pay any taxes or assessments thereon.

5. COSTS AND LIABILITIES

Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate comprehensive general liability insurance coverage.

A. *Taxes.* Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Grant.

B. *Hold Harmless.* Grantor shall hold harmless, indemnify, and defend the RCCD, the Executory Interest Holder, the United States of America, and their respective members, directors, officers, employees, agents and contractors and the successors and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due to the negligence of any of the Indemnified Parties and/or (2) the violation or alleged violation of, or other failure to comply with, any state, federal or local law, regulation, or requirement that is related to the Property or this Grant, including the existence or administration of this Grant. This subparagraph shall not be construed to relieve the RCCD, United States and the Executory Interest Holder from any liability for which it would otherwise be responsible for injuries to its employees on the Property in the course and scope of their duties.

6. 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: first, the State of New Hampshire, and second, the United States of America, or any subdivision of either of them, consistent with Section 170(c)(1) of the US Internal Revenue Code of 1986, as amended, which government unit has among its purposes the conservation and preservation of land and water areas and agrees and is capable of enforcing the conservation Purposes of this Easement, or with the United States' written consent, 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 RCCD and the United States 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.

7. BREACH OF EASEMENT

- A. When a breach of this Easement, or conduct by anyone inconsistent with this Easement, comes to the attention of the RCCD, it shall notify the Grantor in writing of such breach or 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 RCCD of its actions taken under this section.
- C. If the Grantor fails to take such proper action under this preceding paragraph, the RCCD 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 RCCD's or the United States' 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 RCCD, 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 RCCD may pursue any of its remedies under this Section 7, 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 RCCD 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 RCCD 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 RCCD in the exercise of any right or remedy upon any breach by the Grantor shall impair RCCD's rights or remedies or be construed as a waiver.

8. RIGHT IN THE UNITED STATES OF AMERICA

- A. Under this Conservation Easement, the same rights are granted to the United States that are granted to the RCCD. However, the Secretary of the United States Department of Agriculture (the Secretary), on behalf of the United States, will only exercise these rights under the following circumstances: In the event that the RCCD fails to enforce any of the terms of this Conservation Easement, or the Executory Interest Holder fails to enforce any of the terms of this Easement if this Easement becomes vested in the Executory Interest Holder pursuant to section 11.A as determined in the sole discretion of the Secretary, the Secretary and his or her successors or assigns may exercise the United States' rights to enforce the terms of this Conservation Easement through any and all authorities available under Federal or State law.
- B. In the event that the RCCD and/or Executory Interest Holder if this Easement becomes vested in the Executory Interest Holder pursuant to section 11.A attempts to terminate, transfer or otherwise divest itself of any rights, title, or interests of this Conservation Easement without the prior consent of the Secretary and, if applicable, payment of consideration to the United States, then, at the option of the Secretary, all right, title, and interest in this Conservation Easement shall become vested solely in the UNITED STATES OF AMERICA.
- C. The United States of America ("USA") shall have reasonable access to the Property and all of its parts for such inspection as necessary to determine compliance with and enforce the terms of this Conservation Easement Deed, and to exercise the rights conveyed hereby and to maintain Easement boundaries if the USA desires.

9. 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, the RCCD, United States or Executory Interest Holder may hereafter designate by notice given in accordance herewith. Notice shall be deemed to have been given when so delivered or so mailed.

Notices, requests and other communication shall be directed to:

Executive Director
Rockingham County Conservation District
110 North Road
Brentwood NH 03833

Chair, Board of Selectmen
Town of Stratham
10 Bunker Hill Avenue
Stratham NH 03885

State Conservationist
Natural Resources Conservation Service
Federal Building, 2 Madbury Road
Durham NH 03824

10. 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.

11. EXECUTORY INTEREST

- A. If RCCD 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 RCCD 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 RCCD in the Property by filing an action to quiet title in the appropriate Court. If said Court determines that the RCCD has failed to substantially enforce this Easement, then the rights and obligations under this Easement shall immediately vest in the Executory Interest Holder who shall then assume all interests and responsibilities granted to the RCCD in this deed.
- B. The interests held by the Executory Interest Holder are assignable or transferable with advance permission of the United States to any party qualified to become the RCCD's assignee or transferee as specified in Section 6. A. above. Any such assignee or transferee shall have like power of assignment or transfer.

12. 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, the RCCD and the Executory Interest Holder 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. Due to the federal interest in this Easement, the United States must consent to any condemnation action.

- 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 RCCD, and the United States 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 RCCD, the Executory Interest Holder and the United States of America 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 RCCD's interest shall be zero percent (0%), the Executory Interest Holder's interest shall be 50 percent (50%) and the United States of America interest shall be 50 percent (50%). This percentage value is based on an appraisal completed on December 29, 2006 by Peter A. Knight, The Stanhope Group Appraiser and Consultants, Portsmouth, N.H., an appraiser licensed in the State of New Hampshire, which appraisal determined the purchase price for this Easement. 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 RCCD 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.

13. ADDITIONAL EASEMENT

Subject to any applicable law, regulation or ordinance, should the Grantor determine that the expressed purpose 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 6. A., above, accepts and records the additional conservation easement. Any easement arising after the date of execution of this Easement will be subordinated, by operation of law or otherwise to this Easement.

14. ALTERNATE DISPUTE RESOLUTION

- A. The Grantor and the RCCD 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 RCCD 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 RCCD believes that some action or inaction of the Grantor or a third party is causing irreparable harm or damage to the Property, the RCCD 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 14.

- F. If the United States exercises its rights under this agreement, this provision (Section 14. A. – E.) will not apply.

15. NO MERGER

- A. The Grantor and RCCD 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 RCCD, the Executory Interest Holder or the United States of America or any successor or assignee shall be deemed to eliminate these Easement terms, or any portion thereof, pursuant to the doctrine of “merger” or any other legal doctrine.
- B. In the event RCCD takes legal title to Grantor's interest in the Protected Property, RCCD shall commit the monitoring and enforcement of the Easement to one of the Executory Interest Holders (or alternatively, to another qualified organization within the meaning of Section 107(h) (3) of the U.S. Internal Revenue Code (1986), which organization has among its purposes the conservation and preservation of land and water areas until RCCD conveys title away to a successor Grantor.

16. LIABILITY AND INDEMNIFICATION

The Grantor shall indemnify, defend and hold harmless the RCCD, the Executory Interest Holder and the United States from any liability resulting from Grantor's negligent acts in violation of the terms of this Easement or applicable state, local and federal laws, including, but not limited to, the release, use or deposit of any hazardous substance on the property.

17. SUBORDINATION

Any mortgage or lien arising after the date of execution of this Easement shall be subordinated, by operation of law or otherwise, to the terms of this Easement.

18. TITLE AND ENVIRONMENTAL WARRANTIES

Grantor warrants that Grantor has good title to the property; that the Grantor has the right to convey this Easement; and that the Property is free and clear of any encumbrances. Grantor also warrants that Grantor has no actual knowledge of a release or threatened release of hazardous substances or wastes on the Property.

19. BASELINE DOCUMENTATION AND STEWARDSHIP RESPONSIBILITIES OF THE RCCD

To facilitate the fulfillment of their responsibilities under this Easement, the RCCD shall be responsible for the following (which shall include, but not be limited to):

- i. Maintaining baseline information and annual monitoring the Property in accordance with applicable policies and guidelines, such as the Standards and

Practices of the Land Trust Alliance and those required by the United States of America in the Cooperative Agreement by and between the United States of America and the Town of Stratham dated June 11, 2007;

- ii. Responding to Grantor requests for approvals required under this Easement; and
- iii. Investigating potential Easement violations and/or encroachments and responding accordingly.
- iv. Providing an annual monitoring report to the Executory Interest Holder, to NRCS or its successor agency, or to another agency as instructed by the NRCS or successor agency, indicating compliance with the terms of this Easement and/or actions necessary for compliance.

Copies of the Baseline Documentation Report shall be held by the RCCD and the NRCS.

20. AMENDMENT

This Easement may be amended only if in the sole and exclusive judgment of the RCCD and the United States such amendment furthers or is not inconsistent with the purposes of this Easement. Any such amendment must be mutually agreed upon by the RCCD, the Grantor and the United States, signed and duly recorded by the parties and comply with all applicable laws and regulations. RCCD must provide to NRCS timely notice in writing of the amendment.

21. CONTROLLING LAWS AND LIBERAL CONSTRUCTION / INTERPRETATION

This Easement shall be interpreted under the laws of the State of New Hampshire and the United States. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed to affect the Purposes of the Easement. If any provision in said Deed is found to be ambiguous, an interpretation consistent with the Purposes of said Deed that would render the provision valid shall be favored over any interpretation that would render it invalid.

22. REPRESENTATIONS AND TITLE WARRANTIES

Grantor warrants that it has good title and sufficient title to the Property, free from all encumbrances except those identified below and hereby promises to defend the same against all claims that may be made against it. All holders of any liens of other encumbrances arising from borrowing have agreed to subordinate their interests in the Property to this Easement.

23. ENVIRONMENTAL WARRANTY

Grantor warrants that it is in compliance with, and shall remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any

governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with or any liability under any Environmental Law relating to the operations or conditions of the Property. Grantor further warrants that it has no actual knowledge of a release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable federal and state law.

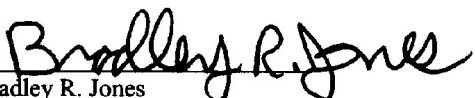
Moreover, Grantor hereby promises to defend and indemnify the United States against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Property. Grantor's indemnification obligation shall not be affected by any authorizations provided by RCCD to Grantor with respect to the Property or any restoration activities carried out by RCCD at the Property; provided, however, that RCCD shall be responsible for any Hazardous Materials contributed after this date to the Property by RCCD.

"Environmental Law" or "Environmental Laws" means any and all Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect.

"Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.

The RCCD, 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 RCCD, all in the furtherance of the conservation purposes for which this Easement is delivered.

IN WITNESS WHEREOF, Grantor has hereunto set his hand this 28th day of AUGUST, 2007.


Bradley R. Jones

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM, ss

On this 28th day of August, 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.

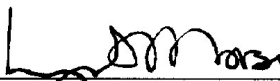

 Notary Public/Justice of the Peace
 My Commission Expires: 2.7.2012

ACCEPTED: **ROCKINGHAM COUNTY CONSERVATION DISTRICT**

By: Cynthia W. Smith
 Cynthia W. Smith
 Title: Chairman
 Duly Authorized
 Date: Aug. 28, 2007

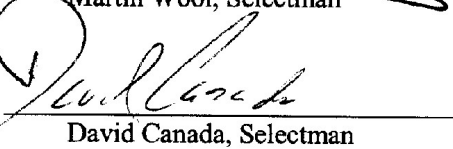
STATE OF NEW HAMPSHIRE
 COUNTY OF ROCKINGHAM, ss

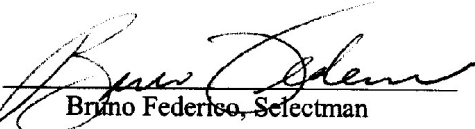
On this 28th day of August, 2007, before me personally appeared Cynthia W. Smith, of Rockingham County Conservation District, known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing instrument, and acknowledged that she executed the same as her free act and deed for the purposes therein contained.

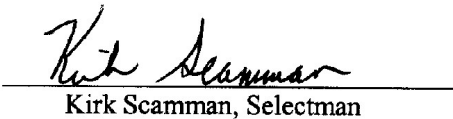

 Notary Public/Justice of the Peace
 My Commission Expires: 2.7.2012

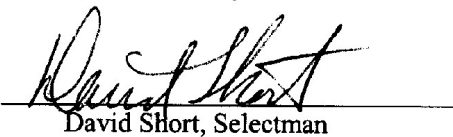
ACCEPTED BY THE EXECUTORY
INTEREST HOLDER: **TOWN OF STRATHAM**

By: 
Martin Wool, Selectman

By: 
David Canada, Selectman

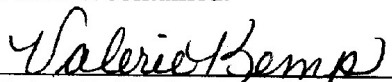
By: 
Bruno Federico, Selectman

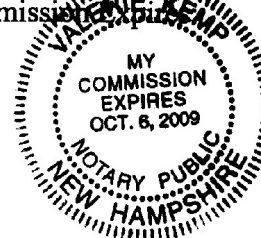
By: 
Kirk Scamman, Selectman

By: 
David Short, Selectman

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM, ss

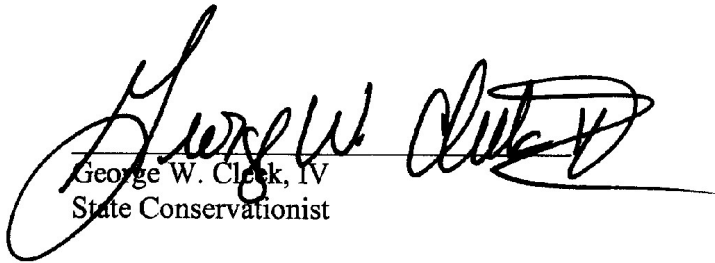
On this 30 day of July, 2007, before me personally appeared, Martin Wool, David Canada, Bruno Federico, Kirk Scamman and David Short, Selectmen of the Town of Stratham, known to me, or satisfactorily proven, to be the persons whose names are subscribed to the foregoing instrument, and acknowledged that they executed the same, in their capacity as Selectmen of the Town of Stratham, as their free act and deed for the purposes therein contained.


Notary Public/Justice of the Peace
My Commission Expires



ACCEPTANCE OF PROPERTY INTEREST BY THE NATURAL RESOURCES CONSERVATION SERVICE

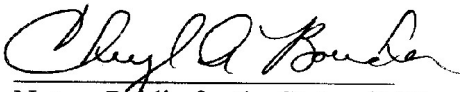
The Natural Resources Conservation Service, an agency of the United States Government, hereby accepts and approves the foregoing conservation easement deed on 24.031 acres owned by Bradley R. Jones, 18 Winnicutt Road in the Town of Stratham, New Hampshire, and the rights conveyed therein, on behalf of the United States of America.


George W. Cleek, IV
State Conservationist

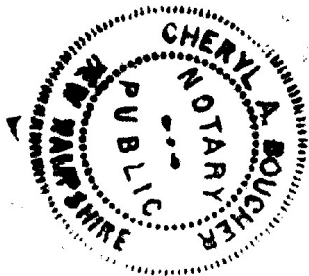
State of New Hampshire
County of Stafford

On this 27 day of August, 2007, before me, the undersigned, a Notary Public in and for the State, personally appeared George W. Cleek IV, known or proved to me to be the person whose signature appears above, and who being duly sworn by me, did say that he is the New Hampshire State Conservationist of the Natural Resources Conservation Service, United States Department of Agriculture, is authorized to sign on behalf of the agency, and acknowledged and accepted the rights conveyed by the deed to be his voluntary act and deed.

In witness whereof, I have hereunto set my hand and official seal the day and year first above written.


Notary Public for the State of NH

CHERYL A. BOUCHER
Notary Public - New Hampshire
My Commission Expires March 21, 2012



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 4 Lot 56-2, consisting of approximately 24.031 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 April 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 1175.25 feet a distance of 653.25 feet to a point;

Thence South 60° 52' 28" West a distance of 393.67 feet to an iron pipe;

Thence South 25° 49' 48" East a distance of 307.53 feet to an iron pipe;

Thence North 56° 35' 59" East a distance of 400.74 feet to a point;

Thence running southerly along the arc of a curve to the left having a radius of 1048.75 feet a distance of 211.20 feet along said Winnicutt Road and along said stone wall to a point;

Thence South 45° 37' 54" East a distance of 53.25 feet along said Winnicutt Road and along said stone wall to a point;

Thence South 24° 14' 14" West a distance of 259.79 feet along said Spring Creek Lane to a point;

Thence North 41° 17' 17" West a distance of 54.94 feet to a point;

Thence North 41° 17' 17" West a distance of 243.75 feet to a point;

Thence South 32° 26' 54" West a distance of 284.42 feet to a point;

Thence South 41° 17' 17" East a distance of 343.32 feet to a point;

Thence South 24° 14' 14" West a distance of 64.95 feet along said Spring Creek Lane to an iron pipe

Thence South 63° 18' 41" West a distance of 194.89 feet to a point;

Thence North 58° 07' 25" West a distance of 309.30 feet to a point;
Thence North 58° 05' 13" West a distance of 300.05 feet to a point;
Thence North 58° 04' 31" West a distance of 300.03 feet to a point;
Thence North 58° 01' 00" West a distance of 299.81 feet to a drill hole in said stone wall;
Thence North 35° 00' 02" East a distance of 505.46' feet along said stone wall to a drill hole;
Thence North 34° 29' 04" East a distance of 513.37 feet to a point;
Thence North 33° 36' 30" East a distance of 100.00 feet along said stone wall to a point;
Thence North 34° 49' 56" East a distance of 67.85 feet along said stone wall to a point;
Thence North 33° 35' 56" East a distance of 45.86 feet along said stone wall to the point of beginning.

The Property subject to the Conservation Easement consists of 24.031 acres, more or less as shown on the Plan.

APPENDIX B

DRIVEWAY ACCESS EASEMENT

The reserved driveway access easement within the Easement is described as follows:

Beginning at a point on the southerly side of Winnicutt Road and thence running South 24° 14' 14" West a distance of 259.79 feet along said Spring Creek Lane to a point;

Thence turning and running North 41° 17' 17" West a distance of 54.94 feet to a point;

Thence turning and running North 24° 14' 14" East a distance of 255.36 feet to a point;

Thence turning and running South 45° 37' 54" East to the point of beginning.

This area is identified as a driveway access to the Excluded Area as shown on the Plan.