

THIS IS A NON-CONTRACTUAL CONVEYANCE PURSUANT TO NEW HAMPSHIRE RSA 78-B:2 AND IS EXEMPT FROM THE NEW HAMPSHIRE REAL ESTATE TRANSFER TAX.

### CONSERVATION EASEMENT DEED

Garvase N. White and Annette L. White (f/k/a Annette L. Burns) of 9 Lovell 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, grant in perpetuity to

Rockingham Land Trust, a New Hampshire not-for-profit corporation, with an address c/o Rockingham Planning Commission, 156 Water Street, Exeter, County of Rockingham, State of New Hampshire, having been determined by the Internal Revenue Service to be an income tax exempt, publicly supported corporation, contributions to which are deductible for federal income tax purposes pursuant to the United States Internal Revenue Code, (hereinafter referred to as the "Grantee" which shall, unless the context clearly indicates otherwise, include the Grantee's successors and assigns),

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, if any, situated on the westerly side of Willowbrook Avenue in the Town of Stratham, County of Rockingham, State of New Hampshire, more particularly bounded and described in Appendix "A" attached hereto and made a part hereof.

#### 1. PURPOSES

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

A. The preservation of the land subject to the Easement granted hereby for outdoor recreation by and/or the education of the general public, through the auspices of the Grantee; and

B. The preservation and conservation of open spaces, particularly the conservation of the 20.3 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.

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ROCKINGHAM COUNTY  
REGISTRY OF DEEDS

These purposes are consistent with the open space conservation goals and/or objectives as stated in New Hampshire RSA Chapter 79-A which states: "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."; and

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

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

2. USE LIMITATIONS (Subject to the 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 as described below, and provided that the productive capacity of the Property to produce forest and/or agricultural crops shall not be degraded by on-site activities.

i. For the purposes hereof, "agriculture" and "forestry" shall include animal husbandry, floriculture, and horticulture 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 detrimental to the (scenic, agricultural, historic, recreational, wildlife habitat protection) purposes of this Easement].

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. Natural Resources Conservation Service, or other government or private, nonprofit natural resource conservation and management agencies then active. [Management activities shall not materially impair the scenic quality of the Property as viewed from public waterways, great ponds, public roads, or public trails.]

B. The Property may be re-subdivided in furtherance of conservation purposes, i.e. the portion of the property not subject to the conservation easement may be sold separately from the portion subject to the conservation easement.

C. No structure or improvement, including, but not limited to, a dwelling, any portion of a septic system, tennis court, swimming pool, dock, aircraft landing strip, tower or mobile home, shall be constructed, placed, or introduced onto the Property. However, ancillary structures and improvements including, but not limited to, a road, dam, fence, bridge, culvert, barn, maple sugar house, or shed may be constructed, placed, or introduced onto the Property only as necessary in the accomplishment of the agricultural, forestry, conservation, or noncommercial outdoor recreational uses of the Property and provided that they are not detrimental to the (scenic, agricultural, historic, recreational, 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 the agricultural, forestry, conservation, habitat management, or noncommercial outdoor recreational 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 New Hampshire Natural Heritage Inventory or the agency then recognized by the State of New Hampshire as having responsibility for identification and/or conservation of such species; and

iii. are not detrimental to the scenic, agricultural, historic, recreational, wildlife habitat protection purposes of this Easement.

Prior to commencement of any such activities, all necessary Federal, State, and local permits and approvals shall be secured.

E. No outdoor advertising structures such as signs and billboards shall be displayed on the Property except as desirable or necessary in the accomplishment of the agricultural, forestry, conservation, or noncommercial outdoor recreational 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 rocks, minerals, gravel, sand, topsoil, or other similar materials shall be removed from the Property.

G. There shall be no dumping, injection, burning, or burial of man-made materials or materials then known to be environmentally hazardous.

3. RESERVED RIGHTS

A. This provision is an exception to 2. above.

B. The Grantor reserves the right to prohibit hunting or trapping of any kind.

C. The Grantor reserves the right to prohibit public access of any kind.

D. The Grantor reserves the right to disallow logging or changes of grade of the property subject to the easement.

E. The Grantor reserves the right to prohibit motorcycles, all-terrain vehicles, or snowmobiles.

F. The Grantor must notify the Grantee in writing at least thirty (30) days before any exercise of the aforesaid reserved rights.

4. NOTIFICATION OF TRANSFER, TAXES, MAINTENANCE

A. The Grantor agrees to notify the Grantee in writing 10 days before the transfer of title to the Property or any division of ownership thereof permitted hereby.

B. The 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 U.S. Government, or any subdivision of either of



them, consistent with Section 170(c)(1) of the U.S. Internal Revenue Code of 1986, as amended, or to any qualified organization within the 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 and fulfill the responsibilities and carry out the duties assumed by the acceptance of this Easement.

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 thirty (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 the 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. 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.

E. 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.

7. NOTICES

All notices, requests and other communications, required or permitted to be given under this Easement shall be in writing, except as otherwise provided herein, and shall be delivered in hand or sent by certified mail, postage prepaid, 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. 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 (including, for purposes of this subsection, proceeds from any lawful sale, in lieu of condemnation, of the Property unencumbered by the restrictions hereunder) shall be divided between the Grantor and the Grantee in the following proportions: Grantor: 18%, Grantee: 82%.

C. The Grantee 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.

10. 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 that 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.

11. ARBITRATION OF DISPUTES

A. Any dispute arising under this Easement shall be submitted to arbitration in accordance with New Hampshire RSA 542.

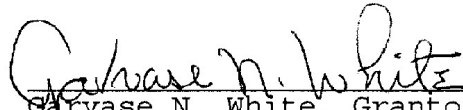
B. The Grantor and the Grantee shall each choose an arbitrator within 30 days of written notice from either party. The arbitrators so chosen shall in turn choose a third arbitrator within 30 days of the selection of the second arbitrator.

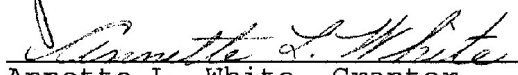
C. The arbitrators so chosen shall forthwith set as early a hearing date as is practicable which they may postpone only for good cause shown.

D. A decision by two of the three arbitrators, made as soon as practicable after submission of the dispute, shall be binding upon the parties and shall be enforceable as part of this Easement.

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.

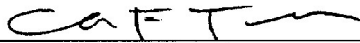
IN WITNESS WHEREOF, we have hereunto set our hands this 31<sup>st</sup> day of December, 1998.

  
Garvase N. White, Grantor

  
Annette L. White, Grantor

STATE OF NEW HAMPSHIRE  
COUNTY OF ROCKINGHAM, ss.

On this 31st day of December, 1998, before me personally appeared Garvase N. White and Annette L. White (f/k/a Annette L. Burns), 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 as their free act and deed for the purposes therein contained.


  
Notary Public/Justice of the Peace  
Charles F. Tucker

ACCEPTED: ROCKINGHAM LAND TRUST

By: Peter A. Dow / Peter A. Dow  
Title: President  
Duly Authorized  
Date: 12/31/98

STATE OF NEW HAMPSHIRE  
COUNTY OF ROCKINGHAM, ss.

On this 31st day of December, 1998, before me personally appeared Peter A. Dow of Rockingham Land Trust, known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he/she executed the same as his/her free act and deed for the purposes therein contained.

  
Notary Public/Justice of the Peace  
Charles F. Tucker

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## Appendix "A"

A certain parcel of land with the buildings thereon, if any, located on the westerly side of Willowbrook Avenue in Stratham, County of Rockingham, State of New Hampshire, being more particularly bounded and described as follows:

Beginning at the northeasterly corner thereof at land now or formerly of Charles W. Scammon and Melody K. Scammon; thence turning and running along Willowbrook Avenue, South  $11^{\circ}$  East 138 feet, more or less, to a point; thence continuing along Willowbrook Avenue, South  $24^{\circ} 27' 30''$  East 65.20 feet to a rebar; thence turning and running along the property of White not subject to this conservation easement, on the following three courses and distances: North  $56^{\circ} 48' 00''$  West 296.83 feet to a rebar, thence South  $27^{\circ} 52' 34''$  West 288.44 feet to a rebar, and thence South  $56^{\circ} 48' 00''$  East 296.83 feet to the aforesaid Willowbrook Avenue; thence turning and running along Willowbrook Avenue, South  $38^{\circ} 11' 52''$  East 16.00 feet to a rebar; thence turning and running South  $38^{\circ} 11' 52''$  East 114.95 feet to a rebar; thence turning and running South  $41^{\circ} 17' 43''$  West 206.97 feet to a iron pipe at land now or formerly of Mackenzie; thence turning and running along land of Mackenzie, on the following two courses and distances: North  $63^{\circ} 02' 23''$  West 290.00 feet to an iron pipe and thence South  $89^{\circ} 15' 12''$  West 297.99 feet to land now or formerly of Tentindo; thence turning and running along land of Tentindo, Abizaid, Wass and Dolan, North  $35^{\circ}$  West 660 feet, more or less, to a point; thence turning and running along land of Dolan and land now or formerly of Diamond, North  $51^{\circ}$  East 828 feet to a point at land now or formerly of Aberdeen Realty Trust; thence turning and running along land of Aberdeen Realty Trust on the following two courses and distance: South  $36^{\circ}$  East 227 feet to a point and thence South  $37^{\circ}$  East 209 feet to a point; thence turning and running North  $51^{\circ}$  East 196 feet to a point at land now or formerly of Scammon; thence turning and running along land of Scammon on the following two courses and distances: South  $43^{\circ}$  East 188 feet to a point and thence South  $48^{\circ}$  East 237 feet to the point of beginning. Said lot containing 20.3 acres more or less.

Meaning and intending to be a portion of the property described in the following Deeds: (1) Deed from Annette L. Burns to Annette L. Burns and Garvase N. White dated October 17, 1977, and recorded in the Rockingham County Registry of Deeds at Book 2295, Page 1968; and (2) Deed from Garvase N. White to Garvase N. White

and Annette L. White recorded in the Rockingham County Registry of Deeds at Book 3185, Page 2074.

For reference, see plan entitled "Conservation Easement Plan, Tax Map 16, Lot 1, prepared for Annette L. and Garvase N. White, Willowbrook Avenue, Stratham, N.H." dated December 1998.

The southerly property with Mackenzie is described variously on various plans. The description above is believed by Garvase N. White and Annette L. White to be the correct description, but Garvase N. White and Annette L. White do not warrant the same. See the referenced plan for details.

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