

THIS IS A TRANSFER TO A TOWN
PURSUANT TO NEW HAMPSHIRE RSA 78-B:2I
AND IS THEREFORE EXEMPT FROM THE NEW
HAMPSHIRE REAL ESTATE TRANSFER TAX.

025153

CONSERVATION EASEMENT DEED
With Grant of Access

We, **David J. Short and Jeanne T. Short**, husband and wife, of 18R Scamman Road, Town of Stratham, County of Rockingham, State of New Hampshire, 03885 (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

the **SOUTHEAST LAND TRUST OF NEW HAMPSHIRE**, a corporation duly organized and existing under the laws of the State of New Hampshire, with a principal place of business at 12 Center Street, 2nd Floor, PO Box 675, Town of Exeter, County of Rockingham, State of New Hampshire, 03833, 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), with

an **Executory Interest**, as further defined in Section 9 below, to the **TOWN OF STRATHAM**, a duly authorized municipal corporation as represented by the Stratham Conservation Commission, an official commission of the Town of Stratham, pursuant to New Hampshire RSA 36-A:4, with a principal place of business at 10 Bunker Hill Avenue, Town of Stratham, County of Rockingham, State of New Hampshire, 03885 (sometimes referred to herein as the "Executory Interest Holder"),

the Conservation Easement (herein referred to as the "Easement") hereinafter described with respect to that certain parcel/area of land (herein referred to as the "Property") with any and all buildings, structures, and improvements thereon/being unimproved land, consisting of approximately 34.6 acres, situated on Scamman Road 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 and shown on a survey plan entitled "Plat of Land Scamman Road Stratham N.H. Prepared for Southeast Land Trust" by T.D. Brouillette Land

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ROCKINGHAM COUNTY
REGISTRY OF DEEDS

Surveying dated May 19, 2015 and recorded at the Rockingham County Registry of Deeds as Plan # Q-38889 (herein referred to as the "Survey").

1. PURPOSES

The Easement hereby granted is pursuant to NH RSA 477:45-47, exclusively for the following conservation Purposes (herein referred to as the "Purposes") for the public benefit:

- A. The protection, enhancement and enlargement of seventy-five (75) acres of protected land owned by the Town of Stratham which is adjacent to the Property, and an additional two hundred and thirty three (233) acres of Town owned land that includes Stratham Hill Park and the Gordon Barker Town Forest which are located in close proximity to the Property; and
- B. The protection of an additional 34.6 acres located in a four hundred and sixty (460) acre unfragmented Tier 1 Forest Matrix Block delineated by the New Hampshire Fish and Game Department's Wildlife Action Plan (2010); and
- C. The conservation of the productive forest land of which the Property consists, which includes a New Hampshire Natural Heritage Bureau documented "dry Appalachian oak forest", and the productive forest soils of the Property which are categorized entirely as Group 1 Forest Soils, and the long-term protection of the Property's capacity to produce economically valuable agricultural and forestry products; and
- D. The protection of open space and the natural habitats on the Property and the wildlife habitat thereon, of which approximately thirty-four (34) acres of the property has been identified as "Highest Ranking Habitat in the State" through the New Hampshire Fish & Game Department's Wildlife Action Plan (2010) and the remainder of the Property as "Supporting Landscape";
- E. The protection of important upland buffer and approximately eight hundred (800) feet of frontage along an approximately eighty (80) acre red maple-black ash wetland system documented by the New Hampshire Natural Heritage Bureau that is largely protected through the Town of Stratham's ownership;
- F. The scenic and recreational enjoyment of the general public that enjoy the Property from the trail system that is open to the public on and adjoining the Property, said trail system being a part of the Stratham Hill Park and Gordon Barker Town Forest trail system;
- G. The protection of the quality and availability of ground water resources under the Property, of which half the Property overlays a stratified drift aquifer.

The above Purposes are consistent with the clearly delineated open space conservation goals and/or objectives as stated in the 1998 Master Plan of the Town of Stratham, which states in Chapter 6 "Recreation", Section "5.0 Recommendations": "Seek to establish a network of trails linking public conservation and recreation by interconnecting, through

easements and other agreements with landowners”; in Chapter 7 “Resource Conservation and Preservation”, Section “6.3 Water Resources”: “The Town should acquire land or development rights to key parcels, if needed to protect future town water supplies. Such acquisitions should be integrated with Townwide open space protection efforts.”; and identified as an open space parcel in Chapter 7 “Resource Conservation and Preservation” on map “RCP 10”; and with 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.”

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)

The Property shall be maintained in perpetuity as open space subject to the following use limitations:

- A. There shall not be conducted on the Property any industrial or commercial activities, except Agriculture and Forestry, as described below, and provided that the productive capacity of the Property to yield forest and/or agricultural crops shall not be degraded by on-site activities.

i. **Description of Agriculture and Forestry**

- a. **Agriculture:** For the purposes hereof, “Agriculture” 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; 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 Purposes of this Easement.

- b. **Forestry:** For the purposes hereof, “Forestry” shall include the growing, stocking, cutting, and sale of forest trees of any size capable of producing timber or other forest products, all as not detrimental to the Purposes of this Easement.

1. **Commercial Forestry:** For the purposes hereof, “Commercial Forestry” shall include all forestry and forest management activities performed for commercial or industrial purposes, including barter transactions.

2. **Non-commercial Forestry:** For the purposes hereof, “Non-commercial Forestry” shall include non-commercial timber stand improvement activities, wildlife habitat improvement, and the small-scale cutting or

harvesting of wood products for the domestic use of the Grantor, such as clearing trees to maintain the edge of a field, thinning the forest stand to maintain a view, or cutting firewood for domestic consumption. Non-commercial Forestry shall not include activities conducted for the contemporaneous production of sale proceeds or other consideration.

- ii. **Requirements for Agriculture:** Agriculture shall be performed, to the extent reasonably practicable, in accordance with a coordinated management plan for the sites and soils of the Property. Agricultural management activities shall be in accordance with the then-current scientifically based practices recommended by UNH Cooperative Extension, U.S. Natural Resources Conservation Service, or other government or private, nonprofit natural resource conservation and management agencies then active. Such management activities shall not be detrimental to the Purposes of this Easement.
- iii. **Requirements for Forestry:** Any and all Commercial and Non-commercial Forestry shall be carried out in accordance with all applicable local, state, and federal laws and regulations, and, to the extent reasonably practicable, in accordance with then-current, generally accepted best management practices for the sites, soils, and terrain of the Property and shall not be detrimental to the Purposes of the Easement. For references on best management practices see:
 - “Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire” (J.B. Cullen, 2004); and
 - “Good Forestry in the Granite State: Recommended Voluntary Forest Management Practices for New Hampshire” (New Hampshire Forest Sustainability Standards Work Team, 2010), or similar successor publications.
- iv. **Requirements for Commercial Forestry:** In addition to the requirements outlined in Section 2.A.iii above, Commercial Forestry shall be performed using silvicultural practices that enhance or maintain the value of timber while recognizing that the ecological, aesthetic, wildlife, or other non-timber values are important components of the forest. To the extent reasonably practicable, forestry shall meet the following goals:
 - a. The goals are:
 - maintenance of soil productivity;
 - protection of water quality, wetlands, and riparian zones;
 - maintenance or improvement of the overall quality of forest products;
 - conservation of scenic quality;
 - protection of significant or fragile natural areas;
 - protection of significant historic and cultural features; and
 - conservation of native plant and animal species.
 - b. Any and all Commercial Forestry shall be performed in accordance with a written Forest Management Plan consistent with this Easement, prepared by a licensed professional forester, or by other qualified person approved in advance and in

writing by the Grantee.

- c. Said Forest Management Plan shall have been prepared not more than ten (10) years prior to the date any harvesting is expected to commence. Or, if more than ten (10) years old, the plan shall have been reviewed and updated as required by such a forester or other qualified person at least thirty (30) days prior to the date of harvest.
 - d. Said Forest Management Plan shall include a statement of landowner objectives, and shall specifically address:
 - the accomplishment of those Purposes for which this Easement is granted,
 - the goals in Section 2.A.iv.above, and
 - the protection of the water quality in the large wetland along the Property's eastern boundary, as well as minimizing disturbance around all wetlands.
 - e. At least thirty (30) days prior to any commercial timber harvest, the Grantee shall have received from the Grantor a written certification, signed by a licensed professional forester, or by other qualified person approved in advance and in writing by the Grantee, that the Forest Management Plan, as defined in 2.A.iv, a-d, above, has been prepared in compliance with the terms of this Easement. Grantee may request the Grantor to submit the Plan itself to Grantee within ten (10) days of such request, but acknowledges that the plan's purpose is to guide forest management activities in compliance with this Easement, and that the actual activities will determine compliance therewith.
 - f. Timber harvesting with respect to any Commercial Forestry shall be conducted in accordance with said Plan and be supervised by a licensed professional forester, or by other qualified person approved in advance and in writing by the Grantee.
 - g. In areas used by, or visible to the general public, such forestry shall be carried out, to the extent reasonably practicable, in accordance with the recommendations contained in "A Guide to Logging Aesthetics: Practical Tips for Loggers, Foresters, and Landowners" (Jones 1993), or similar successor publications.
- B. The Property shall not be subdivided and none of the individual tracts which together comprise the Property shall be conveyed separately from one another, except that the lease of any portion of the Property for any use permitted by this Easement shall not violate this provision.
- C. No structure or improvement shall be constructed, placed, or introduced onto the Property, except for structures and improvements which are: i) necessary in the accomplishment of the agricultural, forestry, conservation, habitat management, or noncommercial outdoor recreational uses of the Property and which may include but not be limited to a road, dam, fence, utility line, bridge, culvert, barn, maple sugar house, or shed; and ii) not detrimental to the Purposes of this Easement. Notwithstanding the above, there shall not be constructed, placed, or introduced onto the Property any of the

following structures or improvements: dwelling, mobile home, cabin, residential driveway, indoor riding ring, any portion of a septic system, tennis court, swimming pool, athletic field, golf course, or aircraft landing area.

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, or exemplary natural communities, such determination of harm to be based upon information from the New Hampshire Natural Heritage Bureau or the agency then recognized by the State of New Hampshire as having responsibility for identification and/or conservation of such species and/or natural communities; and
- iii. are not detrimental to the Purposes of this Easement.

Prior to commencement of any such activities, all necessary federal, state, local, and other governmental permits and approvals shall be secured.

E. No outdoor advertising structures 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 structures are not detrimental to the Purposes of this Easement. No sign on the Property shall exceed sixteen (16) square feet in size, and no sign shall be artificially illuminated.

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 on the Property of man-made materials or materials then known to be environmentally hazardous.

H. No rights-of-way or easements of ingress or egress in favor of any third party shall be created or developed into, on, over, or across the Property without the prior written approval of the Grantee, except those of record as of the execution of this Easement and those specifically permitted in the provisions of this Easement.

I. The Grantor shall not operate or grant permission to operate motorized vehicles on the Property, except as allowed in Section 3(A) below.

- J. The Property shall not be posted against, and the Grantor shall keep access to and use of the Property open to the public for, pedestrian and bicycle, non-motorized, non-commercial, outdoor recreational and outdoor educational purposes as will have minimal impact on the Property, such as but not limited to hiking, mountain biking, wildlife observation, cross-country skiing, but the landowner shall retain the right whether to allow hunting and camping. However, the Grantee shall be under no duty to supervise said access, use, or purpose. The Grantor reserves the right to post the Property against public access to agricultural cropland during the planting and growing season, to lands while being grazed by livestock, to forestland during harvesting or other forest management activities.

3. RESERVED RIGHTS

- A. The Grantor reserves the right to operate motorized vehicles, and permit others to operate said vehicles, for the purposes of maintaining and managing the Property. This provision is an exception to Section 2.I., above.
- B. The Grantor reserves the right to maintain, but not expand, the areas shown on the Survey as "Lawn" as a residentially maintained lawn/garden area. There is no requirement that the Grantor maintain this area in such a fashion and the Grantor may permit it to grow up to a natural wooded state or a landscaped wooded state should the Grantor so desire. This provision is an exception to Sections 2 (C) and (D) above.
- C. The Grantor reserves the right to maintain, repair, and replace the existing paved driveway from Scamman Road to the Excluded Area identified on the Survey as "Driveway" and to use the driveway for access by motorized vehicles or by foot. Furthermore, the Grantor reserves the right to maintain, repair, and replace the existing culverts and install new culverts for the driveway. This provision is an exception to Sections 2 (C), (D) and (I), above.
- D. The Grantor reserves the right to maintain, repair, replace, and upgrade the existing underground utilities passing under the Property and serving the Excluded Area, including but not limited to telephone, electric, and cable and any above ground transformers/equipment enclosures associated with said underground utilities. The approximate location of the existing utilities are shown on the Survey as "Underground Utilities." Said underground utilities shall only serve the permitted uses on the Property and/or the Excluded Area
- E. The Grantor must notify the Grantee in writing at least thirty (30) days before any exercise of the aforesaid reserved rights, except in the case of an emergency in which case notification within seven (7) days after the emergency exercise of a reserved right shall suffice; and furthermore the use of motorized vehicles in Section 3(A) and maintenance of the lawn in Section 3(B) shall not require notice to the Grantee.
- F. The Grantor reserves the right to grant a lease, easement, or other legal right to the Town of Stratham to withdraw groundwater on a sustainable yield basis and to remove said

groundwater from the Property only for the purpose of providing a public water system, as defined by NH RSA 485:1-a, XV, as it may be amended from time to time.

“Sustainable yield” shall mean that rate of annual water withdrawal that can be replenished from the aquifer on an annual basis, based on well recovery rates.

Withdrawal or removal of groundwater for private, commercial purposes not served by a public water system is expressly prohibited.

- i) **Test Wells:** Prior to drilling test wells on the Property, the Grantor or Town of Stratham shall submit a Test Well Site Plan to the Grantee for review and approval. Said plan shall identify the proposed locations and access for the test wells and identify the steps to be taken to minimize damage to the Property and Purposes of this Easement. The Grantor or Town of Stratham shall include in The Test Well Site Plan a restoration plan that addresses the impacts associated with the test wells and associated improvements.
 - a. The Grantee shall limit its review of the Test Well Site Plan to the proposed access and restoration plan components and either approve, approve with conditions, or deny those components of the Test Well Site Plan within thirty (30) days of receipt of the request.
 - b. The Grantor and the Town of Stratham is encouraged to communicate regularly and openly with the Grantee as it develops its Test Well Site Plan.
 - c. In the event that if after two (2) years from the date of installation of the test wells the Grantor or Town of Stratham has not submitted a Construction Proposal per Env-Ws 374.02, as may be amended, to the State of New Hampshire, then the Grantor shall initiate the restoration plan and complete it within six (6) months. The Grantor may request extensions from the Grantee for implementing and completing the restoration plan which the Grantee may grant at its discretion.
- ii) **Facilities and Improvements:** For the purposes hereof, permitted activities in conjunction with a groundwater withdrawal development project shall consist of the installation, maintenance, monitoring, and replacement of test wells, long-term water production wells, monitoring wells, monitoring stations, pumping stations, and ancillary improvements such as but not limited to permeable-surface roads, signs, electric utilities necessary to power the pumps and related equipment, pipes, conduits, and security facilities, but only if they are required to be located on the Property. To the extent that said facilities and improvements must be located on the Property, those facilities and improvements shall, to the maximum extent possible, be located so as to minimize the impact to and disturbance of the Property and the Purposes of this Easement, and are subject to the prior written approval of the Grantee, as outlined below. Other major facilities including, but not limited to, storage tanks, shipping facilities, non-permeable pavement, and office and laboratory facilities for employees shall not be located within the Property.

- a. Prior to submitting a Construction Proposal per Env-Ws 374.02, as may be amended, for approval by the appropriate State of New Hampshire agency, the Grantor or Town of Stratham shall submit to the Grantee for approval the following information and plans (hereinafter, collectively referred to as "Site Plans") in appropriate format (e.g., documents, maps, plans, specifications, and designs) sufficient to identify the location and design of any proposed facilities or improvements on the Property, including but not limited to temporary or permanent well sites, pumping stations, and ancillary improvements such as but not limited to access ways/roads, signs, electric utilities, pipes, conduits, and security facilities and the provisions to minimize disturbance and impacts to the Property and Purposes of this Easement during and after installation and operation of the ground water withdrawal development project for the public water system.
 - b. The Grantee shall approve, approve with conditions, or deny the proposed Site Plans in writing within sixty (60) days of its receipt and base its decision on the impacts to the Property and the Purposes of this Easement.
 - c. The Construction Proposal submitted to the State of New Hampshire shall accurately reflect the Site Plans approved by the Grantee.
 - d. Upon completion of the ground water withdrawal development project, the Grantor or Town of Stratham shall submit an "as built" Site Plan to the Grantee.
 - e. Any proposal to expand, enlarge or relocate facilities and improvements related to groundwater withdrawal shall require the approval of the Grantee in accordance with process and procedure in 4.A.ii. a-d above. This provision does not apply to increases in water withdrawal rates or amounts or to maintenance or repair of said facilities and improvements.
 - f. If the groundwater wells and associated facilities and improvements are no longer used and there is no feasible plan for their eventual reuse, the Grantor shall undertake the restoration of the site in consultation with the Grantee.
- iii.) Compliance with Law: Activities taken by the Grantor and Town of Stratham in execution of the groundwater withdrawal right herein shall comply with all federal, state and local requirements, including but not limited to requirements associated with public water supply, water withdrawals, and groundwater discharges, and the Grantor and Town of Stratham shall obtain any associated and requisite approvals from said agencies and abide by the conditions of said approvals.
- iv.) The Grantor or Town of Stratham shall provide to the Grantee a copy of any application for renewal, and any subsequent approval by the State, of the groundwater withdrawal permit.

This provision is an exception to Section 2.C., D., and F. above.

4. NOTIFICATION OF TRANSFER, TAXES, MAINTENANCE

- A. The Grantor agrees to notify the Grantee in writing at least ten (10) days before the transfer of title to the Property.
- B. The Grantee shall be under no obligation to maintain the Property or pay any taxes or assessments thereon.

5. BENEFITS AND BURDENS

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, agrees to and is capable of protecting the conservation purposes of this Easement, and has the resources to enforce the restrictions of this Easement. Any such assignee or transferee shall have like power of assignment or transfer.

6. AFFIRMATIVE RIGHTS OF GRANTEE

- A. The Grantee and Executory Interest Holder 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. For these purposes, and for the benefit of the Property, the Grantor hereby also conveys and grants to the Grantee and Executory Interest Holder an appurtenant right of access for pedestrian access from and to Scamman Road over an approximately fifty (50) foot right of way as shown on the Survey as the southernmost "50' Wide Right of Way" located between Lot 18-58 and Lot 18-59 and further described in Appendix A. The location of the access easement may be relocated by the Grantor, Grantee and Executory Interest Holder upon the mutual agreement of the three parties. The Grantee and Executory Interest Holder shall have the right to allow the public to use said Access Easement for pedestrian access to the Property. The burden and benefit of this right of access, as established herein, shall run with the land.
- B. To facilitate such inspection and to identify the Property as conservation land protected by the Grantee, the Grantee shall have the right to place signs, each of which shall not exceed thirty (30) square inches in size, along the Property's boundaries.
- C. The Executory Interest Holder or its designee(s) shall have the right, but not the obligation, to maintain the pedestrian/mountain bike trails and associated bridges and

other improvements (e.g., signs, trail markers, etc.) on the Property.

7. RESOLUTION OF DISAGREEMENTS

- A. The Grantor and the Grantee desire that issues arising from time to time concerning uses or activities in light of the provisions 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 either party becomes concerned whether any use or activity (which together for the purposes of this Section, "Resolution of Disagreements," shall be referred to as the "Activity") complies with the provisions of this Easement, wherever reasonably possible the concerned party shall notify the other party of the perceived or potential problem, and the parties shall explore the possibility of reaching an agreeable resolution by informal dialogue.
- B. If informal dialogue does not resolve a disagreement regarding the Activity, and the Grantor agrees not to proceed or to continue with the Activity pending resolution of the disagreement concerning the Activity, either party may refer the disagreement to mediation by written notice to the other. Within ten (10) days of the delivery of such a notice, the parties shall agree on a single impartial mediator. Mediation shall be conducted in Exeter, New Hampshire, or such other location as the parties shall agree. Each party shall pay its own attorneys' fees and the costs of mediation shall be split equally between the parties.
- C. If the parties agree to bypass mediation, if the disagreement concerning the Activity has not been resolved by mediation within sixty (60) days after delivery of the notice of mediation, or if the parties are unable to agree on a mediator within ten (10) days after delivery of the notice of mediation, the disagreement may be submitted to binding arbitration in accordance with New Hampshire RSA 542. The parties shall have ten (10) days to accept or refuse binding arbitration. The Grantor and the Grantee shall each choose an arbitrator within twenty (20) days of the delivery of written notice from either party referring the matter to arbitration. The arbitrators so chosen shall in turn choose a third arbitrator within twenty (20) days of the selection of the second arbitrator. The arbitrators so chosen shall forthwith set as early a hearing date as is practicable, which they may postpone only for good cause shown. The arbitration hearing shall be conducted in Exeter, New Hampshire, or such other location as the parties shall agree. A decision by two of the three arbitrators, made as soon as practicable after submission of the matter, shall be binding upon the parties and shall be enforceable as part of this Easement.
- 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, to require the restoration of the Property to its condition prior to the breach, and to recover such damages as appropriate.
- E. Notwithstanding the availability of mediation and arbitration to address disagreements

concerning the compliance of any Activity with the provisions 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 court of competent jurisdiction to cause the cessation of any such damage or harm, to enforce the terms of this Easement, to enjoin any violation by permanent injunction, and to require the restoration of the Property to its condition prior to any breach.

8. BREACH OF EASEMENT – GRANTEE’S REMEDIES

- A. If the Grantee determines that a breach of this Easement has occurred or is threatened, the Grantee shall notify the Grantor in writing of such breach and demand corrective action to cure the breach and, where the breach involves injury to the Property, to restore the portion of the Property so injured to its prior condition.
- B. The Grantor shall, within thirty (30) days after receipt of such notice or after otherwise learning of such breach, undertake those actions, including restoration, which are reasonably calculated to cure swiftly said breach and to repair any damage. The Grantor shall promptly notify the Grantee of its actions taken hereunder.
- C. If the Grantor fails to perform its obligations under the immediately preceding paragraph B. above, or fails to continue diligently to cure any breach until finally cured, the Grantee may undertake any actions that are reasonably necessary to repair any damage in the Grantor’s name or to cure such breach, including an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury.
- D. If the Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation features of the Property, the Grantee may pursue its remedies under this Section, “Breach of Easement...,” without prior notice to the Grantor or without waiting for the period provided for cure to expire.
- E. The Grantee shall be entitled to recover damages from the party directly or primarily responsible for violation of the provisions of this Easement or injury to any conservation features protected hereby, including, but not limited to, damages for the loss of scenic, aesthetic, or environmental attributes of the Property. Without limiting the Grantor’s liability therefore, the Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.
- F. The Grantee’s rights under this Section, “Breach of Easement...,” apply equally in the event of either actual or threatened breach of this Easement, and are in addition to the provisions of the preceding Section, “Resolution of Disagreements,” which section shall also apply to any disagreement that may arise with respect to activities undertaken in response to a notice of breach and the exercise of the Grantee’s rights hereunder.

- G. The Grantor and the Grantee acknowledge and agree that should the Grantee determine, in its sole discretion, that the conservation features protected by this Easement are in immediate danger of irreparable harm, the Grantee may seek the injunctive relief described in the third paragraph of this Section, "Breach of Easement...", both prohibitive and mandatory, in addition to such other relief to which the Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The Grantee's remedies described in this Section, "Breach of Easement...", shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
- H. Provided that the Grantor is directly or primarily responsible for the breach, all reasonable costs incurred by the Grantee in enforcing the terms of this Easement against the Grantor, including, without limitation, staff and consultant costs, reasonable attorneys' fees and costs and expenses of suit, and any costs of restoration necessitated by the Grantor's breach of this Easement shall be borne by the Grantor; and provided further, however, that if the Grantor ultimately prevails in a judicial enforcement action each party shall bear its own costs. Notwithstanding the foregoing, if the Grantee initiates litigation against the Grantor to enforce this Conservation Easement, and if the court determines that the litigation was initiated without reasonable cause or in bad faith, then the court may require the Grantee to reimburse the Grantor's reasonable costs and reasonable attorney's fees in defending the action.
- I. Forbearance by the Grantee to exercise its rights under this Easement in the event of any breach of any term thereof by the Grantor shall not be deemed or construed to be a waiver by the Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of the Grantee's rights hereunder. No delay or omission by the Grantee in the exercise of any right or remedy upon any breach by the Grantor shall impair such right or remedy or be construed as a waiver. The Grantor hereby waives any defense of laches or estoppel.
- J. 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, disease, infestation 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. The Grantee and the Grantor reserve the right, separately or collectively, to pursue all legal and/or equitable remedies, as set forth in this Section, "Breach of Easement...", against any third party responsible for any actions inconsistent with the provisions of this Easement.

9. EXECUTORY INTEREST

- A. If the Grantee ceases to enforce the Easement conveyed hereby or fails to enforce it within thirty (30) days after receipt of written notice from the Town of Stratham, a qualified organization as specified in the Section "Benefits and Burdens" above (sometimes herein referred to as the "Executory Interest Holder"), requesting such enforcement delivered in hand or by certified mail, return receipt requested, then the Executory Interest Holder shall have the right to enforce this Easement. All reasonable costs of such enforcement shall be paid by the Grantee. In such circumstance, or in the event the Grantee acquires the underlying fee interest in the Property, the Executory Interest Holder shall then also have the right to terminate the Easement interest of the Grantee in the Property by recording a notice to that effect in the Registry of Deeds referring hereto and shall thereupon assume and thereafter have all interests, rights, responsibilities and duties granted to and incumbent upon the Grantee in this Easement.
- 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 the Section "Benefits and Burdens" above. Any such assignee or transferee shall have like power of assignment or transfer.

10. NOTICES

All notices, requests and other communications, required 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.

11. 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.

12. EXTINGUISHMENT & CONDEMNATION

- A. Extinguishment. If circumstances arise in the future such as render the Purposes of this Easement impossible or impracticable to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such judicial termination or extinguishment, shall be determined in accordance with Section 12.C. below. In making

this grant of Easement, Grantor has considered and acknowledges the possibility that uses prohibited by the terms of this Easement may become more economically viable than the uses specifically reserved by Grantor pursuant to this Easement. It is the intent of both Grantor and Grantee that any such change in economic conditions shall not be deemed to be circumstances justifying the termination or extinguishment of this Easement pursuant to this Section.

- B. Condemnation. If all or any part of the Property is taken, in whole or in part, by exercise of the power of eminent domain or is acquired by purchase in lieu of condemnation, whether by public, corporate or other authority, so as to terminate this Easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of their interests in the Property subject to the taking or in lieu purchase and to recover all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered. The amount of the proceeds to which the Grantee shall be entitled, after payment of any expenses, shall be determined in accordance with Section 12.C. below.
- C. Valuation. This Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of Sections 12.A. and 12.B. above, shall have a fair market value which shall be determined as follows:
- (i) If the Grantor claims a charitable contribution deduction, that value determined by multiplying (1) the fair market value of the Property without deduction for the value of this Easement as of the time of said extinguishment or condemnation, by (2) the ratio of the value of the Easement at the time of this grant to the value of the Property at the time of this grant without deduction for the value of this Easement, those values being those used to calculate the deduction for federal income or estate tax purposes allowable by reason of this grant, pursuant to the IRS Code Section 170(h) or 2055(f), determined by an appraisal report which shall be prepared by a qualified appraiser on behalf of the Grantor and which the Grantor shall submit to the Grantee. For the purposes of this Section 12, the ratio of the value of the Easement to the value of the Property unencumbered by this Easement shall remain constant. Any increase in value attributable to improvements made after the effective date of this Easement shall accrue to such of the Grantor and Grantee that made the improvement(s).
 - (ii) If the Grantor does not claim a charitable contribution deduction, that value determined by an appraisal prepared by a qualified appraiser as of the time of said extinguishment or condemnation.

The balance of the amount recovered under Section 12.A. or 12.B. above, after payment of any expenses, shall be divided between the Grantor and the Grantee in proportion to the value of their respective interests in that part of the Property extinguished or condemned as determined pursuant to this Section 12.C.(i) or (ii) as the case may be.

13. AMENDMENT

If, owing to unforeseen or changed circumstances, Grantor and Grantee agree that an amendment to, or modification of, this Easement would be appropriate and desirable, Grantor and Grantee may jointly amend this Easement pursuant to: the provisions and limitations of this section; the then-current amendment policies of the Grantee; notification is given to the New Hampshire Attorney General's Office at least thirty (30) days prior to the adoption of the amendment; and applicable state and federal law. Any amendment shall be consistent with the Purposes of this Easement, and shall not impair the conservation attributes of the Property protected by this Easement. No amendment shall affect the qualification of this Easement or the status of the Grantee under any applicable laws, including Sections 170(h) and 501(c)(3) of the Internal Revenue Code of 1986, as amended, and NH RSA 477:45-47 as may be amended from time to time, nor shall any amendment affect the perpetual duration of this Easement. Any amendment shall be executed by the Grantor and the Grantee and shall be recorded in the Rockingham County Registry of Deeds. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

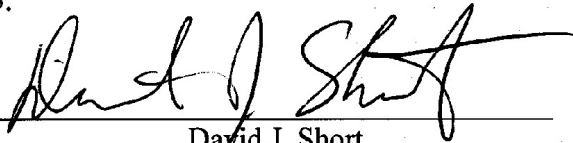
14. ADDITIONAL EASEMENT

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 the Section "Benefits and Burdens," above, accepts and records the additional easement.

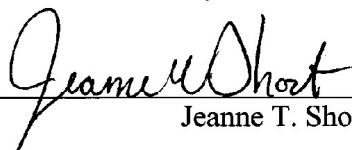
The Grantee, by accepting and recording this Easement, agrees to be bound by and to observe and enforce the provisions hereof and assumes the rights and responsibilities herein granted to and incumbent upon the Grantee, all in the furtherance of the conservation purposes for which this Easement is delivered.

IN WITNESS WHEREOF, We have hereunto set our hands this 19 day of

June, 2015.



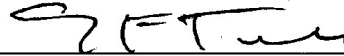
David J. Short



Jeanne T. Short

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM, ss.

On this 19 day of June, 2015, before me personally appeared
David J. Short and Jeanne T. Short, husband and wife, known to me, or satisfactorily proven,
to be the people 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.



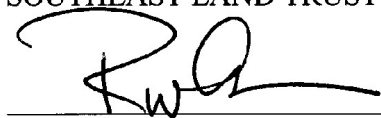
Notary Public/~~Justice of the Peace~~

My commission expires:



ACCEPTED: SOUTHEAST LAND TRUST OF NEW HAMPSHIRE

By:


Roger Stephenson

Title: President

Duly Authorized

Date:

6-18-15

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM, ss.

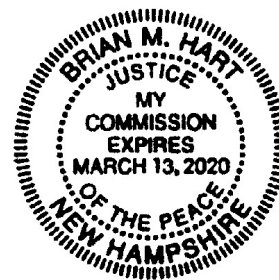
On this 18 day of June, 2015, before me personally appeared **Roger Stephenson**, President of the Southeast Land Trust of New Hampshire, known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same as his free act and deed for the purposes therein contained.



Notary Public/Justice of the Peace

My commission expires:

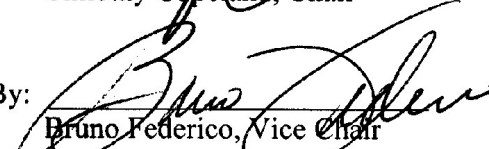
3-13-2020




EXECUTORY INTEREST ACCEPTED BY THE TOWN OF STRATHAM, NEW HAMPSHIRE

BOARD OF SELECTMEN

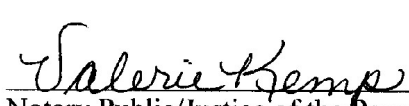
By: 
Timothy Copeland, Chair

By: 
Bruno Federico, Vice Chair

By: 
David Canada

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

The foregoing Conservation Easement Deed was acknowledged before me this _____ day of June 15, 2015, 2015 by Timothy Copeland, Bruno Federico, and David Canada, duly authorized Selectmen of the Town of Stratham Board of Selectmen, on behalf of the Town of Stratham.


Notary Public/~~Justice of the Peace~~
My commission expires:

VALERIE KEMP
Notary Public - New Hampshire
My Commission Expires January 28, 2020

APPENDIX A

The "Property" subject to this Easement is a portion of two tracts of land situated on Scamman Road, so-called, in the Town of Stratham, County of Rockingham, State of New Hampshire, consisting of approximately 34.6 acres, shown on a plan entitled "Plat of Land Scamman Road Stratham N.H. Prepared for Southeast Land Trust of N.H.," by T.D. Brouillette Land Surveying, dated May 19, 2015, recorded as Plan 7-38884 at the Rockingham County Registry of Deeds (hereafter "Survey"), and more particularly bounded and described as follows:

Beginning at the northwesterly corner of a 50' wide right of way at an iron pipe in a stonewall, at land of Christian Barone, thence N63°53'41"W 27.69' to the end of stonewall, thence N63°53'41"W 101.43' to the beginning of stonewall, thence N69°41'43"W 20.79' to a 1 1/4" iron pipe in stonewall, thence N69°41'43"W 41.87' to the end of stonewall, thence N69°41'43"W 101.29' to a 1 1/4in iron pipe, thence N69°41'43"W 190.00' to a point, thence N69°41'43"W 100.00' to a 1" iron pipe. The previous 7 courses are by land of Christian Barone, George L. Dukeman, and Norman and Donna Marsh.

Thence N25°05'01"E 89.16' to the beginning of a stonewall, thence N25°05'52"E 146.98' along stonewall to a point, thence N27°41'03"E 91.31' to a point, thence N31°18'46"E 124.11' to a drill hole found in stonewall, the previous 4 courses are by land of Crockett Farm LLC.

Thence S70°00'32"E 366.77' to a 1/2in iron rod set flush, thence N22°02'10"E 143.31' to a 1/2" iron rod, thence N83°13'20"W 236.33' to a 1/2" iron rod, thence S84°46'41"W 200.00' to a 1/2" iron rod, thence S24°46'41"W 340.00' to a 1/2" iron rod, thence S61°13'19"E 425.00' to a 1/2" iron rod, thence N22°02'07"E 151.76' to drill hole set with 1/2" iron rod witness.

Thence S61°13'19"E 783.75' to a 1/2in iron rod set in found stone pile, thence S60°36' 11"E 453.11' to a 1/2" iron rod set in found stone pile, the previous 2 courses are by land of Heirs of C.H. Chase, and Gordon and Edith Barker Trustees.

Thence S13°40'59"W 298.34' to a 5/8" iron rod found by land of Heirs of C.H. Chase, thence S57°41'22"E 427.24' to a 5/8" iron rod by land of Heirs of C.H. Chase, thence S29°35' 19"W 454.66' to a 6" by 6" fieldstone bound found up 3.5' leaning northeasterly, thence S29°35'19"W 354.50' to a 6" by 8" fieldstone bound found broken off with a 24" red oak partially grown over said bound, thence S29°35'19"W 5' to stonewall, the previous 3 courses by land of Town of Stratham.

Thence N51°29'42"W 70.10' along stonewall to a point, thence N51°58'13"W 94.52' to a point, thence N54°52'41"W 119.81' to a drill hole in stonewall, thence N53°24'23"W 56.51' to a point, thence N58°17'45"W 39.40' to a drill hole in stonewall, thence N06°55'26"E 144.02' to drill hole in stonewall, thence N53°39'29"W 60.21' to a 3/4" iron pipe at end of stonewall, the previous 7 courses are by the land of Julie Adams and by the land of Charles T. Buban.

Thence N53°39'29"W 50.06' along right of way to a drill hole, thence N57°44'48"W 49.91' to a point, thence N56°02'35"W 181.95' to a drill hole in stone wall with a 3/8" iron rod witness, thence N54°12'54"W by stonewall 26.47' to a 1" pinched iron pipe, thence N66°59'52"W 46.55'

to the end of stonewall, thence N68°18'58"W 61.57' to the beginning of stonewall, thence N79°02'03"W 31.25' to a 1" iron pipe found in stonewall, thence N79°02'03"W 67.75' to a point, thence N74°57'14"W 84.15' to a 1" iron pipe found in stonewall, thence N74°57'14"W 90.37' to a point, thence N74°57'14"W 16.00' to a point, thence N46°16'09"W 48.89' to a 1" iron rod found in stonewall, thence N46°16'09"W 48.56' to a point, thence N65°15'26"W 104.97' to a 1" iron pipe found at the end of stonewall, the previous 11 courses are by land of Christopher Lupoli, Keri A. Degen, Lucey Family Irrevocable Trust, and A&C Gilman Family Revocable Trust.

Thence N65°15'26"W 50.00' along right of way to the point of beginning.

SUBJECT TO a 15' wide right of way in favor of the Town of Stratham recorded at the RCRD at Book 3409, Page 0020.

TOGETHER WITH appurtenant right of access from and to Scamman Road through and across a fifty (50) foot right of way to and from the conservation easement area described above consisting of a fifty (50) foot wide right of way, as shown on the Survey as "50' Wide Right of Way" over which the Grantee and Executory Interest Holder may pass and repass on foot and the Grantee or Executory Interest Holder may allow the public to pass and repass on foot, all as more particularly described in Section 6.A of the Conservation Easement. Said access easement more particularly described as follows:

Beginning at a point on the easterly sideline of Scamman Road at the southeasterly corner of land of Shauna Larkin, thence following a curve to the left with a radius of 20.00' and a length of 25.33' to a 1" iron pipe, thence N39°30'39"E 292.01' along land of Larkin to a drill hole in a stonewall to the above described conservation easement area, thence S53°39'29"E 50.06' by the conservation easement area to a 3/4" iron pipe, thence S39°30'22"W 266.81' along land of Charles Buban to a 3/4" iron pipe, thence following a curve to the left with a radius of 20.00' and a length of 36.37' to a point on the easterly sideline of Scamman Road, thence N67°46'13"W 93.12' along the easterly sideline of Scamman Road to the point of beginning.

MEANING AND INTENDING to describe a portion of the premises conveyed by deed from Leo and Shirley Manseau, Trustees of the Scamman Road Realty Trust to David and Jeanne Short dated July 20, 1999 and recorded at the RCRD Book 3409, Page 0020 and all of the premises conveyed by a deed from Robert and Lucy Young to David and Jeanne Short dated September 25, 2002 and recorded at the RCRD Book 3845, Page 2535.