

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. THIS TRANSFER IS ALSO EXEMPT FROM THE LCHIP SURCHARGE PURSUANT TO RSA 478:17-G, II(A).

053225

WARRANTY CONSERVATION EASEMENT DEED WITH GRANT OF WATER WITHDRAWAL RIGHTS

I, **BRADLEY R. JONES**, a married person, with a mailing address of PO Box 175, 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, 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),

and an Executory Interest therein to the **TOWN OF STRATHAM**, a New Hampshire municipal corporation duly organized, with a principal place of business at 10 Bunker Hill Avenue, Town of Stratham, County of Rockingham, State of New Hampshire, 03885, a "qualified organization" within the meaning of Section 170 (b)(1) of the Internal Revenue Service Code of 1986, as amended, and a governmental body eligible to hold a "conservation easement" within the meaning of N.H. RSA 477:45-47 (hereinafter referred to as the "Executory Interest Holder"), as further described in Section 10 below,

the Conservation Easement (herein referred to as the "Easement") hereinafter described with respect to that certain area of land (herein referred to as the "Property") being unimproved land, consisting of approximately 39.97 acres, situated on Winnicut Road in the Town of Stratham, County of Rockingham, State of New Hampshire, shown on a plan entitled "PLAT OF LAND IN

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ROCKINGHAM COUNTY
REGISTRY OF DEEDS

STRATHAM, NH. SHOWING CONSERVATION EASEMENT AND EXCLUDED AREA AT WINNICUT ROAD & HIGH STREET (ASSESSORS MAP 17 LOT 109 & MAP 18 LOT 3)", prepared by Millennium Engineering Inc., Exeter, NH, dated Sept. 06, 2012, and recorded at the Rockingham County Registry of Deeds as Plan D-3744 O, and more particularly bounded and described in Appendix "A" attached hereto and made a part hereof.

The Property includes the following natural habitat, open space, scenic, forestry, water supply, and conservation attributes protected by the terms of this Easement:

- More than 1,400 feet of undeveloped, scenic frontage along Winnicut Road and more than 700 feet of shoreline on Jewell Hill Pond (aka Pete's Pond);
- an exemplary natural community of dry Appalachian oak forest, identified by the New Hampshire Natural Heritage Bureau, considered to be a good quality example of this rare or uncommon forest type;
- "as the N.H. Fish and Game Department's Wildlife Action Plan, revised as of 2010, has categorized approximately 86% of the Property as "Tier 1," containing the "highest ranking habitats by ecological condition in the state," 9% as "Tier 2," containing "habitats of highest ranking condition as compared to all habitats in the same biological region (Gulf of Maine Coastal Plain);"
- enhancement and enlargement of 107 acres of protected land adjacent to/nearby the Property, including Jones conservation easement (107 acres, Rockingham County Conservation District);
- 23.4 acres of statewide or locally significant agricultural soils, and 29.7 acres of soils in highest suitability category (Group I) for forest products, as determined by the U.S. Natural Resources Conservation Service;
- 12.74 acres within the Wellhead Protection Area for the Jewell Hill Farm and Chisholm Farm public water supply;
- The Town of Stratham remains a highly desirable community with continued residential development pressure, even during the present slow recovery to the recession.

The conservation attributes and present conditions of the Property are further described and set forth in a Baseline Documentation Report which is on file with the Grantee and Executory Interest Holder.

1. PURPOSES

Because of the above described conservation attributes, 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 of the rare and uncommon natural habitat of the Property; and
- B. The conservation of open spaces, particularly the conservation of the productive forest land of which the Property consists, and the long-term protection of the Property's capacity to produce economically valuable forestry products; and

- C. The scenic enjoyment of the general public; and
- D. The preservation and protection of the quality and availability of ground water and surface water resources on and under the Property, as potential future public water supplies, as defined by RSA 485:1-a, XV, as it may be amended from time to time.

These Purposes are consistent with the clearly delineated open space conservation goals and/or objectives as stated in Chapter 7 (Resource Conservation and Preservation) of the August, 1998 Master Plan of the Town of Stratham ("the Master Plan"): "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...."; 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 for industrial or commercial purposes shall be performed, to the extent reasonably practicable, in accordance with a coordinated management plan for the sites and soils of the Property. Said agriculture shall not be detrimental to the Purposes of this Easement, nor materially impair the scenic quality of the Property as viewed from public roads. Said agricultural activities shall be in accordance with the then-current scientifically based practices recommended by the UNH Cooperative Extension, U.S. Natural Resources Conservation Service, and the New Hampshire Department of Agriculture, Markets, and Food, including but not limited to recommended practices in said NH Department's "Manual of Best Management Practices (BMPs) for Agriculture in New Hampshire" dated July 2008 and as may be revised, updated, or superseded from time to time, or by other governmental natural resource conservation and management agencies then active.
- 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. Exceptions to this limitation may be granted by mutual agreement in writing by the Grantor and Grantee. 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 (second edition)" (University of New Hampshire Cooperative Extension, 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 the exemplary natural community dry-Appalachian oak forest and 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.a above
 - the protection of the water quality of the unnamed pond, as well as minimizing disturbance around all wetlands; and
 - 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, fence, utility line, bridge, culvert, barn, maple sugar house, or shed; and ii) not detrimental to the Purposes of this Easement. Any such structure's individual footprint shall not exceed two hundred (200) square feet in area and the cumulative footprint of all such structures shall not exceed one thousand (1,000) square feet in area. 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, any portion of a septic system, tennis court, swimming pool, athletic field, golf course, dock, communications tower, pond, 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 twenty-four (24) 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 neither use nor grant permission for motorized vehicle use on the Property, except as necessary in the accomplishment of the agricultural, forestry, habitat management, law enforcement and public safety, or conservation uses of the Property, provided that no use of motorized vehicles shall create impacts that are detrimental to the productivity of the soils on the Property and the Purposes of this Easement; however, notwithstanding the foregoing, use of snowmobiles on snow is allowed on the Property.
- J. The Property shall not be used to satisfy the density, open space, frontage, setback, or other requirements of any applicable zoning ordinance, subdivision regulation, or other land use regulation of any governmental unit with respect to the development of any other property. Notwithstanding the provisions of the immediately preceding sentence, said regulations shall not include those governing N.H. Current Use Assessment under RSA 79-A as may be amended from time to time.

3. RESERVED RIGHTS

- A. Posting of Property Against Public Access: The 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.

4. GRANT OF PUBLIC WATER WITHDRAWAL TO TOWN OF STRATHAM

Subject to the following conditions, the Town of Stratham reserves the right to withdraw groundwater on a sustainable yield basis and to remove said groundwater from the Property only for the purpose of providing a community public water system, as defined by NH RSA 485:1-a, XV, as it may be amended from time to time. Said community public water system shall be operated by or on behalf of the Town of Stratham. The community public water system shall primarily serve the Town of Stratham, but may also serve adjacent communities such as Exeter

or Greenland as part of a regional supply operation. The withdrawal or removal of groundwater for private commercial purposes is expressly prohibited.

- A. Permitted Activities: For the purposes hereof, Permitted Activities in conjunction with said withdrawal and/or removal shall consist of the installation, maintenance, monitoring, and replacement of temporary wells for exploratory and/or testing purposes, long-term water production wells, and monitoring wells (hereinafter referred to as "Permitted Activities"). Should the exploratory wells indicate that sufficient groundwater exists for a community public water system, then Permitted Activities shall also include unpaved woods roads no greater than fifteen (15') feet in width, suitable for accessing wells and running underground utilities, pipes, and conduits, signs as required for safety or by the NHDES, and underground electric utilities necessary to power the pumps.
- i. Prior to installing any wells, the Town shall prepare a plan showing the location of trees which may be cut. The plan may be reviewed by a forester retained by the Grantor. The forester may require alternatives to the proposed tree cutting; the alternatives will take into account the underlying Purposes of the Conservation Easement while still allowing the location of the wells to be where the Town dictates. The Grantee and the Stratham Conservation Commission may also review and comment on the proposed tree cutting plan.
 - ii. The Grantor shall be consulted in the design of any such woods roads and may, in a reasonable manner and without having the effect of defeating the purposes of this section, require changes thereto. Any associated woods roads on the Property shall not be constructed of an impervious or impermeable surface and shall minimize the impact on the Purposes of this Easement.
 - iii. Following the installation of trenches for water or other pipes, the Town shall restore the area to its prior condition and shall seed and loam the area.
 - iv. Once said improvements are installed, located, or placed on the Property, the Town of Stratham shall have the right to maintain, repair, and replace said improvements. Upon completion of any maintenance, repair or replacement of said improvements, the Town of Stratham shall restore the impacted portions of the Property to a condition substantially similar to that which existed prior to the disturbance.
- B. Permits Required: Prior to commencement of any activities on the Property related to this reserved right, the Town of Stratham shall secure all necessary federal, state, local, and other governmental permits and approvals. The Town of Stratham's actual withdrawal activities and improvements shall be conducted in accordance with said permits. The Town of Stratham shall provide the Grantee and Grantor with copies of said permits within fifteen (15) days of Town of Stratham's receipt.
- C. Non Compliance: The Town of Stratham shall notify the Grantee and Grantor within five (5) days of determining non-compliance with the conditions of any permits related to this right.

- D. Review Process: Prior to submitting a final proposed groundwater withdrawal plan or subsequent permit amendments or renewals to the New Hampshire Department of Environmental Services (or the then current agency or agencies responsible for the regulation of public water supplies, hereinafter referred to as "NHDES"), the Town of Stratham shall provide to the Grantee and Grantor written information including, but not limited to, documents, maps, plans, specifications, and designs where appropriate, sufficient to identify the proposed water withdrawal and its associated Permitted Activities with reasonable specificity. Such information shall include but not be limited to the following:
- i. Groundwater resource location, description, wellhead locations, wellhead protection zone, and wellhead protection area;
 - ii. Proposed sustainable yield pumping and recharge rates;
 - iii. Monitoring and reporting practices;
 - iv. Design, location and construction impacts of all structures and improvements;
 - v. Well-capping procedures;
 - vi. Anticipated changes in groundwater tables, surface water levels (including Pete's Pond) and associated wetlands and in-stream flows on and off the Property, as a result of proposed groundwater withdrawals; and
 - vii. Provisions to minimize disturbance to the Property and the Purposes of this Easement during and after installation and operation of the proposed withdrawal activities, and improvements.

Within forty-five (45) days of receipt of said information, the Grantee and Grantor may each provide comments and requested changes to the Town of Stratham's proposed groundwater withdrawal plan. The Town of Stratham shall negotiate in good faith with the Grantor and Grantee to address such comments prior to the Town of Stratham's submission of the proposed groundwater withdrawal plan to NHDES.

- E. Impact on Exclusion Area: The Town of Stratham shall request NHDES to conduct public hearings on the proposed ground water withdrawal plan, pursuant to state law and administrative regulations then in effect. Should the NHDES determine that such plan will negatively impact the quantity and/or quality of the water supply in the "Exclusion Area" pursuant to the provisions of RSA 485-C:21 and associated administrative orders, then the Town of Stratham shall have an affirmative obligation to revise the proposed groundwater withdrawal plan. If revisions to the proposed groundwater withdrawal plan are not feasible, then the Town of Stratham shall, in the alternative, provide Grantor the ability to connect to the Town water service as a water supply source for the "Exclusion Area." If this option is exercised, then all connection, impact, and similar one-time fees will be waived for Grantor. However, the Grantor shall be responsible for water usage fees. Further, the Town of Stratham shall notify the Grantee and Grantor of the submission of the final proposed groundwater withdrawal plan within five (5) days of its submission to NHDES. Nothing contained herein shall limit the Grantee's or Grantor's rights to submit comments on the proposed groundwater withdrawal plan to NHDES or otherwise participate in the public review process by NHDES.

- F. Enforcement. In the event that the Town of Stratham fails to execute its obligations

under this section, then Grantor shall have the same enforcement rights against the Town of Stratham as are set forth in Section 9 below.

- G. The exercise of this reserved right shall not require the Town of Stratham to make any additional financial payment to the Grantor.
- H. In the event that sufficient groundwater is located on the Property to create a community public water supply, the Grantor reserves the right to determine the value of such water supply and gift the value of same to the Town of Stratham. The Town of Stratham agrees to accept said gift and provide a written acknowledgement of said gift at the time of conveyance.

5. 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.

6. 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 (hereinafter referred to as "qualified organization"), 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. Prior to any assignment of the easement interest herein (including an assignment in connection with the merger or dissolution of the Grantee) the Grantee shall offer, in writing, to assign the easement to the Town of Stratham, which shall have thirty (30) days to accept or decline the assignment. Said acceptance or declination of the assignment shall be in writing. The Assignment of the conservation easement shall be recorded in the Rockingham County Registry of Deeds. Any such assignee or transferee shall have like power of assignment or transfer, subject to the conditions of this Section 6. The rights of the Town of Stratham hereunder are in addition to its rights as the Executory Interest Holder in Section 10 below.

7. 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.

- 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-six (36) square inches in size, along the Property's boundaries.
- C. The Grantee shall have the rights to post, and to authorize others to post, the Property against or otherwise limit public access only with the consent of the Executory Interest Holder and only if such access is shown to degrade the conservation attributes of the Property, to be inconsistent with the Purposes of this Easement, or to threaten public safety.

8. 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 parties may agree that the disagreement shall be submitted to binding arbitration in accordance with New Hampshire RSA 542. Unless the parties agree upon a single arbitrator, 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 arbitrator(s) 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. The Arbitrator's decision, or 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, 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.

9. 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.

10. 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. Further, if the Grantee assigns or transfers its interest to another qualified organization, including any action taken as part of or in preparation for the dissolution of the Grantee or merger of the Grantee with or into another non-profit organization, 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.
- C. 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.

11. 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.

12. 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.

13. CONDEMNATION/EXTINGUISHMENT

- 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, or whenever all or a part of the Property is lawfully sold without the restrictions imposed hereunder in lieu of exercise of eminent domain, the Grantor, the Grantee, and the Town of Stratham shall thereupon act jointly to recover the full damages resulting from such taking with all incidental or direct damages and expenses incurred by them thereby to be paid out of the damages recovered.
- B. The balance of the land damages recovered from such taking or lawful sale in lieu of exercise of eminent domain shall be divided between the Grantor, the Town of Stratham, and the Grantee in proportion to the fair market value, at the time of condemnation, 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 at the time of the condemnation as determined by an appraisal at condemnation or extinguishment. The Grantor, the Grantee, and the Town of Stratham agree the portion of damages recovered that are attributed to the Easement shall be distributed entirely to the Town of Stratham as it provided the entire purchase price for the acquisition of the Easement.
- C. The Town of Stratham shall use the proceeds resulting from condemnation or extinguishment in a manner consistent with and in furtherance of one or more of the conservation purposes set forth herein.

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.

15. MERGER

The Grantor, Grantee and Executory Interest Holder explicitly agree that it is their express intent, forming a part of the consideration hereunder, that the provisions of this Easement are to last in perpetuity, and that, to that end, no conveyance of the underlying fee interest in the Property to the Grantee or Executory Interest Holder shall be deemed to eliminate this Easement, or any portion thereof, under the doctrine of "merger" or any other legal doctrine.

16. AMENDMENT

If, owing to unforeseen or changed circumstances, the Grantor, Grantee and the Executory Interest Holder agree that an amendment to, or modification of, this Easement would be appropriate and desirable, Grantor, Grantee, and the Executory Interest Holder may amend this Easement pursuant to: the provisions and limitations of this section; the then-current amendment policies of the Grantee; and applicable state and federal law. Any amendment shall be consistent with the Purposes of this Easement, and shall not impair the conservation values 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 the Executory Interest Holder and shall be recorded in the Rockingham County Registry of Deeds. Nothing in this paragraph shall require Grantor, Grantee, or Executory Interest Holder to agree to any amendment or to consult or negotiate regarding any amendment.

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.

This Property is not the homestead of the Grantor or any other person.

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of October, 2012.

Bradley R. Jones
BRADLEY R. JONES

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM, ss.

On this 17th day of October, 2012, 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.



Sharon C. Somers
Notary Public/Justice of the Peace
My commission expires:

ACCEPTED: SOUTHEAST LAND TRUST OF NEW HAMPSHIRE

By: 

Title: Roger W. Stephenson, Vice President
Duly Authorized

Date: 9-28-2012

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM, ss.

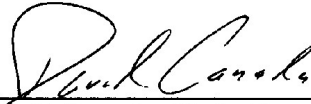
On this 28 day of September 2012, before me personally appeared **Roger W. Stephenson, Vice President of the Southeast Land Trust of New Hampshire**, known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he/she executed the same as his/her free act and deed for the purposes therein contained.

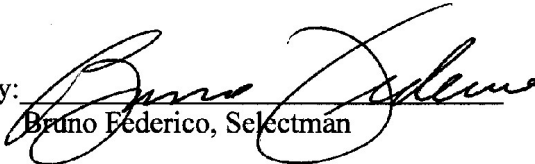



Notary Public/Justice of the Peace
My commission expires: 3-10-2015

EXECUTORY INTEREST ACCEPTED BY THE TOWN OF STRATHAM, NEW HAMPSHIRE

BOARD OF SELECTMEN

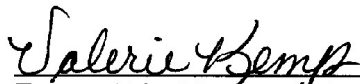
By: 
David Canada, Chair, Board of Selectmen

By: 
Bruno Federico, Selectman

By: _____
Timothy Copeland, Selectman

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

The foregoing Warranty Conservation Easement Deed and Deed Restriction with Grant of Drainage Easement was acknowledged before me this 1 day of October, 2012 by David Canada, Bruno Federico, and Timothy Copeland, duly authorized Selectmen of the Town of Stratham Board of Selectmen, on behalf of the Town of Stratham.


Type or Print Name: Valerie Kemp
Justice of the Peace/Notary Public
My Commission Expires: 1/27/2015

VALERIE KEMP
Notary Public - New Hampshire
My Commission Expires January 27, 2015

APPENDIX A

Legal Description of the Property Subject to Conservation Easement

A certain tract or parcel of land located in the Town of Stratham, County of Rockingham and State of New Hampshire, depicted as Lot 1 (Tax Map 17, Lot 109) and a portion of Lot 2 (Tax Map 18, Lot 3) on a two-sheet plan entitled "PLAT OF LAND IN STRATHAM, NH. SHOWING CONSERVATION EASEMENT AND EXCLUDED AREA AT WINNICUT ROAD & HIGH STREET (ASSESSORS MAP 17 LOT 109 & MAP 18 LOT 3)", dated September 6, 2012, prepared by Millennium Engineering Inc., Exeter, NH, and recorded herewith at the Rockingham County Registry of Deed, being more particularly bounded and described as follows:

Beginning at an iron rod at the westerly corner of the within described Lot 1 (Map 17, Lot 109) along the northerly sideline of Winnicut Road, as shown on said plan; thence running along other land of said Grantor N32°33'49" E a distance of 329.66 feet to a iron rod, thence turning and running N60°33'19"W 189.99 feet to a point in a stone wall at land now or formerly of Christopher M. Cavaretta and other land of Bradley R. Jones, thence turning and running along said stone wall along said other land of said Jones the following courses and distances:

- N53°28'20" E 247.74 feet to a point;
- N63°05'23"E 302.19 feet to a point;
- N17°42'28"E 177.03 feet to a point;
- N26°04'27"E 44.11 feet to a point;
- N42°50'59"E 27.19 feet to a point;
- N53°56'22"E 17.96 feet to a point at land now or formerly of Crockett Farm, LLC;

Thence turning and running along land now or formerly of Crockett Farm, LLC, the following courses and distances:

- S43°16'36"E 111.13 feet to a point along said stone wall;
- S43°48'42"E 75.70 feet to a point at the end of a stone wall;
- S52°28'11"E 45.82 feet to a point at the beginning of a stone wall;
- S34°49'32"E 145.32 feet to a point along said stone wall;
- S35°39'22"E 114.49 feet to a point along said stone wall;
- S37°00'35"E 56.34 feet to a point along said stone wall;
- S16°33'54"E 7.74 feet to a point along said stone wall;
- S44°53'00"E 34.93 feet to a point along said stone wall;
- S40°35'46"E 62.40 feet to a point along said stone wall;
- S50°23'08"E 72.65 feet to a point along said stone wall;
- S35°07'38"E 281.68 feet to a point along said stone wall;
- S38°32'47"E 135.38 feet to the end of the stone wall;
- S46°07'05"E 45.05 feet to the beginning of a stone wall;
- S62°03'34"E 32.57 feet to a point along said stone wall;
- S8°24'36"E 57.50 feet to a point along said stone wall;
- S87°34'09"E 20.01 feet to a point along said stone wall;

- N55°50'00"E 35.49 feet to a point along said stone wall;
- N80°53'54"E 38.00 feet to a point at the end of said stone wall on the southerly sideline of an unnamed pond;

Thence turning and running along said unnamed pond the following courses and distances:

- S04°58'12"E 27.93 feet to a point;
- S28°27'27"E 30.92 feet to a point;
- S21°02'31"E 35.72 feet to a point;
- S37°59'19"E 39.65 feet to a point;
- S55°57'47"E 50.36 feet to a point;
- S65°48'50"E 53.06 feet to a point;
- S58°58'53"E 62.96 feet to a point;
- S68°53'47"E 103.95 feet to a point;
- S63°04'24"E 65.60 feet to a point;
- S59°39'49"E 54.93 feet to a point;
- S66°11'01"E 62.55 feet to a point;
- S60°25'35"E 52.61 feet to a point;
- S58°24'37"E 54.26 feet to a point;
- S59°29'18"E 59.77 feet to a point;
- S41°54'46"E 39.72 feet to a point;
- S41°54'46"E 18.19 feet to a point at land now or formerly of Anita M. & Alfred N. Binette;

Thence turning and running along said Binette S36°38'44"W a distance of 301.68 feet to a point in a stone wall; thence turning and running along said stone wall, still along land of Binette, S01°53'46"E a distance of 54.01 feet to a point in said stone wall; thence turning and running S01°53'46"E 84.30 feet to a point in said stone wall at land now or formerly of John W. & Cynthia Dixon; thence turning and running along said Dixon N78°45'04"W 315.00 feet to an iron rod at other land of the Grantor, said point being the northeast corner of the Excluded Area as shown on said Plan;

Thence turning and running along said Excluded Area, N66°05'08"W 388.75 feet to an iron rod; thence turning and running along said Excluded Area S37°38'07"W 417.31 feet to an iron rod set at the northerly sideline of Winnicut Road;

Thence turning and running along said Winnicut Road the following courses and distances:

- N41°47'38"W 402.99 feet to a point in a stone wall;
- N42°56'21"W 110.14 feet along said stone wall to a point;
- N42°12'18"W 100.76 feet along said stone wall to a point;
- N47°47'50"W 97.87 feet along said stone wall to a point;
- N45°06'17"W 104.94 feet along said stone wall to a point;
- N55°42'13"W 74.38 feet along said stone wall to a point;
- N55°03'35"W 152.78 feet along said stone wall to a point;
- N56°36'52"W 189.16 feet along said stone wall to a point;
- N55°17'13"W 209.37 feet to an iron rod at the end of said stone wall at other land now or

formerly of Bradley R. Jones, said point being the point of beginning.

Said area containing 39.97 acres, more or less.

Said Conservation Easement Area being subject to a right-of-way shown as "R.O.W" on Plan D-18183 as recorded at the Rockingham County Registry of Deeds.

MEANING AND INTENDING to describe and convey a conservation easement interest in a portion of the lands and premises conveyed to Bradley R. Jones by Warranty Deed of Deborah S. Wilson and Francis Wilson dated November 4, 1999 and recorded with the Rockingham County Registry of Deeds at Book 3435, Page 1709.

APPENDIX B

Legal Description of the Property Excluded from Conservation Easement

A certain tract or parcel of land located in the Town of Stratham, County of Rockingham and State of New Hampshire, depicted as "Excluded Area Not Subject to the Conservation Easement 217,800 S.F. 5.00 acres" on a two-sheet plan entitled "PLAT OF LAND IN STRATHAM, NH. SHOWING CONSERVATION EASEMENT AND EXCLUDED AREA AT WINNICUT ROAD & HIGH STREET (ASSESSORS MAP 17 LOT 109 & MAP 18 LOT 3)", dated September 6, 2012, prepared by Millennium Engineering Inc., Exeter, NH, and recorded herewith at the Rockingham County Registry of Deed, being more particularly bounded and described as follows:

Beginning at an iron rod at the westerly corner of the within described area along the northerly sideline of Winnicut Road, as shown on said plan; thence running along other land of said Grantor N37°38'07"E 417.31 feet to an iron rod; thence turning and running S66°05'08"E 388.75 feet to an iron rod at land now or formerly of John W. & Cynthia Dixon; thence turning and running S05°05'03"W a distance of 300.00 feet to an iron rod at the northerly sideline of High Street; thence turning and running along High Street S79°30'45"W a distance of 65.69 feet to a point; thence turning and running along High Street S76°33'44"W a distance of 270.93 feet to a point; thence turning and running along a curve to the right with a radius of 114.95 feet a distance of 125.75 feet along said High Street and Winnicut Road to a point; thence turning and running along said Winnicut Road N40°45'22"W a distance of 204.61 feet to a point; thence turning and running along said Winnicut Road N41°47'38"W a distance of 12.22 feet to an iron rod, said iron rod being the point of beginning. Said area containing 5.00 acres, more or less.

MEANING AND INTENDING to describe a portion of the lands and premises conveyed to Bradley R. Jones by Warranty Deed of Deborah S. Wilson and Francis Wilson dated November 4, 1999 and recorded with the Rockingham County Registry of Deeds at Book 3435, Page 1709.