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Recording Fee: \$ 85.29

Return to:

Town of Stratham

Attn: Paul Deschaine

10 Bunker Hill Avenue

Stratham, NH 03885

Bill Town

071763

2004 AUG 26 AM 9:17

ROCKINGHAM COUNTY
REGISTRY OF DEEDS

CONSERVATION EASEMENT DEED

We, Robert T. Wiggin, Jr. and Marsha L. Wiggin, married, with a principal place of residence at 52 Union Road, Town of Stratham, County of Rockingham, State of New Hampshire (hereinafter referred to as the "Grantor", which word where the context requires includes the plural and shall, unless the context clearly indicates otherwise, include the Grantor's executors, administrators, legal representatives, devisees, heirs, successors, and assigns),

for consideration paid, with WARRANTY covenants, grant in perpetuity to

the Town of Stratham, a municipal corporation situated in the County of Rockingham, State of New Hampshire, acting through its Conservation Commission pursuant to New Hampshire RSA 36-A:4, with a mailing address of 10 Bunker Hill Avenue, Town of Stratham, State of New Hampshire, 03885, (hereinafter referred to as the "Grantee" which shall, unless the context clearly indicates otherwise, include the Grantee's successors and assigns,)

the Conservation Easement (herein referred to as the "Easement") hereinafter described with respect to that certain parcel of land (herein referred to as the "Property") with any and all improvements thereon situated on Union 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.

Grantee acquires this Easement pursuant to NH RSA 477:45-47 and RSA 486-A:1-14.

I. DEFINITIONS

- A. *Agricultural management activities* shall include the production, growing, cultivation, and harvesting of floricultural products, horticultural products, fruits and vegetables, Christmas trees, sod, grass, and forage crops; the raising of dairy animals, bees, exotic game animals, poultry, horses and other livestock, and fish and aquacultural products; the

storage, processing and retail sale of agricultural products produced principally on the Property; and the conservation of soil and water resources.

- B. *Aquifer* shall mean a geologic formation, group of formations or part of a formation that contains sufficient saturated permeable materials (including, but not limited to, sand, gravel, fractured bedrock) to yield significant quantities of water to wells and springs.
- C. *Biosolids* shall mean all treated wastes from the bodies of humans, including treated sewage sludge or compost.
- D. *Commercial activities* shall mean the wholesale or retail marketing, sale, storage, transportation, transmission, or advertising of products or services for a fee or other compensation intended to generate a net profit.
- E. *Community water system* shall mean any water supply which is piped for human consumption which serves at least 15 (fifteen) connections used by year-round residents or regularly serves at least 25 (twenty-five) year-round residents, or as this definition may be updated by the New Hampshire Department of Environmental Services or successor agency.
- F. *Forest management activities* shall mean the growing, stocking, thinning, cutting, harvesting, removal, or sale of forest trees and other native forest plants, and the conservation of soil and water resources.
- G. *Groundwater* shall mean water below the land surface in the saturated zone (where the pore spaces between permeable materials including, but not limited to, sand, gravel, fractured bedrock are filled with water).
- H. *Industrial activities* shall mean the manufacturing, assembling or processing of materials, and the researching and development of products.
- I. *Municipal water system* shall mean a community water system owned by a municipality or village district.
- J. *Pesticides* shall mean herbicides, insecticides, fungicides, rodenticides, biocides, and other similar substances that destroy, repel or control pests.
- K. *Surface water* shall mean streams, lakes, ponds, marshes, water courses, and other bodies of water as defined in NH RSA 485 A:2.
- L. *Sanitary zone* shall mean land within a 400 (four hundred) foot radius of any community water system wellhead or such distance as specified in the New Hampshire Drinking Water Regulations, Env-WS 310, or as they may be updated. Said zone, and the provisions which apply to the zone herein, shall become inoperative during periods when the well is inactivated and Grantee determines that there is no current or anticipated future

use for the well as a community water system. If the well is reactivated or a new one installed, then provisions for the sanitary zone contained herein shall apply.

- M. *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.

II. PURPOSES

It is the purpose of this Easement to assure that the Property will be retained forever in its open space undeveloped condition and to prevent any use of the Property that will impair or interfere with the following aspects of the Property worthy of conservation:

- A. **Water Quality and Supply.** The perpetual protection of the quality and sustainable yield of groundwater and surface water resources under and on the Property to:
1. Safeguard present and future community drinking water supplies, including the land area on the Property which contributes water to a community water source, and
 2. Safeguard the environmental values of the Property that are dependent on water quality and quantity.

This purpose yields a substantial public benefit and is consistent with NH RSA 485-C:1, the "Groundwater Protection Act", which states, in part: "The natural quality of the groundwater resource shall be preserved and protected in order that groundwater may be used for drinking water supply. Ambient groundwater quality standards shall meet drinking water standards....;"

This purpose is also consistent with NH RSA 481:1-C, which states, in part: "an adequate supply of water is indispensable to the health, welfare, and safety of the people of the State, and is essential to the ecological balance of the natural environment of the State and that the water resources of the State are subject to an ever-increasing demand for new and competing uses; that, therefore, the general court declares and determines that the waters of New Hampshire whether occurring above or below ground constitute a precious, finite and invaluable public resource which should be protected, conserved, and managed in the interest of present and future generations....," and

- B. **Open Space.** The preservation and conservation of open spaces, particularly the approximately 20 acres of productive farm and forest land, and the wetlands and frontage on Marsh Brook of which the Property consists. The Property contains soils of prime and statewide importance and abuts two other parcels that have been permanently protected, with a total of 120 contiguous acres protected. This purpose is consistent with NH RSA 79-A, which states: "It is hereby declared to be in the public interest to encourage the preservation of open space, thus providing a healthful and attractive outdoor environment for work and recreation of the state's citizens, maintaining the

character of the state's landscape, and conserving the land, water, forest, agricultural and wildlife resources.”; and

- C. The preservation of the public scenic and historic values, including the approximately 750 feet of frontage on Union Road. The parcel is the last remaining acreage of the original Wiggin Farm, which has been in the Wiggin family for over 300 years.

The above purposes are consistent clearly delineated open space conservation goals and/or objectives, i.e., the following statements 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 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....”;

These significant conservation values are set forth in detail in baseline documentation entitled “Baseline Documentation Report Wiggin Conservation Easement” on file with the Grantee.

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

III. PROHIBITED USES AND ACTIVITIES

Any activity on or use of the Property inconsistent with the purposes of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited. The Grantor will not perform or give permission to or allow others to perform the following acts on the Property:

- A. Industrial Activities and Commercial Activities. No industrial activities or commercial activities shall be allowed on the Property except as permitted in Section IV and approved by the Grantee.
- B. Subdivision. The Property shall not be subdivided or otherwise divided on the ground into separate ownerships except as provided in this Section III or in Section IV below.

The design of any subdivision permitted in Section IV below must receive the prior written approval of the Grantee. Approval will be based on the proposal's consistency with the purposes of this Easement. All other provisions of this Easement shall remain in effect on any parcels so subdivided and all subsequent owners of the newly created parcels must meet the qualifications provided above in the first paragraph of Section III.B.

- C. **Improvements.** No structure or improvements, including, but not limited to, any portion of a residential septic system, billboard, tennis court, swimming pool, dock, aircraft landing strip, tower, wireless telecommunications facility, or mobile home shall be permanently or temporarily constructed, placed or introduced onto, above, or below ground on the Property. However, the existing farm stand on Union Road may be repaired or replaced and ancillary structures and improvements including, but not limited to, utilities, roads, storage tanks, and dams, may be constructed, placed, or introduced onto the Property only as necessary for permitted activities approved by the Grantee and specified in Section IV below.
- D. **Land Surface Alterations.** No removal, filling or other disturbances or erosion of the soil surface, above or below the water table, or any changes in topography, surface or subsurface water systems, wetlands, or wetland habitat shall be allowed, except as necessary in conjunction with permitted on-site activities approved by the Grantee and specified in Section IV below, and provided that:
1. A minimum distance of 5 (five) feet must be maintained between any altered land surface and the historical high groundwater table elevation, except in cases of pond creation in conjunction with permitted on-site activities approved by the Grantee and specified in Section IV; and
 2. Any surface so altered will be recontoured, stabilized and revegetated immediately upon completion of any work associated with permitted uses, with consideration to weather conditions favorable to revegetation.
- E. **Resource Extraction.**
1. In the Sanitary Zone, there shall be no mining, quarrying, excavation or extraction of ground or surface water or minerals such as rocks, gravel, sand, topsoil, or other similar materials except as permitted in Section IV below. In no case may minerals be removed from the Property.
 2. In areas on the Property outside the Sanitary Zone, the resource extraction activities described in Section III.E.1. above are prohibited except in conjunction with permitted on-site activities approved by the Grantee and specified in Section IV below. In no case may minerals be removed from the Property.
 3. A minimum distance of 5 (five) feet must be maintained between the altered land surface and the historical high groundwater table elevation, except in cases of pond creation in conjunction with permitted on-site activities approved by the Grantee and specified in Section IV below.

4. Following any permitted resource extraction, the land surface must be recontoured, stabilized and revegetated immediately upon completion of the resource extraction, with consideration to weather conditions favorable to revegetation.
- F. Waste Disposal. There shall be no dumping, storage, injection, burning or burial of man-made materials, including, but not limited to, building demolition, construction debris, trash, tires, vehicle bodies or parts or similar materials, of materials known to be environmentally hazardous, or of municipal plowed snow.
- G. Storage Tanks. No underground or above ground tanks for the storage of gaseous or liquid petroleum products shall be installed, placed or allowed to remain on the Property, except for above ground fuel tanks with adequate spill containment that are in active use in conjunction with on-site activities as permitted in Section IV and approved by the Grantee and by the New Hampshire Department of Environmental Services or successor agency.
- H. Hazardous Substances. No substances which constitute a hazard to public health or the environment shall be transported, used, stored, applied, or disposed of in any manner or to any extent on or under the Property, except as necessary in conjunction with on-site activities permitted in Section IV and approved by the Grantee.
- I. Impervious Surfaces. Buildings or other impervious materials permitted in conjunction with on-site activities as permitted in Section IV shall cover no more than 3 (three) percent of the Property. The location of impervious surfaces within the Sanitary Zone must receive the prior review and approval of the Grantee.
- J. Water Quality Degradation. Surface water quality and groundwater quality shall be preserved and in no event shall be polluted or degraded by activities on the Property so that the surface or groundwater quality on the Property reaches or violates water quality standards set for public drinking water by the New Hampshire Department of Environmental Services, or such agency with the statutory authority to regulate public water supplies at the time.
- K. Unsustainable Water Withdrawal. The sustainable yield of groundwater, as recharged from surface water and infiltration of precipitation, shall not be exceeded by on-site water withdrawal.
- L. Rare Species Harm. Activities shall not harm state or federally recognized rare, threatened or endangered species or exemplary natural community based upon information from the New Hampshire Natural Heritage Bureau or the agency then recognized by the State of New Hampshire as having statutory responsibility for the conservation of such species.
- M. Detrimental Uses. Notwithstanding the foregoing provisions with regard to specific prohibited uses and activities, but in addition thereto, no activity or use shall be initiated

or maintained or allowed to be initiated or maintained which is detrimental or threatens to become detrimental to the conservation purposes of this Easement and the protection of the quality and quantity of the present or potential community water system.

IV. PERMITTED USES AND ACTIVITIES

- A. The Grantor reserves to itself the following rights related to a Municipal Drinking Water System:

At the Grantor's option, and with all necessary federal, state and local permits, groundwater may be withdrawn by the Grantee/Grantor or the Grantee's/Grantor's designee on a sustainable yield basis and exported from the Property if used for a municipal water system as defined herein. For the purposes hereof, permitted activities in conjunction with the provision of a municipal drinking water system shall be defined as the installation, maintenance, monitoring and replacement of water supply wells, monitoring wells, drinking water treatment facilities, a water distribution system, pump stations, and ancillary improvements such as roads, signs, utilities, security facilities; and the extraction and exportation of groundwater from the Property, all for the purpose of serving public drinking water supply needs. Said activities may be conducted provided that:

Design of facilities and extraction rates are in accordance with a "Water Extraction Plan" which must be approved in advance of implementation and in writing by the New Hampshire Department of Environmental Services or successor agency. Said Plan shall include but not be limited to:

1. Groundwater resource location, description, wellhead locations, wellhead protection zone, and wellhead protection area;
2. Proposed sustainable yield pumping and recharge rates;
3. Monitoring and reporting practices;
4. Facilities design, location and construction impacts;
5. Well-capping procedures; and
6. Anticipated changes in groundwater tables and surface water levels and associated wetlands and in-stream flows on and off the Property as a result of drinking water withdrawals, potential impacts on the associated biological communities, and provisions that shall provide for minimal disturbance to the conservation values of the Property during and after installation and operation of the water supply facilities.

- B. The Grantor reserves the right to subdivide the Property into separately conveyable lots only as necessary for the Grantor's exercise of the reserved rights in Section IV.A. above. The new lot containing the site and/or facilities for withdrawal and/or removal of groundwater shall be the minimum size necessary to accomplish said withdrawal and/or removal. In order to exercise said right, the Grantor shall provide written notice to the Grantee of the proposed exercise at least 90 days prior to submission of any subdivision

application to governmental authorities or 90 days prior to the Grantor's conveyance of any newly created lot, whichever is earlier. Said notice shall include a recordable survey plan prepared by a licensed surveyor at the Grantor's expense showing the proposed boundaries of the new lots, and shall also demonstrate that said subdivision and/or separate conveyance shall minimize detrimental impacts on the purposes of this Easement. The design of any subdivision must receive the prior written approval of the Grantee and said approval shall be based on the proposal's consistency with the purposes of this Easement. All other provisions of this Easement shall remain in effect on any parcels so subdivided.

C. Agriculture and Forestry. Agricultural and forest management activities are allowed on the Property as defined herein. Necessary ancillary improvements that serve on-site forest and agricultural management activities, such as forest and farm roads, utilities, wells, irrigation pumps, ponds, equipment sheds, barns, fences, culverts, and bridges, may be constructed on the Property. Agricultural and forest management activities may be conducted on the Property provided that:

1. Within the Sanitary Zone, no pesticides, biosolids, septage, manure, or similar soil amendments shall be used, stored or disposed of; no livestock or other domestic animals shall be kept or grazed; no new ponds or forestry or farm roads will be created; and no buildings shall be erected; and
2. Forest and agricultural management activities shall promote the overall conservation of viable populations of native plant and animal species; and
3. As long as the Property contributes to an active municipal water system well, forest management activities in which more than the equivalent of 15 (fifteen) cords of wood are cut in any calendar year shall be conducted in accordance with a written "Forest Management Plan" prepared by a professional forester; and agricultural management shall be conducted in accordance with a written "Farm Management Plan."

The preparation of said plans is the responsibility of the Grantor. Said plans shall be submitted to the Grantee for approval (see Section V) in advance of implementation and updated at least once every ten (10) years or on such timetable as may be mutually agreed upon in writing by the Grantor and the Grantee. Said plans shall include:

- a) Natural resource inventory of the Property (including special plant and animal habitat; wildlife; soils; forest types, stocking and stand histories; water resources, location of steep slopes, floodplains, highly permeable or erodible soils, wetlands, and other surface waters);
- b) Aquifer location and description (based on existing information);
- c) Current or proposed wellhead and ancillary facilities and location(s), Sanitary Zone location;

- d) Proposed transportation, storage, use, disposal, timetable, and application rates of specific pesticides, fertilizers, biosolids, septage, manure, and other similar soil amendments;
 - e) Log landing, and forestry and farm road design and layout;
 - f) Proposed buffer zones, cover cropping, erosion controls, and other methods to protect ground and surface waters;
 - g) Forest management and harvesting methods and goals;
 - h) Location, uses and types of ancillary improvements; vehicle use; time of year or conditions for operations; conversion of forest to cleared land; exposure of bare soils; and creation of impervious areas;
 - i) Habitat and scenic impacts; and
 - j) Proposed resource extraction or forest or agricultural by-product disposal.
4. Forest management activities shall be supervised by a professional forester; and
5. Forest and agricultural management activities must be conducted, to the extent possible, in accordance with current scientifically based practices as recommended by state or federal natural resource agencies such as the Natural Resource Conservation Service and in accordance with "Best Management Practices" as set forth in the following publications or as these publications may be specifically updated or superseded:
- a) *Manual of Best Management Practices for Agriculture in New Hampshire*, NH Department of Agriculture, as amended August 1998;
 - b) *Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire*, Department of Resources and Economic Development, 1996;
 - c) *Pesticide Management Guidelines for Groundwater Protection*, UNH Cooperative Extension, November 1992;
 - d) *Buffers for Wetlands and Surface Waters: A Guidebook for New Hampshire Municipalities*, Audubon Society of NH, NH Office of State Planning, UNH Cooperative Extension, Natural Resource Conservation Service, as revised May 1997;
 - e) *Best Management Practices: Biosolids*, UNH Cooperative Extension, 1995;
 - f) *Best Management Practices to Control Nonpoint Source Pollution: A Guide for Citizens and Town Officials*, NH Department of Environmental Services, as revised November 1997;
 - g) *Recommended Voluntary Forest Management Practices for New Hampshire*, Forest Sustainability Standards Work Team, 1997.
6. Management activities shall not significantly impair the scenic quality of the Property as viewed from public waters or roads.
- D. Outdoor Recreation. Non-Commercial outdoor recreation is allowed provided that:

1. In the Sanitary Zone, no camping is allowed, no trails or other recreational improvements may be created or maintained and only non-motorized, dispersed pedestrian recreation is allowed, and
 2. In areas on the Property outside the Sanitary Zone, and with permission from the Grantor, construction, maintenance, signing and use of trails for transitory passive outdoor recreational purposes such as hiking, bicycle riding, , and cross-country skiing are allowed. Necessary ancillary improvements such as trail-head parking, steps, bridges, waterbars, and culverts (but not buildings or campgrounds) are permitted provided that the location, design, use and maintenance plans for any such trails must be approved in advance and in writing by the Grantee.
- E. Detrimental Uses. Notwithstanding the foregoing provisions with regard to specific permitted uses and activities, but in addition thereto, no activity or use shall be initiated or maintained or allowed to be initiated or maintained which is detrimental or threatens to become detrimental to the conservation purposes of this Easement and the protection of the quality and quantity of the present or potential municipal water system.

V. GRANTEE APPROVAL FOR PERMITTED USES AND ACTIVITIES

The Grantor hereby covenants and agrees that the Grantor shall not commence any use or activity which requires prior written approval (see Sections III.B, III.C, III.D, III.E, III.G, III.H, III.I, and IV.) or any other potentially detrimental uses, without having obtained the Grantee's written approval according to the procedures set forth hereunder:

- A. The Grantor shall notify the Grantee in writing of any proposed plan, use or activity that requires the Grantee approval under the terms of this Easement and shall submit to the Grantee, at least 30 (thirty) days in advance, plans and such other information as the Grantee may require.
- B. The Grantee shall approve any or all elements of such proposed plan, use, or activity, with or without conditions, only upon a written finding from the Grantee to the Grantor that:
 1. The proposed plan, use, or activity is consistent with the terms of this Easement; and
 2. That such plan, use, or activity shall not defeat or derogate from the purposes of this Easement.

If the Grantee does not approve any or all elements of the proposed activity or use, it shall provide written notice and explanation thereof to the Grantor. Such approval or denial shall be made within 60 (sixty) days of receiving the Grantor's written notice requesting approval of said proposed activity.

- C. In the absence of a response from the Grantee within the 60-day period, the Grantee understands that the Grantor may proceed with the proposed activity if it is consistent with this Easement. However, lack of approval or denial by the Grantee within the aforesaid 60 (sixty) day period does not preclude the Grantee from denying the use or activity as inconsistent with this Easement at a later date.
- D. Notwithstanding the approval of the Grantee as provided herein, the Grantor shall obtain all necessary federal, state and local approvals and/or permits for its proposed activity, including, but not limited to, approval of the Planning Board, Zoning Board of Adjustment or other boards or departments of the Grantee.

VI. NOTIFICATION OF TRANSFER, TAXES, MAINTENANCE

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

VII. BENEFITS, BURDENS AND ACCESS

- A. The burden of the Easement conveyed hereby shall run with the Property and shall be enforceable against all future owners and tenants in perpetuity; the benefits of this Easement shall not be appurtenant to any particular parcel of land but shall be in gross and assignable or transferable only to the State of New Hampshire or any subdivision of it, consistent with Section 170(c)(1) of the U.S. Internal Revenue Code of 1986, as amended. Any such assignee or transferee shall have like power of assignment or transfer.
- B. The Grantee shall have reasonable access to the Property and all of its parts for such inspection as is necessary to determine compliance with and to enforce this Easement and exercise the rights conveyed hereby, or to take any and all actions with respect to the Property as may be necessary or appropriate with or without order of court, to remedy or abate any violation.
- C. This Easement hereby conveyed does not grant to the general public access or any rights to enter the Property.

VIII. BREACH OF EASEMENT

- A. If the Grantee determines that a violation of the terms of this Easement has occurred or is threatened, the Grantee shall give written notice to the Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured.

- B. If the Grantor fails to cure the violation within 30 (thirty) days after receipt of the notice thereof from the Grantee, or under circumstances where the violation cannot reasonably be cured within a 30-day period, or if the Grantor fails to continue diligently to cure such violation until finally cured, the Grantee may bring 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.
- C. The Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any conservation purposes protected by this Easement, including, without limitation, legal fees, court costs, reasonable Grantee expenses, and costs of restoration and damage to conservation purposes. Without limiting the Grantor's liability therefor, the Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.
- D. If the Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation purposes of the Property, the Grantee may pursue its remedies under this section without prior notice to the Grantor or without waiting for the period provided for cure to expire.
- E. Nothing contained in this Easement shall be construed to entitle the Grantee to bring any action against the Grantor for any injury to or change in the Property resulting from causes beyond the Grantor's control, including, but not limited to, unauthorized actions by third parties, natural disasters such as fire, flood, storm, 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.
- F. The Grantee and the Grantor reserve the right, separately or collectively, to pursue all legal remedies against any third party responsible for any actions detrimental to the conservation purposes of this Easement.
- G. Enforcement of the terms of this Easement shall be at the discretion of the Grantee, and any forbearance by the Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement 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 under this Easement, nor shall any such forbearance be deemed an abandonment of this Easement by the Grantee.

IX. 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.

X. 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.

XI. SEPARATE PARCEL

The Grantor agrees that for the purpose only of determining compliance with any present or future regulation (other than those governing New Hampshire Current Use Assessment under RSA 79-A), bylaw, order, or ordinance (within this paragraph referred to as "legal requirements") of the Town of Stratham, the State of New Hampshire, or any other governmental unit, the Property shall be deemed a separate parcel of land and shall not be taken into account in determining whether any land of the Grantor, other than the Property, complies with any said legal requirements. The Property shall not be taken into account to satisfy in whole or in part any of said legal requirements or any area, density, setback or other dimensional standard applicable to other land of the Grantor.

XII. MERGER

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

XIII. AMENDMENT OR ADDITIONAL EASEMENT

The Grantor and the Grantee may mutually agree to amend the provisions of this Easement provided that any amendment or additional easement shall be wholly consistent with the purposes of this Easement, shall not affect its area or perpetual duration, and shall result in an enhancement of the conservation values of the Property.

XIV. CONDEMNATION/EXTINGUISHMENT

- A. If circumstances arise in the future such as render the purpose of this Easement impossible 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 termination or extinguishment, shall be as determined in accordance with Section XIV.B.

- B. The balance of the land damages recovered (including, for purposes of this subsection, proceeds from any lawful sale, in lieu of condemnation, of the Property unencumbered by the restrictions hereunder) shall be divided between the Grantor and the Grantee in proportion to the fair market value, at the time of condemnation, of their respective interests in that part of the Property condemned. The values of the Grantor's and Grantee's interests shall be determined by an appraisal prepared by a qualified appraiser at the time of condemnation.
- C. If all or any part of the Property is taken by exercise of the power of eminent domain or 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, the Grantor and Grantee shall act jointly to recover the full value of the interests in the Property subject to the taking or in lieu purchase and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by the Grantor and Grantee in this connection shall be paid out of the amount recovered. The Grantee's share of the balance of the amount recovered shall be in proportion to the ratio set forth in Section XIV.B.
- D. The Grantee shall use its share of the proceeds in a manner consistent with and in furtherance of one or more of the conservation purposes set forth herein.

XV. ARBITRATION OF DISPUTES

- A. Any dispute arising under this Easement may, upon mutual agreement of the Grantee and the Grantor, be submitted to arbitration in accordance with NH RSA 542.
- B. The Grantor and the Grantee shall each choose an arbitrator within 30 (thirty) days of written notice from either party. The arbitrators so chosen shall in turn choose a third arbitrator within 30 (thirty) days of the selection of the second arbitrator.
- C. The arbitrators so chosen shall forthwith set as early a hearing date as is practicable which they may postpone only for good cause shown.
- D. A decision by two of three arbitrators, made as soon as practicable after submission of the dispute, shall be binding upon the parties and shall be enforceable as part of this Easement, but may not affect its perpetuity.

We are husband and wife and do hereby release our homestead interests in the within conveyed rights and easements but retain said homestead rights in the underlying fee title.

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, the Grantor and the Grantee hereunto set our hands as of the 26 day of day of August, 2004.

Kitty Peterson
Witness

By: Robert T. Wiggin, Jr.
Robert T. Wiggin, Jr.

Kitty Peterson
Witness

By: Marsha L. Wiggin
Marsha L. Wiggin

State of New Hampshire
County of Rockingham, SS

Personally appeared Robert T. Wiggin, Jr. and Marsha L. Wiggin this 26 day of August, 2004, who acknowledged the foregoing to be their voluntary act and deed.

Before me,

Kitty Peterson
Justice of the Peace/Notary Public
My commission expires:
Seal or stamp:

KITTY L. PETERSON, Justice of the Peace
My Commission Expires February 6, 2007

ACCEPTED: TOWN OF STRATHAM, NEW HAMPSHIRE
BOARD OF SELECTMEN

By: David Short
David Short, Selectman

By: Martin Wood
Martin Wood, Selectman

By: Kirk Scamman
Kirk Scamman, Selectman

State of New Hampshire
County of Rockingham

The foregoing Conservation Easement Deed was acknowledged before me this 23rd day of August, 2004 by David Short (name), a duly authorized Selectman of the Town of Stratham, a New Hampshire municipal corporation, on behalf of said Town.

Norma J. Corrow
Justice of the Peace/Notary Public NORMA J. CORROW
My Commission Expires: _____ NOTARY PUBLIC
Seal or Stamp: _____ STATE OF NEW HAMPSHIRE
My commission expires _____

State of New Hampshire
County of Rockingham

The foregoing Conservation Easement Deed was acknowledged before me this 23rd day of August, 2004 by Martin Wool (name), a duly authorized Selectman of the Town of Stratham, a New Hampshire municipal corporation, on behalf of said Town.

Norma J. Corrow
Justice of the Peace/Notary Public
My Commission Expires: _____ NORMA J. CORROW
Seal or Stamp: _____ NOTARY PUBLIC
STATE OF NEW HAMPSHIRE
My commission expires _____

State of New Hampshire
County of Rockingham

The foregoing Conservation Easement Deed was acknowledged before me this 23rd day of August, 2004 by Kirk Scamman (name), a duly authorized Selectman of the Town of Stratham, a New Hampshire municipal corporation, on behalf of said Town.

Norma J. Corrow
Justice of the Peace/Notary Public
My Commission Expires: _____ NORMA J. CORROW
Seal or Stamp: _____ NOTARY PUBLIC
STATE OF NEW HAMPSHIRE
My commission expires Apr. 17, 2007

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APPENDIX A

Conservation Easement Area: A certain tract of land designated as Conservation Easement Area and situate on the easterly side of Union Road (sometimes known as Winnicut Road) in the Town of Stratham, Rockingham County, New Hampshire, said tract shown on a Plan entitled "Conservation Easement Plan, 52 Union Road, Stratham, New Hampshire for the Town of Stratham" by James Verra and Associates, Inc. dated 3-5-04 and recorded in the Rockingham County Registry of Deeds as Plan # D-31896, said Conservation Easement Area more particularly bounded and described as follows:

Commencing at the southwesterly corner on the easterly side of Union Road, at the northwesterly corner of land now or formerly of the Town of Stratham; thence

1. North 33° 44' 54" east a distance of 422.30 feet to a point; thence
2. South 60° 37' 23" east a distance of 666.62 feet to a point; thence
3. North 29° 22' 37" east a distance of 195.17 feet to a point; thence
4. South 60° 01' 43" East a distance of 126.33 feet to a point; thence
5. South 59° 08' 06" east a distance of 100.03 feet to a point; thence
6. South 59° 54' 11" east a distance of 196.89 feet to a point; thence
7. South 03° 44' 18" west a distance of 318.56 feet to a point; thence
8. South 02° 07' 26" west a distance of 186.11 feet to a point; thence
9. South 00° 04' 39" east a distance of 53.20 feet to a point; thence
10. North 65° 04' 41" west a distance 125.31 feet to a point; thence
11. North 65° 31' 14" west a distance of 313.28 feet to a point; thence
12. North 64° 41' 59" west a distance of 221.35 feet to a point; thence
13. North 65° 22' 54" west a distance of 145.88 feet to a point; thence
14. North 66° 58' 00" west a distance of 202.30 feet to a point; thence
15. North 63° 30' 54" west a distance of 139.47 feet to a point; thence
16. North 64° 56' 21" west a distance of 228.28 feet to the point of beginning.

Said Conservation Easement Area shown to contain 12.860 acres more or less. The Non-Easement Area of 3.000 acres shown on said Plan is specifically excluded.

The property is subject to Current Use Assessment, notice of which has been recorded in said Registry at Book 2707, Page 500; Book 2793, Page 277; and Book 2845, Page 1151.

For source of title see Deed of Robert T. Wiggin and Bertha C. Wiggin to Robert T. Wiggin, Jr. and Marsha L. Wiggin dated May 8, 1984, recorded at Book 2490, Page 589.

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