

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.

035283

**FIDUCIARY CONSERVATION EASEMENT DEED AND DEED RESTRICTION
WITH GRANT OF DRAINAGE EASEMENT**

We, **Scott Pelletier**, of 10 Jade Street, Methuen, MA 01844 and **Lizabeth M. MacDonald**, of 225 Water Street, Exeter, NH 03833, **Co-Executors under the Will of Viola S. Roberts**, 10th Circuit - Probate Division - Brentwood, Docket #318-2010-ET-01047, and **Sherrill J.**

McIntosh, as heir of Viola S. Roberts as to the Real Estate, of 4 Church Hill Road, Durham, NH 03824, with a mailing address of 225 Water Street, Town of Exeter, County of Rockingham, State of New Hampshire, 03833, (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

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 11 below,

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ROCKINGHAM COUNTY
REGISTRY OF DEEDS

TOGETHER WITH the Deed Restriction hereinafter described with respect to the remainder of the Grantor's property that is excluded from this Conservation Easement and shown as "Exclusion Area" on a certain plan of land described below (herein after referred to as "Exclusion Area"), and more particularly bounded and described in Appendix "B" attached hereto and made a part hereof (together, the parcels bounded and described in Appendices "A" and "B" comprise the Grantor's property in its entirety),

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") with any and all buildings, structures, and improvements thereon, consisting of approximately 17.63 acres, situated on Stratham Heights Road in the Town of Stratham, County of Rockingham, State of New Hampshire, shown as "Conservation Easement Area" on a plan entitled "Standard Property Survey & Conservation Easement for Property at 94 Stratham Heights Road Stratham, Rockingham County, New Hampshire owned by Estate of Viola S. Roberts" by North Easterly Surveying, Inc. of Kittery, Maine, dated 7/12/12, recorded at the Rockingham County Registry of Deeds as Plan D- 37307, 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, agricultural, and conservation attributes protected by the terms of this Easement:

- More than 200 feet of undeveloped, scenic frontage along Stratham Heights Road in the Town of Stratham;
- 11 acres of prime, statewide, and locally significant agricultural soils, as determined by the U.S. Natural Resources Conservation Service;
- ~11 acres of agricultural fields, ~4.8 acres of shrubland and reverting pasture, and ~1 acre of emergent and open water wetlands, including a farm pond;
- "as the N.H. Fish and Game Department's Wildlife Action Plan, revised as of 2010, has categorized approximately 16 acres of the Property as "supporting landscapes...that are important to the highest ranking habitat because of their interactions with those habitats,";
- enhancement and enlargement of 162+ acres of protected land adjacent to/nearby the Property, including Cooperative Middle School conservation easement (18 acres, Town of Stratham), Vineyards Conservation Easement (20 acres, Town of Stratham), Rollins Tract (Town of Stratham, 44 acres) and the Saltonstall Conservation Easement (80 acres, Southeast Land Trust of New Hampshire); this Easement lies within a contiguous block of unfragmented habitat containing more than 1,000 acres;
- 11 acres overlying an identified stratified-drift aquifer and 17 acres within the Wellhead Protection Area for the The Vineyards & Thornhill Condos; and
- 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, Grantor, and Executory Interest Holder.

1. PURPOSES

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

- A. The conservation of open spaces, particularly the conservation of the productive farm and/or forest land of which the Property consists, protection of the Property's prime, statewide, or locally significant agricultural soils, and the long-term protection of the Property's capacity to produce economically valuable agricultural and forestry products;
- B. The scenic enjoyment of the general public as viewed from Stratham Heights Road; and
- C. The protection of the quality of ground water and surface water resources on and under the Property; and
- D. The protection of the natural habitat of the Property.

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 United States 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.

ii. **Requirements for Agriculture:** Agriculture shall be performed, to the extent reasonably practicable, in accordance with a coordinated management plan for the sites and soils of the Property. Agricultural management activities shall be in accordance with the then-current scientifically based practices recommended by UNH Cooperative Extension, U.S. Natural Resources Conservation Service, or other government natural resource conservation and management agencies then active. Such management activities shall not be detrimental to the Purposes of this Easement and shall be 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," New Hampshire Department of Agriculture, Markets and Food, revised July 2008; and
- b. "Pesticide Management Guidelines for Groundwater Protection," University of New Hampshire Cooperative Extension, November 1992; and
- c. "Best Management Practices: Biosolids," University of New Hampshire Cooperative Extension, 1995; and
- d. "Best Management Practices to Control Nonpoint Source Pollution: A Guide for Citizens and Town Officials," New Hampshire Department of Environmental Services, as revised January 2004.

iii. **Requirements for Forestry:** Any Forestry shall be carried out in accordance with all applicable local, state, and federal laws and regulations, and, to the extent reasonably practicable, in accordance with then-current, generally accepted best management practices for the sites, soils, and terrain of the Property and shall not be detrimental to the Purposes of the Easement. For references on best management practices see:

- "Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire" (J.B. Cullen, 2004); and
- "Good Forestry in the Granite State: Recommended Voluntary Forest

Management Practices for New Hampshire (second edition)” (University of New Hampshire Cooperative Extension, 2010), or similar successor publications.

- B. The Property shall not be subdivided, 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: 1) 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 2) not detrimental to the Purposes of this Easement. In addition, any structure a part of which is within two-hundred and fifty feet (250) feet of Stratham Heights Road shall be subject to the following additional limitations and conditions:
- i. All said structures shall be temporary, movable structures, without a permanent foundation.
 - ii. No such structure shall be higher than sixteen (16) feet in height.
 - iii. For the purposes of this section, a hoop house (also known as a high tunnel) shall be allowed if it is:
 - a. a framed structure with the Property’s soil as its floor;
 - b. without a foundation or footing; and
 - c. covered with plastic or a similar material; and
 - d. necessary to provide control over the climate and environmental variables in an effort to enhance or extend the agricultural growing season.
 - iv. Otherwise allowable hoop houses may be heated or unheated.
 - v. Each hoop house shall be sited so that its longest dimension is perpendicular or nearly perpendicular to Stratham Heights Road so as to minimize the visual impact on the scenic view of the Property.

The Grantee, in its sole discretion and with the consent of the Executory Interest Holder, may grant exceptions to the above limitations on structures sited within two-hundred and fifty feet (250) of Stratham Heights Road, upon its determination that the exception sought is necessary for the agricultural use of the Property and is not detrimental to any Purpose of this Easement. The approval of the Grantee and the consent of the Executory Interest Holder shall not be unreasonably withheld.

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, tower, indoor riding arena, dam, 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. DEED RESTRICTION GRANTED ON EXCLUSION AREA

For the benefit and in aid of the Conservation Easement granted hereby and running therewith, the Grantors hereby also grant to the Grantee the right to enforce the following Deed Restriction with respect to the Exclusion Area:

The Exclusion Area shall not be sold separately or subdivided from the Property.

4. GRANT OF DRAINAGE EASEMENT

Subject to the following conditions, the Grantor hereby grants to the Town of Stratham the right to install, maintain, repair, and replace in-kind a drainage swale and associated improvements and structures on the portion of the Property identified as "Potential Drainage Easement Area" on the Plan recorded herewith and described in Appendix C attached hereto:

- i. Permitted Activities: For the purposes hereof, permitted activities in conjunction with said drainage swale and associated improvements and structures shall consist of the installation, maintenance, monitoring, and replacement of said drainage swale and associated improvements and structures, including but not limited to the cutting, clearing, and removal of vegetation, alteration of terrain and topography, and the digging, excavation, and removal of soils and rock from the Potential Drainage Easement Area.
- ii. Conditions: Said drainage swale and associated improvements and structures and stormwater discharge shall not be detrimental to any structures on the Property, shall not be detrimental to the agricultural use or viability of the "Fields", shall not make the Property or any portion thereof ineligible for certification under the US Department of Agriculture's (USDA) National Organic Program (NOP), and shall not degrade the water quality of the "Pond" or the "Well". The water quality of said Pond shall be documented in the Baseline Documentation Report on file with the Grantor, Grantee, and Town of Stratham. The location of the "Fields", "Pond", and "Well" are identified on the Baseline Documentation Report on file with the Grantor, Grantee, and Executory Interest Holder. Further, said structures and improvements, to the maximum extent possible, be located so as to minimize the impact on and disturbance of the Property and the Purposes of this Easement.
- iii. Study: The Town of Stratham shall conduct, at its sole cost, the appropriate technical studies, consistent with the engineering practices at the time of the implementation of this right, of the Property, Stratham Heights Road, and the vicinity to determine the best possible drainage solution for the Guinea Road/Stratham Heights Road intersection. The study shall also determine the potential quantity of storm water discharge onto the Property that can be expected from 2 year, 25 year, and 100 year 24-hour storm events and the

environmental impact of any runoff and best possible ways to mitigate said impact (hereinafter referred to as "Technical Study"), which shall be provided to the Grantor and Grantee.

- iv. Design standards: Said drainage swale and associated improvements and structures shall be designed to be consistent with the Best Management Practices (BMP's) outlined in the "NH Stormwater Management Manual Volumes 1-3" (New Hampshire Department of Environmental Services, 2010).
- v. Approval of the Grantor and Grantee: The location and design of the drainage swale and associated structures and improvements shall be subject to the review and approval of the Grantor and Grantee, said approval not to be unreasonably withheld by either the Grantor or the Grantee.
- vi. Approval Process: At least sixty (60 days) prior to the exercise of this right, the Town of Stratham shall provide to the Grantor and Grantee written information including, but not limited to, documents, maps, plans, specifications, and designs where appropriate, sufficient to identify the design and location of the drainage swale and related structures and improvements, the construction sequence, monitoring practices, and an explanation of how the proposed design is consistent with the provisions of Section 4.ii – iv above. Should the Grantor notify the Town of Stratham that the Property is certified or is in the process of being certified under the USDA's National Organic Program, the Town of Stratham shall send a copy of said information to the New Hampshire Department of Agriculture, Markets, and Food and request the Department's comments on the potential impact, if any, on the Property's eligibility for certification or continued certification under the National Organic Program.

Within thirty (30) days of receipt of said information, the Grantee and Grantor shall approve, disapprove with written reasons, or approve with conditions the proposed design and location of the proposed drainage swale and associated structures and improvements. During such time, the Grantor and Grantee will work in cooperation with the Town of Stratham and its consultants/agents to reach a mutually acceptable design. At the Grantee's election, the Grantee may hire an independent consultant to review the proposed design and location of the proposed drainage swale and associated structures and improvements. The Grantor's and Grantee's approval shall not be unreasonably withheld.

- vii. 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 use and maintenance of said drainage swale and associated structures 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.

- viii. Once said drainage swale and associated structures and improvements are installed, located, or placed on the Property, the Town of Stratham shall maintain, repair, or replace said drainage swale, structures, and improvements as needed to maintain the function of said swale, structures and improvements and their ability to meet said design standards in section iv above. Unless an emergency event occurs, which threatens Stratham Heights Road, the drainage swale, structures and improvements, or the Property, the Town of Stratham shall provide prior written notice to the Grantor and Grantee at least fifteen (15) days before the repair or replacement of said drainage swale, structures and improvements.
- ix. Once said drainage swale and associated structures and improvements are installed, located, or placed on the Property, should the Grantor or Grantee believe that the drainage swale and associated structures and improvements are not functioning consistently with the terms and conditions of this Section 4, the Grantor or Grantee shall notify the Town of Stratham in writing of its concerns and requested remedy. The parties agree to seek a resolution consistent with the provisions and process of Section 10, Breach of Easement and Section 9, Resolution of Disputes herewithin.

5. RESERVED RIGHTS

- A. Pond. The Grantor reserves the right to maintain but not expand the existing pond, identified as "Pond" on the Plan, for the purpose of agriculture, non-commercial recreation, fire protection, or wildlife habitat enhancement. The Grantor shall secure all necessary federal, state, local, and other governmental permits and approvals as may be necessary in the exercise of this reserved right. The Grantor shall notify the Grantee in writing at least fifteen (15) days before the exercise of this reserved right.
- B. Dug Well. The Grantor reserves the right to maintain, repair, and replace the existing dug well and maintain, repair, and replace in-kind the associated well house, the location of both which is shown as "Dug Well" in the Baseline Documentation Report, for the purpose of supporting the agricultural use of the Property.
- C. Farm Stand. The Grantor reserves the right to construct, maintain, repair, and replace a farm stand on the Property within two hundred and fifty (250) feet of Stratham Heights Road. The footprint of said farm stand shall be no larger than two hundred (200) square feet in size and the farm stand shall be no higher than sixteen (16) feet. At least thirty (30) days prior to constructing, placing, or introducing said farm stand on the Property, the Grantors shall provide the Grantee with written information identifying the proposed location, dimensions, and square footage of the farm stand and other such information as may be necessary to determine its consistency with the terms of this Easement and the conditions of this Section 5.C. This provision is an exception to Section 2.C's requirement that all structures be temporary, movable structures.

6. 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.

7. 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 7. The rights of the Town of Stratham hereunder are in addition to its rights as the Executory Interest Holder in Section 11 below.

8. 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 (30) square inches in size, along the Property's boundaries.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

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


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

IN WITNESS WHEREOF, We have hereunto set our hands this 17th day of July, 2012.


ESTATE OF VIOLA S. ROBERTS



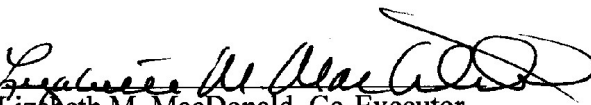
 Witness

By: 

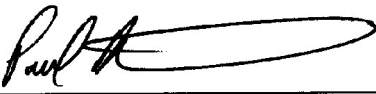
 Scott Pelletier, Co-Executor



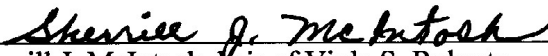
 Witness

By: 

 Lizabeth M. MacDonald, Co-Executor



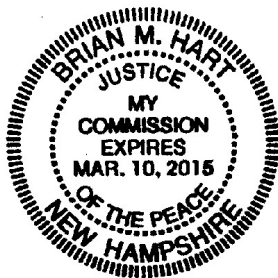
 Witness




 Sherrill J. McIntosh, Heir of Viola S. Roberts

STATE OF NEW HAMPSHIRE
 COUNTY OF ROCKINGHAM, ss.

On this 17 day of July, 2012, before me, personally appeared **Scott Pelletier, Co-Executor of the Estate of Viola S. Roberts**, known to me, or proven to me through satisfactory evidence of identification, to be the individual whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same for the purposes therein contained on behalf of the Estate of Viola S. Roberts.

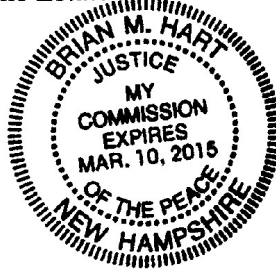




 Notary Public/Justice of the Peace
 Printed Name: Brian M. Hart
 My Commission expires: 3-10-2015

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM, ss.

On this 17 day of July, 2012, before me, personally appeared **Lizabeth M. MacDonald, Co-Executor of the Estate of Viola S. Roberts**, known to me, or proven to me through satisfactory evidence of identification, to be the individual whose name is subscribed to the foregoing instrument, and acknowledged that she executed the same for the purposes therein contained on behalf of the Estate of Viola S. Roberts.



[Signature]

Notary Public/Justice of the Peace

Printed Name: Brian M Hart

My Commission expires: 3-10-2015

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM, ss.

On this 17 day of July, 2012, before me, personally appeared **Sherrill J. McIntosh, heir of Viola S. Roberts**, known to me, or proven to me through satisfactory evidence of identification, to be the individual whose name is subscribed to the foregoing instrument, and acknowledged that she executed the same for the purposes therein contained.




[Signature]

Notary Public/Justice of the Peace

Printed Name: Brian M Hart

My Commission expires: 3-10-2015

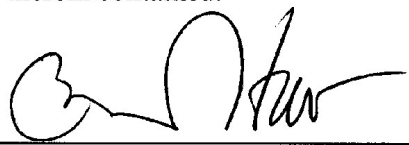
ACCEPTED: SOUTHEAST LAND TRUST OF NEW HAMPSHIRE

By: 
Title: PRESIDENT
Duly Authorized
Date: 7/16/2012

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM, ss.

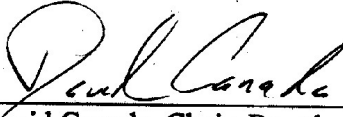
On this 16 day of July, 2012, before me personally appeared Thomas B. Chamberlin, known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he/she executed the same as his/her free act and deed for the purposes therein contained.

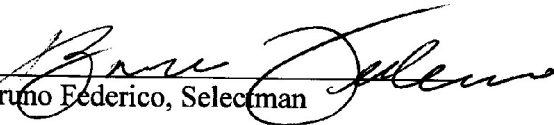



Notary Public/Justice of the Peace
My commission expires:

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 ^{Eiduary} ~~Warranty~~ Conservation Easement Deed and Deed Restriction with Grant of Drainage Easement was acknowledged before me this 16 day of July, 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: Brian M. Hart
Justice of the Peace/Notary Public
My Commission Expires: 3/10/2015

APPENDIX A

Legal Description of the Property Subject to Conservation Easement

A certain tract or parcel of land, located on the southeast side of Stratham Heights Road, Town of Stratham, Rockingham County, State of New Hampshire depicted as "Conservation Area" on a plan entitled "Standard Property Survey & Conservation Easement" for property at 94 Stratham Heights Road, Town of Stratham, Rockingham County, New Hampshire, owned by Estate of Viola S. Roberts, prepared for Southeast Land Trust of New Hampshire, prepared by North Easterly Surveying, Inc., dated 7/12/12, which is recorded herewith in the Rockingham County Registry of Deeds and being more particularly described as follows:

Beginning at an iron rod at the end of a stone wall on the southeast sideline of said Stratham Heights Road being the northeasterly corner of land now or formerly of William P. & Angela M. Holler; thence running N 63° 59' 12" E along the southeast sideline of said Stratham Heights Road a distance of 243.08 feet to an iron rod with cap at land depicted as "Exclusion Area" on said plan; thence running S 42° 59' 00" E along said Exclusion Area a distance of 359.00 feet to an iron rod; thence running N 65° 42' 02" E along said Exclusion Area a distance of 255.00 feet to a drill hole set in a stone wall at land now or formerly of Ruth M. Breslin Revocable Trust; thence running S 43° 09' 08" E along said stone wall by land of said Ruth M. Breslin Revocable Trust a distance of 69.91 feet to a drill hole; thence running S 42° 35' 39" E along said stone wall by land of said Ruth M. Breslin Revocable Trust a distance of 232.52 feet to a drill hole; thence running S 43° 06' 13" E along said stone wall by land of said Ruth M. Breslin Revocable Trust a distance of 184.81 feet to a drill hole at the end of said stone wall; thence running S 42° 00' 41" E by land of said Ruth M. Breslin Revocable Trust a distance of 179.06 feet to a nail in a fence post; thence running S 42° 21' 00" E by land of said Ruth M. Breslin Revocable Trust a distance of 201.58 feet to a nail set in an 18 inch hickory tree; thence running S 46° 31' 14" E by land of said Ruth M. Breslin Revocable Trust a distance of 17.76 feet to a drill hole set in a stone wall at other land of said Ruth M. Breslin Revocable Trust; thence running S 41° 47' 52" W along said stone wall by land of said Ruth M. Breslin Revocable Trust a distance of 39.61 feet to a point; thence running S 47° 12' 35" W along said stone wall by land of said Ruth M. Breslin Revocable Trust a distance of 97.83 feet to a point; thence running S 45° 14' 15" W along said stone wall by land of said Ruth M. Breslin Revocable Trust a distance of 188.63 feet to a point; thence running S 76° 08' 07" W along said stone wall by land of said Ruth M. Breslin Revocable Trust a distance of 38.39 feet to a drill hole set at the end of said stone wall; thence running S 79° 49' 27" W by land of said Ruth M. Breslin Revocable Trust a distance of 165.75 feet to a drill hole; thence running S 36° 32' 39" E by land of said Ruth M. Breslin Revocable Trust a distance of 159.53 feet to a spike set in a 24 inch pine at the beginning of a stone wall; thence running S 35° 37' 58" E along said stone wall by land of said Ruth M. Breslin Revocable Trust a distance of 168.80 feet to a drill hole set at the end of said stone wall; thence running S 34° 37' 51" E by land of said Ruth M. Breslin Revocable Trust a distance of 221.27 feet to a 10 inch maple; thence running S 42° 38' 37" E by land of said Ruth M. Breslin Revocable Trust a distance of 93.46 feet to a point at land now or formerly of Rollins Hill Development, LLC; thence running S 39° 11' 47" W by land of said Rollins Hill Development, LLC a distance of 328.88 feet to an iron pipe at land now or formerly of Exeter Region Cooperative; thence running N 25° 55' 50" W by land of said Exeter Region Cooperative a

distance of 327.76 feet to a drill hole; thence running N 21° 05' 20" W by land of said Exeter Region Cooperative a distance of 49.42 feet to a drill hole set at the beginning of a stone wall; thence running N 22° 53' 57" W along said stone wall by land of said Exeter Region Cooperative a distance of 52.93 feet to an iron pipe at the end of said stone wall at land now or formerly of William P. & Angela M. Holler; thence running N 25° 26' 51" W by land of said Holler a distance of 243.78 feet to a point; thence running N 27° 32' 25" W by land of said Holler a distance of 220.74 feet to a point near a triple elm; thence running N 22° 15' 22" W by land of said Holler a distance of 206.64 feet to a 10 inch hickory; thence running N 09° 06' 40" W by land of said Holler a distance of 19.03 feet to a point at the beginning of a stone wall; thence running N 24° 15' 20" W along said stone wall by land of said Holler a distance of 165.92 feet to a drill hole; thence running N 36° 18' 10" W along said stone wall by land of said Holler a distance of 115.66 feet to a drill hole; thence running N 40° 34' 28" W along said stone wall by land of said Holler a distance of 205.83 feet to a drill hole; thence running N 42° 43' 20" W along said stone wall by land of said Holler a distance of 110.21 feet to a drill hole; thence running N 42° 25' 48" W along said stone wall by land of said Holler a distance of 329.84 feet to the point of beginning, containing 17.63 acres of land.

APPENDIX B

Legal Description of the Exclusion Area

A certain tract or parcel of land with buildings thereon, located on the southeast side of Stratham Heights Road, Town of Stratham, Rockingham County, State of New Hampshire depicted as "Exclusion Area" on a plan entitled "Standard Property Survey & Conservation Easement" for property at 94 Stratham Heights Road, Town of Stratham, Rockingham County, New Hampshire, owned by Estate of Viola S. Roberts, prepared for Southeast Land Trust of New Hampshire, prepared by North Easterly Surveying, Inc., dated 7/12/12, which is recorded herewith in the Rockingham County Registry of Deeds and being more particularly described as follows:

Beginning at a 8" by 8" granite post on the southeast sideline of said Stratham Heights Road being the northwesterly corner of land now or formerly of Ruth M. Breslin Revocable Trust; thence running S 42° 30' 43" E by land of said Ruth M. Breslin Revocable Trust a distance of 146.61 feet to a nail set in a fence post at the beginning of a stone wall; thence running S 43° 09' 08" E along said stone wall by land of said Ruth M. Breslin Revocable Trust a distance of 212.47 feet to a drill hole at land depicted as "Conservation Area" on said plan; thence running S 65° 42' 02" W along said Conservation Area a distance of 255.00 feet to an iron rod; thence running N 42° 59' 00" W along said Conservation Area a distance of 359.00 feet to an iron rod on the southeasterly sideline of said Stratham Heights Road; thence running N 63° 59' 12" E along the southeast sideline of said Stratham Heights Road a distance of 151.86 feet to a point; thence running N 68° 03' 58" E along the southeast sideline of said Stratham Heights Road a distance of 103.82 feet to the point of beginning, containing 2.00 acres of land.

APPENDIX C**Legal Description of the Drainage Easement**

A certain tract or parcel of land, located on the southeast side of Stratham Heights Road, Town of Stratham, Rockingham County, State of New Hampshire depicted as "Proposed 20' wide Drainage Easement" on a plan entitled "Standard Property Survey & Conservation Easement" for property at 94 Stratham Heights Road, Town of Stratham, Rockingham County, New Hampshire, owned by Estate of Viola S. Roberts, prepared for Southeast Land Trust of New Hampshire, prepared by North Easterly Surveying, Inc., dated 7/12/12, which is recorded herewith in the Rockingham County Registry of Deeds and being more particularly described as follows:

Beginning at an iron rod at the end of a stone wall on the southeast sideline of said Stratham Heights Road being the northeasterly corner of land now or formerly of William P. & Angela M. Holler; thence running N 63° 59' 12" E along the southeast sideline of said Stratham Heights Road a distance of 20.85 feet to a point; thence running S 42° 25' 48" E a distance of 323.90 feet to a point; thence running S 42° 43' 20" E a distance of 76.10 feet to a point; thence running S 47° 16' 40" W a distance of 20.00 feet to an iron rod in a stone wall at land now or formerly of William P. & Angela M. Holler; thence running N 42° 43' 20" W along said stone wall by land of said Holler a distance of 76.15 feet to a drill hole; thence running N 42° 25' 48" W along said stone wall by land of said Holler a distance of 329.84 feet to the point of beginning.