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REGISTER OF DEEDS  
STRAFFORD COUNTY

**CONSERVATION EASEMENT DEED**

**Thomas B. Merrick Revocable Trust with Thomas B. Merrick Trustee**, of 7 Canney Road, County of Strafford, State of New Hampshire 03824, (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, grants in perpetuity to the **Town of Durham working through its Conservation Commission**, with a principal place of business at 15 Newmarket Road, Durham, Strafford County, State of New Hampshire, 03824, (hereinafter referred to as the "Grantee" which shall, unless the context clearly indicates otherwise, include the Grantee's successors and assigns), the **Conservation Easement** (herein referred to as the "Easement") hereinafter described with respect to that certain parcel of land (herein referred to as the "Property") with any and all buildings, structures, and improvements thereon/being unimproved land situated on **7 Canney Road** in the Town of Durham, County of Strafford, State of New Hampshire, more particularly bounded and described in **Appendix "A"** attached hereto and made a part hereof and is shown as "Conservation Easement" on a plan entitled "Conservation Easement Plan prepared for Thomas B. Merrick" prepared by Atlantic Survey Co., Inc. dated July, 2005 (the "**Plan**") recorded herewith.

1. PURPOSES

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

- A. The assurance that the Property will be retained forever as an important forestland, field, wetland, and wildlife habitat area; and
- B. The conservation of the forestland of which the Property consists for the preservation and conservation of wildlife habitat on the Property; and
- C. The preservation of open spaces for the scenic enjoyment of the general public; and
- D. The preservation of the land of which the Property consists for non-commercial, passive outdoor recreation by the general public; and

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- E. The prevention of any uses of the Property that will significantly impair or interfere with the conservation values of the Property; and
- F. The preservation and protection of the water quality of surface waters on the Property.

These purposes are consistent with the clearly delineated open space goals and objectives of the Town of Durham Master Plan 2000, which states as a recommendation that: "... the Town should encourage keeping open or in agricultural use land that has the potential to develop into residences" (Recommendation 5, Page 4.51). Durham's Master Plan states further that the Town should: "Expand and strengthen the Durham greenway system through acquisition of conservation easements on important lands. . ." (Recommendation 1, Page 4.35).

These purposes are also consistent 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."; and

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

The specific conservation values of the Property with respect to these purposes are documented in an Easement Documentation Report, prepared by Grantee and signed and acknowledged by the Grantor, establishing the baseline condition of the Protected Property at the time of this grant and including reports, maps, photographs, and other documentation.

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

2. USE LIMITATIONS (Subject to the reserved rights specified in Section 3 below)

A. The Property shall be maintained in perpetuity as open space without there being conducted thereon any industrial or commercial activities.

B. The Property shall remain open to the public for non-motorized, non-wheeled, limited non-commercial, outdoor recreational purposes such as hiking and cross-country skiing, but not camping or hunting which shall remain at the Grantor's discretion, except that the Grantor may post:

- i. any portion of the Property should it deem such posting to be necessary to protect the purposes of this Easement set forth in Section 1 above; and/or
- ii. any portion of the Property against public use during active firewood removal, dead or diseased tree removal, non-native or invasive species removal, or gardening activities,

but only after obtaining the written permission of the Grantee, such permission not to be unreasonably withheld.

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C. The Property shall not be subdivided and none of the individual tracts which together comprise the Property shall be conveyed separately from one another.

D. No structure or improvement, including, but not limited to, a dwelling, any portion of a septic system, tennis court, swimming pool, dock, aircraft landing strip, telecommunications and/or wireless communications facility, tower, non-permeable pavement, utility pole, conduit, line, outdoor lighting, mobile home, or any other temporary or permanent structure or facility on or above the premises shall be constructed, placed or introduced onto the Property. However, ancillary structures and improvements including, but not limited to, a permeable woods road, fence, bridge, culvert, may be constructed, placed or introduced onto the Property only as necessary in the accomplishment of firewood removal, dead or diseased tree removal, non-native or invasive species removal, gardening, conservation, or noncommercial outdoor recreational uses of the Property and provided that they are not detrimental to the purposes of this Easement.

E. 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 firewood removal, dead or diseased tree removal, non-native or invasive species removal, gardening, 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 rare 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
- iii. are not detrimental to the purposes of this Easement; and
- iv. Prior to commencement of any such activities, all necessary federal, state, and local permits and approvals shall be secured.

F. No outdoor advertising structures such as signs and billboards shall be displayed on the Property except as desirable or necessary in the accomplishment of the conservation or noncommercial outdoor recreational uses of the Property, and provided such signs are not detrimental to the purposes of this Easement.

G. 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.B., D., or E., above. No such rocks, minerals, gravel, sand, topsoil, or other similar materials shall be removed from the Property.

H. There shall be no storage or dumping of trash, garbage, or other unsightly or offensive material, hazardous substance, or toxic waste, nor any placement of underground storage tanks in, on, or under the Property.

I. There shall be no removal, destruction or cutting of trees, shrubs or plants, planting of trees, shrubs or plants, use of fertilizers, grazing of domestic animals, or disturbance or change in the natural habitat in any manner.

J. The Property and any portion thereof shall not be included as part of the gross area of other property not subject to this Easement for the purposes of determining density, lot coverage, or open space requirements under otherwise applicable laws, regulations or ordinances controlling land use and building density. No development rights which have been encumbered or extinguished by this Easement shall be transferred to any other lands pursuant to a transferable development rights scheme or cluster development arrangement or otherwise; provided, however, that with prior written permission of the Grantee:

K. There shall be no defacement, movement, removal, or alteration of any stone walls or other monuments or markers that serve as legal boundaries, as per New Hampshire RSA 472:6, or as the legal boundary of this Easement as described in Appendix A. Nothing herein shall prevent the maintenance and rehabilitation of stone walls.

3. RESERVED RIGHTS

All uses of the Property not expressly prohibited herein and not inconsistent with the purposes of this Easement are expressly reserved to the Grantor.

A. The right to sell, give, mortgage, lease, or otherwise convey the Property.

B. The right to cut and remove, in whole or in part, dead or diseased trees, shrubs, or plants, and to cut and remove trees, in whole or in part, which pose a hazard to people or personal property.

C. The right to control or remove non-native or invasive species as such species may be listed by the New Hampshire Fish & Game Department, New Hampshire Natural Heritage Bureau, the New Hampshire Department of Agriculture, or the state agency that tracks such listings. Invasive species are non-native animal, plant, or other organisms that through their capacity to spread into native ecosystems demonstrably or potentially threaten native species.

D. The right to maintain forest openings existing at the time of this Easement, as documented in the Easement Documentation Report, through the cutting and removal of vegetation and the right to continue the use of these openings for Christmas tree farming and gardening in the locations identified in the Easement Documentation Report.

E. The right to construct, relocate, and maintain trails on the Property, said trails not to exceed twelve (12) feet in total clear width and shall not be constructed with an impervious surface.

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F. The right to cut and remove trees or limbs for the sole purpose of providing firewood to the Grantor for the Grantor's sole use and not for resale. Said firewood extraction shall not exceed eight (8) cords in any given year.

G. The right of the Grantor to use mechanized equipment and motor vehicles reasonably necessary for the practice of conservation or for the exercise of any of the Grantor's Reserved Rights under this Section or the Grantor's permitted uses specified Section 2.

H. The right to tap trees for personal sugaring use.

I. Should it be found unfeasible for the Grantor to locate septic or well facilities within the Excluded Area shown on the Plan, with such facilities to serve the house existing at the time of this Easement and any additions thereto, then the Grantor shall have the right to locate such facilities within the Easement area subject to the approval of the Grantee with such approval not to be unreasonably withheld.

J. The right to construct, or to permit the Grantee to construct, and maintain, a permeable parking area with a capacity of no more than five (5) vehicles for the purpose of accommodating the public outdoor recreational and educational uses of the Property. The location, size, and design of any new parking areas shall be prepared in consultation with the Grantee, and shall not be detrimental to the purposes of this Easement

4. NOTIFICATION OF TRANSFER, TAXES, MAINTENANCE

A. The Grantor agrees to notify the Grantee in writing 10 days before the transfer of title to the Property.

B. The Grantee shall be under no obligation to maintain the Property or pay any taxes or assessments thereon.

5. BENEFITS, BURDENS, AND ACCESS

A. The burden of the Easement conveyed hereby shall run with the Property and shall be enforceable against all future owners and tenants in perpetuity; the benefits of this Easement shall not be appurtenant to any particular parcel of land but shall be in gross and assignable or transferable only to the State of New Hampshire, the U.S. Government, or any subdivision of either of them, consistent with Section 170(c)(1) of the U.S. Internal Revenue Code of 1986, as amended, or to any qualified organization within the meaning of Section 170(h)(3) of said Code, which organization has among its purposes the conservation and preservation of land and water areas and agrees to and is capable of enforcing the purposes of this Easement. Any such assignee or transferee shall have like power of assignment or transfer.

B. The Grantee shall have the right to enter the Property at all reasonable times and with prior verbal notice and, if necessary, across other lands retained by the Grantor, for the purposes of: (a) inspecting the Property to determine if the Grantor is complying with the covenants and purposes of this Easement; (b) enforcing the terms of this Easement; (c) taking 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 violations hereof.

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C. The Grantee shall have the right to place signs on the Property boundaries for the purpose of identifying it as conservation easement land protected by the Grantee.

6. BREACH OF EASEMENT

A. When a breach of this Easement, or conduct by anyone inconsistent with this Easement, comes to the attention of the Grantee, it shall notify the Grantor in writing of such breach or conduct, delivered in hand or by certified mail, return receipt requested.

B. The Grantor shall, within thirty (30) days after receipt of such notice or after otherwise learning of such breach or conduct, undertake those actions, including restoration, which are reasonably calculated to cure swiftly said breach, or to terminate said conduct, and to repair any damage. The Grantor shall promptly notify the Grantee of its actions taken under this section.

C. If the Grantor fails to take such proper action under the preceding paragraph, the Grantee shall, as appropriate to the purposes of this deed, undertake any actions that are reasonably necessary to cure such breach or to repair any damage in the Grantor's name or to terminate such conduct. The cost thereof, including the Grantee's expenses, court costs, and legal fees shall be paid by the Grantor, provided that the Grantor is directly or primarily responsible for the breach.

D. Nothing contained in this Easement shall be construed to entitle the Grantee to bring any action against the Grantor for any injury to or change in the Property resulting from causes beyond the Grantor's control, including, but not limited to, unauthorized actions by third parties, natural disasters such as fire, flood, storm, and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

E. The Grantee and the Grantor reserve the right, separately or collectively, to pursue all legal remedies against any third party responsible for any actions detrimental to the conservation purposes of this Easement.

F. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair Grantee's rights or remedies or be construed as a waiver.

7. DISCRETIONARY CONSENT

Grantee's consent for activities otherwise prohibited under Section 2 above may be given under the following conditions and circumstances. If, owing to unforeseen or changed circumstances, any of the activities listed in Section 2 are deemed desirable by Grantor and Grantee, Grantee may, in its sole discretion, give permission for such activities, subject to the limitations herein. Such requests for permission shall be in writing and shall describe the proposed activity in sufficient detail to allow Grantee to judge the consistency of the proposed activity with the purpose of this Easement. Grantee may give its permission only if it determines, in its sole discretion, that such activities (1) do not violate the purpose of this Easement and (2) either enhance or do not impair any significant conservation interests associated with the

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Protected Property. Notwithstanding the foregoing, the Grantee and Grantor have no right or power to agree to any activities that would result in the termination of this Easement or to allow any residential, commercial or industrial structures or any commercial or industrial activities not provided for above.

8. NOTICES

All notices, requests and other communications, required or permitted to be given under this Easement shall be in writing, except as otherwise provided herein, and shall be delivered in hand or sent by certified mail, postage prepaid, return receipt requested to the appropriate address set forth above or at such other address as the Grantor or the Grantee may hereafter designate by notice given in accordance herewith. Notice shall be deemed to have been given when so delivered or so mailed.

9. 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.

10. CONDEMNATION

A. Whenever all or part of the Property is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate in whole or in part the Easement conveyed hereby, the Grantor and the Grantee shall thereupon act jointly to recover the full damages resulting from such taking with all incidental or direct damages and expenses incurred by them thereby to be paid out of the damages recovered.

B. The balance of the land damages recovered (including, for purposes of this subsection, proceeds from any lawful sale, in lieu of condemnation, of the Property unencumbered by the restrictions hereunder) shall be divided between the Grantor and the Grantee in 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 interest shall be determined by an appraisal prepared by a qualified appraiser at the time of condemnation.

C. The Grantee shall use its share of the proceeds in a manner consistent with and in furtherance of one or more of the conservation purposes set forth herein.

11. ADDITIONAL EASEMENT

Should the Grantor determine that the expressed purposes of this Easement could better be effectuated by the conveyance of an additional easement, the Grantor may execute an additional instrument to that effect, provided that the conservation purposes of this Easement are not diminished thereby and that a public agency or qualified organization described in Section 5.A., above, accepts and records the additional easement.

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12. PARTIES SUBJECT TO THE CONSERVATION EASEMENT

The covenants agreed to and the terms, conditions, and restrictions imposed by this grant shall not only be binding upon the Grantor but also its lessees, agents, personal representatives, successors and assigns, and all other successors to Grantor in interest and shall continue as a servitude running in perpetuity with the Property.

13. MERGER

The Grantor and 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.

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, Grantor has hereunto set his hand(s) this 29 day of August, 2006.

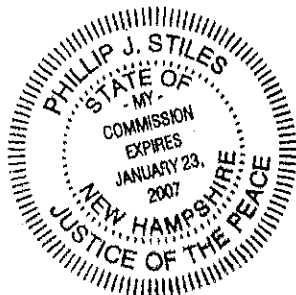
GRANTOR

Thomas B. Merrick Trustee  
Thomas B. Merrick, Trustee  
Thomas B. Merrick Revocable Trust

STATE OF NEW HAMPSHIRE  
COUNTY OF STRAFFORD, ss.

On this 29 day of August, 2006, before me personally appeared Thomas B. Merrick, known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same as his free act and deed for the purposes therein contained.

[Signature]  
Notary Public/Justice of the Peace



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ACCEPTED: TOWN OF DURHAM

By: [Signature]  
Todd Selig

Title: Town Administrator  
Duly Authorized by the Durham Town Council

Date: 8/29/06

By: [Signature]  
~~Dwight Baldwin~~  
Duane Hyde

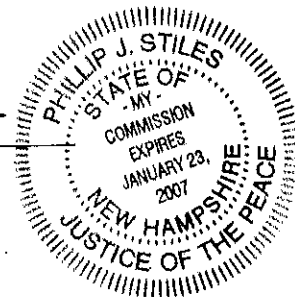
Title: Chair of Durham Conservation Commission  
Duly Authorized by the Conservation Commission

Date: 8/29/06

STATE OF NEW HAMPSHIRE  
COUNTY OF STRAFFORD, ss.

On this 29 day of AUGUST 2006, before me the undersigned officer, personally appeared Todd Selig known to me (or satisfactorily proven) to be the Town Administrator for the Town of Durham and authorized agent of the Town of Durham and that being authorized so to do on behalf of such entity, executed the foregoing instrument for the purposes therein contained. In witness whereof I set my hand and seal.

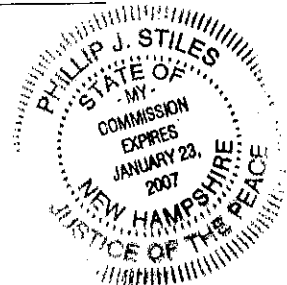
[Signature]  
Notary Public/Justice of the Peace



STATE OF NEW HAMPSHIRE  
COUNTY OF STRAFFORD, ss.

On this 29<sup>th</sup> day of AUGUST 2006, before me the undersigned officer, Vice personally appeared ~~Dwight Baldwin~~ known to me (or satisfactorily proven) to be the Chair of the Conservation Commission for the Town of Durham and authorized agent of the Town of Durham and that being authorized so to do on behalf of such entity, executed the foregoing instrument for the purposes therein contained. In witness whereof I set my hand and seal.

[Signature]  
Notary Public/Justice of the Peace



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## APPENDIX A Conservation Easement Description

Beginning at a drill hole at the intersection of stone walls on the westerly side of Canney Road; thence running S11°54'13"E along said road and stone wall a distance of 364.22 feet to a point; thence running S20°38'42"E along said road and stone wall, a distance of 157.94 feet; thence turning and running N37°27'59"W, a distance of 221.20 feet to an iron rod; thence turning and running N48°16'08"W, a distance of 139.76 feet to an iron rod; thence turning and running S44°00'17"W, a distance of 216.53 feet to the corner of a stone wall; thence turning and running S07°04'52"E, a distance of 251.85 feet to the intersection of stone walls; thence turning and running N86°46'00"E, a distance of 114.16 feet to an iron rod at the end of a stone wall; thence turning and running along said stone wall the following courses and distances:

N02°50'50"E, a distance of 96.73 feet;  
N89°48'15"E, a distance of 82.84 feet;  
N07°57'03"E, a distance of 12.83 feet;  
N83°39'23"E, a distance of 95.29 feet;  
N88°46'53"E, a distance of 74.72 feet to said Canney Road;

thence turning and running along said Canney Road and stone wall the following courses and distances:

S25°55'54"E, a distance of 257.29 feet;  
S20°53'39"E, a distance of 246.58 feet;  
S25°54'21"E, a distance of 128.66 feet to an iron pipe;  
S25°54'21"E, a distance of 1.40 feet to the end of the stone wall;

thence turning along a non tangent curve to the right, of which the radius point lies N47°36'20"W, a radial distance of 1,810.00 feet at Route 108; thence southwesterly along the arc, through a central angle of 03°35'40", a distance of 113.55 feet along said Route 108 to a concrete bound; thence turning and running S45°59'20"W along said Route 108, a distance of 306.01 feet to a concrete bound and a point of curve to the left having a radius of 2,010.00 feet and a central angle of 09°32'13"; thence southwesterly along the arc a distance of 334.57 feet to a concrete bound at the Durham Bypass; thence turning and running N55°04'32"W along said bypass, a distance of 480.10 feet to a concrete bound; thence turning and running N31°32'09"W along said bypass, a distance of 95.10 feet to a steel stake in a stone wall; thence turning and running N02°13'47"W along said stone wall and land of Joanne H. Harding Revocable Trust, land of Kathleen A. Pareti and land of Mary Elizabeth Gillespie, a distance of 648.51 feet; thence running N00°30'05"W along said stone wall and land of David L. Burrows, a distance of 87.56 feet; thence running N03°48'13"W along said stone wall and land of said Burrows and land of Leo J. Hession, Jr., a distance of 168.27 feet; thence running N04°15'00"W along said stone wall and land of said Hession, a distance of 51.76 feet; thence running N02°41'48"W along said stone wall and land of said Hession, land of Stanley Steelman and land of Scott C. Fuller, a distance of 247.87 feet; thence running N00°58'59"W along said stone wall and land of said Fuller, a distance of 117.98 feet; thence running N05°09'23"W along said stone wall and land of said Fuller, a distance of 65.15 feet to a steel stake on the southerly side of Bagdad Road; thence

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turning and running N75°31'57"E along said road, a distance of 50.06 feet to an iron pipe; thence turning and running S02°45'18"E along land of Richard G. Lilly, a distance of 210.10 feet to a steel stake; thence turning and running N88°16'57"E along land of said Lilly, a distance of 206.92 feet to a steel stake; thence turning and running N78°14'59"E along land of Suzanne S. Dev Revocable Trust and land of James D. Case, a distance of 378.05 feet to the POINT OF BEGINNING.

Containing 1,010,657 square feet or 23.20 acres, more or less.

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