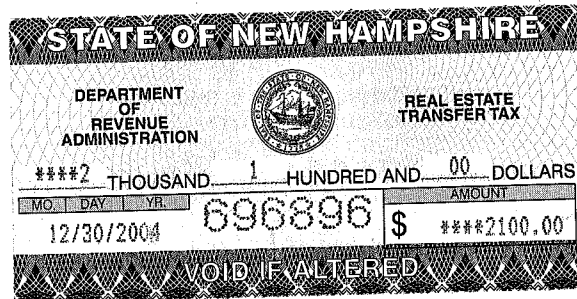


REGISTER OF DEEDS
STRAFFORD COUNTY**CONSERVATION EASEMENT DEED**

MILL POND CENTER, INC., a New Hampshire not-for-profit corporation, of 50 Newmarket Road, Durham, 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

ROCKINGHAM LAND TRUST, a New Hampshire not-for-profit corporation, with an address of 8 Center Street, Exeter, County of Rockingham, State of New Hampshire, 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),

the **Conservation Easement** (herein referred to as the "Easement") hereinafter described with respect to a significant portion of a certain parcel of land (herein referred to as the "Property") with any and all structures and improvements thereon situated on 50 Newmarket Road in the Town of Durham, County of Strafford, State of New Hampshire. Said Property consists of approximately 9.977 acres of land identified in Tax Map 6, Lot 9-8 and is more particularly bounded and described in Appendix "A" attached hereto and made a part hereof. Specifically excluded from this Easement is a distinct area of land also within Tax Map 6, Lot 9-8, consisting of 7.281 acres land (herein referred to as the "Exclusion Area") and is more particularly bounded and described in Appendix "B" attached here to and made a part hereof. Said Property and said Exclusion Area are also more particularly bounded and described in the "Conservation Easement Plan for Mill Pond Center, 50 Newmarket Road, Durham, New Hampshire" dated March 5, 2003 with revisions through May 10, 2004, and completed by Doucet Survey, Inc. of Newmarket, NH, to be recorded herewith.

1. PURPOSES

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

- A. The protection and conservation of open spaces, particularly the conservation of the approximately 5 acre hayfield, of which the Property consists; and
- B. The protection of the more than 400 feet of shoreline on the Oyster River, on which the Property fronts and provides access to;
- C. The preservation of open spaces for the scenic enjoyment of the general public as viewed from Newmarket Road (Route 108), including the more than 400 feet of frontage along Newmarket Road, a public road;
- D. The assurance and preservation of access to the land of which the Property consists for non-motorized, non-commercial, transitory outdoor recreation by the general public, including the potential of a future pedestrian link to downtown Durham; and
- E. The conservation of the open fields, forests, and shoreline of the Property for the education and enjoyment of the general public.

These purposes are consistent with the clearly delineated open space and conservation goals and objectives of the Town of Durham Master Plan 2000 which states as a goal that Durham should: "Create an urban service area greenway system that is based upon the major streams and rivers within the core – College Brook, Beards Creek, Oyster River, Littlehale Creek, Pettee Brook, and Reservoir Brook" (page 4.23)

And further recommends that "The Mill Pond and adjacent wetlands should be enhanced as a demonstration of the importance of greenway extensions into the downtown core. Enhancement of foot paths and passive recreational use of this area should be encouraged for the benefit of those living in the immediate neighborhood and to enhance the vision of Durham's special relationship with its fresh – and saltwater bodies" (page 4.24);

And further states as a goal to "Systematically identify, prioritize, and develop a multi-faceted protection program for the scenic viewsheds in Durham" (page 4.27);

And further recommending that "Critical viewsheds should be identified and protected with scenic easements" (page 4.27);

And further recognizing the Newmarket Road "view toward Mill Pond Center" as a viewshed that should be considered for protection (page 4.27);

And further states as a goal that "A multi-agency/group effort should be undertaken to conserve areas identified by this Master Plan as having important values to the community" (page 4.31);

And further recommending that "The Town should pursue and encourage other agencies and non-profits to pursue the acquisition of conservation easements or fee title to the properties shown on the map entitled Areas Identified for Conservation – 2000," said map identifying a portion of the Mill Pond Center property (page 4.31).

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 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, except agriculture and forestry as described below, and provided that the productive capacity of the Property to produce forest and/or agricultural crops shall not be degraded by on-site activities.

i. For the purposes hereof, "agriculture" and "forestry" 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 or forest trees of any size capable of producing timber or other forest products; and the processing and sale of products produced on the Property (such as pick-your-own fruits and vegetables and maple syrup).

ii. Agriculture and forestry on the Property shall be performed, to the extent reasonably practicable, in accordance with the then current scientifically based practices recommended by the University of New Hampshire Cooperative Extension, U.S. Natural Resources Conservation Service, or other government or private, nonprofit natural resource conservation and management agencies then active.

B. The Property shall not be subdivided from the Exclusion Area or otherwise divided in ownership.

C. No structure or improvement, including, but not limited to, a dwelling, a maple sugar house, barn, shed, workshop, any portion of a septic system, tennis court, swimming pool, dock, aircraft landing strip, telecommunications and/or wireless communications facility, tower, bleachers, or mobile home, shall be constructed, placed or introduced onto the Property. However, ancillary improvements including, but not limited to, a permeable road, fence, or culvert, may be constructed, placed or introduced onto the Property only as necessary in the accomplishment of the agricultural, forestry, conservation, or noncommercial outdoor

recreational uses of the Property and provided that they are not detrimental to the purposes of this Easement.

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, such determination of harm to be based upon information from the New Hampshire Natural Heritage Inventory 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 scenic, forestry, recreational and wildlife habitat protection purposes of this Easement; and

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

E. 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 agricultural, forestry, conservation, or noncommercial outdoor recreational uses of the Property, and provided such signs are not detrimental to the purposes of this Easement. No sign shall be greater than 16 square feet in size and no sign shall be artificially illuminated.

F. There shall be no mining, quarrying, excavation, or removal of rocks, minerals, gravel, sand, topsoil, or other similar materials on the Property, except in connection with any improvements made pursuant to the provisions of sections 2.A., C., D., or E., above. No such rocks, minerals, gravel, sand, topsoil, or other similar materials shall be removed from the Property.

G. There shall be no dumping, injection, burning, or burial of man-made materials or materials then known to be environmentally hazardous including vehicle bodies or parts.

H. The Property shall in no way be used to satisfy the density requirements of any applicable zoning ordinance or subdivision with respect to the development of any other property.

I. 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.

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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. This provision is an exception to Sections 2(A), 2(C), 2(D), and 2(F) above. The Grantor reserves the right to place, construct, or introduce a small outdoor, uncovered stage and associated electric utilities within "Area A", as identified on the Plan recorded herewith and more particularly described in Appendix "A" attached hereto, subject to the following conditions and to review and approval of the Grantee.

- i. Said stage shall be no greater than 750 square feet in total. The gross square footage shall be measured from the outside edge of the stage.
- ii. Said stage shall be temporary in nature and shall not be placed, constructed, or introduced within Area A prior to one week before Memorial Day of each year and shall be removed prior to October 31 of each year.
- iii. Said stage shall be placed to the extent practicable so as to minimize its detrimental impact on the purposes of this Easement, as described in Section 1. In no case shall the traveling public be able to view said stage from Route 108 (Newmarket Road).
- iv. Said associated electric utilities are intended solely to service the stage with electrical power for sound, lighting, and related event use. Said associated electric utilities may be permanent or temporary in nature but shall in all cases be constructed and located so as to minimize their impact on the purposes of this Easement, as outlined in Section 1 above. Said utilities shall not include a septic system, leach field, composting toilets or other human waste disposal system.
- v. To exercise this right, the Grantor shall provide written notice to the Grantee at least 60 days prior to the submission of the initial application to the Planning Board or other local authority having jurisdiction over such structures, buildings, and improvements. Said notice shall include the specific details of said exercise, including but not limited to the proposed location of the stage, the footprint and square footage of the stage, and the location and nature of the associated electric utilities.
- vi. After consideration of the impact of the proposed exercise of this right on the purposes of this Easement, the Grantee shall approve or disapprove the proposed exercise in writing to the Grantor. Grantee shall approve or disapprove prior to final action by the Planning Board or other local authority having jurisdiction over such structures. Such approval shall not be unreasonably withheld.
- vii. Any future renovation or change in the type, size, or location of the stage and associated electric utilities shall also be subject to review and approval by the

Grantee, under the same conditions and through the same process set forth in Section 3(A)i-v above.

- viii. Should the Property be sold, transferred, or otherwise conveyed by the original Grantor, being the **Mill Pond Center, Inc.**, to a third party, this right shall be extinguished except by mutual agreement and subject to mutually acceptable modifications between the Grantor and Grantee. However, should the Grantor and Grantee be unable to come to a mutually acceptable agreement prior to the transfer of the Property, the Grantor agrees to remove and properly dispose of any associated electrical utilities within the Easement and installed to service the stage in Area A. Said mutual agreement shall be in writing and shall be recorded at the Strafford County Registry of Deeds.

B. This provision is an exception to Section 2(A) above and Section 4 below. The Grantor reserves the right to conduct events between one week before Memorial Day and October 31 of each year on the stage within Area A reserved under Section 3(A) above, subject to the following limitations and conditions:

- i. Said events may be open to the public or may be private and the Grantor may, at its sole discretion, charge a fee for attendance at said events. Further, Grantor may temporarily prohibit public access to Area A immediately prior to, during, and following said events, when unfettered public access may interfere with the event.
- ii. Said events may be limited, restricted, or forbidden by the Grantee due to soil erosion, sedimentation of nearby wetlands, soil compaction, and loss of vegetative cover within Area A. Should significant soil erosion, sedimentation of nearby wetlands, soil compaction, and loss of vegetative cover occur as the result of events conducted by the Grantor within Area A so as, in the sole opinion of the Grantee, to be detrimental to the purposes of this Easement as outlined in Section 1 above, the Grantor shall be required to develop and implement a site management plan that addresses the aforementioned problems. Said plan shall be subject to review and approval by the Grantee.
- iii. The Grantor shall provide the Grantee with written notice of the schedule of events thirty (30) days prior to the first event of each year.
- iv. Should the Property be sold, transferred, or otherwise conveyed by the original Grantor, **Mill Pond Center, Inc.**, to a third party, this right shall be extinguished except by mutual agreement and subject to mutually acceptable modifications between the Grantor and Grantee. Said mutual agreement shall be in writing and shall be recorded at the Strafford County Registry of Deeds.

C. The Grantor reserves the right to maintain, repair, or relocate the existing walking trail located on the Plan recorded herewith and further, to construct and repair new walking trails on the Property. Said trails shall be constructed and maintained so as to minimize erosion and sedimentation from the Property into the Oyster River. The Grantor must notify the Grantee in

writing at least thirty (30) days before relocating existing trails or constructing new trails. This reserved right does not require the creation or maintenance of said trails and the Grantor shall be under no obligation to create or maintain said trails.

D. This provision is an exception to Section 2(C) above. The Grantor reserves the right to maintain, repair, replace, or expand the existing dock on the Oyster River as identified in the Baseline Documentation and Acknowledgement of Property Condition Report, a copy of which is on file with the Grantor, Grantee, and Executory Interest Holder. Said dock may be expanded to a total area of no larger than 150 square feet, as measured by its outside dimensions and said expansion shall not damage any rare, threatened, endangered species or exemplary natural communities. Prior to commencement of such activities, all necessary federal, state, and local permits and approvals shall be secured. The Grantor must notify the Grantee in writing at least thirty (30) days before exercising this right.

E. This provision is an exception to Section 2(A) above. The Grantor reserves the right to conduct, or to allow other entities to conduct, commercial educational activities on the Property, including but not limited to the hosting of an environmental education camp or arts-related programming. Said commercial educational activities shall not be detrimental to the scenic, open space, water quality, and recreational purposes of this Easement as outlined in Section 1 above.

F. This provision is an exception to Sections 2(C), (D) and (F) above. The Grantor reserves the right to place, construct, and locate a pedestrian bridge across the Oyster River to serve as a trail link with downtown Durham. Said pedestrian bridge shall be consistent with the purposes of this Easement and shall be constructed so as to minimize erosion and sedimentation into the Oyster River. The location and design of said pedestrian bridge shall be mutually agreed to by the Grantor and Grantee, said mutual agreement to be in writing. Further, Grantor shall secure all necessary local, state, and federal permits prior to beginning any site work and said work shall not damage any rare, threatened, endangered species or exemplary natural communities. Once constructed, the Grantor shall have the right to maintain, repair and replace said pedestrian bridge.

G. This provision is an exception to Sections 2(A), (C), (D) and (F) above. The Grantor reserves the right to maintain, repair, and replace the leach field, a portion of which is currently located within the Easement area and identified in the Baseline Documentation and Acknowledgement of Property Condition Report, a copy of which is on file with the Grantor, Grantee, and Executory Interest Holder, subject to the following conditions:

- i. Said leach field shall serve only the buildings and structures located on the Property and Exclusion Area at the time of the recording of this Easement.
- ii. Should said leach field fail and require replacement, the Grantor agrees first, that if, at the time of proposed replacement of the leach field, a sanitary sewer line along the Property's boundary with Route 108 has been extended prior to the proposed exercise of this right or will be extended along the Property's boundary with Route 108 within six (6) months of the proposed exercise of this right, the Grantor will forego the

replacement of said leach field and connect to the sewer line. Said leach field shall be removed from the Property and properly disposed of.

- iii. Further, if the sewer line has not been extended or will not be extended within six (6) months of the proposed exercise of this right, the Grantor shall next evaluate the relocation of the leach field within the Exclusion Area. Should the Grantor be unable to locate an acceptable replacement area for the leach field within the Exclusion Area, the Grantor may then replace the leach field on the portion of the Property subject to this Easement.
- iv. To exercise this right of replacement of the leach field within the portion of the Property subject to this Easement, the Grantor shall provide written notice to the Grantee at least 30 days prior to the submission of the initial application to the Planning Board or other authority having jurisdiction over such structures. Said notice shall justify the placement of said leach field inside of the Easement and shall include the specific details of said exercise, including but not limited to the proposed location of the leach field.
- v. The Grantee shall approve the proposed exercise in writing to the Grantor only if the Grantor demonstrates that no extension of the sanitary sewer line has occurred or is planned along the Property's boundary with Route 108 within six (6) months of the proposed exercise of this right, and that no reasonable, acceptable location can be identified within the Exclusion Area for said leach field. Grantee shall approve or disapprove prior to final action by the authority having jurisdiction over such structures. Such approval shall not be unreasonably withheld. Grantor and Grantee shall join in recording a notice at the Strafford County Registry of Deeds.

4. AFFIRMATIVE OBLIGATIONS OF THE GRANTOR

- A. The Grantor hereby conveys public pedestrian access to all portions of the Property as shown on the Plan recorded herewith, except that the Grantor may post
- 1. with prior approval of the Grantee, any portion of the Property against public use should it deem such posting to be necessary to protect the purposes of this Easement set forth in Section 1 above; and/or
 - 2. temporarily, any portion of the Property against public use when public safety may be at risk; and/or
 - 3. any portion of the Property against public use from dusk to dawn; and/or
 - 4. temporarily, Area A against public use, as reserved in Section 3(B) above.

Such pedestrian access is solely for transitory, non-commercial, non-motorized outdoor recreation, including but not limited to walking, hiking, cross country skiing, bird watching, and fishing. The Grantor shall notify the Grantee in writing within (5) days of posting against public access, as permitted under the provision of Section 4.A.2 above.

- B. The Grantor shall maintain the open fields, as identified in the Baseline Documentation and Acknowledgement of Property Condition Report on file with the Grantor, Grantee, and

Executory Interest Holder, through mowing and other appropriate management activities to ensure an unobstructed scenic view of the Property from Route 108 (Newmarket Road). Should the scenic view from Route 108 (Newmarket Road) become obstructed by trees, brush, or other vegetative growth, the Grantee shall have the right to mow the field and clear said trees, brush, or vegetative growth to reestablish the scenic view from Route 108 (Newmarket Road). The Grantor shall reimburse the Grantee for the actual costs of said mowing and clearing of trees, brush, or vegetative growth. The Grantee shall notify the Grantor thirty (30) days prior to the mowing or clearing said trees, brush or vegetative growth.

5. 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.

6. 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 conservation purposes of this Easement. 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 and fulfill the responsibilities and carry out the duties assumed by the acceptance of this Easement.
- 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.

7. 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 Durham**, a qualified organization as specified in Section 6.A. above (sometimes herein referred to as the "Executory Interest Holder"), requesting such enforcement delivered in hand or by certified mail, return receipt requested, then said **Town of Durham** shall have the right to enforce this Easement. All reasonable costs of such enforcement shall be paid by the Grantee. In such circumstance, the Town of Durham shall then also have the right to terminate the interest of the Grantee in the

Property by recording a notice to that effect in the Registry of Deeds referring hereto and shall then assume all interests and responsibilities granted to the Grantee in this deed.

B. The interests held by the Executory Interest Holder are assignable or transferable to any party qualified to become the Grantee's assignee or transferee as specified in Section 6.A. above. Any such assignee or transferee shall have like power of assignment or transfer.

8. BREACH OF EASEMENT – GRANTEE'S REMEDIES

A. If the Grantee determines that a breach of this Easement has occurred or is threatened, the Grantee shall notify the Grantor in writing of such breach and demand corrective action to cure the breach and, where the breach involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by the Grantee. Such notice shall be delivered in hand or by certified mail, return receipt requested.

B. If the Grantor fails, within thirty (30) days after receipt of such notice or after otherwise learning of such conduct, to undertake those actions, including restoration, which are reasonably calculated to cure said breach and to repair any damage to the Property caused thereby or fails to continue diligently to cure such 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.

C. The Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to the Purposes of this Easement, as identified in Section 1 above. 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 values of the Property, the Grantee may pursue its remedies under this Section 8 without prior notice to the Grantor or without waiting for the period provided for cure to expire.

E. The Grantee's rights under this Section 8 apply equally in the event of either actual or threatened violations of the terms of this Easement. The Grantor agrees that the Grantee's remedies at law for any violation of the terms this Easement are inadequate and that the Grantee shall be entitled to the injunctive relieve described in Section 8.B, 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 8 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

F. All reasonable costs incurred by the Grantee in enforcing the terms of this Easement

against the Grantor, including, without limitation, costs and expenses of suit and reasonable attorneys' fees, and any costs of restoration necessitated by the Grantor's breach of this Easement shall be borne by the Grantor, provided that the Grantor is directly or primarily responsible for the breach; and provided further, however, that if the Grantor ultimately prevails in a judicial enforcement action initiated by the Grantee, the Grantee shall bear the costs of the Grantor's costs and expenses of suit and reasonable attorney fees.

G. 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, estoppel, or prescription.

H. 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 8, against any third party responsible for any actions detrimental to the conservation purposes of this Easement.

9. 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.

10. 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.

11. 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. Should the Town of Durham be the Executory Interest Holder at the time of condemnation, the Town of Durham shall receive 50% of the Grantee's value. In the case where the Town of Durham undertakes the condemnation of all or a portion of the Property and the Town of Durham is the Executory Interest Holder at the time of condemnation, the Grantee shall keep 100% of the value from its interest and the Town of Durham shall receive none.

C. The Grantee and Executory Interest Holder shall use their respective shares of the proceeds in a manner consistent with and in furtherance of one or more of the conservation purposes set forth herein.

12. 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 56.A., above, accepts and records the additional easement.

13. ALTERNATE DISPUTE RESOLUTION

A. The Grantor and the Grantee desire that issues arising from time to time concerning prospective uses or activities in light of the conservation purposes 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 a party becomes concerned about the consistency of any proposed use or activity with the purpose(s) of this Easement, wherever reasonably possible, the concerned party shall notify the other party of the perceived or potential problem, and explore the possibility of reaching an agreeable resolution.

B. If informal dialogue does not resolve the issue, and the Grantor agrees not to proceed with the proposed use or activity pending resolution of the on-going dispute, either party may refer the dispute to mediation by request made in writing to the other. Within ten (10) days of the receipt of such a request, the parties shall agree on a single impartial mediator who shall be an attorney licensed to practice law in New Hampshire or an experienced land use or land conservation professional, both of which must have experience with conservation easements and training in mediation. The mediator shall be mutually agreed upon by the Grantor and Grantee. Mediation shall be conducted in Durham, New Hampshire. Each party shall pay its own attorneys' fees and the costs of mediation shall be split equally between the parties.

C. If the dispute has not been resolved by mediation within sixty (60) days after delivery of the mediation request, or the parties are unable to agree on a mediator within thirty (30) days after delivery of the mediation request, then, upon the Grantor's continued agreement not to proceed with the disputed use or activity pending resolution, either party may refer the dispute to binding arbitration by request made in writing and in accordance with New Hampshire RSA 542. Within thirty (30) days of the receipt of such a request, the parties shall select a single impartial arbitrator to hear the matter. The arbitrator shall be an attorney licensed to practice law in New Hampshire with experience in conservation easements and applicable training and experience as an arbitrator. The arbitrator shall be mutually agreed upon by the Grantor and Grantee. Judgment upon the award rendered by the arbitrator may be enforced in any court of competent jurisdiction. The arbitrator shall be bound by and follow the substantive law of New Hampshire and the applicable provisions of the United State Internal Revenue Code. The arbitrator shall render a decision within thirty (30) days of the arbitration hearing. Arbitration shall be conducted in Durham, New Hampshire.

D. If the parties do not agree to resolve the dispute by arbitration, or if the parties are unable to agree on the selection of an arbitrator, then either party may bring an action at law or in equity in any court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation by permanent injunction, and to require the restoration of the Property to its condition prior to the breach and for such damages as appropriate.

E. Notwithstanding the availability of mediation and arbitration to address disputes concerning the consistency of any proposed use or activity with the purposes 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 New Hampshire court of competent jurisdiction to cause the cessation of any such damage or harm pending resolution of any dispute in accordance with this Section 13.

14. 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.

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

IN WITNESS WHEREOF, Grantor has hereunto set his hand(s) this 22nd day of December 2004.



Daniel G. Miner, Grantor
President of the Board, Mill Pond Center, Inc.
Duly authorized

STATE OF NEW HAMPSHIRE
COUNTY OF Strafford, ss.

On this 23 day of December, 2004 before me personally appeared Daniel G. Miner, 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.

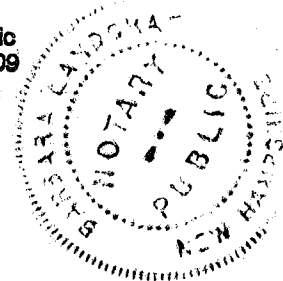


Type or Print Name:

Notary Public/Justice of the Peace

My commission expires: _____

BARBARA LANDGRAF, Notary Public
My Commission Expires July 14, 2009



BK3123 PG0183

ACCEPTED: ROCKINGHAM LAND TRUST

By: Joanna Pellmar

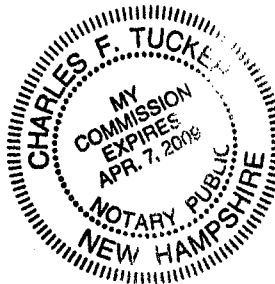
Title: President
Duly Authorized

Date: December 29, 2004

STATE OF NEW HAMPSHIRE
COUNTY OF Rockingham, ss.

On this 29th day of December, 2004, before me personally appeared Joanna Pellmar of Rockingham Land Trust, 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.

Charles F. Tucker
Type or Print Name:
Notary Public/~~Justice of the Peace~~
My commission expires: _____



BK3123 PG0184

EXECUTORY INTEREST ACCEPTED: TOWN OF DURHAM

By: [Signature]

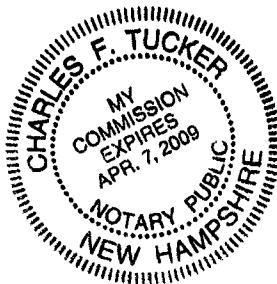
Title: Town Administrator
Duly Authorized

Date: 12/29/04

STATE OF NEW HAMPSHIRE
COUNTY OF Rochester, ss.

On this 29th day of December, 2004, before me personally appeared Todd Selig, Town Administrator of the Town of Durham, 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.

[Signature]
Type or Print Name:
Notary Public/~~Justice of the Peace~~
My commission expires: _____



BK3123 PG0185

Appendix "A"
Easement Area

A certain parcel of land with the buildings thereon if any in the Town of Durham, County of Strafford, State of New Hampshire, and shown as "**Easement Area**" on a plan entitled, "Conservation Easement Plan for Mill Pond Center, 50 Newmarket Road, Durham, New Hampshire" dated March 5, 2003 with revisions through May 10, 2004, and recorded in the Strafford County Registry of Deeds as Plan No. 78-31, being more particularly bounded and described as follows:

Beginning at the northeasterly corner thereof at a rebar at the end of a stonewall at land now or formerly of the Mill Pond Trust and Newmarket Road (Route 108), thence running along a stonewall and said Route 108 on the following six courses and distances: South 13° 38' 22" West 123.80 feet to a point; thence South 20° 28' 22" West 98.90 feet to a point; thence South 27° 45' 22" West 79.40 feet to a point; thence South 35° 20' 22" West 88.90 feet to a point; thence South 46° 04' 22" West 45.30 feet to a point; and thence South 52° 15' 22" West 105.10 feet to a point at land now or formerly of Core Health Services, Inc.; thence turning and running along land of said Core Health Services, Inc. and stonewalls on the following three courses and distances: North 60° 08' 38" West 7.40 feet to a point; thence North 13° 54' 11" West 48.70 feet to a drill hole; and thence North 34° 12' 55" West 215.76 feet to a magnetic nail set in the intersection of stonewalls; thence turning and running along land of Mill Pond Center, Inc. not retained within the "Easement Area" (the "Exclusion Area") on the following eight courses and distances: North 89° 15' 00" West 430 feet to a rebar; thence South 70° 03' 16" West 46.01 feet to a point; thence North 45° 00' 00" West 28 feet to a rebar; thence North 32° 00' 00" East 68 feet to a point; thence North 20° 00' 00" East 140 feet to a rebar; thence North 53° 00' 00" West 135 feet to a rebar; thence North 53° 00' 00" West 180 feet to a rebar; and thence South 41° 30' 00" West 210 feet to a rebar at land now or formerly of Richard J. Higgins and Doreen C. Higgins; thence turning and running along land of said Higgins, North 52° 03' 57" West 181.74 feet through a one inch bar found to the bank of the Oyster River; thence turning and running along the Oyster River in a generally northeasterly direction approximated by a tie line running North 40° 16' 46" East 433.83 feet to a drill hole in a boulder at land now or formerly of Edward Tillinghast and/or the Mill Pond Trust; thence turning and running along said land, South 57° 10' 03" East 328 feet through an iron pipe to a rebar; thence continuing along the same course, a distance of 70 feet to a rebar; thence continuing along the same course, a distance of 314.40 feet through a 3/8 inch iron rod to a rebar at a two feet wide stone box culvert; thence turning and running South 82° 04' 58" East 475.97 feet to the point of beginning. Said parcel containing 434,315 square feet, more or less, including "Area A" as shown on said plan.

Meaning and intending to be a portion of the premises described in a Deed from Wilburn O. Bonnell and Deborah Pierce Bonnell to Mill Pond Center, Inc. dated March 1, 2002, and recorded in the Strafford County Registry of Deeds at Book 2469 Page 214.

BK3123 PG0186

Area A

A certain parcel of land with the buildings thereon if any in the Town of Durham, County of Strafford, State of New Hampshire, and shown as "Area A" on a plan entitled, "Conservation Easement Plan for Mill Pond Center, 50 Newmarket Road, Durham, New Hampshire" dated March 5, 2003 with revisions through May 10, 2004, and recorded in the Strafford County Registry of Deeds as Plan No. 78-31, being more particularly bounded and described as follows:

Beginning at the northerly most corner thereof, at land now or formerly of the Mill Pond Trust, thence turning and running along land of the Mill Pond Trust, South 57° 10' 03" East 70 feet to a rebar; thence turning and running along other land included in the "Easement Area" on the following four courses and distances: South 11° 00' 00" East 32 feet to a point; thence South 18° 30' 00" East 80 feet to a point; thence South 03° 00' 00" West 39.78 feet to a point; and thence South 44° 30' 00" West 157.29 feet to a rebar at the "Exclusion Area"; thence turning and running along the "Exclusion Area", North 53° 00' 00" West 135 feet to a point; thence turning and running along other land of the "Easement Area", North 22° 00' 00" East 25 feet to a point; thence turning and running North 31° 00' 00" East 215 feet to a point; thence turning and running North 49° 06' 17" East 12.89 feet to the point of beginning. Said "Area A" containing 37,318 square feet, more or less.

Meaning and intending to be a portion of the premises described in a Deed from Wilburn O. Bonnell and Deborah Pierce Bonnell to Mill Pond Center, Inc. dated March 1, 2002, and recorded in the Strafford County Registry of Deeds at Book 2469 Page 214.

BK3123 PG0187

Appendix "B"
Exclusion Area

A certain parcel of land with the buildings thereon if any in the Town of Durham, County of Strafford, State of New Hampshire, and shown as "**Exclusion Area**" on a plan entitled, "Conservation Easement Plan for Mill Pond Center, 50 Newmarket Road, Durham, New Hampshire" dated March 5, 2003 with revisions through May 10, 2004, and recorded in the Strafford County Registry of Deeds as Plan No. 28-31, being more particularly bounded and described as follows:

Beginning at the southwesterly most corner thereof at land now or formerly of Charles H. Leighton at a point near a one inch t-bar; thence running along Newmarket Road, North 62° 13' 22" East 91.80 feet to a point; thence turning and running North 64° 27' 22" East 148.30 feet to a rebar at a stonewall at land now or formerly of Core Health Services, Inc.; thence turning and running along land of said Core Health Services, Inc. and a stonewall, North 34° 48' 23" West 224.17 feet to a magnetic nail set in the intersection of stonewalls; thence turning and running along a stonewall, North 55° 33' 43" East 319.04 feet to a magnetic nail set in the intersection of stonewalls; thence turning and running along other land of Mill Pond Center, Inc. included in the "Easement Area" on the following eight courses and distances: North 89° 15' 00" West 430 feet to a rebar; thence South 70° 03' 16" West 46.01 feet to a point; thence North 45° 00' 00" West 28 feet to a rebar; thence North 32° 00' 00" East 68 feet to a point; thence North 20° 00' 00" East 140 feet to a rebar at "Area A"; thence turning and running along "Area A" North 53° 00' 00" West 135 feet to a rebar; thence turning and running along the "Easement Area", North 53° 00' 00" West 180 feet to a rebar; and thence South 41° 30' 00" West 210 feet to a rebar at land now or formerly of Richard J. Higgins and Doreen C. Higgins; thence turning and running along land of said Higgins, South 52° 03' 57" East 57.66 feet to a one inch t-bar; thence continuing along land of said Higgins, South 43° 58' 24" West 199.90 feet to a one inch iron rod; thence turning and running South 42° 05' 08" East 505.03 feet along land of said Higgins and land of Thomas L. Hutchinson and Heidi S. Hutchinson to a one inch t-bar at land now or formerly of Charles H. Leighton; thence turning and running along land of said Leighton, South 71° 34' 38" East 161.45 feet to a point; thence continuing along land of said Leighton, South 27° 46' 38" East 110 feet to the point of beginning. Said "Exclusion Area" containing 317,180 square feet, more or less.

Meaning and intending to be a portion of the premises described in a Deed from Wilburn O. Bonnell and Deborah Pierce Bonnell to Mill Pond Center, Inc. dated March 1, 2002, and recorded in the Strafford County Registry of Deeds at Book 2469 Page 214.

BK3123 PG0188