

BK 4270PG0500

Note: This is a transfer to an instrumentality of the State of N.H. pursuant to RSA 78-B:2(I) and (II) and is therefore exempt from NH Real Estate Transfer Tax.

Return to:
Newton Board of Selectmen
P.O. Box 378
Newton, NH 03859

Conservation and Preservation Easement

Hidden Acres Farm
Newton, New Hampshire

Forrest Reynolds, being unmarried, and with a principal place of residence at 42 Thornell Road, Town of Newton, County of Rockingham, State of New Hampshire, 03859, (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 Newton, with a principal mailing address of PO Box 378, Town of Newton, County of Rockingham, State of New Hampshire, 03859, acting through its Conservation Commission pursuant to New Hampshire RSA 36-A:4, (hereinafter referred to as the "**Grantee**" which shall, unless the context clearly indicates otherwise, include the Grantee's successors and assigns), the Conservation and Preservation Easement (hereinafter referred to as the **Easement**) and hereinafter described with respect to that certain parcel of land known as **Hidden Acres Farm**, situated on Thornell Road in the Town of Newton, County of Rockingham, State of New Hampshire and containing a total of approximately 22.2 acres, including approximately 19.25 acres in the undeveloped portion, and approximately 2.95 acres with a house, barn, milk room, equipment shed, poultry house, blacksmith shop and hurricane shed, (hereinafter referred to as the **Farmstead Area**). Hidden Acres Farm and the Farmstead Area are described in Schedule "A" attached hereto and made a part hereof.

Pursuant to New Hampshire RSA chapter 227-M, this Easement is granted subject to an **Executory Interest** conveyed to the State of New Hampshire acting through the New Hampshire **Land and Community Heritage Investment Program** (sometimes referred to as **LCHIP**, and otherwise herein referred to as **Executory Interest Holder**) as more fully described in Section 13.

In accordance with New Hampshire RSA 227-M:14, notwithstanding any other provision of law relating to the disposal of publicly-owned real estate, no deviation in the uses of any resource asset acquired under the Program to uses or purposes not consistent with the purposes of New Hampshire RSA chapter 227-M shall be permitted. As provided in NH RSA 227-M:14, the sale, transfer, conveyance, or release of any resource asset from public trust is prohibited, except as provided in New Hampshire RSA 227-M:13.

ROCKINGHAM COUNTY
REGISTRY OF DEEDS

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This Easement hereby conveyed is pursuant to New Hampshire RSA 477:45-47 and RSA chapter 227-M, exclusively for the following conservation and preservation purposes (hereinafter referred to as the **Purposes**):

1. PURPOSES

A. To protect Hidden Acres Farm from future development, and to conserve, preserve and maintain the unique characteristics of Hidden Acres Farm substantially in its present scenic and open space condition, which taken as a whole, is endowed with scenic, agricultural, architectural and historical significance, the conservation and preservation of which is important to the public and will serve the public interest in a manner consistent with New Hampshire RSA 477:45-47 and RSA chapter 227-M; and

B. To provide public access to the 6-acre, town-owned parcel that abuts Hidden Acres Farm to the southwest; and

C. To conserve soil productivity and to promote the long-term capacity of Hidden Acres Farm to produce economically valuable forest and/or agricultural products; and

D. To preserve biological diversity, native flora and fauna, and the environments, habitats, and ecological processes which support them, as those values exist on the date of this instrument, and as they may evolve in the future; and

E. To preserve Hidden Acres Farm for the scenic enjoyment and the low-impact, non-commercial, outdoor recreational use of the general public for such activities as hiking, nature observation, cross-country skiing, fishing and hunting; and

F. To prevent any use or activity on Hidden Acres Farm which would be detrimental to drainage, flood control, water conservation, water quality, and erosion control, or that would or has the potential to impair or interfere with the unique and significant qualities of public benefit and the conservation and preservation values of Hidden Acres Farm; and

G. To preserve Hidden Acres Farm, an intact and well-preserved example of a small, southern New Hampshire farmstead eligible for the New Hampshire State Register of Historic Places that includes a house, six outbuildings, pond, field gates, stone walls, pasture, fields and a wood lot, which, in their agricultural setting embody the gradual development of the New Hampshire Farm over the centuries; and

H. To preserve The Farmstead Area for single-family residential uses as described by the Newton zoning ordinance as of the date of this Easement for Residential A Zones consistent with its preservation values as described and defined in the Farmstead Area Baseline Documentation prepared by Elizabeth Durfee-Hengen for the New Hampshire Preservation Alliance, dated September 2002, copies of which are on file with the New Hampshire Preservation Alliance, Concord, NH and at the Newton Conservation Commission; and

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I. Overall, to prevent any use or fragmentation of Hidden Acres Farm that will significantly impair or interfere with the conservation or preservation values of Hidden Acres Farm or the unique and significant qualities providing public benefit.

These purposes are consistent with the Master Plan of the Town of Newton, together with the policies of the Rockingham Regional Planning Commission and with New Hampshire RSA 79-A:1, 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 by conserving the land, water, forest, agricultural and wildlife resources."

and with New Hampshire RSA chapter 227-M, which states,

"The intent of the program is to conserve and preserve this state's most important natural, cultural and historical resources through the acquisition of lands, and cultural and historical resources, or interests therein, of local, regional, and statewide significance, in partnership with the state's municipalities and the private sector, for the primary purposes of protecting and ensuring the perpetual contribution of these resources to the state's economy, environment and overall quality of life."

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

The terms of this Conservation and Preservation Easement are as follows:

2. RESTRICTIONS AND USE LIMITATIONS

A. Hidden Acres Farm

1. All provisions of this Easement shall be in perpetuity except the provisions of Section 2.B specifically relating to the house, barn and milk room within the Farmstead Area, the term of which shall be one-hundred (100) years from the date of this Easement.

2. The house shall be used for single-family residential purposes only as described by the Newton zoning ordinance as of the date of this Easement for Residential A Zones. Except as specifically permitted under this Easement, no commercial or industrial activities shall be permitted, and no buildings, including another residence, landing strip, mobile home, tennis court, swimming pool, any portion of a septic system, vehicle, storage tank, asphalt or concrete pavement, advertising structure such as billboard or sign, fence (fences existing at the time of this Easement excluded), antenna, satellite receiving dish (small rooftop dishes excluded), utility pole, communication facility or tower, conduit, line or other temporary or permanent structure, facility or improvement shall be constructed, installed, placed or allowed to remain on, above or under Hidden Acres Farm. With prior approval of the

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Grantee, temporary structures such as a construction trailer or dumpster required for construction, maintenance, repair or rehabilitation of the buildings are permitted.

3. Hidden Acres Farm shall not be subdivided or conveyed in any form in separate parcels. The Grantor further covenants and agrees to not undertake any action that would have the effect of subdividing or conveying any part of Hidden Acres Farm.

4. Hidden Acres Farm shall in no way be used to satisfy the requirements of any applicable zoning ordinance or subdivision regulation, including but not limited to, density, frontage or open space requirements, with respect to the development of any other property.

5. Under no circumstances shall rocks, minerals, gravel, sand, topsoil, or other similar materials be removed from Hidden Acres Farm. Further, there shall be no removal, filling, or other disturbances of the soil surface, nor any changes in topography, including but not limited to, mining, quarrying, dredging, excavation or removal of rocks, minerals, gravel, sand, topsoil, or other similar materials or natural deposits, or disturbance of or changes to surface or subsurface water systems, wetlands, or natural habitat on Hidden Acres Farm unless such activities:

a. Are commonly necessary in the accomplishment of the on-site agricultural, forestry, habitat management, conservation or non-commercial, low-impact outdoor recreational uses of Hidden Acres Farm;

b. Do not harm state or federally recognized rare 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;

c. Are not detrimental to the Purposes of this Easement; and

d. Are initiated and conducted only after all necessary federal, state, local and other governmental permits and approvals have been duly secured.

6. There shall be no placing, dumping, injection, storage or burial on Hidden Acres Farm of trash, debris, or other waste, or of materials that are known to be environmentally hazardous, including snow from municipal plowing, construction or demolition debris and vehicles or vehicle parts. The storage and spreading of compost, manure, or other fertilizer under sound agricultural practices, the storage of feed, the temporary storage of trash in sound receptacles for regular off-site disposal are permitted.

7. With the exception of any already on record, no rights-of-way, easement of ingress or egress, driveways, roads, or utility lines shall be constructed, developed or maintained into, on, over, under, or across Hidden Acres Farm, without the prior written approval of Grantee.

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8. There shall be no cutting or removal of maple, oak, walnut, butternut or hickory trees along Thornell Road except as necessary to maintain health of the trees or as required for public safety. Any existing stonewalls on the Premises shall be maintained in at least their current condition and location and may be repaired or improved.

B. The Farmstead Area

1. Except as specifically provided in Section 3.B.2, all provisions of this Section 2.B shall be for the term of one-hundred (100) years from the date of this Easement. Prior to expiration of the one-hundred (100) year period set forth herein, the Grantor, the Grantee and the Executory Interest Holder, with mutual written agreement, may renew the provisions of this Section by jointly updating and amending this Conservation and Preservation Easement at the Rockingham County Registry of Deeds, or its successor agency, provided that any such amendment shall be consistent with the protection of the conservation and preservation values of Hidden Acres Farm and the Purposes of this Easement. Nothing in this paragraph shall require the Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

2. Except with prior written approval of both the Grantee and the Executory Interest Holder, the Grantor shall not move, demolish, remove, or raze the house, barn or milk room, unless required to do so by an eminent domain proceeding

3. If any or all of the house, barn or milk room are substantially damaged or completely destroyed by fire, flood, windstorm, hurricane or earth movement, or other casualty, such that the Grantor, Grantee and the Executory Interest Holder agree that restoration or reconstruction is impractical or impossible, or agree that the Purposes of the Easement would not be served by such restoration or reconstruction, the Grantor shall have the right, with the prior written approval of the Grantee and the Executory Interest Holder, to alter, demolish, remove or raze the affected building(s). Under such circumstances, the Grantor shall have the right, though not the obligation, to replace any or all of the affected buildings, provided, however, that such replacement is in substantially the same location and is further subject to Section 2.B.4 below.

4. Prior to any restoration, reconstruction, replacement, or structural alteration of, or addition to, the house, barn or milk room, or substantial alteration or modification to the exterior elevations or roofs of any of the house, barn or milk room, the Grantor shall obtain the prior written approval of the Grantee and the Executory Interest Holder, which approval shall not be unreasonably withheld or conditioned, provided such work:

a. Is not more than 25% larger than the footprint area of the building(s) as they exist at the time of this Easement, the footprint area to be calculated by multiplying the length times the width. The expansion limit as described above shall apply to the individual buildings and shall not be applied in the aggregate to any one building; and

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b. Reflects, small, southern New Hampshire turn-of-the-twentieth century vernacular farmstead design. Work on individual buildings shall be compatible with the siting, size, scale, proportion, materials and massing of any other existing buildings. Additions or physical and structural alterations to any buildings shall be consistent with, the Secretary of Interior's *Standards for the Rehabilitation of Historic Properties* (or such successor standard identified by the Executory Interest Holder); and

5. The Grantor shall keep and maintain the house, barn and milk room in substantially the same, or better, appearance and structural condition, and location as they exist at the time of this grant. The Grantor agrees to assume the full responsibility for continued maintenance and repair of the house, barn and milk room in a manner consistent with the Secretary of the Interior's *Standards for the Rehabilitation of Historic Properties* (or such successor standard identified by the Executory Interest Holder). The Grantor may seek financial assistance from any source available to it. The Grantee does not assume any obligation for maintaining, repairing or administering the house, barn and milk room.

6. Notwithstanding the above, no prior written notice or approval shall be required for repairing, replacing or maintaining any feature of the exterior elevations or roofs of the house, barn or milk room with materials to match existing materials. The term elevation shall include, but not be limited to, doors, door frames, window sashes and frames, siding and trim, but shall not include the foundation.

7. The following work does not require written notice or approval:

- a. Painting or staining of the exterior in white or gray; exterior trim may also be green or black. Other colors must be approved by the Grantee. Where necessary, paint removal shall be performed by the gentlest means possible. "Blasting" the surface with abrasive materials such as sand, other forms of grit, and water (above 400 psi) is not allowed.
- b. Structural repairs;
- c. Insulation applied to the inside of the house;
- d. Installation of window and door screens and storm windows and doors, provided that meeting rails align and the color of the storm and primary sash match;
- e. Interior renovation and alteration to accommodate uses permitted hereunder or by law;
- f. Pointing or re-pointing of the chimney, provided that mortar matches existing with respect to color, texture and joint profile; or
- g. Replacement of asphalt roof shingles with wood shingles or slate.

3. RESERVED RIGHTS

A. Hidden Acres Farm

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1. Notwithstanding the foregoing, Grantor retains the right to use the Hidden Acres Farm for the commercial or non-commercial agricultural and forestry uses described below, provided, however that such on-site uses or activities, along with any structures or improvements as described herein that are necessary for and ancillary to such allowed or permitted activities shall not:

- a. Be inconsistent with nor detrimental to the Purposes of this Easement;
- b. Degrade the future capacity of Hidden Acres Farm to produce agricultural and/or forest crops;
- c. Cause pollution or degradation of surface or subsurface waters, soil, or soil erosion;
- d. Impair the scenic quality of Hidden Acres Farm as viewed from public roads, trails, or waters; or
- e. Degrade existing historic and archaeological values.

2. The Grantor retains the right to conduct agricultural activities, including but not limited to, maintenance and use of cultivated fields, orchards, and pastures, in accordance with sound agricultural and husbandry practices, together with the right to construct and maintain permeable surface roads necessary for such activities.

A. For the purposes hereof, "agriculture" shall include, agriculture, animal husbandry, floriculture and horticultural activities, and the production of plant and animal products for domestic or commercial purposes, including the sale of products which are produced locally (including but not limited to, fruits, vegetables, maple syrup and small craft items) provided that the products produced on Hidden Acres Farm make up at least 35% of the revenue of the farm stand, all as not detrimental to the Purposes of this Easement.

B. Agricultural activities shall be performed in accordance with a coordinated management plan for the sites and soils of Hidden Acres Farm, developed utilizing the standards and specifications of the U. S. Natural Resources Conservation Service or similar successor agency then active. Agricultural management activities shall be in accordance with the then-current scientifically-based practices recommended by the U. N. H. Cooperative Extension Service, U.S. Natural Resource Conservation Service, or other private or government natural resource conservation and management agencies then active. Such management activities shall not be detrimental to the Purposes of this Easement, nor materially impair the scenic quality of Hidden Acres Farm as viewed from public roads, trails or waterways.

3. The Grantor retains the right to use Hidden Acres Farm to harvest timber and other wood products, together with the right to construct and maintain permeable surface roads necessary for such activities, provided however such activities are consistent with the Purposes of this Easement as well as the following:

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- A. For the purposes hereof, "Commercial Forestry" shall include all on-site forestry and forest management activities performed for commercial or industrial purposes, and all such activities related to the preparation, processing, sale, cutting, harvesting, transportation and conveyance of marketable timber grown on Hidden Acres Farm. For the purposes hereof, "Non-commercial Forestry" shall include forestry and the management of timber for on-site benefits to Hidden Acres Farm and the Grantor, such as public safety, opening a viewshed, clearing trees from the edge of a field or harvesting trees for firewood for the Grantor's residential use.
- B. Forestry for industrial or commercial purposes shall be performed, to the extent reasonably practicable, in accordance with the following goals:
1. Maintenance of soil productivity;
 2. Production of forestry or agricultural crops;
 3. Protection of water quality, wetlands, and riparian zones;
 4. Maintenance or improvement of the overall quality of forest products;
 5. Conservation of scenic qualities especially as viewed from public roads, trails or waters;
 6. Protection of unique or fragile natural areas;
 7. Protection of distinctive historic or cultural features, such as stone walls;
 8. Conservation of native plant and animal species; and
 9. Outdoor recreation by and/or education of the general public.
- C. Forestry for industrial or commercial purposes shall be performed in accordance with a written forest management plan (including updates, amendments, and revisions thereto) on file with the Grantee. The plan shall be prepared by a licensed professional forester (or other qualified person, said person approved in writing by the Grantee) and be consistent with this Easement. The plan shall have been prepared not more than ten (10) years prior to the date any harvesting is expected to commence ("commencement date"), otherwise it shall have been reviewed and updated as required by such a forester or person at least thirty (30) days prior to the commencement date. The plan shall include a statement of the landowner objectives and shall specifically address the goals stated herein, and the long-term protection of those values for which this Easement is granted. Grantor shall submit the plan to Grantee for review not less than thirty (30) days prior to the commencement date. Forestry for commercial or industrial purposes shall be supervised by a licensed forester or other qualified person approved in advance and in writing by the Grantee.
- D. Grantee's review of forest management plans that may be submitted from time to time shall determine that such plans comply with the terms of this Easement. If the plan proposes any clear-cutting or substantial conversion, the plan must demonstrate that such conversion is consistent with the terms and Purposes of this Easement, such as to permit the planting of different species of

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trees, wildlife purposes, or the establishment agricultural uses, and will continue to be managed accordingly. In the case of a proposed conversion to agricultural use, Grantor shall also submit a coordinated management plan for such use pursuant to Section 3.A to Grantee for review simultaneous to submitting the forest management plan.

E. Forestry activities shall be carried out in accordance with all applicable local, state, federal and other governmental laws and regulations, and in accordance with the then-current generally accepted best management practices for the sites, soils, and terrain of Open Space. For references, see *"Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire,"* (J. B. Cullen, 1996) and *"Good Forestry in the Granite State: Recommended Voluntary Forest Management Practices for New Hampshire,"* (N. H. Forest Sustainability Standards Work Team, 1997), or similar successor publications.

F. In areas used by or visible to the general public such forestry activities shall be carried out, to the extent reasonably practicable, in accordance with the recommendations contained in *"A Guide to Logging Aesthetics: Practical Tips for Loggers, Foresters, and Landowners,"* (Geoff Jones, 1993) or similar publications.

4. The Grantor retains the right to construct, use and maintain one or more dam, bridge, culvert, fence for livestock containment, animal shelter or shed (not to exceed 200 square feet each), farm stand, or similar structure or facility, provided that such structures are ancillary to and used exclusively for on-site agricultural, forestry or low-impact, non-commercial, outdoor recreational activities, and comply with all applicable state, federal, and local laws. Construction of such structures as animal shelters, sheds or farm stands shall be compatible in siting, size, scale, proportion, materials and massing with any existing buildings or structures, and/or with small, southern New Hampshire vernacular farmstead design.

5. The Grantor shall have the right to stockpile and compost stumps, tree and brush limbs and similar unpainted, untreated biodegradable materials originating on Hidden Acres Farm in locations where the presence or decomposition of such materials will not impair the Purposes of this Easement.

6. The Grantor retains the right to install and maintain signs that identify and further the agricultural, forestry, preservation and conservation uses of Hidden Acres Farm, provided that such signs are in keeping with the historical integrity of the Hidden Acres Farm and the Purposes of this Easement are not impaired.

7. The Grantor retains the right to use Hidden Acres Farm for low-impact, non-commercial recreational purposes, which includes the right to clear, construct and maintain trails for walking, horseback riding, nature observation, cross-country skiing, and other non-motorized low-impact, non-commercial recreational activities.

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8. The Grantor retains the right to professionally conduct archaeological activities on Hidden Acres Farm, including without limitation survey, excavation and artifact removal, following submission of an archaeological field investigation plan to, and its approval in writing by, the State Archaeologist of the New Hampshire Division of Historic Resources (or appropriate successor official), with written notice to Grantee and Executory Interest Holder.

9. Grantor reserves the right to post against vehicles, motorized or otherwise, and against hunting on active livestock fields, against access to agricultural cropland during the planting and growing season, and against access to forest land during harvesting or establishment of plantations.

B. The Farmstead Area

1. Subject to Section 2.B of this Easement, the Grantor retains the right to use, maintain, repair, rehabilitate, restore, reconstruct or replace the house, barn and milk room together with the existing access drive, utilities (including, but not limited to, septic system, well, telephone, electricity and gas), as well as to erect appurtenant structures such as storage sheds (not to exceed 200 square feet each) and to perform gardening and landscaping activities appropriate to residential use. Fences for the purpose of securing Hidden Acres Farm are allowed without notice to Grantee so long as they do not impair visibility of the Farmstead Area from Thornell Road.

2. Following expiration of the one-hundred (100) year period set forth in Section 2.B, the Grantor retains the right to replace the house, barn or milk room with new or relocated buildings or structures, provided that such buildings or structures shall be subject to the provisions of Section 2.B.4 of this Easement.

3. Subject to Section 2.B.4.a and 2.B.4.b of this Easement the Grantor retains the right to use, maintain, repair, rehabilitate, restore, reconstruct or replace the equipment shed, poultry house, blacksmith shop and hurricane shed.

4. The Grantor retains the right to construct, use and maintain one or more barn, maple sugar house, or similar structure or facility, provided that such structures are ancillary to and used exclusively for on-site, land-based agricultural, forestry or low-impact, non-commercial, outdoor recreational or educational purposes. Such structures shall:

- a. Not impair or obstruct the view of Hidden Acres Farm from Thornell Road.
- b. Be compatible in siting, size, scale, proportion, materials and massing with any existing buildings or structures, and/or with small southern New Hampshire vernacular farmstead design.

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- c. Require prior written approval of the proposed structure(s) from the Grantee and the Executory Interest Holder. Subsequent alterations, additions or modifications of any such structures shall be subject to the 25% expansion limit set forth in Section 2.B.4.a of this Easement and shall be approved in writing in advance by the Grantee and the Executory Interest Holder.

5. Subject to then-current applicable local laws, and with prior written approval of the Grantee, the house and poultry house may be used as, or a portion of the barn converted to, an office for use in connection with the agricultural use of Hidden Acres Farm, or other home occupation or home office use, or nature center or museum in connection with the history of the town or Hidden Acres Farm, or other use, provided, however, that such use does not impair the preservation values of the Farmstead Area or the Purposes of this Easement. This right also includes the right to install, use, maintain, repair or replace a septic system or well appropriate to such use, providing such utilities are located entirely within the Farmstead Area.

6. Within the Farmstead Area, the Grantor retains the right to construct, use and maintain one (1) in-ground, outdoor swimming pool and one (1) tennis court provided that such structures are not visible from Thornell Road.

7. The Grantor retains the right to post against or otherwise limit public access to the Farmstead Area and the buildings therein.

4. REQUESTS FOR APPROVAL

Where Grantee and/or Executory Interest Holder approval is required, the Grantor shall submit to the Grantee or the Executory Interest Holder, or both where required, information (including, but not limited to, documents, maps, plans, specifications, and designs where appropriate) sufficient to identify the proposed activity with reasonable specificity. The Grantor shall not undertake any such activity until approved in writing by the Grantee or the Executory Interest Holder, or both where required, or its/their authorized representative(s). The Grantee and the Executory Interest Holder both reserve the right to consult with governmental agencies, nonprofit conservation or preservation organizations, and/or other consultants or advisors deemed necessary or appropriate by the Grantee and/or Executory Interest Holder, concerning the appropriateness of any activity proposed under this Easement. Grantee and/or Executory Interest Holder approval shall not be unreasonably withheld or conditioned, but determined pursuant to the Purposes of this Easement.

5. AFFIRMATIVE OBLIGATION FOR PUBLIC ACCESS

Pursuant to New Hampshire RSA chapter 227-M, there is hereby conveyed, and Grantor shall permit, public pedestrian access to and across Hidden Acres Farm, but not the Farmstead Area,

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for hunting, fishing, wildlife observation, hiking, cross country skiing and similar transitory, low-impact, non-commercial recreational activities, but not for camping.

6. AFFIRMATIVE OBLIGATION OF GRANTOR

In the event the agricultural land lies fallow for more than two successive years, or vegetation grows which impairs the visibility of Hidden Acres Farm or threatens the open field habitat, the Grantor shall cooperate with the Grantee to ensure that the land remain in an open condition (for purposes of this paragraph, meaning without uncultivated trees and brush) and visibility is not impaired. Cooperation shall include, but not be limited to, allowing the Grantee or the Executory Interest Holder to arrange to have brush cut and the open fields cleared, grazed, or mowed at Grantee's expense. However, no obligation is hereby imposed on the Grantee or the Executory Interest Holder to maintain the land in an open condition.

7. AFFIRMATIVE RIGHTS OF GRANTEE

A. Grantee shall have reasonable access to Hidden Acres Farm and all of its parts (except the interiors of buildings) for such inspection as Grantee finds necessary to determine compliance and enforce the terms of this Easement, to exercise the rights conveyed hereby, to carry out the duties assumed by the Grantee with its acceptance of this Easement, and to maintain boundaries if the Grantee desires.

B. With prior written approval from the Executory Interest Holder, the Grantee may authorize temporarily posting against or otherwise limiting public access if such access is shown to degrade the conservation values of Hidden Acres Farm, or is inconsistent with the Purposes for protecting Hidden Acres Farm, or to repair or mitigate adverse impacts on Hidden Acres Farm from public access, or when public safety is threatened.

C. With notice to the Executory Interest Holder, the Grantee may transfer this Easement specifically to the Rockingham Land Trust, but otherwise to a qualified conservation organization (either of which is hereinafter referred to as the **Assignee**), more fully described in Section 11.

D. With prior written approval of the Executory Interest Holder, the Grantee may, at any time, reassign oversight of those portions of this Easement relevant to the buildings within the Farmstead Area to a duly established Town of Newton Heritage Commission or Historic District Commission, or to any qualified organization with appropriate historic preservation expertise.

E. In cooperation with the Grantor, the Grantee shall have the right to install and maintain signs that identify and further the conservation purposes and low-impact, non-commercial, outdoor recreational uses of Hidden Acres Farm, provided such signs are in keeping with the historical integrity of Hidden Acres Farm and the Purposes of this Easement are not impaired.

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8. ADDITIONAL EASEMENT

Should the Grantor determine that the Purposes of this Easement could be accomplished better by additional easements or restrictions, the Grantor may, with prior written approval of both the Grantee and the Executory Interest Holder, execute an additional instrument to this effect, provided that the conservation and/or preservation purposes of this Easement are not diminished thereby and, further, that a qualified conservation organization or public body pursuant to New Hampshire RSA 477: 46 accepts and records the additional easements or restrictions.

9. NOTIFICATION OF TRANSFER OF TITLE, TAXES, MAINTENANCE

A. Grantor agrees to notify the Grantee, its successors or assigns, in writing, at least ten (10) business days prior to the transfer of title of Hidden Acres Farm (or any division of ownership thereof permitted hereby) to any successor in interest, along with the name(s) and address(es) of such successor(s) in interest.

B. In any deed conveying an interest in all or part of Hidden Acres Farm, Grantor shall make reference to this Easement and shall indicate that all provisions of this Easement are binding upon all successors in interest in perpetuity, except the provisions of Section 2.B specifically relating to the Farmstead Area, the term of which is one-hundred (100) years from the date of this Easement, or for the time period specified upon re-recording an updated and amended Conservation and Preservation Easement.

C. Grantee shall be under no obligation to maintain Hidden Acres Farm or to pay any taxes, liens or assessments thereon.

10. INSURANCE

A. The Grantor shall keep Hidden Acres Farm covered through the New Hampshire Municipal Association or another insurance provider against loss from the perils commonly insured under standard fire and extended coverage policies and comprehensive general liability insurance against claims for personal injury, death, and property damage, provided, however, that whenever Hidden Acres Farm is encumbered with a mortgage or deed of trust, nothing contained in this paragraph shall jeopardize the prior claim, if any, of the mortgagee/lender to the insurance proceeds.

B. The Grantee shall be under no obligation to maintain or provide any insurance coverage to the Grantor for liability, perils or loss for the residence or any other structures on Hidden Acres Farm.

11. BENEFITS AND BURDENS

A. The burden of this Easement conveyed hereby shall run with Hidden Acres Farm and shall be enforceable against all future owners and tenants. Benefits of said Easement shall not

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be appurtenant to any particular parcel of land but shall be in gross and assignable or transferable only to (a) the State of New Hampshire, the United States of America, or any subdivision of either of them, consistent with Section 170(c)(1) of the U.S. Internal Revenue Code (1986), as amended, which government unit has among its purposes the conservation and preservation of land, water and heritage areas, and agrees to and is capable of enforcing the conservation and preservation Purposes of this Easement; or (b) to any qualified organization within the meaning of Section 107(h) (3) of said Code, which organization has among its purposes the conservation and preservation of land, water and heritage areas, and agrees to and is capable of enforcing the conservation and preservation Purposes of this Easement. Any such assignee or transferee shall have like power of assignment or transfer.

B. Any transfer or reassignment of this Easement shall be accompanied by any endowment fund, or equivalent amount, already established for stewardship, monitoring and legal defense of the Easement. If legal considerations make it impossible for said endowment fund to be transferred to the Assignee, then the Grantee and the Assignee shall cooperate in determining fair compensation to the Assignee for stewardship, monitoring and legal defense of the Easement.

C. If at any time it becomes impossible for the Grantee to ensure compliance with the restrictions and covenants contained herein, or that the Grantee ceases to exist, then Grantee's rights and duties hereunder shall become vested in full and fall upon any other entity as outlined above to which such rights and duties may be awarded by a court of competent jurisdiction under the doctrine of *cy pres*.

12. MERGER

Grantor and Grantee agree it is their express intent that no conveyance of the underlying fee interest in Hidden Acres Farm by or to the Grantee, Executory Interest Holder, or any successor or assign of them, shall be deemed to eliminate these Easement terms, or any portion thereof, pursuant to the doctrine of "merger" or any other legal doctrine.

13. EXECUTORY INTEREST

A. The Executory Interest Holder shall have reasonable access to the Premises and all of its parts (except the interiors of buildings) for such inspection as necessary to determine compliance with and enforce the terms of this Easement, to exercise the rights conveyed hereby, to carry out the duties assumed by the Executory Interest Holder, and to maintain boundaries if the Executory Interest Holder desires.

B. 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 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 circumstances, the Executory Interest Holder shall then also have the right to terminate the interest of the Grantee in Hidden

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Acres Farm, subject to Grantee's right to dispute such enforcement, by recording a notice to that effect referring hereto in the Registry of Deeds of Rockingham County, and shall thereupon assume and thereafter have all interests, rights, authority, and responsibilities granted to and incumbent upon the Grantee of this Easement. The interest held by the Executory Interest Holder is assignable or transferable to any party qualified to become the Grantee's assignee or transferee as specified above. Any assignee or transferee shall have like power of assignment or transfer.

14. BREACH OF EASEMENTS OR RESTRICTIONS

- A. When a breach of this Easement or conduct inconsistent with the terms of this Easement comes to the attention of the Grantee, it shall notify the Grantor in writing of such breach or conduct, delivered by hand or by certified mail. The Grantor shall have fourteen (14) days in which to confirm receipt of notification and begin reparation.
- B. Grantor shall undertake those actions, including restoration or reconstruction, which are reasonably calculated to swiftly cure said breach or abate such conduct, and to repair any damage, or restore Hidden Acres Farm to its previous condition. Grantor shall also promptly notify Grantee of its actions taken under this provision.
- C. Failure by the Grantor to take sufficient and proper action pursuant to the preceding paragraph, shall entitle Grantee to bring an action in a court of competent jurisdiction to enforce the terms of this Easement and to recover any damages provided for by law arising from such non-compliance. Such damages, when recovered, may be applied by Grantee to corrective action on Hidden Acres Farm, if it so chooses. Alternatively or additionally, Grantee may, as appropriate to the Purposes of this Easement, undertake any actions at any time that are reasonably necessary to cure such breach or to repair any damage or to terminate such conduct.
- D. If a court of law determines that Grantor has failed to comply with this Easement, Grantee shall be entitled to special or general damages as may be ordered by such court in addition to reasonable costs of enforcement, costs and attorneys fees. In the event such court decides that Grantee initiated litigation in bad faith or without reasonable cause, then Grantee shall reimburse Grantor for any reasonable costs of defending such action, including court costs and attorneys fees.
- E. The parties to this Easement specifically acknowledge that events and circumstances of non-compliance constitute immediate and irreparable injury, loss, and damage to Hidden Acres Farm and, accordingly may entitle Grantee to such equitable relief, including but not limited to, *ex parte* injunctive relief, as a court of competent jurisdiction may deem just. Remedies described herein are in addition to, and not in limitation of, any other remedies available to Grantee at law, in equity, or through administrative proceedings.
- F. The Grantee does not waive or forfeit the right to take action as may be necessary to insure compliance with this Easement by any prior failure to act and Grantor hereby waives any defense of *laches* with respect to any delay or omission by the Grantee, its successors or assigns,

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in acting to enforce any restriction or exercise any rights under this Easement, any such delay or omission shall not impair Grantee's rights or remedies or be construed as a waiver.

15. RESOLUTION OF DISPUTES

A. The Grantor, Grantee, and Executory Interest Holder agree that issues regarding uses or activities on Hidden Acres Farm arising from time to time in light of the conservation purposes of this Easement will first be addressed informally through candid and open communication. Therefore, the Grantor, Grantee, and Executory Interest Holder agree that if a party becomes concerned about the consistency of any use or activity with the Purposes of this Easement, wherever reasonably possible, the concerned party shall notify the other parties of the perceived or potential problem, and explore the possibility of reaching an equitable resolution.

B. If informal dialogue does not resolve the issue, any party may seek alternative resolution such as through mediation or arbitration, binding or otherwise (in accordance with New Hampshire RSA chapter 542), or 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 Hidden Acres Farm to its condition prior to the breach and for such damages as appropriate.

16. CONDEMNATION

A. Whenever all or part of Hidden Acres Farm is taken in exercise of eminent domain by public, corporate or other authority so as to abrogate in whole or in part this Easement, the Grantor and 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 Hidden Acres Farm unencumbered by the restrictions hereunder) shall be divided between the Grantor and the Grantee in proportion to the fair market value of their respective interests in Hidden Acres Farm on the date of execution of this Easement. For this purpose, the Grantor and the Grantee agree that the Grantor's interest shall be forty-seven percent (47 %) and the Grantee's interest shall be fifty-three percent (53 %). The value of the Grantee's interest has been determined, in part, by an appraisal prepared by a qualified appraiser and a copy of that appraisal has been submitted to the Grantee. Any increase in value attributable to improvements made after the date of the Conservation Easement shall accrue to the party who made the improvements. The Grantee shall use its share of the proceeds in a manner consistent with and in furtherance of the conservation Purposes of this Easement set forth herein.

17. MISCELLANEOUS

A. Invalidity or waiver of any provision hereof shall not affect any other provision of this Easement.

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B. By accepting and recording this Easement for itself, its successors and assigns the Grantee agrees to be bound by the provisions hereof and to assume the rights and responsibilities herein provided for and incumbent upon the Grantee, all in furtherance of the conservation and/or preservation purposes for which this Easement is delivered.

~~Indorsement required~~

IN WITNESS WHEREOF, we hereby set our hands this 12th day of December, 2003.

GRANTOR:

Robert B. Donovan
Witness to Grantor

Forrest Reynolds
Forrest Reynolds

STATE OF New Hampshire
COUNTY OF Rockingham,ss.

On this 12th day of December, 2003, before me the undersigned officer, personally appeared Forrest Reynolds, known to me (or satisfactorily proven) to be the person described in the foregoing instrument, and acknowledged that she/he executed the same for the purposes therein contained. In witness whereof I set my hand and seal.

Robert B. Donovan
Justice of the Peace/~~Notary~~ Public
My commission expires: 5/29/2005
ROBERT B. DONOVAN

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM,ss.

ACCEPTED BY GRANTEE:

Charlton J. Swasey
Witness to Grantee

By Stephen M. Cushing
Stephen Cushing, Chair
Newton Board of Selectmen

Daniel F. DeToro
Witness to Grantee

By Mary P. Marshall
Mary Marshall, Newton Board of Selectmen

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[Signature]
Witness to Grantee

By [Signature]
Norman Harding, Newton Board of Selectmen

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM, ss.

On this 12TH day of DECEMBER, 2003, before me the undersigned officer, personally appeared * BELOW known to me (or satisfactorily proven) to be the authorized agents of the Town of Newton, and that being authorized so to do on behalf of such corporation, executed the foregoing instrument for the purposes therein contained. In witness whereof I set my hand and seal.

* STEPHEN CUSHING
MARY MARSHALL
NORMAN HARDING

Charlton J. Swasey
Justice of the Peace/~~Notary Public~~
My commission expires: NOV. 7, 2006

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM, ss.

ACCEPTED BY EXECUTORY INTEREST HOLDER:

State of New Hampshire, acting through the Land and
Community Heritage Investment Program Authority

[Signature]
Witness

By: [Signature]
Rachel Rouillard, Executive Director

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM, ss.

On this 12TH day of DECEMBER, 2003, before me the undersigned officer, personally appeared Rachel Rouillard, known to me (or satisfactorily proven) to be the authorized agent of the State of New Hampshire, acting through the Land and Community Heritage Investment Program Authority, 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.

Charlton J. Swasey
Justice of the Peace/~~Notary Public~~
My commission expires:
NOV. 7, 2006

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SCHEDULE "A"

PROPERTY DESCRIPTION

The Property subject to this Easement is that tract of land, with any and all improvements thereon, situated on Thornell Road, so-called, in the Town of Newton, County of Rockingham, in the State of New Hampshire, consisting of approximately 22.2 acres (the Premises), shown on a plan entitled: "Plan of Land in Newton, N. H., drawn for the Town of Newton, August, 2003," by Civil Construction Management, Inc. Newton, N.H., dated November 24, 2003, recorded on February 13, 2004, in the Rockingham County Registry of Deeds as Plan No. D-31355, and is more particularly bounded and described as follows:

Hidden Acres Farm

Hidden Acres Farm is identified on the above referenced plan.

Beginning at a drill hole at the southwest corner of the parcel described herein, thence:

South 42°20'49" East, 208.96 feet to a drill hole, thence;
South 42°01'48" East, 21.96 feet to a drill hole, thence;
South 42°00'00" East, 202.78 feet to a drill hole, thence;
South 42°49'43" East, 57.29 feet to an iron rod, thence;
South 40°57'06" East, 90.77 feet to a drill hole, thence;
South 41°55'59" East, 201.81 feet to a drill hole, thence;
South 42°06'17" East, 190.29 feet to a drill hole, thence;
South 41°42'44" East, 268.85 feet to a drill hole, thence;
South 42°03'28" East, 120.21 feet to an oak hub, thence;
South 41°57'38" East, 263.90 feet to an oak hub, thence;
South 51°47'30" West, 167.12 feet to a drill hole, thence;
South 32°11'46" East, 35.01 feet to a drill hole, thence;
North 54°50'39" East, 332.72 feet to an iron rod, thence;
North 48°26'30" East, 44.31 feet to a drill hole, thence;
North 58°45'15" East, 57.08 feet to a drill hole, thence;
North 32°25'38" West, 40.21 feet to a drill hole, thence;
North 20°07'02" West, 185.51 feet to an iron rod, thence;
North 22°37'51" East, 112.35 feet to an iron rod, thence;
North 22°37'51" East, 400.00 feet to an iron pipe, thence;
North 60°38'37" West, 209.44 feet to an iron rod, thence;
North 66°33'22" West, 77.00 feet to an iron rod, thence;
North 66°33'22" West, 104.18 feet to a drill hole, thence;
North 64°43'22" West, 66.66 feet to a drill hole, thence;
North 49°55'08" West, 110.47 feet to a drill hole, thence;
North 44°24'10" West, 111.50 feet to a drill hole, thence;
North 48°13'10" West, 91.06 feet to a drill hole, thence;
North 39°49'52" West, 189.54 feet to a drill hole, thence;

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North 33°59'56" West, 51.39 feet to a drill hole, thence;
North 48°58'48" West, 35.58 feet to a triple oak tree, thence;
North 67°55'17" West, 49.84 feet to a hickory tree, thence;
North 74°47'36" West, 27.36 feet to a drill hole, thence;
South 86°46'52" West, 89.86 feet to a drill hole, thence;
South 81°04'18" West, 102.67 feet to a drill hole, thence;
South 70°54'26" West, 93.97 feet to a drill hole, thence;
South 64°53'13" West, 63.21 feet to a drill hole, thence;
South 51°21'51" West, 105.87 feet to a drill hole, thence;
South 53°49'19" West, 163.59 feet to the point of beginning.

Containing 22.21 acres.

Farmstead Area

The Farmstead Area is identified on the above-referenced plan.

Beginning at an iron pipe at the northeast corner of the parcel described herein, thence:
North 60°38'37" West 209.44 feet to an iron rod, thence;
North 66°33'22" West, 77.00 feet to an iron rod, thence;
South 32°29'44" West, 400.95 feet to an iron rod, thence;
South 62°25'26" East, 355.00 feet to an iron rod, thence;
North 22°37'51" East, 400.00 feet to the point of beginning.

Containing 2.96 acres.

Meaning and intending to describe a portion of the premises in the deed of Abbie L. Reynolds to Forrest Reynolds, Jr., dated December 3, 1953, and recorded at the Rockingham County Registry of Deeds, Book 1302, Page 379. The above referenced Deed was a Deed to Forrest T. Reynolds, Jr. and Marjorie I. Reynolds, as joint tenants with the right of survivorship; Marjorie Reynolds died on February 2, 1990, see Death Certificate to be recorded.