

CONSERVATION EASEMENT
DEED

RICHARD R. FERNALD, Escrow Agent

to

The SOCIETY FOR THE PROTECTION
OF NEW HAMPSHIRE FORESTS

RECEIVED AND RECORDED
HILLSBOROUGH COUNTY
REGISTRY OF DEEDS

Judith E. MacDonell
REGISTER

#515

BRIGHTON, FERNALD, TAFT & HAMPSEY
PROFESSIONAL ASSOCIATION

ATTORNEYS AT LAW
14 GROVE STREET

P. O. BOX 270

PETERBOROUGH, NEW HAMPSHIRE 03458-0270

HILLSBOROUGH, SS.

RECORDS

2902

3000

CONSERVATION EASEMENT DEED

I, RICHARD R. FERNALD, Escrow Agent of 71 Cheney Avenue, Town of Peterborough, County of Hillsborough, State of New Hampshire, (hereinafter sometimes 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 and/or assigns), for consideration paid, and as escrow agent for those persons specified in Appendix "A" attached hereto and made a part hereof, grant to the Society for the Protection of New Hampshire Forests, a corporation duly organized and existing under the laws of the State of New Hampshire with a principal place of business at 54 Portsmouth Street, Concord, New Hampshire, being a publically supported corporation, contributions to which are deductible for federal income tax purposes pursuant to Section 501(c)(3) of the United States Internal Revenue Code, (hereinafter sometimes referred to as the "Grantee" which word shall, unless the context clearly indicates otherwise, include the Grantee's successors and/or assigns) with WARRANTY covenants, in perpetuity the following described Conservation Easement, pursuant to New Hampshire RSA 477:45-47 exclusively for conservation purposes, namely:

The preservation of open spaces, particularly the productive farm land of which the land area subject to the easement granted hereby consists, for the scenic enjoyment of the general public, consistent with the clearly delineated Town of Peterborough's "Development Policy and Guide 1974", stating, "The consumption of agricultural land by development has been one of the greatest tragedies of the American small town. Economic pressures and changing land values have been the chief villains of the transition of the countryside into urban sprawl. Peterborough has not apparently suffered in this respect. Its transition from a farming community to today has been gentle on open space. A recommendation of the Peterborough Conservation Commission to encourage a revitalization of agriculture makes a great deal of sense. Not only is agriculture a good industry, it is one of the best guardians of scenic beauty and open space", and with New Hampshire RSA Chapter 79-A which states: "It is hereby declared to be in the public interest to encourage the preservation of open spaces in the state by providing a healthful and attractive outdoor environment for work and recreation of the state's citizens, by maintaining the character of the state's landscape, and by conserving the land, water, forest, and wildlife resources.", to yield a significant public benefit in connection therewith;

all consistent and in accordance with U.S. Internal Revenue Code, with respect to that certain parcel of land (herein referred to as the "Property) with any and all buildings, structures and improvements thereon situated in the Town of Peterborough, County of Hillsborough, the State of New Hampshire, more particularly bounded and described as follows:

DEC 24 1986
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BK 3862 Pg 0285

BRIG:

STATE OF NEW HAMPSHIRE
TAX ON TRANSFER OF REAL PROPERTY
STATE TAX COMMISSION
DEC 24 '86
30.00
PB 40658
JGH, N.H. 03458 0270

A certain tract of land situated on the westerly side of Old Street Road, in Peterborough, in the County of Hillsborough and State of New Hampshire, and being Lot 8, containing 23.28 acres, more or less, as shown on plan of land entitled, "Plan of Land of Jean F. Farve Land Western Section, Cheney Avenue and Old Street Road, Peterborough, N.H., Scale 1 inch = 100 Feet, June 29, 1983, Survey and Plan By William A. Bean, L.L.S., Revised Lots 1-7 Aug. 24, 1983; Revised Delete Lots 1 & 2 Oct. 17, 83; Revised Add Drainage Watkins Plan Oct. 20, 83; Revised Add Lot 1 & 2, April 25, 1984" and recorded in the Hillsborough County Registry of Deeds as Plan #16702, more particularly bounded and described as follows, to wit:

Beginning at an iron pin at stone wall on the westerly side of Old Street Road; thence

1) South 9° 52' 13" West by Old Street Road, 463.86 feet, more or less, to an iron pin; thence

2) North 82° 49' 49" West by wire fence 397.71 feet, more or less, to an iron pin; thence

3) North 15° 21' 13" East, 398.54 feet, more or less, to an iron pin; thence

4) North 84° 52' 48" West, 100.23 feet, more or less, to an iron pin; thence

5) North 84° 27' 56" West, 48.13 feet, more or less, to an iron pin at the beginning of a stone wall; thence

6) North 87° 07' 12" West by stone wall, 274.03 feet, more or less, to an drill hole in a stone in said stone wall; thence

7) North 84° 19' 03" West by stone wall, 421.89 feet, more or less, to a drill hole in a stone in said stone wall; thence

8) North 84° 02' 33" West by stone wall, 207.86 feet, more or less, to a drill hole in a stone in said stone wall; thence

9) North 84° 01' 22" West by stone wall, 54.74 feet, more or less, to a drill hole in a stone in said stone wall; thence

10) North 84° 41' 24" West by stone wall, 203.82 feet, more or less, to a drill hole in granite post; thence

11) North 85° 10' 39" West by stone wall, 124.75 feet, more or less, to a drill hole in a stone in said stone wall; thence

12) North 7° 33' 26" East, 492.39 feet, more or less, to an iron pin; thence

13) South 85° 56' 34" East, 482.18 feet, more or less, to an iron pin; thence

- 14) South 30° 38' 05" West, 108.93 feet, more or less, to an iron pin; thence
- 15) South 85° 05' 40" East, 320.00 feet, more or less, to an iron pin; thence
- 16) North 5° 24' 20" East, 259.24 feet, more or less, to an iron pin; thence
- 17) South 85° 05' 40" East 81.79 feet, more or less, to an iron pin; thence
- 18) South 84° 05' 37" East, 134.68 feet, more or less, to an iron pin; thence
- 19) South 85° 00' 00" East, 126.67 feet, more or less, to an iron pin; thence
- 20) South 85° 00' 22" East, 200.05 feet, more or less, to an iron pin; thence
- 21) North 5° 06' 19" East, 271.17 feet, more or less, to an iron pin at stone wall; thence
- 22) South 85° 22' 08" East by stone wall and the southerly side of Cheney Avenue, 50.00 feet to an iron pin; thence
- 23) South 5° 05' 36" West by Lot 1, 271.46 feet, more or less, to an iron pin; thence
- 24) South 5° 06' 41" West by Lot 4, 149.36 feet, more or less, to an iron pin; thence
- 25) South 5° 08' 31" West by Lot 5, 149.88 feet, more or less, to an iron pin; thence
- 26) South 5° 05' 03" West by Lot 6, 149.96 feet, more or less, to an iron pin; thence
- 27) South 5° 06' 23" West by Lot 7, 148.93 feet, more or less, to an iron pin; thence
- 28) South 84° 54' 25" East by Lot 7, 424.27 feet, more or less, to the bound of beginning.

Containing 23.28 acres, be the same more or less.

Being the same premises conveyed to Richard R. Fernald as Escrow Agent by deed of Monadnock Investment Corporation dated June 6, 1984 and recorded in Book 3168, Page 0030 of the Hillsborough County Registry of Deeds.

SUBJECT, HOWEVER, to a septic system easement on a 150 x 150 portion of Lot 8 as shown on the above-referenced plan. "The grantor shall have the right to install a septic system on any area of said portion and shall have the right to repair, replace and/or enlarge said septic system as the need may arise. The grantor may also move the septic system from time to time as the need may arise to any other location within said portion. The grantor shall also have the right to install a sewer pipe running from Lot 1 to said portion of Lot 8 and shall have the right to enter onto Lot 8 for the purpose of repairing and/or replacing said pipe as well as to gain ingress and egress to said portion of Lot 8 for all purposes listed above. The grantor shall use its best efforts to restore Lot 8 to its condition prior to entry by the grantor onto Lot 8 for the purposes listed above. Grantor shall include the grantor, its successors and assigns."

Subject further to a certain permanent easement and right of way conveyed to Charles H. Howard, III by deed of Richard R. Fernald, Escrow Agent, dated August 20, 1986 and recorded in Volume 3619, Page 376 of the Hillsborough County Registry of Deeds.

The property is situated in a rapidly developing community and visible from and has 464 feet of frontage on Old Street Road, a town maintained public highway. The Property is also visible from and has 50 feet of frontage on Cheney Avenue, a town maintained public highway. Due to the open fields, a substantial view exists from Old Street Road of Mount Monadnock, a scenic landmark of the area.

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

1. USE LIMITATIONS

A. The Property shall be maintained in perpetuity as open space without there being conducted thereon any industrial or commercial activities, except agriculture as described below, and provided that the productive capacity of the Property to produce agricultural crops shall not be degraded by on-site activities.

i. For the purposes hereof "agriculture" shall include agriculture, animal husbandry, floriculture and horticulture activities; and the production of plant and animal products for domestic or commercial purposes.

ii. Agriculture on the Property shall be performed to the extent possible in accordance with a coordinated management plan for the sites and soils of the Property. Agricultural management activities shall be in accordance with the current scientifically based practices recommended by the U.S. Cooperative Extension Service, U.S. Soil Conservation Service, or other government or private natural resource conservation and management agencies then active. Management activities shall not materially impair the scenic quality of the

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Property as viewed from public waterways, great ponds, public roads, or public trails.

B. No structure or improvement such as a dwelling, road, fence, bridge, or shed shall be constructed, placed or introduced onto the Property except as necessary in the accomplishment of the agricultural, conservation, or recreational uses of the Property and not detrimental to the purposes of this easement. Fences for the purposes of securing the Property are allowed.

C. No changes in topography, surface or sub-surface water systems, wetlands, or natural habitat shall be allowed that would harm state or federally recognized rare or endangered species. Otherwise, none of the aforementioned shall be allowed except as necessary in the accomplishment of the agricultural, habitat management, conservation or recreational uses of the property and not detrimental to the purposes of this easement. The Town of Peterborough, however, may maintain and install public water and sewer lines and storm water drainage areas on said Property.

D. No outdoor advertising structures such as signs and billboards shall be displayed on the Property.

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

F. There shall be no dumping or burial of materials then known to be ecologically hazardous.

G. Hiking and cross-country skiing shall be permitted, but snowmobiles, off-highway recreational vehicles and all other motor driven vehicles are prohibited, except for farm vehicles used to mow, clear or cultivate the land.

H. The property shall not be subdivided.

2. NOTIFICATION OF TRANSFER, TAXES, MAINTENANCE.

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

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

3. 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 said easement shall not be

appurtenant to any particular parcel of land but shall be in gross and assignable only to a governmental unit within the meaning of Section 170(c)(1) of the federal income tax regulations, or to any qualified organization within the meaning of Section 170(h)(3) of the federal income tax regulations, and as the same may hereafter be amended or changed from time to time, which organization has among its purposes the conservation or preservation of land and water areas, and any such assignee shall have like power of assignment. Any assignment of benefits by the Grantee (or successors) must require the assignee to carry out the purposes of this Conservation Easement Deed.

B. The Grantee shall have reasonable access to the Property and all of its parts for such inspection as it necessary to determine compliance and to enforce the Easements and exercise the rights conveyed hereby and fulfill the responsibilities and carry out the duties assumed by the acceptance of this Easement Deed.

4. BREACH OF EASEMENT

A. When a breach of this easement comes to the attention of the Grantee, it shall notify the then owner of the Property in writing of such breach, delivered in hand or by certified mail, return receipt requested.

B. Said Owner shall have 30 days after receipt of such notice to undertake those actions, including restoration, which are reasonably calculated to swiftly cure the conditions constituting said breach and to notify the Grantee thereof.

C. If said Owner fails to take such curative action, the Grantee, its successors or assigns, may undertake any actions that are reasonably necessary to cure such breach, and the cost thereof, including the Grantee's expenses, court costs and legal fees shall be paid by the said Owner, provided the said Owner is determined to be directly or indirectly responsible for the breach.

5. POWER OF TERMINATION

If the Grantee ceases to enforce the easement conveyed hereby or fails to enforce it within thirty days after receipt of written notice requesting such enforcement delivered in hand or by certified mail, return receipt requested, then the Town of Peterborough, New Hampshire acting through its Conservation Commission shall have the right to terminate the interest of the Grantee in the Property by recording a notice to that effect referring hereto in the Hillsborough County Registry of Deeds and shall then assume all interests and responsibilities granted to the Grantee in this Deed.

6. 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 damages recovered shall be divided between the Grantor and Grantee in proportion to the fair market value of their respective interests in that part of the Property condemned on the date of execution of this Conservation Easement Deed. For this purpose, the Grantee's interest shall be the amount by which the fair market value of the Property immediately prior to the execution of this Conservation Easement Deed is reduced by the use limitations imposed.

7. ADDITIONAL EASEMENT

A. Should the Grantor determine that the expressed purposes of this Easement Deed 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 Conservation Easement Deed are not diminished thereby and that a public agency or qualified organization described in Section 3.A., above, accepts and records the additional easement.

8. TRANSFER OF EASEMENT

A. The Grantee may only transfer or assign this Easement Deed pursuant to the provisions of Section 3.A. above or to a qualified conservation organization, as defined in Section 1.170A-14(c)(1) of the Internal Revenue Code, provided that that organization agrees to and is capable of enforcing the conservation purposes of the easement.

9. ARBITRATION OF DISPUTES

A. Any dispute arising under this Easement Deed shall be submitted to arbitration in accordance with New Hampshire RSA 542.

B. The Grantor and the Grantee shall each choose an arbitrator and the arbitrators so chosen shall choose a third arbitrator.

C. A decision with respect to any such dispute by two of the three arbitrators shall be binding upon the parties and shall be enforceable as part of this Easement Deed.

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

BK 3862 PG 0291

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of
December, 1986.

Susan A. Tarr
Witness

Richard R. Fernald
Richard R. Fernald, Escrow Agent

THE STATE OF NEW HAMPSHIRE
HILLSBOROUGH, SS.

Personally appeared RICHARD R. FERNALD, Escrow Agent, who
acknowledged the foregoing to be his voluntary act and deed.

Before me,

Susan A. Tarr
Justice of the Peace
Notary Public

ACCEPTED: SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE FORESTS

BY: James Van Fleet

Title: Asst. Treasurer
duly authorized

BA 3862 PG 0292

APPENDIX "A"

Richard R. Fernald
to the
Society For the Protection of New Hampshire Forests

List of persons (all residents of the Town of Peterborough, New Hampshire) for whom Richard R. Fernald is acting as Escrow Agent in purchasing Lot 8 situated on Old Street Road, Peterborough, New Hampshire, 03458, consisting of 23.28 acres as shown on Plan No. 16702 recorded in the Hillsborough County Registry of Deeds.

Marsha Baker
Virginia C. Baker
Erle G. Bishop and Esther W. Bishop
Joan J. Brewster
Dorothy M. Buchanan
Robert H. Cormack
Philip M. DuBois and Jennifer L. DuBois
G. Kenneth Eaton and Mary Eaton
Richard R. Fernald and Judith C. Fernald
Emily B. Gibbs
George E. Grimshaw
Mildred S. Harang Estate
H. Brian Holland and Helen C. Holland
Robert M. Johnson and Elizabeth B. Johnson
Walter E. Jones and Margaret Jones
George M. Kendall and Kate S. Kendall
Paul C. LaRoche and Patricia T. LaRoche
Anthony B. Linn and Kathleen M. Linn
Earl H. Loomis Estate
Phyllis J. Nichols
Peter Oliver and Constance G. Oliver
Richard A. Ozenich and Shirley M. Ozenich
Nancy H. Patterson
Ruth T. Pearson
Laurence A. Quick and Constance B. Quick
Clinton Sayres Estate
Jack H. Watkins
Coburn T. Wheeler and Catherine M. Wheeler
Phillips Whidden and Jeanette Whidden