

Return to:
City of Concord, NH
Engineering Services Division
City Hall
41 Green Street
Concord, NH 03301

**CONSERVATION EASEMENT DEED
HOIT ROAD OPEN SPACE SUBDIVISION**

WHEREAS, **STRATEGIC CONTRACTING CO., LLC**, a New Hampshire limited liability company, having a mailing address of P.O. Box 4766, Manchester, Hillsborough County, New Hampshire 03108 (hereinafter referred to as the “Grantor,” which word where the context requires includes the plural and shall, unless the context clearly indicates otherwise, includes the Grantor's executors, administrators, legal representatives, devisees, heirs, successors and assigns) is the owner of certain real property (the “Property”) situate in the City of Concord, County of Merrimack, State of New Hampshire, Tax Map 122, Block 3, Lot 12; and

WHEREAS, the City of Concord, a municipal corporation having its principal place of business at 41 Green Street, Concord, Merrimack County, New Hampshire 03301 (the “Grantee”), has established a Conservation Commission pursuant to New Hampshire RSA 36-A; and

WHEREAS, the Grantor desires to grant, release and dedicate in perpetuity to the Grantee, on behalf of the Concord Conservation Commission, a conservation easement (the “Easement”) on the Property, consisting of approximately 7.63 acres, more particularly bounded and described in Exhibit A attached hereto (the “Easement Area”), on the conditions hereinafter specified, for the protection and conservation of the natural resources thereon, and to be enforced by the Grantee; and

WHEREAS, the Grantee agrees by accepting this grant to honor the intention of the Grantor as stated herein, and to preserve and protect in perpetuity the conservation values of the Property for the benefit of this generation and the generations to come;

NOW, THEREFORE, be it known that Strategic Contracting Co., LLC, for consideration paid, with WARRANTY covenants, does hereby grant, release and dedicate to the City of Concord, acting through its Conservation Commission, a conservation easement (the “Easement”) in perpetuity over the Easement Area as hereinafter set forth.

1. **PURPOSES.** The Easement hereby granted is pursuant to New Hampshire RSA 477:45-47, exclusively for the following Conservation Purposes:
 - a. To assure that the Easement Area will be retained forever in its predominantly undeveloped, forested, and open space condition; and

- b. To conserve forests and wetlands for the benefit of native plants and wildlife; and
- c. The protection of the natural habitat and resources located within the Easement Area and preserve the traditional rural character of the area; and
- d. To provide for low-impact, non-commercial outdoor passive recreational use by the owners of the Lots within the Hoit Road Open Space Subdivision; and
- e. To preserve the Easement Area as open space for the scenic enjoyment of the Lot owners; to maintain, protect, and preserve the property as wildlife habitat; and to preserve and protect the ground and surface water resources on and under the Easement Area; and
- f. To conserve the Property's agricultural soils [including prime, statewide and locally important agricultural soils] and agricultural productivity, and to ensure the long-term protection of the Property's capacity to produce economically valuable agricultural products; and
- g. The preservation protection and conservation of open spaces, particularly the wildlife habitat thereon; and
- h. To enhance and protect the health, safety, convenience, and general welfare of the inhabitants of City of Concord; and
- i. To preserve the quantity and quality of groundwater and surface water resources on and under the Open Space; and
- j. To prevent any use or activity on the Open Space which would be detrimental to drainage, flood control, water conservation, water quality, soil stability or erosion control, carbon sequestration, or the unique and significant qualities of public benefit and the conservation and preservation values of the Open Space; and
- k. To ensure the City of Concord will have a contiguous block of protected open space land to further a healthful and attractive environment, land conservation and the protection of water, forest, agricultural and wildlife resources consistent with the Ordinance; and
- l. To protect wildlife bio-diversity and habitat preservation for threatened and endangered animals, and other species; to protect and conserve critical habitats, threatened and endangered animals and species identified as at risk; and to protect and soundly manage natural resources, including the protection of wildlife bio-diversity and habitat preservation for the scenic enjoyment of the general public.

The above Purposes are consistent with the clearly delineated open space conservation goals and objectives as stated in the 2030 Master Plan of the City of Concord, adopted on June 18, 2008 which states, "The prosperity, health, welfare and existence of human society is based on the resources provided by a healthy and productive environment Additional urban and rural development is anticipated, yet Concord residents also desire to preserve for future generations the essential open space qualities that help to make Concord a pleasant and desirable place to live." The above Purposes are also consistent with New Hampshire RSA 79-A, which states: "It is hereby declared to be in the public interest to encourage the preservation of open space, thus providing a healthful and attractive outdoor environment for work and recreation of the state's citizens, maintaining the character of the state's landscape, and conserving the land, water, forest, agricultural and wildlife resources."

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

2. **USE LIMITATIONS.** The Grantor intends that this Easement will confine the use of the Easement Area to such activities as are consistent with the Purposes of this Easement. Any activity on or use of the Easement Area inconsistent with the Purposes of this Easement is prohibited. Without limiting the generality of the foregoing, the following limitations shall apply:
 - a. The Easement Area shall not be subdivided or conveyed in any form in separate parcels beyond the subdivision approved by the City of Concord Planning Board on February 15, 2017.
 - b. The Easement Area shall be maintained in perpetuity as open space without there being conducted thereon any industrial or commercial activities
 - c. No structure or improvement, including, but not limited to, a dwelling, any portion of a septic system, tennis court, swimming pool, dock, aircraft landing strip, mobile home, utility tower, or wireless communication facility shall be constructed, placed, or introduced onto the Easement Area. However, ancillary structures and improvements which are necessary in the accomplishment of the agricultural, forestry, conservation, habitat management, or noncommercial outdoor recreational uses of the Property, and which may include but are not limited to a road, trail, dam, fence, bridge, culvert, barn, or shed, may be constructed, placed, or introduced onto the Easement Area, with the prior written approval of the Concord Conservation Commission 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 habitats shall be allowed unless such activities are approved by the Concord Conservation Commission and:
 - (1) Are commonly necessary in the accomplishment of the conservation, habitat management, or noncommercial passive outdoor recreational uses of the Easement Area;

(2) Do not harm state or federally recognized rare, threatened, or endangered species, or exemplary natural communities, such determination of harm to be based upon information from the New Hampshire Natural Heritage Bureau or the agency then recognized by the State of New Hampshire as having responsibility for identification or conservation of such species; and

(3) Are not detrimental to the Purposes of this Easement.

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

- e. No outdoor advertising structures such as signs and billboards shall be located on the Easement Area with the exception of temporary signs for produce or trees cultivated on the Easement Area.
 - f. There shall be no mining, quarrying, excavation or removal of rocks, minerals, gravel, sand, topsoil or other similar materials on the Easement Area, except in connection with any improvements made pursuant to the provisions of sections 2. b., c., or d. above and provided that such activities are not detrimental to the Purposes of this Easement. No such rocks, minerals, gravel, sand, topsoil, or similar materials shall be removed from the Easement Area.
 - g. There shall be no storage, dumping, release, injection, burial or burning of man-made materials or materials then known to be hazardous, or disposal of any type of material on the Easement Area.
 - h. The Easement Area shall in no way be used to satisfy the density requirements of any applicable zoning ordinance or subdivision regulation with respect to the development of any other property.
 - i. The Grantor shall not grant permission to use all-terrain motorized vehicles, motorbikes, or motorcycles, or any other types of motorized vehicles within the Easement Area. However, both the Grantee and the Grantor reserves the right to operate and permit the operation of motorized all terrain vehicles solely for the purposes of conducting permitted forestry or wildlife management on the property, or other management activities permitted by this Easement, and for emergency and law enforcement purposes. Furthermore, the Grantor reserves the right, and the right to grant permission to third parties, to ride or use snowmobiles, horses, and non-motorized bicycles for non-commercial recreational purposes and to the extent applicable, for handicap accessibility in accordance with the Americans with Disabilities Act or successor federal legislation. . Such recreational uses shall be confined to identified paths or trails, and shall not be detrimental to the Purpose of this Easement.
- 3. RESERVED RIGHTS.** All rights not expressly granted herein are reserved to the Grantor. Without limiting the generality of the foregoing, the rights so reserved shall include the right to enter upon, through and across the Easement Area for all purposes not inconsistent with this Easement.
- 4. NOTIFICATION OF TRANSFER, TAXES, AND MAINTENANCE.**
- a. Grantor agrees to notify the Grantee in writing at least thirty (30) days before the transfer of title to any part of the Property.

- b. Grantee shall be under no obligation to maintain the Easement Area or pay any taxes or assessments thereon.

5. BENEFITS, BURDENS, AND ACCESS.

- a. The burden of the Easement conveyed hereby shall run with the Property and shall be enforceable against all future owners and tenants in perpetuity. The benefits of said 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 United States under Section 170 (c)(1) of the United States 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 Easement Area and all of its parts for such inspection as is 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 deed.
- c. The Grantee shall have the right to place signs on the Easement boundaries and on trails within the Easement Area for the purposes of identifying it as a conservation easement and land protected by the Grantee.

6. BREACH OF EASEMENT.

- a. When a breach of this Easement, or conduct by anyone inconsistent with this Easement, comes to the attention of the Grantee, it shall notify the Grantor in writing of such breach, delivered in hand or by certified mail, return receipt requested.
- b. The Grantor shall, within thirty (30) days after receipt of such notice or after otherwise learning of such breach or conduct, undertake those actions, including restoration, which are reasonably calculated to swiftly cure the conditions constituting said breach and prevent future breaches, or to terminate said conduct, and to repair any damage. The Grantor shall promptly notify the Grantee of its actions taken under this section.
- c. If the Grantor fails to take such proper action under the preceding section, the Grantee, its successors or assigns, may undertake any actions that are reasonably necessary to cure such breach or to repair any damage in the Grantor's name or to terminate such conduct. The cost thereof, including the Grantee's expenses, court costs and legal fees shall be paid by the said Grantor, provided the said Grantor is determined to be directly or indirectly responsible for the breach.
- d. Nothing contained in this Easement shall be construed to entitle the Grantee to bring any action against the Grantor for any injury to or change in the Easement Area 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 Easement Area resulting from such causes.

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

7. **NOTICES.** All notices, requests, and other communications required to be given under this Easement shall be in writing, except as otherwise provided herein, and shall be delivered in hand or sent by certified mail, postage prepaid, return receipt requested, to the appropriate address set forth above or to 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.

8. DISPUTE RESOLUTION.

- a. The Grantor and the Grantee desire that issues arising from time to time concerning uses or activities in light of the provisions of the Easement Area will first be addressed through candid and open communication between the parties rather than unnecessarily formal or adversarial action. Therefore, the Grantor and the Grantee agree that if either party becomes concerned whether any use or activity (which together for the purposes of this Section shall be referred to as the "Activity") complies with the provisions of this Conservation Easement Deed, wherever reasonably possible the concerned party shall notify the other party of the perceived or potential problem, and the parties shall explore the possibility of reaching an agreeable resolution by informal dialogue.
- b. If informal dialogue does not resolve a disagreement regarding the Activity, and the Grantor agrees not to proceed or to continue with the Activity pending resolution of the disagreement concerning the Activity, by mutual agreement, either party may refer the disagreement to mediation by written notice to the other. Within ten (10) days of the delivery of such a notice, the parties may agree on a single impartial mediator. Mediation shall be conducted in Concord, New Hampshire, or such other location as the parties shall agree. Each party shall pay its own attorneys' fees and the costs of mediation shall be split equally between the parties.
- c. If the parties agree to bypass mediation, if the disagreement concerning the Activity has not been resolved by mediation within sixty (60) days after delivery of the notice of mediation, or if the parties are unable to agree on a mediator within ten (10) days after delivery of the notice of mediation, then either party may bring an action at law or in equity in the Merrimack County Superior Court, or its equivalent jurisdictional successor, to enforce the terms of this Easement, and for other relief including for a declaratory judgment, for specific performance of the terms of this Easement, and for such damages as appropriate.
- d. Notwithstanding the availability of mediation to address disagreements concerning the compliance of any Activity with the provisions of this Conservation Easement Deed, 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 the Merrimack County Superior Court, or its equivalent jurisdictional successor, to cause the cessation of any such damage or harm, to enforce the terms of this Conservation Easement, to enjoin

any violation by permanent injunction, and to require the restoration of the Property to its condition prior to any breach.

8. **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 or otherwise, the remainder of the provisions of this Easement or the application of such provision to persons or circumstances other than those specifically found to be invalid shall not be affected thereby.

9. **CONDEMNATION.**

- a. Whenever all or any part of the Easement Area 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 interests shall be determined by an appraisal prepared by a qualified appraiser at the time of condemnation.
- c. The Grantee shall use its share of the proceeds in a manner consistent with and in furtherance of one or more of the Conservation Purposes set forth herein.

10. **ADDITIONAL EASEMENT.** Should the Grantor determine that the express 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 Paragraph 5.a. above, accepts and records the additional easement.

The Grantee, by accepting and recording this Conservation 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 furtherance of the Conservation Purposes for which this Easement is delivered.

Executed on this 14th day of June, 2017.

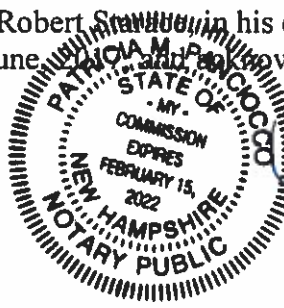
STRATEGIC CONTRACTING CO., LLC

 Robert Starace Member

By: Robert Starace
Its: Member
Duly authorized

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

Personally appeared Robert Stanbury, in his capacity as Member of Strategic Contracting Co., LLC, this 14th day of June, 2017, and acknowledged the foregoing on behalf of Strategic Contracting Co., LLC.



Patricia M. Pardo
Justice of the Peace/Notary Public
My commission expires: 2-15-22

The acceptance of this Conservation Easement Deed is made by the City Manager on behalf of the City of Concord by vote of authorization of the City Council on _____.

ACCEPTED: City of Concord

By: _____
Thomas J. Aspell, Jr.
Title: City Manager
Date: _____

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

Personally appeared Thomas J. Aspell, Jr., City Manager of the City of Concord, this _____ day of _____, 2017, and acknowledged the foregoing on behalf of the City of Concord.

Justice of the Peace/Notary Public
My commission expires: _____

EXHIBIT A

Beginning at an iron rod to be set at the southeasterly corner of new Lot 6, at land of Brian F. & Jeanne M. Chase, being the northeast corner of the parcel herein described;

Thence by land of said Chase S 15° 10' 47" E a distance of two hundred ninety nine and thirty hundredths feet (299.30') to an iron rod found;

Thence still by land of said Chase S 15° 10' 47" E a distance of approximately twenty three and twenty four hundredths feet (23.24') to the centerline of Hayward Brook;

Thence southwesterly along the centerline of said brook for approximately one thousand eight feet (1008'), having a tie course of S 37° 24' 39" W and a distance of four hundred eighty seven and one hundredths feet (487.01'), to land of Duene F. & Marianne K. Cowan;

Thence by land of said Cowan N 38° 40' 32" W a distance of approximately twenty nine and fifty nine hundredths feet (29.59') to an iron pipe found;

Thence by land of said Cowan N 38° 40' 32" W a distance of twenty two and eighty one hundredths feet (22.81') to an iron rod found at land of Lee G. Lajoie;

Thence by land of said Lajoie, land of Alvin R. and Yolanda Jones and land of Hiram C. & Marybeth H. Morrill N 33° 27' 23" W a distance of seven hundred sixty six and fifteen hundredths feet (766.15') to a point at land of Ronald L. & Rosanne Marie Kubera Morreau;

Thence by land of said Morreau N 21° 30' 11" W a distance of two hundred eighty eight and seventy seven hundredths feet (288.77') to an iron rod to be set at the southwesterly corner of new Lot 1, being the northwesterly corner of the parcel herein described;

Thence, by said new Lot 1, and by new Lots 2, 3, 4, 5 and 6 S 72° 01' 15" E a distance of eight hundred twelve and four hundredths feet (812.04') to the POINT OF BEGINNING, containing approximately 332,589 square feet or 7.63 acres.

Being shown as Remainder Lot 12 (Open Space) on plan entitled: Subdivision Plan prepared for Strategic Contracting Company, LLC, Assessor's Map 122 Block 3 Lot 12, Hoit Road, Concord, New Hampshire, having a scale of 1" = 50', dated September, 2016 (with revisions), and prepared by T.F. Bernier, Inc., of Concord, New Hampshire, to be recorded at the Merrimack County Registry of Deeds.