

Return to:
JAL 112218
McLane Middleton, P.A.
900 Elm Street, P.O. Box 326
Manchester, NH 03105-0326

CONSERVATION EASEMENT DEED

LYN E. KUTZELMAN TRUSTEE of THE LYN E. KUTZELMAN REVOCABLE TRUST, a New Hampshire trust created u/d/t dated August 20, 1996, as amended and restated, of 51 Maple Avenue, Atkinson, County of Rockingham, State of New Hampshire 03811, herein after referred to as the "Grantor", grants to the **TOWN OF ATKINSON**, a municipal corporation, with a mailing address of 21 Academy Drive, Atkinson, County of Rockingham, State of New Hampshire, 03811, **acting through its Conservation Commission** pursuant to RSA 36-A:4, 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 deserted Conservation Easement pursuant to RSA 477:45-47 exclusively for conservation purposes, namely:

To assure that the property will be retained forever in its undeveloped, scenic, and open space condition and to prevent any use of the property that will **significantly impair or interfere with the conservation value of the property;**

The above purposes are consistent with the open space conservation goals as stated in the 1998 Master Plan of the Town of Atkinson, which states: "The town should encourage, and where necessary purchase conservation and agricultural easements".

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 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 with and in accordance with the U.S Internal Revenue Service Code, Section 170(h).

The premises subject to this Easement are those areas in Atkinson, Rockingham County, State of New Hampshire, designated as a certain parcel of land situated on the westerly side of Maple Avenue in Atkinson, County of Rockingham, State of New Hampshire, and bounded and described as follows:

1. Beginning at an iron pipe in the westerly line of Maple Avenue at land of Bertram G. Peck;
2. Southwesterly by said land of Peck 483.3 feet to an iron pin in a wall at land of Hutchenson;
3. Southerly by the wall and land of Peck 182.54 feet to a wall corner;
4. By the same course of land of Peck 15.84 feet to another wall corner;
5. Southwesterly by the wall 168.2 feet to an angle in the wall;
6. Again southwesterly but more southerly by the wall and land of Peck 24.0 feet;
7. Again southwesterly but more southerly by the wall and land of Peck 30 feet;
8. Southeasterly by the wall and land of Peck 188.8 feet;
9. Southerly by the wall and land of Peck 57.4 feet to a cross wall and land now or formerly of Knight;
10. Westerly by the wall and land of Knight 527.7 feet to a corner in the wall and land of Colcord;
11. Northerly by the wall and said land of Colcord 482.9 feet to an iron pipe in the wall at land of Hutchenson;
12. Northeasterly by land of Hutchenson 1200.4 feet to an iron pipe in the westerly line of Maple Avenue;

13. Southeasterly by the westerly line of Maple Avenue 150.0 feet to the point of beginning.

Containing 9.73 acres, more or less.

Meaning and intending to describe the same premises conveyed to Lyn E. Kutzelman, Trustee of The Lyn E. Kutzelman Revocable Trust by deed of Lyn E. Kutzelman, dated November 3, 2005 and recorded in the Rockingham County Registry of Deeds at Book 4588, Page 967.

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.
- B. The Property shall not be subdivided or otherwise divided into parcels of distinct ownership (except as already divided in the description), and may only be sold, transferred, devised or conveyed in its entirety.
- C. No dwelling, other structure or site improvement of any kind shall be constructed, placed or introduced onto the Property except for improvements such as a path, fence, or bridge, which only may be constructed, placed or introduced onto the Property as necessary in the accomplishment of conservation or non-commercial outdoor recreational uses of the Property and only so long as they are not detrimental to the purposes of this Easement.
 - i. Such structures or improvements shall be sited to have minimal impact upon the conservation values of the Property; the scenic views of and from the Property as viewed from public roads, trails and waters;
 - ii. Horses may be kept on the property and a barn is allowed to be built on the property;
 - iii. The property may be used for agricultural purposes including gardening and grazing for horses.
- D. No removal, filing or other disturbances of the soil surface, nor any changes in topography, surface, or sub-surface water systems, wetlands, or natural habitat shall be allowed until all necessary federal, state or local permits and approvals are secured and unless such activities;
 - i. Are commonly necessary in the accomplishment of the conservation, habitat management, or non-commercial outdoor recreational uses of the Property; and,

- ii. 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; and
 - iii. Are not detrimental to the purposes of this Easement. The construction and maintenance of drainage swales and ancillary features within the Drainage Easement on lots shown to contain such easements is expressly permitted.
- E. No outdoor advertising structures such as signs and billboards shall be displayed on the Property except as allowed under 2B below.
 - F. There shall be no mining, quarrying, excavation or extraction of rocks, minerals, gravel, sand, top soil or other similar materials on the Property.
 - G. There shall be no dumping, injection, or burial of materials then known to be environmentally hazardous, including vehicle bodies or parts.
 - H. **Trees and other vegetation shall be left uncut and undisturbed.** However, trees which in the opinion of the Tree Warden of the Town of Atkinson might constitute a hazard (so-called "widow-makers") may be removed on an individual basis.
 - I. The Grantors, their heirs and assigns, reserve the right to post against hunting and fishing or not post as the Grantors may desire from time to time.
 - J. The Property may be used by the public for quiet recreational and educational activities such as hiking, nature study, horseback riding, skiing, and snowshoeing so long as these activities are in accordance with the purposes and other use limitations of this Easement Deed. However the Grantors, their heirs and assigns, reserve the right to post against public access or not post as the Grantors may desire from time to time.
 - K. Motorized recreational vehicles may not be used on the Property except for public health or safety emergencies.
 - L. The Easement Property shall not be used to meet any designated open space requirements as a result of the provisions of any subdivision, land use regulation or approval process or in calculating allowable unit density. All development rights for the Easement Property are transferred to the Grantee.

2. AFFIRMATIVE RIGHTS OF GRANTEE

- A. The Grantee shall have reasonable access to the Property and all of its parts for such inspection as is necessary to **maintain boundaries**, to determine compliance

and to enforce the terms of this Conservation Easement Deed and exercise the rights conveyed hereby and fulfill the responsibilities and carry out the duties assumed by the acceptance of this Conservation Easement Deed.

- B. The Grantee shall have the right to post signs on the Property identifying it as land protected under a conservation easement.

3. NOTIFICATION OF TRANSFER, TAXES, MAINTENANCE

- A. Grantor agrees to notify the Grantee in writing within thirty (30) 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 assessments thereon, although it is understood that the granting of this Easement may result in a reduction of assessed value because of the nature of the restrictions assumed.

4. BENEFITS AND BURDENS

- 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 to any public agency having and performing governmental functions, or to any qualified organization within the meaning of Section 170(h)(3) of the United States Internal Revenue Code of 1954 as presently amended, 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.

5. BREACH OF EASEMENT — GRANTEE'S REMEDIES

- A. If the Grantee determines that a breach of this Easement has occurred or is threatened, the Grantee shall notify the Grantor in writing of such breach and demand corrective action to cure the breach and, where the breach involves injury to the Property, to restore the portion of the Property so injured to its prior condition.
- B. The Grantor shall, within thirty (30) days after receipt of such notice or after otherwise learning of such breach, undertake those actions, including restoration, which are reasonably calculated to cure swiftly said breach and to repair any damage. The Grantor shall promptly notify the Grantee of its actions taken hereunder.
- C. If the Grantor fails to perform its obligations under the immediately preceding paragraph B. above, or fails to continue diligently to cure any breach until finally cured, the Grantee may undertake any actions that are reasonably necessary to repair any damage in the Grantor's name or to cure such breach, including an

action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury.

- D. If the Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation features of the Property, the Grantee may pursue its remedies under this Section "Breach of Easement...", without prior notice to the Grantor or without waiting for the period provided for cure to expire.
- E. The Grantee shall be entitled to recover damages from the party directly or primarily responsible for violation of the provisions of this Easement or injury to any conservation features protected hereby, including, but not limited to, damages for the loss of scenic, aesthetic, or environmental attributes of the Property. Without limiting the Grantor's liability therefore, the Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.
- F. The Grantee's rights under this Section, "Breach of Easement...", apply equally in the event of either actual or threatened breach of this Easement.
- G. The Grantor and the Grantee acknowledge and agree that should the Grantee determine, in its sole discretion, that the conservation features protected by this Easement are in immediate danger of irreparable harm, the Grantee may seek the injunctive relief described in the third paragraph of this Section, "Breach of Easement...", both prohibitive and mandatory, in addition to such other relief to which the Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The Grantee's remedies described in this Section, "Breach of Easement...", shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
- H. Provided that the Grantor is directly or primarily responsible for the breach, all reasonable costs incurred by the Grantee in enforcing the terms of this Easement against the Grantor, including, without limitation, staff and consultant costs, reasonable attorneys' fees and costs and expenses of suit, and any costs of restoration necessitated by the Grantor's breach of this Easement shall be borne by the Grantor; and

Provided further, however, that if the Grantor ultimately prevails in a judicial enforcement action each party shall bear its own costs. Notwithstanding the foregoing, if the Grantee initiates litigation against the Grantor to enforce this Conservation Easement, and if the court determines that the litigation was initiated without reasonable cause or in bad faith, then the court may require the Grantee to reimburse the Grantor's reasonable costs and reasonable attorney's fees in defending the action.

- I. Forbearance by the Grantee to exercise its rights under this Easement in the event of any breach of any term thereof by the Grantor shall not be deemed or construed to be a waiver by the Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of the Grantee's rights hereunder. No delay or omission by the Grantee in the exercise of any right or remedy upon any breach by the Grantor shall impair such right or remedy or be construed as a waiver. The Grantor hereby waives any defense of laches or estoppel.
- J. Nothing contained in this Easement shall be construed to entitle the Grantee to bring any action against the Grantor for any injury to or change in the Property resulting from causes beyond the Grantor's control, including, but not limited to, unauthorized actions by third parties, natural disasters such as fire, flood, storm, disease, infestation and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. The Grantee and the Grantor reserve the right, separately or collectively, to pursue all legal and/or equitable remedies, as set forth in this Section, "Breach of Easement...", against any third party responsible for any actions inconsistent with the provisions of this Easement.

6. NOTICES

- A. 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 at such other address as the Grantor or the Grantee may hereafter designate by notice given in accordance herewith. Notice shall be deemed to have been given when so delivered or so mailed.

7. CONDEMNATIONS

- A. Whenever all or part of the Property is taken in exercise of eminent domain 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 expenses incurred by them thereby to be paid out of the damages recovered.
- B. The balance of the damages recovered shall be distributed among them in proportion to the value of their interests in that part of the Property condemned.

8. ADDITIONAL EASEMENT

- A. Should the Grantor determine that the expressed Purposes of this Easement could better be effectuated by the conveyance of an additional easement, the Grantor may execute an additional instrument to that effect, provided that the conservation purposes of this Easement are not diminished thereby and that a public agency or

qualified organization described in the Section "Benefits and Burdens," above, accepts and records the additional easement.

[THIS IS A NON-CONTRACTUAL CONVEYANCE PURSUANT TO NEW HAMPSHIRE RSA 78-B:2 AND IS EXEMPT FROM THE NEW HAMPSHIRE REAL ESTATE TRANSFER TAX.]

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.

Both Lyn E. Kutzelman and George R. Kutzelman, wife and husband, hereby release all rights of homestead.

TRUSTEE CERTIFICATE

The undersigned trustees, as trustees of The Lyn E. Kutzelman Revocable Trust, under Trust Agreement dated August 20, 1996, as amended and restated, and thereto have full and absolute power in said trust agreement to convey any interest in real estate and improvements thereon held in said trust and no purchaser or third party shall be bound to inquire whether the trustees have said power or are properly exercising said power or to see to the application of any trust asset paid to the trustees for a conveyance thereof.

[See Signatures on Next Page]

IIN WITNESS WHEREOF, Lyn E. Kutzelman Trustee of The Lyn E. Kutzelman Revocable Trust and George R. Kutzelman, has hereunto set their hands this ____ day of _____, 2018.

Witness: _____

Lyn E. Kutzelman Trustee of The Lyn E. Kutzelman Revocable Trust

Witness: _____

George R. Kutzelman

STATE OF NEW HAMPSHIRE
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by Lyn E. Kutzelman, Trustee of The Lyn E. Kutzelman Revocable Trust, on behalf of the Trust.

Notary Public/Justice of the Peace
Printed Name: _____
My Commission Expires: _____
(Seal)

STATE OF NEW HAMPSHIRE
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of November, 2018, by George R. Kutzelman.

Notary Public/Justice of the Peace
Printed Name: _____
My Commission Expires: _____
(Seal)

Accepted: Town of Atkinson Conservation Commission

By: Paul Wainwright

Title: CHAIR, TOWN OF ATKINSON CONSERVATION ^{COMMISSION}, Duly Authorized

Date: NOVEMBER 5, 2018

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

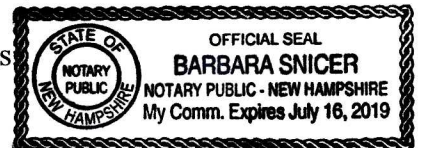
Personally appeared **Paul Wainwright** (Name and Title) of the Town of Atkinson Conservation Commission this 5th day of November, 2018 and acknowledged the foregoing on behalf of the Town of Atkinson Conservation Commission.

Barbara Snicer
Justice of the Peace/Notary Public

Print Name:

My Commission Expires

[seal]



Accepted: Town of Atkinson Board of Selectmen

By: William M Baldwin

Title: Chairman, Atkinson Board of Selectmen ~~Duly~~ Authorized

Date: 11/5/2018

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

Personally appeared William M. Baldwin (Name and Title) of the Town of Atkinson Board of Selectmen this 5th day of November, 2018 and acknowledged the foregoing on behalf of the Town of Atkinson Board of Selectmen.

Barbara Snicer
Justice of the Peace/Notary Public

Print Name:

My Commission Expires:

[seal]

