

This is a transfer to the State of New Hampshire and is exempt from the payment of real estate transfer tax pursuant to NH RSA 78-B:21(I).

### AMENDED AGRICULTURAL PRESERVATION RESTRICTION

I, Victor E. Virgin, of 346 Lakeshore Drive, Franklin, New Hampshire 03235, hereinafter referred to as "Grantor"), for valuable consideration including the mutual covenants and conditions contained herein, grant to the State of New Hampshire, its successors and assigns (hereinafter referred to as "Grantee"), acting through the Agricultural Lands Preservation Committee and the Commissioner of the Department of Agriculture, Markets & Food, with a mailing address of 25 Capitol Street, P.O. Box 2042, Concord, New Hampshire 03302-2042, with the warranty covenants specified in RSA 477:27, the agricultural land development rights to constitute an agricultural preservation restriction pursuant to RSA 432:18 *et seq* and RSA 477:45-47 on the site located in the Town of Sanbornton and the Town of Tilton, County of Belknap and State of New Hampshire, described below.

WHEREAS, the Grantor acquired property in Sanbornton and Tilton, on the southerly side of March Road, which included Tract II, stated to comprise 7.70 acres more or less, of the premises previously conveyed by Agricultural Preservation Restriction of David E. Welch, Patricia A. Welch and Marjorie F. Welch to the Grantee dated December 30, 1983, and recorded in the Belknap County Registry of Deeds at Book 861, Page 957; and

WHEREAS, the said Agricultural Preservation Restriction of Welch also conveyed Tract I, comprising the "home place" of the said Welches containing 23.14 acres more or less,

and located on the northerly side of said March Road, which Tract I has subsequently been conveyed into separate ownership and is physically subdivided by March Road from Tract II of the Grantor herein; and

WHEREAS, by executing this amendment the Grantor and the Grantee intend only to amend the Agricultural Preservation Restriction of Welch relating to the described Tract II therein, and in no way intend to amend or effect the Agricultural Preservation Restriction of Welch relating to Tract I; and

WHEREAS, the said Agricultural Preservation Restriction of Welch contained standard provisions against uses that "result in rendering the Site no longer suitable for agricultural use, and from permitting or suffering others to perform such activities," but permitted construction or placement of building or structures "to be used for agricultural purposes or for dwellings to be used for family living by the landowner, his immediate family or employees . . . subject to the prior approval of the Grantee;" and further provided that "(A)ny building or structure and the land upon which it is situated shall not be sold or otherwise severed from the Site unless the Grantee releases such dwelling, permanent structure or land from the restriction pursuant to RSA 36-D:7 (Supp.) [now RSA 432:24-25];" and

WHEREAS, the portion of Site conveyed to the Grantee within the lands of the Grantor has been preserved in use for agricultural uses but adjoins other lands not so restricted as shown on a plan entitled "Agricultural Easement Adjustment Plat of the land of Victor Virgin" by Richard D. Bartlett & Associates, LLC, dated August 12, 2004, which depicts the surveyed acreage of the land restricted by said deed of the Welches to the Grantee to comprise approximately 7.75 Acres of the Grantor's Lot 7-100 After Annexation containing 15.77 acres; and

WHEREAS, the Grantor desires to build a dwelling for the owner of Lot 7-100 on approximately 2.58 acres of the restricted portion of Lot 7-100 at the northwesterly end of said Lot as shown on the said Plan with the approval of the Grantee, and to convey the remaining 8.03 acres of Lot 7-100 to the Grantee subject to the same conditions and restrictions as conveyed to the Grantee by the said deed of the Welches:

NOW, THEREFORE, in consideration of the Grantee's approval of the proposed dwelling site comprising 2.58 acres, more or less, and located at the northwesterly end of Lot 7-100 of the Grantor as shown on said Plan by Richard D. Bartlett & Associates, LLC, dated August 12, 2004, pursuant to RSA 432:24-25, the Grantor hereby conveys to the Grantee with WARRANTY COVENANTS an agricultural preservation restriction pursuant to RSA 32:18 *et seq* and RSA 477:45-47 on the site located in the Town of Tilton, County of Belknap and State of New Hampshire, described as follows (hereinafter referred to as "Site"):

Beginning at an iron pin set at the northwesterly corner of Lot 7-300 as shown on a Plan entitled "Agricultural Easement Adjustment Plat of the land of Victor Virgin" by Richard D. Bartlett & Associates, LLC, dated August 12, 2004, to be recorded in the Belknap County Registry of Deeds;

Thence running N 14° 06' 46" E by Lot 7-400 as shown on said Plan for a distance of 80.92 feet to another iron pin set;

Thence turning and running S 88° 32' 03" W for a distance of 75.82 feet to an iron pin set;

Thence running N 82° 24' 41" W for a distance of 164.71 feet to an iron pin set;

Thence running N 67° 20' 24" W for a distance of 150.96 feet to a steel pipe set;

Thence turning and running N 09° 43' 05" E for a distance of 209.00 feet to a steel pipe set;

Thence turning and running N 74° 19' 17" W for a distance of 111.62 feet to a steel pipe set in the westerly line of Lot 7-100 at land, now or formerly, of Richard D. Griffin;

Thence turning and running S 11° 31' 21" W by said land of Griffin for a distance of 994.24 feet to an iron pin set in a stone wall at land, now or formerly, of Spencer & Marjorie Reed Trust;

Thence turning and running southeasterly by said stone wall and said land of Spencer & Marjorie Reed Trust for a total distance of 342.84 feet to a drill hole set in a corner of stone walls at land, now or formerly, of Laurie Robichaud;

Thence turning and running by a stone wall and said land of Robichaud N 14° 09' 25" E for a distance of 250.80 feet to a drill hole set in said wall;

Thence continuing by said stone wall and said land of Robichaud N 14° 21' 45" E for a distance of 175.07 feet to a drill hole set in a corner of stone walls:

Thence turning and running by a stone wall and said land of Robichaud S 74° 21' 06" E for a distance of 125.04 feet to a point in said stone wall at the southwest corner of Lot 7-300 as shown on said Plan;

Thence turning and running N 14° 06' 46" E through an iron pin set for a distance of 304.62 feet to the iron pin set at the point of beginning.

Meaning and intending to describe and convey the development rights only to a portion of the land conveyed to the Grantor herein by warranty deed of John W. Hyatt, Trustee of Bay of Fundy Realty Trust dated March 19, 1999, and recorded in the said Registry at Book 1520, Page 963.

The terms of the agricultural preservation restriction are as follows: The Grantors, their heirs, executors, administrators, successors and assigns, and any person claiming by, through or under the above, covenant and agree that they are restrained from constructing on, selling, leasing, or otherwise improving the Site for uses that result in rendering the Site no longer suitable for agricultural use, and from permitting or suffering others to perform such activities. Such restraint shall be appropriate to retaining the Site predominantly in its agricultural use, and without limiting the generality of the foregoing such restraint shall include prohibition of:

1. Construction or placement of building or structures except those to be used for agricultural purposes on any portion of the Site, other than the 2.58-acre dwelling site for one single-family dwelling to be used for family living by the landowner, his immediate family or employees. Construction or placement of permanent structures for agriculturally related retail sales purposes shall be subject to the prior approval of the Grantee. Approval for such construction or placement shall be granted only when it will not defeat or derogate from the intent of this restriction. Any building or structure and the land upon which it is situated shall not be sold or otherwise subdivided from the Site unless the Grantee releases such dwelling, permanent structure or land from the restriction pursuant to RSA 432:24 &25. Persons deemed to be employees as used herein shall be as follows:
  - a. Owner operator(s);
  - b. Employees, including full-time, part-time and seasonal employees; and
  - c. Family members.

2. Excavation, dredging or removal of loam, sod, peat, gravel, soil, rock, or other mineral substances in such a manner as to adversely affect the Site's future agricultural potential, except that such activities when incidental to the construction or placement of permitted buildings or structures or when performed as part of an agricultural activity in accordance with sound, generally accepted agricultural practices shall be permitted; and
3. All other acts or uses detrimental to such retention of the Site for agricultural use.

The agricultural preservation restriction imposed hereby is subject to any prior right, easement, privilege, restriction, condition or covenant, except that the following right(s), easement(s), privilege(s), restriction(s), condition(s) or covenant(s) are expressly released herewith due to the acquisition of the Site's agricultural land development rights:

1. Victor E. Virgin and Bernadette Duguay-Virgin release to Grantee all rights of homestead and other interests in the Site.

The agricultural preservation restriction imposed hereby shall run with the Site in perpetuity except as expressly released, as to the whole Site or a portion thereof, by the Grantee pursuant to RSA 432:18 *et seq.*

In the event that the development rights purchased hereunder, are released to Grantors, repayment by said Grantors of the reasonable value thereof, shall equal 60% of the difference between fair market value of such land at the time of such release and the fair market value of such land restricted for agricultural purposes at the time that the development rights were acquired.

The agricultural preservation restriction imposed hereby shall be enforceable by the Grantee against all persons in an action at law, injunction, or other proceeding, and representatives of the Grantee shall be entitled to enter upon the Site in a reasonable manner and at reasonable times to assure compliance with such restriction.

Except as otherwise provided for herein, Grantors retain all customary rights and privileges of ownership including the right to privacy and to carry out all regular agricultural practices which are not prohibited by RSA 477:45. Grant of the agricultural land development rights hereunder does not include the grant of any right to use of the Site to the public. The Grantee shall not sell or convey the agricultural land development rights acquired hereunder to a third party without the consent of the Grantors, or their heirs executors, administrators, successors, and assigns, as the case may be.

The Grantors, their heirs, executors, administrators, successors, assign, and any person claiming by, through, or under the above, as the case may be, shall be responsible for paying any general property taxes on the Site and any other taxes resulting from ownership of the Site or activities conducted on the Site.

In case the Site or a portion thereof is sought to be taken in the exercise of the eminent domain power, so as to adversely affect the Site's suitability for agricultural use, Grantors, their heirs, executors, administrators, successors, assigns, and any person claiming by, or through, or under the above, as the case may be, and the Grantee shall cooperate to ensure that RSA 432:18 *et seq* is complied with, including taking joint or individual legal action where appropriate.

The foregoing restriction is intended to conform to and have the benefit of RSA 432:18 *et seq* and RSA 477:45-47 (Supp.). If any provision of this instrument shall be held to be unenforceable by any court of competent jurisdiction, this instrument shall be construed as

though such provision had not been included in it. If any provision of this instrument shall be reasonably subject to two or more constructions, one or more of which would render such provision invalid, then such provision shall be given such construction as would render it valid. If any provision of this instrument is found to be ambiguous, it shall be interpreted in accordance with the policy and provisions of RSA 432:18 *et seq.*, the regulations enacted thereunder, and RSA 477: 45-47 (Supp.).

Witness the hand of Grantors this 17<sup>th</sup> day of September, 2007

[Signature]  
Witness

Victor E. Virgin  
Victor E. Virgin

[Signature]  
Witness

Bernadette Duguay-Virgin  
Bernadette Duguay-Virgin

STATE OF NEW HAMPSHIRE  
COUNTY OF Merrimack

The foregoing instrument was acknowledged before me on this 17<sup>th</sup> day of September, 2007 by Victor E. Virgin and Bernadette Duguay-Virgin.

Christine E. Murch  
Notary Public/Justice of the Peace  
Notary  
Title  
My commission expires: July 13, 2010





I, Stephen H. Taylor, Commissioner of the Department of Agriculture, Market & Food hereby certify that at this meeting on MARCH 9<sup>TH</sup> 2007, the Agricultural Lands Preservation Committee accepted the above-described Site for acquisition of agricultural land development rights under RSA 432:18 *et seq.* I further certify that I approve the form and content of the above-described agricultural preservation restriction and that this instrument constitutes the certificate required by RSA 432:27.

Witness my hand this 20<sup>th</sup> day of September, 2007.



Witness



Stephen H. Taylor,  
Commissioner of New Hampshire  
Department of Agriculture, Markets &  
Food