112971

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.

CONSERVATION EASEMENT DEED

TILTON-MAC-CAL, LLC, of 33 Congress Street, Braintree, Massachusetts 02184, a New Hampshire limited liability corporation (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 TILTON**, a New Hampshire municipal corporation, with a mailing address of 145 Main Street, Tilton, New Hampshire 03276, situated in the County of Belknap, State of New Hampshire, acting through its Conservation Commission pursuant to NH 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 Easement (herein referred to as the "Easement") hereinafter described with respect to that certain portion (herein referred to as the "Conservation Easement Area") of certain property (the "Property") of the Grantor situated on Laconia Road in the Town of Tilton, County of Belknap, State of New Hampshire. The Property is shown as "Proposed Lot 4" on a certain plan (the "Plan") entitled "Consolidation and Subdivision Plat prepared for: Tilton Mac-Cal LLC," dated August 24, 2000, as revised, and prepared by Richard D. Bartlett & Associates, Inc., and recorded or to be recorded in the Belknap County Registry of Deeds. The Conservation Easement Area is more particularly bounded and described in Appendix A attached hereto and made a part hereof.

BK1678PG0201

1. PURPOSES. The Easement hereby granted is pursuant to NH RSA 477:45-47, exclusively for the preservation and conservation of the Conservation Easement Area as a wildlife corridor and wetland and stream corridor and for the preservation of the quality of groundwater and surface water resources on and under the Conservation Easement Area.

The above purposes are consistent with the clearly delineated open space conservation goals and/or objectives as stated in the Master Plan of the Town of Tilton 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 and in accordance with the U.S. Internal Revenue Code, Section 170(h).

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

2. USE LIMITATIONS. Subject to the reserved rights specified in Section 3 below:

A. The Conservation Easement Area 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 without the written consent of the Grantee.

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, tower or mobile home, shall be constructed, placed, or introduced onto the Conservation Easement Area. However, ancillary structures and improvements including, but not limited to, a road, dam, fence, bridge, culvert, barn, maple sugar house, or shed may be constructed, placed, or introduced onto the Conservation Easement Area only as necessary in the accomplishment of the conservation, habitat management, or noncommercial outdoor recreational uses of the Conservation Easement Areaand, provided that they are not detrimental to the purposes of this Easement.

D. No removal, filling, or other disturbances of the Conservation Easement Area's soil surface, nor any changes in the Conservation Easement Area's topography, surface or subsurface water systems, wetlands, or natural habitat shall be allowed unless such activities:

i. are commonly necessary in the accomplishment of the conservation, habitat management, or noncommercial outdoor recreational uses of the Conservation Easement Area; and

ii. do not harm state or federally recognized rare, threatened, 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.

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 displayed on the Conservation Easement Area.

F. There shall be no mining, quarrying, excavation, or removal of rocks, minerals, gravel, sand, topsoil, or other similar materials on the Conservation Easement Area, except in connection with any improvements made pursuant to the provisions of Sections 2.A., C., or D., above. No such rocks, minerals, gravel, sand, topsoil, or other similar materials shall be removed from the Conservation Easement Area.

BK1678PG0202

G. There shall be no dumping, injection, burning, or burial of man-made materials, biosolids, or materials then known to be environmentally hazardous on the Conservation Easement Area.

H. There shall be no posting of the Conservation Easement Area to limit or prohibit the general public from accessing and using the Conservation Easement Area for low-impact, non-motorized, non-wheeled, non-commercial, outdoor recreational purposes.

I. Notwithstanding any of the foregoing or any other provision of this Deed, no activity shall be allowed which violates the provisions of the Tilton Zoning Ordinance or other Town land use regulations.

3. RESERVED RIGHTS. Notwithstanding any provision of this Conservation Easement Deed to the contrary, the Grantor shall have the right to:

A. Conduct or permit on or within the Conservation Easement Area any action which may be required from time to time by the U.S. Army Corps of Engineers and/or the New Hampshire Department of Environmental Services in connection with any permit issued thereby.

B. Prohibit the use of the Conservation Easement Areafor hunting of wild game and/or waterfowl and post signs on the Conservation Easement Area for the purpose thereof, subject to the prior consent of the Grantee with respect to the content, design, dimensions and locations thereof.

4. NOTIFICATION OF TRANSFER, TAXES, MAINTENANCE.

A. The Grantor agrees to notify the Grantee in writing ten (10) days before the transfer of title to the Property.

B. The Grantee shall be under no obligation to maintain the Property 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 this 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 U.S. Government, or any subdivision of either of them, consistent with Section 170(c)(1) of the U.S. 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.

BK1678PG0203

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

6. MONITORING, BREACH OF EASEMENT.

A. This Easement shall be monitored by the Tilton Conservation Commission to ensure compliance with the terms and conditions hereof. In the event that the Tilton Conservation Commission ceases for any reason to monitor the Easement, all authority reserved to the Tilton Conservation Commission hereunder shall be vested in the Tilton Board of Selectmen.

B. 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 or conduct, delivered in hand or by certified mail, return receipt requested.

C. 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 cure swiftly said breach, or to terminate said conduct, and to repair any damage. The Grantor shall promptly notify the Grantee of its actions taken under this section.

D. If the Grantor fails to take such proper action under the preceding section, the Grantee shall, as appropriate to the purposes of this Deed, 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 Grantor, provided that the Grantor is directly or primarily responsible for the breach.

E. 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 Conservation 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, and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Conservation Easement Area resulting from such causes.

F. 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 at such other address as the Grantor or the Grantee may hereafter designate by

BK1678PG0204

notice given in accordance herewith. Notice shall be deemed to have been given when so delivered or so mailed.

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, by confirmation of an arbitration award or otherwise, the remainder of the provisions of this Easement or the application of such provision to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

9. CONDEMNATION/EXTINGUISHMENT.

A. Whenever all or part of the Conservation 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 Conservation Easement Area 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 Conservation Easement Area 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.

D. If the property remaining after a partial condemnation is insufficient to carry out the purposes set forth in Section 1 entitled "Purposes", then this Easement may be terminated and the remaining property sold with the proceeds thereof divided in accordance with the formula set forth in Section 9.B., above. The determination as to insufficiency shall be in the sole and absolute discretion of the Grantee.

10. ADDITIONAL EASEMENT. 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 Section 5.A., above, accepts and records the additional easement.

11. ARBITRATION OF DISPUTES.

Any dispute arising under this Easement shall be submitted to arbitration with a single arbitrator in accordance with New Hampshire RSA 542 and administered and conducted under the

BK1678PG0205

Commercial Arbitration Rules of the American Arbitration Association. The prevailing party in any judicial action or arbitration shall be entitled to reimbursement from the other party for costs, filing fees, arbitration filing fees, reasonable attorneys fees, witness fees, expert fees, arbitration panel fees and travel fees. Any arbitration hearing shall take place in Concord, New Hampshire.

A decision by the arbitrator, made as soon as practicable after submission of the dispute, shall be binding upon the parties and shall be enforceable as part of this Easement.

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

12. CONSERVATION EASEMENT FUND. Grantor shall give to the Grantee the sum of $1,250 to be held in a separate fund and to be used for the purpose of monitoring and enforcing the Easement hereby granted. The Grantee's Treasurer shall have custody of said fund and shall pay out the same only upon order of the ~~Conservation Commission~~ Board of Selectmen.

The foregoing conveyance is made subject to all easements, rights, restrictions, covenants, conditions and other matters of record to the extent in force and applicable.

IN WITNESS WHEREOF, I have hereunto set my hand this 22 day of February, 2001.

TILTON MAC-CAL, LLC

By: _____
Its: Manager

COMMONWEALTH OF Mass COUNTY OF Suffolk

Personally appeared before me, Robert M. MacPherson of Tilton Mac-Cal, LLC, this 22 day of February, 2001, and acknowledged the foregoing on behalf of Tilton Mac-Cal, LLC.

_____
~~Justice of the Peace~~/Notary Public
My commission expires: 1/20/06

BK1678PG0206

ACCEPTED: TOWN OF TILTON CONSERVATION COMMISSION

By: James M. Crosby
Title: Chairman
Duly Authorized

Date: 1 May 2001

By: Charles E. Mitchell
Title: VICE CHAIR
Duly Authorized

Date: _____

THE STATE OF NEW HAMPSHIRE
COUNTY OF BELKNAP

Personally appeared, James M. Crosby of the Town of Tilton Conservation Commission, this 1st day of May, 2001, and acknowledged the foregoing on behalf of the Town of Tilton Conservation Commission.

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

CATHERINE APOTRAS-WOESSNER NOTARY PUBLIC STATE OF NEW HAMPSHIRE MY COMMISSION EXPIRES SEPTEMBER 6, 2003

THE STATE OF NEW HAMPSHIRE
COUNTY OF BELKNAP

Personally appeared, Charles E. Mitchell of the Town of Tilton Conservation Commission, this 2nd day of May, 2001, and acknowledged the foregoing on behalf of the Town of Tilton Conservation Commission.

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

CATHERINE APOTRAS-WOESSNER NOTARY PUBLIC STATE OF NEW HAMPSHIRE MY COMMISSION EXPIRES SEPTEMBER 6, 2003

BK1678PG0207

ACCEPTED: TOWN OF TILTON BOARD OF SELECTMEN

By: Robert G. Brown
Title: SELECTMAN
Duly Authorized

Date: 5-3-01

By: Joseph B. Pless
Title: Selectman
Duly Authorized

Date: 5-3-01

By: Kathleen D. Dawson
Title: selectmen
Duly Authorized

Date: 5-3-01

Richard D. Manseau
SELECTMAN
6/3/01

5-3-01

THE STATE OF NEW HAMPSHIRE
COUNTY OF BELKNAP

Personally appeared, Robert G. Brown, Joseph B. Pless, Kathleen Dawson + Richard Manseau of the Town of Tilton Board of Selectmen, this 3rd day of May, 2001, and acknowledged the foregoing on behalf of the Town of Tilton Board of Selectmen.

Before me,

Catherine Apotria-Woessner
Justice of the Peace/Notary Public
My commission expires: _____

CATHERINE APOTRIA-WOESSNER NOTARY PUBLIC STATE OF NEW HAMPSHIRE MY COMMISSION EXPIRES SEPTEMBER 16, 2003

BK1678PG0208

THE STATE OF NEW HAMPSHIRE
COUNTY OF BELKNAP

Personally appeared, _____ of the Town of Tilton Board of Selectmen, this _____ day of _____, 2001, and acknowledged the foregoing on behalf of the Town of Tilton Board of Selectmen.

Before me,

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

THE STATE OF NEW HAMPSHIRE
COUNTY OF BELKNAP

Personally appeared, _____ of the Town of Tilton Board of Selectmen, this _____ day of _____, 2001, and acknowledged the foregoing on behalf of the Town of Tilton Board of Selectmen.

Before me,

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

BK1678PG0209

APPENDIX A

Legal Description of the Conservation Easement Area

A certain portion of a certain tract of land, situated in Tilton, County of Belknap, State of New Hampshire, located on the northerly side of New Hampshire Routes 3 & 11, shown as "Proposed Lot 4" on a certain plan (the "Plan") entitled "Consolidation and Subdivision Plat prepared for: Tilton Mac-Cal LLC," dated August 24, 2000, as revised, prepared by Richard D. Bartlett & Associates, Inc., and recorded or to be recorded in the Belknap County Registry of Deeds, exclusive of the area of land delineated on the Plan as "Limits of Conservation Easement". The Conservation Easement Area is more particularly bounded and described as follows:

Commencing at a steel pin set on the northerly sideline of NH Routes 3 & 11, said steel pin marking the southwesterly most corner of the lot herein described; thence N07°09'35"W a distance of 243.92 feet to a steel pin; thence N84°00'00"E a distance of 110.02 feet to a steel pin; thence N07°09'35"W a distance 50.01 feet to a steel pin; thence N 84°00'00"E a distance of 365.00 feet to a steel pin; thence N 05°00'00"E a distance of 757.66 feet to a steel pin at land now or formerly of Nickerson Business Park LLC; thence, along said Nickerson land, N84°32'40"E a distance of 44.03 feet to a point; thence N85°03'05"E a distance of 174.27 feet to a point; thence N70°10'55"E a distance of 34.55 feet to a point at land now or formerly of John and Marion McDonald; thence, by said McDonald land S87°47'25"E a distance of 512.44 feet to a steel pin marking the northeasterly most corner of the lot herein described; thence S04°44'15"E a distance of 134.49 feet to a point; thence S06°18'00"E a distance of 72.79 feet to a point; thence S00°16'25"E a distance of 111.61 feet to a point; thence S14°19'25"E a distance of 87.69 feet to a point; thence S01°49'45"E a distance of 73.49 feet to a point; thence S04°49'15"E a distance of 440.25 feet to a steel pin marking the southeasterly most corner of the lot herein described at land now or formerly of Joseph J. Jordan, Jr.; thence N88°59'30"W a distance of 199.69 feet, along said Jordan land to a steel pin at land now or formerly of Leta Wiley; thence N88°59'30"W a distance of 100.03 feet, along said Wiley land, to a steel pin; thence by a curve to the right, having a central angle of 26°55'52" and a radius of 300.00 feet, a distance of 141.01 feet to a point; thence N35°12'35"E a distance of 158.75 feet to a point; thence, by a curve to the left, having a central angle of 76°09'30" and a radius of 200.00 feet, a distance of 265.84 feet to a point; thence by a curve to the left, having a central angle of 130°18'28" and a radius of 115.00 feet, a distance of 261.54 feet to a point; thence, by a curve to the left, having a central angle of 55°38'51" and a radius of 200.00 feet, a distance of 194.25 feet to a point; thence by a curve to the right, having a central angle of 77°54'26" and a radius of 115.00 feet, a distance on 156.37 feet to a point; thence by a curve to the left, having a central angle of 22°43'28" and a radius of 333.00 feet, a distance of 132.07 feet to a point; thence S08°16'40"W a distance of 25.46 feet to a steel pin at land of said McCarthy; thence, continuing by said McCarthy land, and land now or formerly of Ralph Burleigh, N89°20'10"W a distance of 140.00 feet to a steel pin at other land of Vincent and Christina McCarthy; thence N07°47'45"E a distance of 125.00 feet, along said McCarthy land, to a steel pin; thence S88°24'45"W a distance of 135.00 feet to a steel pin; thence S12°07'10"W a distance of 167.00 feet to a steel pin at land now or formerly of Richard A. LaVallee; thence S84°05'45"W a distance of 67.01 feet, along said LaVallee land to an iron pipe at

BK1678PG0210

land now or formerly of John & Lorraine Marges; thence N01°51'40"E a distance of 11.04 feet, along said Marges land to a point; thence N17°28'55"W a distance of 190.05 feet to a steel pin set in the centerline of a stream; thence westerly, along the centerline of said stream, a distance of 200 feet more or less to a steel pin; thence S05°04'45"E a distance of 143.66 feet to a steel pin set at the northeasterly corner of a cemetery, the last four (4) courses being along Marges land; thence S85°49'00"W a distance of 155.20 feet, along said cemetery, to a steel pin; thence, continuing by said cemetery, S05°01'15"E a distance of 48.15 feet to a concrete bound set on the northerly sideline of NH Routes 3 & 11; thence by a curve to the left, having a central angle of 03°36'08" and a radius of 4,634.00 feet, a distance of 291.34 feet to the point of beginning.

The Conservation Easement Area, as described herein, contains approximately 18.31 acres, more or less.

RECEIVED
2001 AUG 27 PM 1:37
Rachel M. Normandin
REGISTRY OF DEEDS
BELKNAP COUNTY
Register

BK1678PG0211