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env: True North mortgage

## Corrective Conservation Easement Deed

## CONSERVATION EASEMENT DEED

Doc# 522366  
Book: 2547  
Pages: 1295 - 1304  
Filed & Recorded  
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KATHI L. GUAY, CPO, REGISTER

MERRIMACK COUNTY REGISTRY OF DEEDS  
RECORDING \$ 46.00  
SURCHARGE \$ 2.00

R.A.W. Investments Trust, Inc., PO Box 596, Newport, NH 03773, (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 WARNER**, situated in the County of Merrimack, 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 parcel of land (herein referred to as the "Property") being unimproved land situated off Route 103 and Interstate Highway 89 at Exit 9 in the Town of Warner, County of Merrimack, State of New Hampshire, more particularly bounded and described in Appendix "A" attached hereto and made a part hereof.

Note: This easement deed revises an earlier registered deed to correct the owner of record, R.A.W. Investments Trust, Inc.

1. PURPOSES

The Easement hereby granted is pursuant to NH RSA 477:45-47, exclusively for the following conservation purposes:

- A. The protection of the land and the water body of the Warner River to which it provides access and on which it fronts subject to the Easement granted hereby for outdoor recreation by and/or the education of the general public;
- B. The preservation of the land subject to the Easement granted hereby for the scenic enjoyment of the general public;
- C. The protection of natural habitats of plants and animal species, including wood turtles, a species of concern and native to New Hampshire;
- D. The preservation and conservation of open spaces, particularly the conservation of the 11.2 acres of floodplain and productive wetland of which the Property consists and the long-term protection of the Property's capacity to provide wildlife habitat;
- E. The protection of water quality in the Warner River by providing a natural, vegetated buffer; and

- F. The protection of a valuable groundwater aquifer which extends throughout this parcel of land and the wellhead protection area, associated with the Warner Village Water District's wells downstream.

The above purposes are consistent with the natural resource goals, objectives and actions as stated in the 1999 Master Plan of the Town of Warner, which encourage the protection for streams, flood plains and wetland areas;

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 Property is as follows:

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

- 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.
- C. No structure or improvement, including, but not limited to, a dwelling, any portion of a septic system, fence, culvert, tennis court, swimming pool, dock, wharf, aircraft landing strip, golf course, pay-to-fish facility, tower, or mobile home shall be constructed, placed, or introduced onto the Property, unless such structures or improvements are commonly necessary in the accomplishment of the conservation, wildlife habitat management, or noncommercial outdoor recreational or educational uses of the Property.
- D. No removal, filling, or other disturbances of soil surface, nor any changes in topography, surface or subsurface water systems, wetlands, or natural habitat, nor any cutting or removal of the growth or vegetation or the pulling from the ground of stumps or roots shall be allowed unless such activities:
- i. are consistent with the restoration, conservation and/or monitoring of the wildlife habitat on the Property or noncommercial outdoor recreational or educational uses of the Property,;
  - 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 Property except as desirable or necessary in the accomplishment of the conservation, wildlife habitat management, or noncommercial outdoor recreational uses of the Property, and provided such signs are not detrimental to the purposes of this Easement.
- F. There shall be no mining or quarrying. There shall be no excavation, or removal of rocks, minerals, gravel, sand, topsoil, or other similar materials on the Property, except in connection with any improvements made pursuant to the provisions of sections 2.C., D., or E., above. No such rocks, minerals, gravel, sand, topsoil, or other similar materials shall be removed from the Property.
- G. There shall be no dumping, storage, injection, burning, or burial of man-made materials or materials then known to be environmentally hazardous.
- H. There shall be no grazing of livestock on the property.
- I. There shall be no posting to prohibit the public from accessing and using the Property for low-impact, non-motorized, non-wheeled, non-commercial, outdoor recreational purposes, and the Grantee shall be under no duty to supervise said access, use, or purpose.

### 3. RESERVED RIGHTS

- A. The Grantor reserves the right to post the Property against motorized wheeled vehicles.

### 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.
- B. The Grantee shall have reasonable access to the Property 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. 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 or conduct, delivered in hand or by certified mail, return receipt requested.
- B. The Grantor shall, within 30 (thirty) 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.
- C. If the Grantor fails to take such proper action under the preceding paragraph, 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.
- 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 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, 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.

- 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 or permitted 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 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. 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 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, or whenever all or part of the Property is lawfully sold without the restrictions imposed hereunder in lieu of condemnation or exercise of eminent domain, 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 from such taking or lawful sale in lieu of condemnation or exercise of eminent domain 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 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.

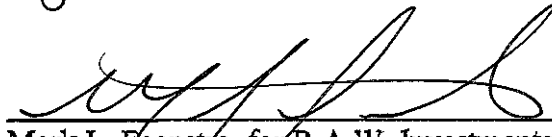
11. ARBITRATION OF DISPUTES

- A. Any dispute arising under this Easement shall be submitted to arbitration in accordance with New Hampshire RSA 542.
- B. The Grantor and the Grantee shall each choose an arbitrator within 30 (thirty) days of written notice from either party. The arbitrators so chosen shall in turn choose a third arbitrator within 30 (thirty) days of the selection of the second arbitrator.
- C. The arbitrators so chosen shall forthwith set as early a hearing date as is practicable which they may postpone only for good cause shown.
- D. A decision by two of the three arbitrators, 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.

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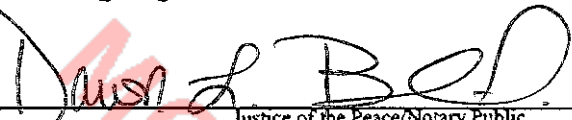
The Grantee, by accepting and recording this Easement, agrees to be bound by and to observe and enforce the provisions hereof and assumes the rights and responsibilities herein granted to and incumbent upon the Grantee, all in the furtherance of the conservation purposes for which this Easement is delivered.

IN WITNESS WHEREOF, We have hereunto set my our hands this 2<sup>nd</sup> day  
of July, 2003.

  
Mark L. Feenstra, for R.A.W. Investments Trust, Inc., Grantor

The State of New Hampshire  
County of Merrimack

Personally appeared Mark L. Feenstra this 2 day of July, 2003  
and acknowledged the foregoing on the behalf of R.A.W. Investments Trust, Inc.

Before me,   
Justice of the Peace/Notary Public  
DAWN L. BLAKE  
Notary Public, Maine  
My commission expires: My Commission Expires July 29, 2009



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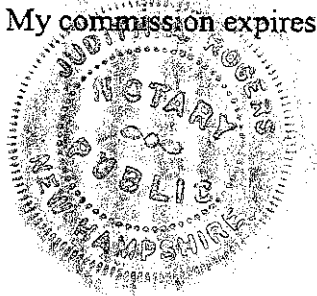
ACCEPTED: TOWN OF WARNER

By: Edward F MicalTitle: SELECTMAN  
Duly AuthorizedDate: JULY 14, 2003By: John C BrayshawTitle: SELECTMAN  
Duly AuthorizedDate: July 14, 2003By: Allen C. BrownTitle: SELECTMAN  
Duly AuthorizedDate: 7/14/03The State of New Hampshire  
County of Merrimack

Personally appeared Edward F. Mical, John C Brayshaw, and Allen C. Brown, of the Town of Warner, this 14<sup>th</sup> day of July, 2003, and acknowledged the foregoing on behalf of the Town of Warner.

Before me, Judith A. Rogers  
Justice of the Peace/Notary Public

My commission expires:

JUDITH A. ROGERS, Notary Public  
My Commission Expires April 16, 2008



**APPENDIX A**

The Property subject to the Conservation Easement granted hereby is a certain tract of land with no buildings thereon situated on off Route 103 in the Town of Warner, Merrimack County, New Hampshire bounded and described as follows:

Beginning at an iron rod set at the northwesterly corner of the herein described Conservation Easement, in the Town of Warner, said iron rod being at the southwest corner Lot 1 as shown on a plan entitled "Subdivision Plan Assessors Map 35 Lot 4 West Main Street, Warner, New Hampshire Scale 1"=60' Date: April, 2000" with revisions through 10/08/02, prepared by T.F. Bernier, Inc., 39 Warren Street P.O. Box 3464 Concord, New Hampshire.

Thence South 69°07'20" East along said Lot 1 a distance of two hundred ten and zero hundredths (210.00) feet to an iron rod set at the southwesterly corner of Lot 2;

Thence South 69°07'20" East along said Lot 2 a distance of one hundred ninety-two and seventy-nine hundredths (192.79) feet to an iron rod set at the southeasterly corner of Lot 2;

Thence South 69°07'20" East a distance of ninety-five and zero hundredths (95.00) feet to an iron rod set;

Thence South 69°07'20" East a distance of forty-five and zero hundredths (45.00) feet to an iron rod set;

Thence North 77°55'34" East a distance of one hundred sixty-eight and fifty-one hundredths (168.51) feet to an iron pipe found at the corner of land now or formerly of Lisa Brochu;

Thence South 17°06'27" East along said Brochu land a distance of one hundred seventy and thirty-three hundredths (170.33) feet to an iron rod found;

Thence South 8°12'47" East along said Brochu land a distance of one hundred fifty-two and ninety-five hundredths (152.95) feet to an iron pipe found at the corner of land now or formerly of Thomas J. Duncan;

Thence South 12°06'24" East along said Duncan land a distance of eighty-eight and fifty-five hundredths (88.55) feet to an iron rod set;

Thence South 2°06'24" East along said Duncan land a distance of forty and zero hundredths (40.00) feet to an iron rod set;

Thence South 2°53'36" West along said Duncan land a distance of fifty-six and zero hundredths (56.00) feet to an iron rod set;

Thence South 8°53'36" West along said Duncan land a distance of forty-nine and zero hundredths (49.00) feet to an iron rod set;

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Thence South 25°53'36" West along said Duncan land a distance of one hundred sixty-seven and zero hundredths (167.00) feet to an iron pipe found at the northerly bank of the Warner River;

Thence South 25°53'36" West a distance of twenty-nine (29) feet plus or minus to the thread of the Warner River;

Thence northwesterly seven hundred fifty-nine (759) feet plus or minus along the thread of the Warner River to a point;

Thence northeast sixty (60) feet more or less to a concrete bound found at land of the Warner Village Fire District;

Thence North 13°30'31" West along said Warner Village Fire District land a distance of four hundred three and ninety-nine hundredths (403.99) feet to a concrete bound found at land of Evans Group, Inc.;

Thence North 6°28'28" East along said Evans Group, Inc. land a distance of one hundred ninety-five and forty-seven hundredths (195.47) feet to the point of beginning.

Containing 11.2 acres more or less.

**MEANING AND INTENDING** to describe a portion of Parcel 3, Tax Map 35 and a portion of the same premises conveyed by Warranty Deed to R.A.W. Investments Trust, Inc., by Highview Church Farm, Inc., dated October 28, 1999 and recorded at Book 2181, Page 1297 of the Merrimack County Registry of Deeds.

MERRIMACK COUNTY RECORDS

*Kate L. Gray*, CPO, Register