

## **GRANT OF DEVELOPMENT RIGHTS, CONSERVATION RESTRICTIONS and PUBLIC ACCESS EASEMENT**

KNOW ALL PERSONS BY THESE PRESENTS that the **TOWN OF HINESBURG**, a Vermont Municipality, on behalf of itself and its successors and assigns (hereinafter “Grantor”), pursuant to Title 10 V.S.A. Chapters 34 and 155 and in consideration of the payment of Ten Dollars and other valuable consideration paid to its full satisfaction, does freely give, grant, sell, convey and confirm unto the **VERMONT LAND TRUST, INC.**, a non-profit corporation organized under the laws of the State of Vermont, with its principal offices in Montpelier, Vermont, and the **VERMONT HOUSING AND CONSERVATION BOARD**, a public instrumentality of the State of Vermont with its offices in Montpelier, Vermont, and their respective successors and assigns (collectively hereinafter “Grantees”) as tenants in common, forever, the development rights, perpetual conservation easement restrictions, and public access easement (all as more particularly set forth below) in a certain tract of land (hereinafter “Protected Property”) situated in the Town of Hinesburg, Chittenden County, State of Vermont, the Protected Property being more particularly described in Schedule A attached hereto and incorporated herein.

The development rights hereby conveyed to Grantees shall include all development rights except those specifically reserved by Grantor herein and those reasonably required to carry out the permitted uses of the Protected Property as herein described. The development rights hereby conveyed are rights and interests in real property pursuant to 10 V.S.A. §§823. The perpetual conservation easement restrictions, and public access easement hereby conveyed to Grantees consist of covenants on the part of Grantor to do or refrain from doing, severally and collectively, the various acts set forth below. It is hereby acknowledged that the development rights, perpetual conservation easement restrictions, and public access easement shall constitute a servitude upon and shall run with the land.

### **I. Purposes of this Grant and Management Plan**

#### **A. Statement of Purposes**

1. Grantor and Grantees acknowledge the objective of ensuring the availability of the Protected Property for public use and enjoyment, including, but not limited to, educational, recreational and other appropriate community activities and, to that end, the purposes of this Grant (hereinafter referred to as “the Purposes of this Grant”) are as follows:

- a. To conserve productive forestland, wildlife habitats, biological diversity, natural communities, riparian buffers, wetlands, soil productivity, water quality and native flora and fauna on the Protected Property and the ecological processes that sustain these natural resource values as they exist on the date of this instrument and as they may evolve in the future;
- b. To provide for non-motorized, non-commercial recreational, educational and other appropriate community uses on the Protected Property;
- c. To conserve open space values, and scenic resources associated with the Protected Property for present and future generations; and
- d. To require that management of the Protected Property be guided by a public management planning process.

2. Recognizing that conservation of productive forestland is included in the Purposes of this Grant, and that both the resource values of the Protected Property and responsible forest management standards will evolve over time, the forest management objectives of this Grant are to:

- a. Manage forest stands for long rotations which maximize the opportunity for the production of maple sap and/or for harvesting, sustained over time, high quality sawlogs while maintaining a healthy and biologically diverse forest. Grantor and Grantees acknowledge that site limitations, biological factors and public uses may preclude the production of high quality sawlogs, and further that the production of a variety of forest products can be consistent with the goal of producing high quality sawlogs and/or maple sap.
- b. Conduct all sugaring and/or forest management and harvesting activities (including the establishment, maintenance, and reclamation of log landings and skid roads)

using the best available management practices in order to prevent soil erosion and to protect water quality.

3. To ensure that the Protected Property will be owned in perpetuity by the State of Vermont, a municipality, or other nonprofit corporation qualifying under 501(c)(3) of the Internal Revenue Code; or such other entity approved by the Grantees.

4. These purposes will be advanced by conserving the Protected Property because it possesses the following attributes:

- a. \_\_\_\_\_ acres of forest available for long-term sustainable management for the production of forest products;
- b. two occurrences of Dry Red Oak-White Pine Forest, an uncommon natural community in Vermont;
- c. three Vernal Pools, an uncommon natural community in Vermont, that provide high-quality amphibian breeding habitat;
- d. it can be used for numerous recreational, cultural and educational purposes by the Town, its schools, and the community;
- e. streams, including tributaries of Hollow Brook, the Huntington River, and the LaPlatte River, that, with wooded buffers and natural flow, provide an array of ecological benefits including maintaining water quality and providing corridors for species movement;
- f. wetlands, including open, shrub, forested, seepage, and beaver-influenced wetlands;
- g. additional wetland, upland, and riparian habitat for wildlife;
- h. \_\_\_\_\_ feet of frontage on Lincoln Hill Road, Hayden Hill Road East, Hayden Hill Road West, and Economou Road, public highways with scenic vistas; and,
- i. it is in the vicinity of the Fred Johnson Wildlife Management Area owned by the Vermont Department of Fish & Wildlife.

Grantor and Grantees recognize the Purposes of this Grant and share the common goal of conserving these values of the Protected Property by the conveyance of conservation restrictions, development rights and public access easement to prevent the use or development of the Protected Property for any purpose or in any manner which would conflict with the Purposes of this Grant. Grantees accept such conservation restrictions, development rights and public access easement in order to conserve these values for present and future generations.

#### B. Management Plans.

Grantor will, from time-to-time develop comprehensive management plans, including updates, revisions and amendments, for the Protected Property (hereinafter "Management Plans"). The Management Plans shall:

1. Provide for the use and management of the Protected Property in a fashion which is consistent with and advances the Purposes of this Grant; and,
2. At a minimum, the Management Plans shall include the provisions required under this Grant, and shall appropriately balance all the resource attributes of and human uses for the Protected Property. The following items shall be addressed in the Management Plans, as applicable, to ensure compliance with the conditions of this Grant:
  - a. identify and address the management needs of the recreational uses that may need special or more intensive management focus;
  - b. provide for public access and meaningful recreational links to private and public lands;
  - c. include a forest management plan approved by Grantees in accordance with Section I(C), below, if the Grantor proposes to harvest timber or commercial non-timber forest products;
  - d. provide a plan for road, sign, trail and sanitary facility use that has minimal impact on water quality and plant, wildlife and aquatic habitat resources and historic and cultural features;
  - e. provide for the sustainable use of fish and wildlife resources;

- f. provide for the identification and protection of natural communities, plant, wildlife and aquatic habitat and other ecologically sensitive or important areas;
- g. provide for use by educational programs;
- h. provide, as necessary, for any proposed use of the Ecological Protection Zones consistent with Sections V and VI below, as needed; and,
- i. otherwise be consistent with this Grant.

Prior to the final adoption of each Management Plan, including updates, revisions and amendments, Grantor shall, in consultation with Grantees: (a) secure appropriate public input from the general public, (b) develop the Management Plans in a timely and responsive manner, and (c) provide Grantees with a draft of each such Management Plan for its review and approval prior to adoption as well as a copy of each final adopted Management Plan. Grantees' approval of the Management Plans shall not be unreasonably withheld or conditioned if such Plans are consistent with the terms of this Grant.

C. Forest Management Plan.

As provided in Section III(3), below, Grantor shall not harvest timber, wood products, commercial non-timber forest products, or conduct commercial maple sugaring operation without first developing a forest management plan for the Protected Property. Said forest management plan and any updates, amendments or other changes thereto (collectively "Forest Management Plan") shall be submitted to Grantees for their approval prior to any forest management activity listed herein. Grantees' approval of the Forest Management Plan shall not be unreasonably withheld or conditioned, if the Forest Management Plan has been approved by a professional forester and if the Forest Management Plan is consistent with the Purposes of this Grant, and in particular, the Purposes set forth in Section I. Grantees may rely upon the advice and recommendations of such foresters, wildlife experts, conservation biologists or other experts as Grantees may select to determine whether the Forest Management Plan is consistent with the Purposes of this Grant. The Forest Management Plan shall be consistent with the Purposes of this Grant and shall include at least the following elements (except that those elements of the Forest Management Plan which do not change need not be re-submitted in updates or amendments to the Forest Management Plan):

1. Grantor's forest management objectives;
2. An appropriately scaled, accurate map indicating such items as forest stands, streams and wetlands, and major access routes (truck roads, landings and major skid trails);
3. Forest stand ("treatment unit") descriptions (forest types, stocking levels before and after harvesting, soils, topography, stand quality, site class, insect and disease occurrence, previous management history, and prescribed silvicultural treatment including harvest schedules);
4. Description of any commercial sugaring operation, including how management will account for impacts on species diversity and ecosystem health, and impacts on wildlife movement and public access;
5. Plant and wildlife considerations (identification of known significant habitats and management recommendations);
6. Aesthetic and recreational considerations (impact on viewsheds from public roads, trails and places);
7. Historic and cultural resource considerations (identification of known resources and associated management recommendations); and,
8. Management practices to be applied within the Ecological Protection Zones in accordance with the goals and requirements of Sections V and VI below

The Forest Management Plan shall be updated at least once every ten (10) years (or at such other intervals as Grantor and Grantees may mutually agree) if Grantor intends to harvest timber or other wood products. Amendments to the Forest Management Plan shall be required in the event that Grantor proposes a treatment not included in the Forest Management Plan, but no such amendment shall be required for any change in timing or sequence of treatments if such change does not vary more than five years from the prescription schedule set forth in the Forest Management Plan as approved by Grantees. In the event that any treatment unit is substantially damaged by natural causes such as insect infestation, disease, ice, fire, or wind, Grantor may elect to conduct an alternative treatment in which event Grantor shall submit an amendment to the Forest Management Plan for Grantees' approval prior to conducting any alternative treatment.



Disapproval by Grantees of a Forest Management Plan proposing a heavy cut (as defined below) shall not be deemed unreasonable. Grantees, however, may approve a Forest Management Plan or an amendment thereto proposing a heavy cut in its discretion if consistent with the Purposes of this Grant, including for the following purposes:

1. To release an established understory;
2. To permit the planting of different species of trees or the establishment or re-establishment of a field, orchard, or pasture;
3. For wildlife management purposes; or
4. To promote natural regeneration.

“Heavy cut” shall mean the harvesting of wood products below the “C-Line” or minimum stocking level on the Protected Property as determined by applying the protocol set forth in the current U.S. Department of Agriculture, Forest Service Silvicultural Guidelines for the Northeast or by applying a similar, successor standard approved by Grantees.

## **II. Restricted Uses of the Protected Property**

1. The Protected Property shall be used for educational, forestry, agricultural, non-motorized, non-commercial recreation, habitat conservation, natural area, and open space purposes only, except as otherwise specifically permitted under this Grant. No residential, commercial, industrial or mining activities shall be permitted. No buildings, structures, or appurtenant facility or improvements shall be constructed, created, erected or moved onto the Protected Property, except as specifically permitted in both Section III below and the Management Plans.

2. No rights-of-way, easements of ingress or egress, driveways, roads, or utility lines, easements, or other use restrictions shall be constructed, developed, granted, or maintained into, on, over, under, or across the Protected Property without the prior written permission of Grantees, except as otherwise specifically permitted under this Grant, and as appear of record prior to the date of this Grant. Grantees may grant such permission (with or without conditions) if in their sole discretion they determine that any such rights of way, easements of ingress or egress, driveways, roads, utility lines, other easements or other use restrictions are consistent with the Purposes of this Grant.

3. There shall be no signs, billboards, or outdoor advertising of any kind erected or displayed on the Protected Property; provided, however, that Grantor may erect and maintain reasonable signs including but not limited to signs indicating the name of the Protected Property and its ownership by Grantor, boundary markers, directional signs, memorial plaques, informational and interpretive signs, and signs limiting access or use subject to the limitations of Section IV, below. Grantees may erect and maintain signs designating the Protected Property as land under the protection of Grantees, with the prior written permission of Grantor.

4. The placement, collection or storage of trash, human, hazardous or toxic waste, or any other unsightly, harmful or offensive material on the Protected Property shall not be permitted except at such locations, if any, and in such a manner as shall be approved in advance in writing by Grantees and shall be consistent with the Purposes of this Grant and the Management Plans. The temporary storage of trash generated on the Protected Property in receptacles for periodic off-site disposal, shall be permitted without such prior written approval.

5. There shall be no disturbance of the surface, including but not limited to filling, excavation, removal of topsoil, sand, gravel, rocks or minerals, or change of the topography of the land in any manner, except as may be reasonably necessary to carry out the uses permitted on the Protected Property under the terms of this Grant. In no case shall surface mining of subsurface oil, gas, or other minerals be permitted.

6. Grantor shall not give, grant, sell, convey, subdivide, partition, convey in separate parcels, transfer, mortgage, pledge, lease or otherwise encumber the Protected Property without the prior written approval of Grantees which approval may be granted, denied or conditioned - including the condition that the Protected Property be sold for only nominal consideration - in the Grantees' sole discretion.

7. There shall be no operation of motor vehicles on the Protected Property for recreational purposes except as approved in Grantees' sole discretion. However, Grantor may

permit motorized personal assistive mobility devices for use by persons with mobility disabilities on the Protected Property if consistent with the Purposes of this Grant, and as may be required by 42 U.S.C. §35.137. Other non-recreational uses of motor vehicles, including ATVs, for uses consistent with the Purposes of this Grant, such as agriculture, wildlife and forest management, education, trail grooming, maintenance, and for safety or emergency purposes, is permitted. Notwithstanding the foregoing, snowmobiling may be permitted at the discretion of the Grantor.

8. No use shall be made of the Protected Property, and no activity thereon shall be permitted which, is or is likely to become inconsistent with the Purposes of this Grant. Grantor and Grantees acknowledge that, in view of the perpetual nature of this Grant, they are unable to foresee all potential future land uses, future technologies, and future evolution of the land and other natural resources, and other future occurrences affecting the Purposes of this Grant. Grantees, therefore, in their sole discretion, may determine whether (a) proposed uses or proposed improvements not contemplated by or addressed in this Grant, or (b) alterations in existing uses or structures, are consistent with the Purposes of this Grant.

### **III. Permitted Uses of the Protected Property.**

Notwithstanding the foregoing, Grantor shall have the right to make the following uses of the Protected Property:

1. The right to use the Protected Property for all types of non-commercial, non-motorized recreational purposes including, but not limited to, bird-watching, boating, cross-country skiing, fishing, hiking, hunting, snowshoeing, swimming, trapping, walking and wildlife observation consistent with the Purposes of this Grant and the Management Plans. Use of the Protected Property for snowmobiling, and for non-motorized, mechanized recreation such as mountain biking and by animals capable of transporting humans (including, but not limited to, horses) may be permitted in the discretion of Grantor if such uses are regulated in the Management Plans, are consistent with the Purposes of this Grant, and are consistent with Sections V and VI, below.

2. The right to establish, maintain and use fields, orchards and pastures for agricultural uses recreational, scenic or open space purposes and/or for the purpose of maintaining or enhancing wildlife habitat, plant habitat or scenic vistas or values on the Protected Property, provided that the initial forest clearing activity required to establish such fields, orchards, pastures, wildlife habitats, plant habitats, and/or scenic vistas occurs only upon the prior written approval of Grantees, Grantees' approval shall not be unreasonably withheld if such clearcutting is consistent with the Purposes of this Grant, is a component of the Management Plans, and is consistent with Sections V and VI, below.

3. The right to perform non-commercial forest management activities. Further, the right to perform commercial maple-sugaring, the harvest of timber, other wood products and commercial non-timber forest products, provided that:

- a) all such activities are conducted in accordance with an approved Forest Management Plan meeting the requirements of Section I above;
- b) all such activities are conducted under the supervision of a professional forester holding a current Vermont forester license, or a forester or other land manager whose education, experience and qualifications are otherwise approved in advance by Grantees (hereinafter "Professional Forester"); and
- c) any maple sugaring operations shall meet or exceed the standards outlined in Sugarbush Management Standards and Tapping Guidelines for Forestland in Use Value Appraisal (adopted in 2014) or successor guidelines as determined by the Grantees.

During any road construction, maintenance or harvesting and skidding of forest products, or activities associated with sugarbush management, Grantor shall employ the applicable practices recommended in the publication "Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont," a Vermont Department of Forests, Parks and Recreation publication dated August 15, 1987, revised effective August 11, 2018, and as may be amended from time to time (hereafter "AMPs"), or such successor standard approved by Grantees.

Nothing in this clause shall be interpreted to require Grantor to harvest a treatment unit (as defined in Section I(C), above), but only to require that any such harvest be conducted in accordance with the Forest Management Plan should Grantor elect to harvest.

4. The right to construct and maintain barns, sugar houses, or similar structures or facilities, together with necessary access drives and utilities, on the Protected Property, provided that they are used exclusively for agricultural or forestry purposes, and provided further that such construction has been approved in writing in advance by Grantees. Grantees' approval may include designation of a "complex" (meaning an area or areas of the Protected Property within which certain structures are or shall be grouped together) surrounding the structures and shall not otherwise be unreasonably withheld or conditioned, provided that the structure or facility is located in a manner which is consistent with the Purposes of this Grant. Grantor shall not deem unreasonable a condition by Grantees that certain structures must be located within a complex which may be designated in the future as provided in this Section III.

5. The right to use, maintain, establish, construct, and improve water sources, courses, and bodies within the Protected Property for uses permitted in this Grant; provided, however, that Grantor does not unnecessarily disturb the natural course of the surface water drainage and runoff flowing over the Protected Property. Grantor may disturb the natural water flow over the Protected Property to improve drainage of agricultural soils, reduce soil erosion or improve the agricultural potential of areas used for agricultural purposes, but shall do so in a manner that has minimum impact on the natural water flow and is otherwise consistent with the Purposes of this Grant and complies with all applicable laws and regulations. Prior to undertaking a streambank stabilization project or placing any structure otherwise permitted under this Grant or approved by Grantees in accordance with this Grant within rivers or streams or on the banks thereof, Grantor shall provide written notice to Grantees of their intent to do so. The construction of ponds or reservoirs shall be permitted only upon the prior written approval of Grantees, which approval shall not be unreasonably withheld or conditioned; provided, however, that such pond or reservoir is located in a manner which is consistent with the Purposes of this Grant.

In addition, the following shall be designated as water protection areas: all those areas within the forested or naturally vegetated portions of the Protected Property (a.) lying within fifty feet (50') landward of the tops of the banks of any "stream" as defined by the AMPs and (b.) all 'significant wetlands' and their buffer zones as defined by the Vermont Wetland Rules adopted February 7, 1990 and amendments adopted January 6, 2020, effective January 21, 2020, or successor document approved by the Grantees. These areas shall move with the movement of the streams and the following goals and restrictions shall apply thereto:

The principal goal for management within the water protection areas is to maintain or enhance their ecological benefits, including but not limited to water quality, soil integrity, and natural hydrology; providing important terrestrial, wetland, and aquatic habitat; and providing organic matter, nutrients, shade, and large diameter coarse woody material for the benefit of wetland, riparian, and aquatic systems.

Notwithstanding anything to the contrary contained in this Section III(5), any management or use of the water protection areas shall incorporate up-to-date ecological knowledge and management practices, and shall be consistent with the principal goal above.

6. The right to maintain, repair, improve and replace existing recreational trails, together with the right to clear, construct, repair, improve, maintain and replace new trails, provided that the location, use and construction of such new trails are consistent with the Purposes of this Grant and Sections V and VI, below, and are provided for in the Management Plans.

7. The right to conduct periodic, temporary community and public entertainment events on the Protected Property, including concerts, fairs and celebrations, together with the right to erect tents and other temporary structures for such events; provided that such events shall not result in the clearing of any forested areas and provided further that such events are consistent with the Purposes of this Grant and the Management Plans.

8. The right to construct, maintain, repair and use unpaved parking lot(s) on the Protected Property, including associated access drives and utilities, together with the right to

construct improvements normally associated with a parking lot. Grantor shall first obtain the prior written approval of Grantees for the location and size of such unpaved parking lots on the Protected Property, which approval shall not be unreasonably withheld nor conditioned, provided that such location and use shall be consistent with the Management Plans and the Purposes of this Grant.

9. The right to construct, maintain, repair and replace permanent or temporary structures, drives and utilities reasonably necessary to support the uses permitted by this Grant (including modest structures to support public outdoor recreation and/or public outdoor education); provided that such structures comply with the requirements of this Section III(9) and the number and location of such structures, drives and utilities are consistent with the Purposes of this Grant, Section III(5), and Sections V and VI, below, and the Management Plan.

10. The right to charge members of the public reasonable fees for admission to and use of the Protected Property, provided that such fees are collected only for community and public recreation, education or entertainment events on the Protected Property (including, but not limited to, children's activities, concerts, fairs and celebrations) or such fees are reasonably necessary to support Grantor's management of the Protected Property. The right to charge organizations reasonable fees for recreational use of a portion of the Protected Property provided that such use does not unreasonably interfere with the access of the general public to the Protected Property. All fees charged for admission to or use of the Protected Property shall be consistent with the Purposes of this Grant, especially that of public access, and shall be provided for in the Management Plan. Notwithstanding the foregoing, the Grantor must provide some form of meaningful public access on the Protected Property without charging a fee, such as dispersed pedestrian access.

11. The right to conduct and authorize temporary commercial and non-commercial uses of the Protected Property, provided that such uses (i) do not unreasonably interfere with the access of the general public to the Protected Property, (ii) do not materially detract from the Purposes of this Grant, and (iii) are detailed in an approved Management Plan described in Section IB of this Grant.

#### **IV. Public Access.**

Grantor covenants and agrees that the Protected Property shall be available to the general public for all types of non-commercial, non-motorized, non-mechanized dispersed recreational and educational purposes (including, but not limited to, bird-watching, boating, cross-country skiing, fishing, hiking, hunting, snowshoeing, swimming, trapping, walking and wildlife observation) consistent with the Purposes of this Grant. Notwithstanding the foregoing, Grantor may limit or restrict public access to the Protected Property to assure compliance with the requirements of this Grant, to protect natural habitats, or to protect the public health or safety (including, but not limited to, the right to permit, regulate or prohibit fishing, hunting and trapping). If Grantees approve a conveyance of the Protected Property, then Grantees may also require that a separate Grant of Public Access Easement also be conveyed to Grantees in a form approved by Grantees.

#### **V. Dry Red Oak – White Pine Forest Ecological Protection Zones.**

The Ecological Protection Zone comprises two state-significant areas of Dry Red Oak-White Pine Forest on south-facing ridges on the Protected Property. The Ecological Protection Zone consists of approximately 12.5 acres, more or less, distributed across these ridges in multiple patches, and is generally depicted as "Dry Red Oak - White Pine Forest EPZ" on the Hinesburg Town Forest Conservation Plan (hereafter the "Dry Oak-Pine EPZ"). The boundaries of the Dry Oak-Pine EPZ may be changed from time to time by mutual agreement of Grantor and Grantees, as established by a written agreement recorded in the Hinesburg Land Records and depicted on a new Farm Plan signed by Grantor and Grantees. Within the Dry Oak-Pine EPZ, the goals, prescriptions, and restrictions of this Section V are in addition to the provisions of Sections II and III of this Grant, and where inconsistent, the provisions of this Section shall control.

Within the Dry Oak-Pine EPZ the following shall apply:

1. Protection of the Dry Red Oak-White Pine Forest, as well as the natural communities that naturally develop in the future in the Dry Oak-Pine EPZ, and the ecological processes that sustain them, shall be Grantor's and Grantees' highest priority in approving and conducting all activities.
2. All management activities, including without limitation forest management, recreational management and ecological management, shall focus on the goals of a) maintaining soil integrity, natural hydrology, and water quality values, and b) maintaining the natural structure and species composition of the natural communities present or communities that may develop naturally over time, informed by the best current ecological science.
3. All forest management activities shall be conducted pursuant to a forest management plan that is consistent with the Purposes of this Grant and this Section V. Any such activities shall employ all applicable recommended practices described in the regulations entitled "Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont," a Vermont Department of Forests, Parks and Recreation publication dated August 11, 2018, as may be amended from time to time (the "AMPs") or such successor standard approved by Grantees. Management of the Dry Oak-Pine EPZ shall be informed by the best current ecological understanding of the unique characteristics at this site and the natural communities it supports. Silvicultural methods shall strive to mimic the natural, low-intensity disturbance regime specific to the Dry Red Oak-White Pine Forest as well as natural communities that naturally develop in the future in this physical setting.
4. Grantees' approval of a forest management plan submitted pursuant to this Section V and Section III, above, shall not be unreasonably withheld or conditioned; provided that such plan: (i) is consistent with the Purposes of this Grant and with the provisions of this Section V; and (ii) such plan has been approved by a professional forester.
5. Limited agricultural activities consistent with the Purposes of this Grant and with the provisions of this Section V may be permitted in Grantees' sole discretion.
6. In the context of acting under this Section V, Grantor and Grantees may confer about what constitutes the best available ecological science; provided that, Grantees' interpretation thereof shall control.

## **VI. Vernal Pool Ecological Protection Zone.**

The Vernal Pool Ecological Protection Zone consists of three vernal pools and the area around them which is described below and generally depicted as "EPZ Primary Zone" and "EPZ Secondary Zone" on the Hinesburg Town Forest Conservation Plan (together hereinafter referred to as "the Vernal Pool EPZ"). The purpose and goal of the Vernal Pool EPZ is to provide and maintain high quality amphibian habitat, including critical breeding habitat ("the Goals"), by promoting and maintaining high levels of shade and coarse woody material. The Grantees, in their sole discretion, may release from the provisions of this Section VI all or a portion of the Vernal Pool EPZ if the Grantees determine that it ceases to function in a way that meets the Goals, or if the Grantees determine that new scientific knowledge indicates that the limitations and restrictions of this Section are no longer necessary to meet the Goals.

The Vernal Pool EPZ Primary Zone shall be subject to the following limitations and restrictions which shall supersede the provisions of Sections II and III of this Grant, and where inconsistent, the provisions of this Section VI shall control.

**Vernal Pool EPZ Primary Zone:** Each vernal pool and the area within its surrounding 100-foot radius as measured from each pool's edges is the Primary Zone of the Vernal Pool EPZ. There shall be no agricultural activity within the Primary Zone other than the collection of maple sap for maple sugaring operations which may be approved or conditioned by Grantee in its sole discretion. No new structures, land disturbance or improvements, with the exception of pedestrian trails as provided for in in this Grant, shall be permitted within the Primary Zone. Within the Primary Zone there shall be no removal of standing timber or downed wood or disturbance to the pool's hydrology. The only forest management activities which may take place within the Primary Zone, after first receiving the written approval of the Grantees, which may be granted, conditioned or denied in Grantees' sole discretion, shall be the control of exotic species and activities that enhance amphibian habitat. Any existing structures, roads and log landings may remain but only in their current locations and shall not be altered, expanded or improved beyond their current condition, but relocation may be permitted with the prior written approval of Grantees, which approval may be granted, conditioned or denied in Grantees' sole discretion. New roads for timber

harvest may be approved within the Primary Zone by the Grantees if in their sole discretion they determine that there is no other location that can practically meet the same purpose.

In the event a total prohibition against harvesting and limitations upon forest management activities within the Primary Zone affects the eligibility of the Primary Zone for enrollment in the State of Vermont's Use Value Appraisal program, or similar successor program, then those foregoing restrictions which affect such eligibility shall not apply and, instead, only such minimal harvesting and other forest management activities as are required to maintain such eligibility shall be permitted within the Primary Zone.

The Vernal Pool EPZ Secondary Zone shall be subject to the following additional element of the forest management plan required of this Grant:

**Vernal Pool EPZ Secondary Zone:** The Secondary Zone of the EPZ is the forested area lying within an additional 500-foot zone outward from each Primary Zone, except, however, the western corner of the Secondary Zone, located near Town Highway #19, is less than 500 feet outward from the Primary Zone, as depicted on the Hinesburg Town Forest Conservation Plan. Within the Secondary Zone firewood may be harvested as permitted under Section III(3), above. Other timber harvesting is permitted but amphibian habitat needs, such as coarse woody debris and shade, shall be addressed in the preparation of forest management plans which shall explicitly state what prescriptions have been imposed to protect and enhance amphibian habitat.

## **VII. Enforcement of the Covenants and Restrictions.**

Grantees shall make reasonable efforts from time to time to assure compliance by Grantor with all of the covenants and restrictions herein. In connection with such efforts, Grantees may make periodic inspection of all or any portion of the Protected Property, and for such inspection and enforcement purposes, Grantees shall have the right of reasonable access to the Protected Property. In the event that Grantees become aware of an event or circumstance of non-compliance with the terms and conditions herein set forth, Grantees shall give notice to Grantor of such event or circumstance of non-compliance via certified mail, return receipt requested, and demand corrective action sufficient to abate such event or circumstance of non-compliance and restore the Protected Property to its previous condition. If Grantees, in their sole discretion, determine that the event or circumstance of non-compliance requires immediate action to prevent or mitigate significant damage to the conservation values of the Protected Property as provided in the Purposes of this Grant, then Grantees may pursue their rights under this enforcement section without prior notice to Grantor. In the event there has been an event or circumstance of non-compliance which is corrected through negotiation and voluntary compliance, but which has caused Grantees to incur extraordinary costs, including staff time, in investigating the non-compliance and securing its correction, Grantor shall, at Grantees' request, reimburse Grantees for all reasonable costs incurred in investigating the non-compliance and in securing its correction.

Failure by Grantor to cause discontinuance, abatement, or such other corrective action as may be demanded by Grantees within a reasonable time after receipt of notice and reasonable opportunity to take corrective action shall entitle Grantees to bring an action in a court of competent jurisdiction to enforce the terms of this Grant and to recover any damages arising from such non-compliance. Such damages, when recovered, may be applied by Grantees to corrective action on the Protected Property, if necessary. If such court determines that Grantor has failed to comply with this Grant, Grantor shall reimburse Grantees for any reasonable costs of enforcement, including Grantees' staff time, court costs and reasonable attorneys' fees, in addition to any other payments ordered by such court. In the event that Grantees initiate litigation and the court determines that Grantor has not failed to comply with this Grant and that Grantees have initiated litigation without reasonable cause or in bad faith, then the Grantee who commenced the court proceedings shall reimburse Grantor for any reasonable costs of defending such action, including court costs and reasonable attorneys' fees.

Grantor is responsible for the acts and omissions of persons acting on its behalf, at its direction or with its permission, and Grantees shall have the right to enforce against Grantor for events or circumstances of non-compliance with this Grant resulting from such acts or omissions. However, as to the acts or omissions of third parties other than the aforesaid persons, Grantees shall not have a right to enforce this Grant against Grantor unless Grantor: (i) is complicit in said acts or omissions, (ii) fails to cooperate with Grantees in all respects to halt or abate the event or

circumstance of non-compliance resulting from such acts or omissions, or (iii) fails to report such acts or omissions to Grantees promptly upon learning of them. Nor shall Grantees institute any enforcement proceeding against Grantor for any change to the Protected Property caused by natural disasters such as fire, flood, storm or earthquake.

Grantees shall have the right, but not the obligation, to pursue all legal and equitable remedies against any third party responsible for an event or circumstance of non-compliance with this Grant and Grantor shall, at Grantees' direction, assign its right of action against such third party to Grantees, join Grantees in any suit or action against such third party, or appoint Grantees its attorney in fact for the purpose of pursuing an enforcement suit or action against such third party.

The parties to this Grant specifically acknowledge that events and circumstances of non-compliance constitute immediate and irreparable injury, loss, and damage to the Protected Property and accordingly entitle Grantees to such equitable relief, including but not limited to, injunctive relief, as the court deems just and appropriate. The remedies described herein are in addition to, and not in limitation of, any other remedies available to Grantees at law, in equity, or through administrative proceedings.

No delay or omission by Grantees in the exercise of any right or remedy upon any breach by Grantor shall impair Grantees' rights or remedies or be construed as a waiver. Nothing in this enforcement section shall be construed as imposing a liability upon a prior owner of the Protected Property, when the event or circumstance of non-compliance shall have occurred after termination of said prior owner's ownership of the Protected Property.

#### **VIII. Miscellaneous Provisions.**

1. Where Grantor is required, as a result of this Grant, to obtain the prior written approval of Grantees before commencing an activity or act, and where Grantees have designated in writing one of the other Grantees herein or another organization or entity which shall have the authority to grant such approval, the approval of said designee shall be deemed to be the approval of Grantees. Grantor shall reimburse Grantees or Grantees' designee for all extraordinary costs, including staff time, incurred in reviewing the proposed action requiring Grantees' approval; but not to include those costs which are expected and routine in scope. When Grantees have authorized a proposed action requiring approval under this Grant, Grantees shall, upon request, provide Grantor with a written certification in recordable form memorializing said approval.

2. While title is herein conveyed to Grantees as tenants in common, the rights and interests described in this Grant, including enforcement of the conservation easement and restrictions, may be exercised by Grantees collectively, or by any single Grantee individually, provided that court enforcement action by a single Grantee shall foreclose action on the same issue(s) by the other Grantees who shall be bound by the final determination.

3. It is hereby agreed that the construction of any buildings, structures or improvements, or any use of the land otherwise permitted under this Grant, shall be in accordance with all applicable ordinances, statutes and regulations of the Town of Hinesburg and the State of Vermont and at Grantor's sole expense.

4. Grantees shall transfer the development rights, public access easement, and conservation easement and restrictions conveyed by Grantor herein only to a State agency, municipality, or qualified organization, as defined in Chapter 34 or Chapter 155 Title 10 V.S.A., in accordance with the laws of the State of Vermont and the regulations established by the Internal Revenue Service governing such transfers.

5. In the event the development rights or conservation restrictions conveyed to Grantees herein are extinguished by eminent domain or other legal proceedings, Grantees shall be entitled to any proceeds which pertain to the extinguishment of Grantees' rights and interests. Any proceeds from extinguishment shall be allocated between Grantor and Grantees using a ratio based upon the relative value of the development rights and conservation restrictions, and the value of the fee interest in the Protected Property, as determined by a qualified appraisal obtained at the direction of either Grantor or Grantees in the year of extinguishment. Grantees shall use any such proceeds to preserve undeveloped and open space land in order to protect the aesthetic,

agricultural, cultural, educational, scientific, forestry, and natural resources of the State through non-regulatory means.

6. Without limiting the restrictions contained in Section II(6) of this Grant, in any deed or lease conveying an interest in all or part of the Protected Property, Grantor shall make reference to the conservation easement, restrictions, and obligations described herein and shall indicate that this easement and restrictions are binding upon all successors in interest in the Protected Property in perpetuity. Grantor shall also notify Grantees of the name(s) and address(es) of Grantor's successor(s) in interest.

7. The term "Grantor" shall include the successors and assigns of the original Grantor, the Town of Hinesburg. The term "Grantees" shall include the respective successors and assigns of the original Grantees, Vermont Land Trust, Inc. and Vermont Housing and Conservation Board.

8. Grantor shall pay all real estate taxes and assessments on the Protected Property and shall pay all other taxes, if any, assessed in lieu of or in substitution for real estate taxes on the Protected Property.

9. Any signs erected on the Protected Property which mention funding sources shall include the Vermont Housing and Conservation Board and the Vermont Land Trust, Inc.

10. Grantor warrants that Grantor has no actual knowledge of a release or threatened release or hazardous substances or wastes on the Protected Property.

11. During the term of Grantor's ownership, Grantor shall hold harmless, indemnify and defend Grantees against any liabilities, claims and expenses, including reasonable attorney's fees to which Grantees may be subjected, including, but not limited to, those arising from any solid or hazardous waste/hazardous substance release or disposal, or hazardous waste/hazardous substance cleanup laws or the actions, or inactions of said Grantor as owner or operator of the premises, or those of said Grantor's agents.

12. Grantor and Grantees recognize that rare and unexpected circumstances could arise that justify amendment of certain of the terms, covenants or restrictions contained in this Grant. To this end, this Grant may be amended only by mutual agreement of Grantor and Grantees; provided that Grantees determine in their sole discretion that such amendment furthers or does not materially detract from the Purposes of this Grant. Amendments shall be in writing, signed by both Grantor and Grantees, and shall be recorded in the Town of Hinesburg Land Records. Notwithstanding the foregoing, Grantor and Grantees have no right or power to agree to any amendment that would limit the term of the Grant, or adversely affect the qualification of this Grant or the status of Grantee under applicable laws, including without limitation Title 10 V.S.A. Chapters 34 and 155, Section 170(h) and 501(c)(3) of the Internal Revenue Code, as amended, and regulations issued pursuant thereto.

13. This Grant shall be governed by and construed in accordance with the laws of the State of Vermont. In the event that any provision or clause in this Grant conflicts with applicable law, such conflict shall not affect other provisions hereof which can be given effect without the conflicting provision. To this end the provisions of this Grant are declared to be severable. Invalidation of any provision hereof shall not affect any other provision of this Grant.

14. It is further agreed that the Protected Property is accurately depicted and described in both the Hinesburg Town Forest Conservation Plan and a Baseline Documentation Report ("BDR") signed by the original Grantor on or about the date of this Grant and held by Grantee Vermont Land Trust, Inc. Grantees may use the Hinesburg Town Forest Conservation Plan or BDR in enforcing this Grant, but are not limited in their use of the Hinesburg Town Forest Conservation Plan and BDR to show a change of conditions.

INVALIDATION of any provision hereof shall not affect any other provision of this Grant.

TO HAVE AND TO HOLD said granted development rights, conservation easement and restrictions, and public access easement, with all the privileges and appurtenances thereof, to the said Grantees, **VERMONT HOUSING AND CONSERVATION BOARD**, and **VERMONT LAND TRUST, INC.**, their respective successors and assigns, to their own use and behoof forever, and the said Grantor, the **TOWN OF HINESBURG**, on behalf of itself and its successors and assigns, does covenant with the said Grantees, their successors and assigns, that until the ensembling of these presents, it is the sole owner of the premises and has good right and title to convey the same in the manner aforesaid, that the premises are free from every encumbrance, except those presently of record, not intending hereby to reinstate any interest or right terminated or superseded by this Grant, operation of law, abandonment or 27 V.S.A. Ch. 5, Subch. 7; and it hereby engages to warrant and defend the same against all lawful claims whatever, except as aforesaid.

I, \_\_\_\_\_, duly authorized agent of the Town of Hinesburg, has executed this Grant on this \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

**GRANTOR  
TOWN OF HINESBURG**

By: \_\_\_\_\_  
Its Duly Authorized Agent

STATE OF VERMONT  
COUNTY OF \_\_\_\_\_, SS.

At \_\_\_\_\_, Vermont, on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, personally appeared \_\_\_\_\_, duly authorized agent of the Town of Hinesburg, and acknowledged this instrument, by said person sealed and subscribed, to be said person's free act and deed, and the free act and deed of the Town of Hinesburg, before me.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public, State of Vermont  
Commission No. \_\_\_\_\_  
My Commission Expires: 01/31/2023

**Approved by the VERMONT LAND TRUST, INC.:**

\_\_\_\_\_  
Date By: \_\_\_\_\_  
Its Duly Authorized Agent

STATE OF VERMONT  
COUNTY OF \_\_\_\_\_, SS.

At \_\_\_\_\_, Vermont, on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, personally appeared \_\_\_\_\_, duly authorized agent of the Vermont Land Trust, Inc., and acknowledged this instrument, by said person sealed and subscribed, to be said person's free act and deed, and the free act and deed of the Vermont Land Trust, Inc., before me.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public, State of Vermont

Commission No. \_\_\_\_\_  
My Commission Expires: 01/31/2023

**Approved by the VERMONT HOUSING AND CONSERVATION BOARD:**

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Its Duly Authorized Agent

STATE OF VERMONT  
COUNTY OF WASHINGTON, SS.

At Montpelier, Vermont, on this \_\_\_\_\_ day of \_\_\_\_\_, 2021, personally appeared Lawrence W. Mires, duly authorized agent of the Vermont Housing and Conservation Board and acknowledged this instrument, by said person sealed and subscribed, to be said person's free act and deed, and the free act and deed of the Vermont Housing and Conservation Board, before me.

\_\_\_\_\_  
Print Name: Elizabeth M. Egan  
Notary Public, State of Vermont  
Commission No. 157.0002746  
My Commission Expires: 01/31/2023

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**SCHEDULE A**  
**PROTECTED PROPERTY**

Being all and the same lands and premises, including farm buildings, conveyed to Grantor by the following:

1. Administrator's Deed of H.A. Bailey in the Estate of Felix Martin dated May 25, 1937 and recorded in Book 26 at Page 201 of the Town of Hinesburg Land Records.
2. Warranty Deed of Fred Judas dated September 27, 1937 and recorded in Book 27 at Page 20 of the Town of Hinesburg Land Records.
3. Warranty Deed of Clarence Blodgett dated April 25, 1941 and recorded in Book 27 at Page 99 of the Town of Hinesburg Land Records.
4. Warranty Deed of Daisy Verboom and Marien Verboom dated October 6, 1948 and recorded in Book 27 at Page 168 of the Town of Hinesburg Land Records.
5. Warranty Deed of Herbert H. Germain dated October 29, 1954 and recorded in Book 29 at Page 461 of the Town of Hinesburg Land Records.
6. Quit Claim Deed of Charles S. Hayden dated January 14, 1958 and recorded in Book 30 at Page 197 of the Town of Hinesburg Land Records.
7. Warranty Deed of Plant & Griffith Lumber Co. dated April 8, 1958 and recorded in Book 30 at Page 211 of the Town of Hinesburg Land Records.
8. Warranty Deed of Carse Land Company, LLC, dated on or about even date herewith and recorded in Book \_\_\_ at Page \_\_\_ in the Town of Hinesburg Land Records.

**Excepted and excluded** from this description of the Protected Property is a 0.5 acre parcel of land located \_\_\_ and more particularly described as follows, all bearings referenced to "Grid North":

Meaning and intending to include in this description of the Protected Property all of the land with the buildings and improvements thereon lying north of Town Highway #33 (also known as Lincoln Hill Road) and on both sides of Town Highway #19 (also known as Hayden Hill Road), in the Town of Hinesburg, Vermont, and generally described as containing 1,125 acres, more or less.

**NOTICE: Unless otherwise expressly indicated, the descriptions in this Schedule A and in any subsequent Schedules are not based on a survey or subdivision plat.** The Grantor and Grantees have used their best efforts to depict the approximate boundaries of the Protected Property and any excluded parcels, complexes or special treatment areas on a plan entitled "Vermont Land Trust - Hinesburg Town Forest Property, Town of Hinesburg, Chittenden Co., VT, \_\_\_\_\_ 202\_\_" signed by the Grantor and Grantees (referred to throughout this Grant and its Schedules as "Hinesburg Town Forest Conservation Plan"). The Hinesburg Town Forest Conservation Plan is based upon Vermont Base Map digital orthophotos and other information available to Grantees at the time of the Plan's preparation. Any metes and bounds descriptions included in the Schedules herein are approximate only. They are computer generated and are not the result of field measurements or extensive title research. The Hinesburg Town Forest Conservation Plan and any metes and bounds descriptions herein are intended solely for the use of the Grantor and Grantee in establishing the approximate location of the areas described and for administering and interpreting the terms and conditions of this Grant. No monuments have been placed on the ground. The Hinesburg Town Forest Conservation Plan is kept by the Vermont Land Trust, Inc. in its Stewardship Office. **The Hinesburg Town Forest Conservation Plan is not a survey and must not be used as a survey or for any conveyance or subdivision of the land depicted thereon.**

Grantor and Grantees do not intend to imply any limitation on the area of land included in this description, should a survey determine that additional land is also encumbered by the Grant. If, in the future, the Grantor or Grantees shall prepare a survey of the Protected Property, of any portion thereof, or of any excluded lands, and that survey is accepted by the other party or confirmed by a court, the descriptions in the survey shall control.

Reference may be made to the above described deed and record, and to the deeds and records referred to therein, in further aid of this description.