

Agency of Agriculture, Food & Markets  
116 State Street  
Montpelier, VT 05620-2901  
[www.VermontAgriculture.com](http://www.VermontAgriculture.com)

TO: Peter Shumlin, Governor  
FROM: *Diane Battifolli Deputy Secretary* For Charles R. Ross, Jr., Secretary, Vermont Agency of Agriculture, Food & Markets  
DATE: March 16, 2015  
RE: Acquisition of Development Rights – R.J. Fournier & Sons Farm, Inc., Swanton

Your approval is requested for the acquisition of development rights, conservation restrictions, option to purchase, and right of enforcement of the United States on 96 acres of farmland in Swanton owned by R.J. Fournier & Sons Farm, Inc.

The Swanton Selectboard and the Northwest Regional Planning Commission indicate their support of the conservation of this parcel, as evidenced by the attached letters.

#### I. Description of Property

Earl Fournier was a Selectboard member when VLT was very active in conserving Swanton's prime farmland near St. Alban's Bay. While the pace has slowed since then, he's always been a keen observer of farmland conservation. He never felt that conserving the family dairy farm was a good business decision for his family until now. His son David (37) is the fifth generation and he is firmly committed to the farm so conserving will assist a transfer. And more importantly, Earl believes that conservation is a good business decision for Vermont's agricultural future.

The farm corporation was formed by Earl's father Rene in 1974. It helped separate their farm equipment business. In 1983 Earl and Susan became the majority shareholders and several years ago David was added. The farm is in two distinct parcels of 114 and 123 acres. Since the undeveloped lake frontage has very high development value the project funding is split into two phases. The land conserved under this easement represents phase one. Phase two will conserve 119 acres to the south.

The Fournier farm epitomizes the Dairy of Distinction award. It is a very tidy and well-managed farm. They transitioned their 90 cow herd to organic in 2004 and they grow unique forages such as a triticale/sudangrass mix. The 78 acres (78%) of prime soil on phase one can grow just about anything that grows in Vermont. The dominant soil types are Enosburgh loamy fine sand and two types of loams. Another 14 acres are statewide so only 8% is non-ag soil and even that grows good hay. The excellent fertility is accentuated by extensive drainage improvements – every field is tiled.

#### II. Need

The sale of development rights on this property will ensure it remains undeveloped and will help transfer the farm to the next generation of farmers.



### III. Source of Funds

The purchase price for the easement with the option to purchase at agricultural value is \$400,000. VHCB approved a grant for this project in the amount of \$404,000 (\$400,000 for easement purchase and \$4,000 for third-party costs). Financial leverage for this conservation effort includes a \$44,000 bargain sale equal to 10% of the easement purchase.

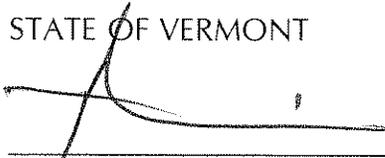
A landowner contribution is not required due to a 10% bargain sale.

**APPROVAL AND ACCEPTANCE OF  
DEVELOPMENT RIGHTS IN REAL PROPERTY**

Now come Peter Shumlin, Governor, and Charles R. Ross, Jr., Secretary, the undersigned, and hereby approve and accept the Grant of Development Rights, Conservation Restrictions, Option to Purchase and Right of Enforcement of the United States for 96 acres, more or less, of land owned by R.J. Fournier & Sons Farm, Inc., located in the Town of Swanton, Vermont, by the Vermont Agency of Agriculture, Food and Markets. The Grant is to be recorded in the Land Records of the Town of Swanton.

This action is taken pursuant to the authority vested in the Governor and the Secretary of the Vermont Agency of Agriculture, Food and Markets by Title 6, Chapter 1, Section 14 of the Vermont Statutes Annotated.

4/13/15  
Date

STATE OF VERMONT  
  
Peter Shumlin  
Governor

4/3/15  
Date

VERMONT AGENCY OF AGRICULTURE,  
FOOD AND MARKETS  
  
For Charles R. Ross, Jr.  
Secretary



# Vermont Land Trust

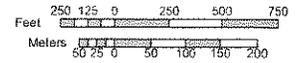
Fournier Farm  
Town of Swanton  
Franklin Co., VT

March 2015

VLT Project #131217 VHCB #2014-075

The Fournier Farm Conservation Plan is based on 2011 DigitalGlobe-Microsoft orthophotos.

1:5,000 1 inch = 416.7 feet



Lake Champlain

Archaeology Zone  
± 4.0 acres

Excluded  
± 0.5 acre

Excluded  
± 4.4 acres

Excluded  
± 13.0 acres

Building Envelope  
± 5.5 acres

Excluded  
± 1.0 acre

Excluded  
± 123 acres (approx.)  
All Lands East of  
Campbell Bay Rd.

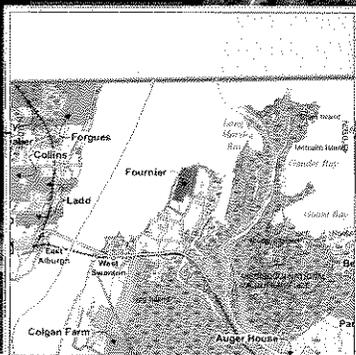
Protected Property

Building Envelope

Archaeology Zone

Excluded Land

ROW



### ACREAGE INFORMATION\*

Tillable	78.5 acres
Pasture	5.1 acres
Woods	6.4 acres
Open Water/Wetland	0.5 acre
Building Envelope	5.5 acres
<b>Total Protected Property</b>	<b>± 96 acres</b>
Excluded Land	± 141.9 acres

\* All acreage is approximate, and is exclusive of public road rights of way.

### Reviewed and Accepted by:

Duly Authorized Agent of R. J. Fournier & Sons Farm, Inc. Date

Duly Authorized Agent of Vermont Land Trust, Inc. Date



## Jensen, Sylvia

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**From:** Moncrief, Monica - NRCS, Colchester, VT <Monica.Moncrief@vt.usda.gov>  
**Sent:** Thursday, March 26, 2015 8:54 AM  
**To:** Nancy Everhart; Allen Karnatz; Penny Hannigan; Jensen, Sylvia; Smith, Stephanie  
**Subject:** Fournier haz mat

Hi,

The hazardous material review has been completed on the Fournier project and no issues were found at the time of the review.

Thanks,

Monica Moncrief  
Legal Instruments Examiner  
Natural Resource Conservation Service  
356 Mountain View Drive, Suite 105  
Colchester, VT 05446  
802-951-6796 ext 227  
Fax: 855-794-3677





# Natural Resources Atlas

Vermont Agency of Natural Resources

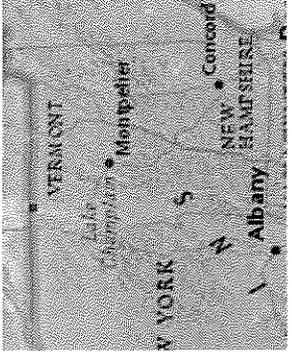
vermont.gov



1: 14,000  
March 12, 2015

711.0 0 356.00 711.0 Meters  
1" = 1167 Ft. 1cm = 140 Meters  
WGS\_1984\_Web\_Mercator\_Auxiliary\_Sphere  
© Vermont Agency of Natural Resources  
THIS MAP IS NOT TO BE USED FOR NAVIGATION

DISCLAIMER: This map is for general reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. ANR and the State of Vermont make no representations of any kind, including but not limited to, the warranties of merchantability, or fitness for a particular use, nor are any such warranties to be implied with respect to the data on this map.



## LEGEND

- Hazardous Waste Site
- Hazardous Waste Generators
- Town Boundary

## NOTES

Map created using ANR's Natural Resources Atlas



**Town of Swanton**  
**OFFICE of the SELECTBOARD**  
P.O. Box 711, 1 Academy Street  
Swanton, VT 05488

January 6, 2015

Mr. Allen Karnatz, Champlain Valley Regional Director  
Vermont Land Trust  
P.O. Box 850  
Richmond, VT 05477

Dear Mr. Karnatz:

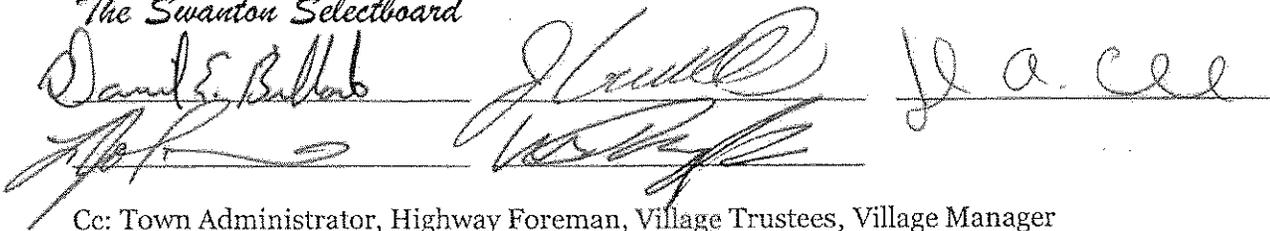
The Swanton Selectboard has reviewed your letter dated December 30, 2014 requesting a letter in support of Earl & Susan Fournier's application to permanently conserve approximately 96 acres of their property in West Swanton for agriculture and/or forestry use. Funding for purchase of their development rights is approved by the Vermont Housing and Conservation Board.

At the Selectboard's January 6, 2015 regular meeting, we voted in the affirmative to support the Fournier's initiative with the Vermont Land Trust for a permanent easement conserving their 96 acres from development. The protection of agricultural land is a goal espoused by Swanton's *Municipal Plan*.

Please let us know if we can be of further assistance.

Sincerely,

*The Swanton Selectboard*

Three handwritten signatures are present, each on a horizontal line. The first signature is 'David E. Ballant', the second is 'James D. [unclear]', and the third is 'J. A. [unclear]'. The signatures are written in dark ink.

Cc: Town Administrator, Highway Foreman, Village Trustees, Village Manager





155 Lake Street • St. Albans, VT 05478 • (802) 524-5958 • (800) 564-5958 • Fax (802) 527-2948

June 4, 2013

Allen Karnatz  
Vermont Land Trust  
PO Box 850  
Richmond, VT 05477

Dear Allen:

Thank you for forwarding information regarding the Vermont Land Trust's work with the following farmers to permanently protect their land for agricultural use:

Walter & Diane Berthiaume	Fairfax
Earl, Susan & David Fournier	Swanton
Andre & Eileen Gagne	Swanton
David & Peggy Howrigan	Fairfax
David & Cathy Montagne	St. Albans

The Commission has long supported the efforts of the Vermont Land Trust to work with interested landowners to protect their lands for farming and other conservation purposes. We especially appreciate the emphasis being placed on protecting large, contiguous acreage of productive farmland to maintain the critical mass needed to sustain farming in the long-term.

We are, therefore, pleased to lend our support to these applications, based on our review of the information provided, with the assurance that they are in conformance with all municipal plans and bylaws currently in effect. We wish you and the applicants the best of success before the Vermont Housing and Conservation Board. If we may be of further assistance, please don't hesitate to give me a call.

Best regards,

Catherine Dimitruk  
Executive Director



EXHIBIT B

GRANT OF DEVELOPMENT RIGHTS, CONSERVATION RESTRICTIONS,  
OPTION TO PURCHASE, and RIGHT OF ENFORCEMENT OF THE UNITED STATES

KNOW ALL PERSONS BY THESE PRESENTS that that **R. J. FOURNIER & SONS FARM, INC.**, (aka R.J. Fournier & Sons, Inc. and Rene J. Fournier & Sons, Farm, Inc.) a Vermont corporation with a principal place of business in Swanton, County of Franklin,, State of Vermont, 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 Grantor's 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 qualified under Sections 501(c)(3) and 170(h) of the Internal Revenue Code ("VLT"), the **VERMONT AGENCY OF AGRICULTURE, FOOD AND MARKETS**, an agency of the State of Vermont with its principal offices in Montpelier, Vermont ("VAAF"), and the **VERMONT HOUSING AND CONSERVATION BOARD**, an independent board of the State of Vermont with its offices in Montpelier, Vermont ("VHCB"), and their respective successors and assigns (hereinafter collectively "Grantees") as tenants in common, forever, the development rights, option to purchase at agricultural value and a perpetual conservation easement and restrictions (hereinafter known as the "Grant") in certain lands consisting of 96 acres, more or less, with the buildings and improvements now or hereafter situated thereon (hereinafter "Protected Property") together with a non-exclusive easement and right of way for access from Town Highway #9 (also known as Campbell Bay Road) to the Protected Property, located in the Town of Swanton, County of Franklin, State of Vermont, said Protected Property being more particularly described in Schedule A attached hereto and incorporated herein. Grantor also gives, grants, sells, conveys and confirms unto the UNITED STATES OF AMERICA, by and through the United States Department of Agriculture ("USDA") Natural Resources Conservation Service ("NRCS" or "UNITED STATES") acting on behalf of the Commodity Credit Corporation, as its interest appears herein, a right of enforcement for the purpose of forever conserving the agricultural productivity of the Protected Property and its value for resource preservation and as farmland.

The Agricultural Conservation Easement Program ("ACEP") facilitated and provided funding through a Cooperative Agreement for the purchase of this Grant, an agricultural land easement under ACEP, on the Protected Property for the purpose of protecting the agricultural use and future viability, and related conservation values, of the Protected Property by limiting nonagricultural uses of the Protected Property. A copy of the Cooperative Agreement is kept on file at the offices of NRCS at 356 Mountain View Drive, Suite 105, Colchester, VT 05446 and at the offices of VHCB.

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 and option hereby conveyed are rights and interests in real property pursuant to Title 10 V.S.A. §§ 823 and 6303. The conservation restrictions 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, to the extent those acts relate to Grantor and not exclusively to Grantees. Grantor and Grantees acknowledge that the conservation restrictions constitute a servitude upon the land and run with the land. The Grantor and Grantees and their respective heirs, successors, agents, assigns, lessees, and any other person claiming under them shall comply with all terms, conditions and restrictions of this Grant.

I. Purposes of the Grant.

1. Consistent with the goals set forth in 10 V.S.A. §§ 821 and 6301, the Grantor, Grantees and the United States acknowledge that this Grant is acquired with its primary purpose being to protect the agricultural use and future viability, and related conservation values, of the Protected Property, thereby preserving and protecting in perpetuity the multiple, interrelated land features which are critical to agricultural lands, archaeological resources, open space, and wildlife habitats. Grantor and Grantees further acknowledge that the Property will be managed for long-term agricultural viability. This primary purpose includes the purpose of protecting and sustaining the productive capacity of agricultural soils and their viability for long-term agricultural use.

2. As secondary purposes, the Grantor, Grantees and the United States acknowledge the following secondary purposes: to conserve scenic and natural resources associated with the Protected Property; to improve the quality of life for Vermonters; and, to maintain for the benefit of future generations the essential characteristics of the Vermont countryside. Natural resource conservation includes, but is not limited to, landform and vegetation changes that may accommodate riparian, floodplain and wetland functions, and therefore protects natural flowages and stream equilibrium conditions.

3. The purpose of ensuring that working and productive agricultural lands remain available for production agriculture, affordable and owned by individuals actively engaged in farming will be further advanced by the Option to Purchase at Agricultural Value, as incorporated below.

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

- a) 75 acres of agricultural soils of prime significance which is 78% of the Protected Property;
- b) 13 acres of agricultural soils of statewide significance which is 14% of the Protected Property;
- c) in the vicinity of the Missisquoi National Wildlife Refuge;
- d) archaeological features including one (1) Native American burial site designated as Site VT-FR-13 in the Vermont Archaeological Inventory; and
- e) 1,400 feet of frontage on Lake Champlain.

Grantor and Grantees recognize these agricultural, silvicultural, scenic, ecological and natural resource values of the Protected Property, and share the common purpose of conserving these values by the conveyance of conservation restrictions, development rights, and option to purchase, to prevent the use, fragmentation, or development of the Protected Property for any purpose or in any manner which would conflict with the maintenance of these values. Grantor and Grantees also recognize that the objectives of ensuring that working and productive agricultural lands remain available for production agriculture, affordable and owned by persons actively engaged in farming will be further advanced by the Option to Purchase at Agricultural Value, as incorporated below. Grantees accept such conservation restrictions, development rights and option to purchase in order to conserve these values for present and future generations and to ensure resale of the Protected Property at its agricultural value.

The purposes set forth above in this Section I are hereinafter collectively referred to as "Purposes of this Grant."

## **II. Agricultural Land Easement Plan.**

As required by section 16 U.S.C. 3865 agricultural production and related uses of the Protected Property are subject to an Agricultural Land Easement Plan, as approved by the NRCS State Conservationist or his or her designee, to promote the long-term viability of the land. Grantor agrees to implement the Agricultural Land Easement Plan on the Protected Property.

If the Protected Property contains Highly Erodible Land or forestland then component plans are required as part of the Agricultural Land Easement Plan. Component plans to the Agricultural Land Easement Plan are required as follows: 1) parcels with Highly Erodible Land must have a Conservation Plan and where appropriate, the plan will include conversion of highly erodible cropland to less intensive uses; 2) parcels with contiguous forest that exceeds the greater of 40 acres or 20 percent of the Protected Property must have a Forest Management Plan. The Agricultural Land Easement Plan shall not include any provisions inconsistent with the Purposes of this Grant.

This Agricultural Land Easement Plan including any applicable component plans, (collectively referred to herein as the "Agricultural Land Easement Plan"), is herein incorporated by reference. The Grantees and Grantor agree to update the plan in the event the agricultural uses of the Protected Property change. A copy of the current Agricultural Land Easement Plan must be kept on file with the Grantees and will be provided to NRCS upon request after reasonable notice.

NRCS shall have the right to enter upon the Protected Property, with advance notice to the Grantees and Grantor, in order to monitor compliance with the Agricultural Land Easement Plan and as provided for in Section VI of this Grant. In the event of substantial ongoing noncompliance with the Agricultural Land Easement Plan, NRCS shall notify the Grantees. NRCS will give the Grantees and Grantor a reasonable amount of time, not to exceed twelve months, to take corrective action, during which time the Grantees will explore methods of compliance with Grantor. The Grantees shall take all reasonable steps (including efforts at securing voluntary compliance and, if necessary, appropriate legal action) to secure compliance with the Agricultural Land Easement Plan following written notification from NRCS that there is a substantial, ongoing event or circumstance of non-compliance with the Agricultural Land Easement Plan. If Grantees fail to enforce the terms of the Grant, including, but not limited to compliance with the Agricultural Land Easement Plan, the United States may exercise its right of enforcement.

The provisions of this section apply to the Agricultural Conservation Easement Program and are not intended to affect any other natural resources conservation requirements to which the Grantor may be or become subject.

## **III. Restricted Uses of Protected Property.**

Any activities inconsistent with the Purposes of this Grant are prohibited. The following activities are specifically prohibited, subject to the qualifications stated below:

1. *Residential Uses and Structures* - No residential activities shall be permitted, and no building, structure or appurtenant facility or improvement shall be constructed, created, installed, erected or moved onto the Protected Property, except as specifically permitted under this Grant.

2. *Industrial or Commercial Uses* - Industrial or commercial activities on the Protected Property are prohibited except for the following:

(i) agricultural production and related uses conducted in accordance with the Agricultural Land Easement Plan required by Section II of this Grant;

(ii) processing or sale of farm or forest products produced or partially produced on the Protected Property in approved buildings;

(iii) small-scale incidental commercial or industrial operations compatible with activities set forth in Section III(2)(i) of this Grant that Grantees approve in writing as being consistent with the Purposes of this Grant;

(iv) activities that can be and in fact are conducted within approved buildings without material alteration to their external appearance or harming the agricultural use and future viability, and related conservation values of the Protected Property;

(v) the sale of excess power generated in the operation of alternative energy structures and associated equipment or other energy structures that Grantees approve in writing as being consistent with the Purposes of this Grant;

(vi) temporary or seasonal outdoor activities or events that do not harm the agricultural use and future viability, and related conservation values of the Protected Property; and,

(vii) customary rural enterprises related to agriculture or forestry or small-scale commercial enterprises compatible with agriculture or forestry such as, but not limited to, farm machinery repair, agri-tourism, processing, packaging, and marketing of farm or forest products, and small-scale farm wineries, cafés, shops, and studios for arts or crafts.

3. *Construction on the Protected Property* – All new structures and improvements must be located within the Building Envelope, containing approximately 5.5 acres and described in Schedule B which is appended to and made a part of this Grant, and is depicted on the Fournier Farm Plan described in Schedule A attached hereto and incorporated herein.

The boundaries and location of the Building Envelope may be adjusted if Grantees and the Chief of NRCS provide prior written approval of the adjusted boundaries and location. The Building Envelope(s) may not increase in size and the adjusted Building Envelope must provide equal or greater protection of the agricultural use and future viability, and related conservation values of the Protected Property.

Utilities to serve approved buildings or structures, including on-farm energy structures allowed under Section IV(6) and agricultural structures that neither individually nor collectively have an adverse impact on the agricultural use and future viability and related conservation values

of the Protected Property may be built outside of the Building Envelope with prior written approval of the Grantees provided that the utilities or agricultural structures follow applicable NRCS-approved conservation practices consistent with the Agricultural Land Easement Plan described in Section II. Without limiting the foregoing, and with the prior written approval of Grantees, the Grantor may construct, maintain, repair, replace, relocate, improve and use systems for disposal of human waste and for supply of water for human consumption (collectively "Systems") on the Protected Property outside of the Building Envelope for the benefit of buildings or structures permitted in the Building Envelope, provided that such Systems comply with Vermont Department of Environmental Conservation Wastewater System and Potable Water Supply Rules or the then applicable law or regulations governing Systems. Grantor shall notify Grantees in writing prior to commencing construction on any new structure or improvement within the Building Envelope.

4. Each time that the agricultural land on the Protected Property lies fallow for more than two successive years (the "fallow land"), Grantor shall cooperate with Grantees, at Grantees' request, to maintain the fallow land in an open condition (meaning without trees and brush) and in active agricultural use. For example, Grantor shall permit access to the fallow land by Grantees and Grantees' contractors to crop, mow, or brush-hog. No obligation is hereby imposed upon Grantor or Grantees to maintain the fallow land in an open condition or in active agricultural use.

5. *Granting of easements for utilities and roads* – The granting or modification of easements for utilities and roads is prohibited when the utility or road will harm the agricultural use and future viability and related conservation values of the Protected Property as determined by the Grantees in consultation with the Chief of NRCS.

6. There shall be no signs, billboards, or outdoor advertising of any kind erected or displayed on the Protected Property. Grantor, however, may erect and maintain reasonable: (a) signs indicating the name of the Protected Property, (b) boundary markers, (c) directional signs, (d) signs regarding hunting, fishing, trapping, trespassing on the Protected Property or signs otherwise regarding public access to the Protected Property, (e) memorial plaques, (f) temporary signs indicating that the Protected Property is for sale or lease, (g) signs informing the public that any agricultural or timber products are for sale or are being grown on the Protected Property, (h) political or religious signs, or (i) signs informing the public of any rural enterprise approved pursuant to Section III(1) above. Grantees, with the permission of Grantor, may erect and maintain signs designating the Protected Property as land under the protection of Grantees.

7. *Waste and Dumping* – Accumulation or dumping of trash, refuse, sewage, junk or toxic materials is not allowed on the Protected Property. This restriction will not prevent generally accepted agricultural or wildlife management practices, such as creation of brush piles, composting, or the storage of farm machinery, organic matter, agricultural products, or agricultural byproducts on the Protected Property.

8. *Surface Alteration* – Grading, blasting, filling, sod farming, earth removal or any other activity that will disturb the soil surface or materially alter the topography, surface or subsurface water systems, or wetlands of the Protected Property is prohibited, except as follows:

(i) dam construction to create ponds for agricultural use, fire protection, or wildlife enhancement, or wetland restoration, enhancement or creation, in accordance with an Agricultural

Land Easement Plan and NRCS standards and specifications;

(ii) erosion and sediment control pursuant to an erosion and sediment control plan approved by the Grantees;

(iii) as required in the construction of approved buildings, structures, roads, and utilities provided that they are compatible with the required alteration and have been approved in writing by Grantees as being consistent with the Purposes of this Grant; or

(iv) agricultural activities conducted in accordance with the Agricultural Land Easement Plan.

9. *Oil, Gas, or Mineral Exploration and Extraction* – Mining or extraction of soil, sand, gravel, oil, natural gas, fuel, coal, or any other mineral substance owned by Grantor as of the date of this Grant or later acquired by Grantor, using any surface mining, subsurface mining, or dredging method, from the Protected Property is prohibited, except for limited mining activities to the extent that the materials mined (e.g. sand, gravel, or shale) are used for agricultural operations on the Protected Property. In the case of this limited mining for materials used for agricultural operations, extraction must be limited to a small, defined area or acreage identified in Schedule [C] and may not harm the conservation values or the agricultural uses of the Protected Property. In no case shall surface mining of subsurface oil, gas, or other minerals be permitted.

10. *Subdivision* – Separate conveyance of a portion of the Protected Property or division or subdivision of the Protected Property is prohibited, except where state or local regulations explicitly require subdivision to construct residences for employees working on the Protected Property, or as may otherwise be permitted in Section III(11) below. Grantor shall provide written notice and evidence of such requirements to Grantees and the Chief of NRCS or his or her authorized designee (Chief of NRCS) prior to division of the Protected Property.

11. Except as provided in Section III(10) above and subject to Grantees' option rights under Section VIII below, the Protected Property shall not be partitioned, divided or subdivided into, or separately conveyed as, more than two farm parcels (one division allowed), nor shall ownership of the buildings on the Protected Property be separated from the ownership of the Protected Property, without the prior written approval of Grantees, which approval may be granted, conditioned or denied in Grantees' sole discretion. To ensure the future agricultural viability of the Protected Property, the boundaries of such division must be approved in writing by Grantees and the Chief of NRCS or his or her authorized designee (Chief of NRCS) before any such division, subdivision or separate conveyance occurs. The Chief of NRCS may only approve the division, subdivision or separate conveyance of the Protected Property into separately conveyable farm parcels when:

a. The Grantees request the Chief of NRCS's approval to subdivide the Protected Property into separate farm parcels, after receiving a request from the Grantor;

b. The Grantor certifies to the Chief of NRCS that the requested subdivision is required to keep all farm parcels in production and viable for agriculture use and that separate conveyance of the Protected Property farm parcels will move the land from one agricultural operation to

another; and,

- c. The Chief of NRCS determines that the:
  - i. Parcels resulting from the subdivision of the Protected Property will meet ACEP land eligibility requirements of 16 U.S.C. § 3865 et seq. as enacted on the date the Protected Property was enrolled in ACEP;
  - ii. Subdivision will not decrease the Grant's protection for the agricultural use and future viability, and related conservation values, of the Protected Property; and,
  - iii. The resulting parcel will not be below the median size of farms in the county as determined by most recent United States Department of Agriculture's National Agricultural Statistical Survey (NASS).

After Grantor receives written approval from Grantees and the Chief of NRCS, the Grantor shall give Grantees and the Chief of NRCS written notice prior to making a division of the Protected Property. Grantor shall pay Grantees an additional stewardship endowment in an amount consistent with Grantees' policies at the time that Grantor exercises its subdivision right pursuant to this Section III(9) as a consequence of creating separately owned farm units. The resulting parcels of land shall remain subject to this Grant.

12. *Limitation on Impervious Surfaces* - Impervious surfaces will not exceed 2% of the Protected Property, excluding NRCS-approved conservation practices developed under the Agricultural Land Easement Plan described in Section II of this Grant. Impervious surfaces are defined as material that does not allow water to percolate into the soil on the Protected Property; this includes, but is not limited to, residential buildings, agricultural buildings with or without flooring, paved areas, and any other surfaces that are covered by asphalt, concrete, or roofs. This limitation does not include public roads or other roads owned and controlled by parties with superior rights to those rights conveyed to Grantees by this Grant.

In the event the Protected Property is subdivided as provided for in Section III(10) the total cumulative impervious surface of the subdivided parcels shall not exceed the impervious limitation referenced above. The Grantor, with Grantees' approval, shall allocate the impervious surface limit among the subdivided parcels and ensure said impervious surface limitation is clearly defined in each subdivided parcel's recorded instrument.

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

The provisions of this Grant and associated schedules will not be interpreted to restrict the types of agricultural operations that can function on the Protected Property, so long as the agricultural operations are consistent with the Agricultural Land Easement Plan required by Section II of this Grant. Permitted uses of the Protected Property include the specific uses permitted in Section III(2) (i)-(vii) and the following activities, subject to the qualifications stated below:

1. *Agricultural Production* - The production, processing, and marketing of agricultural crops and livestock is permitted provided it is conducted in a manner consistent with the terms of the Agricultural Land Easement Plan described in Section II.

2. *Forest Management and Timber Harvest*- Forest management and timber harvesting is permitted, provided all forest management and timber harvesting is carried out in accordance with all applicable local, State, Federal, and other governmental laws and regulations and to the extent reasonably practicable, in accordance with current, generally accepted best management practices for the sites, soils, and terrain of the Protected Property. In addition, if the Protected Property contains 40 contiguous acres of forest or 20 percent of the Protected Property is forestland, then forest management and timber harvesting must be performed in accordance with a written forest management plan. The forest management plan must be prepared by a professional resource manager, in consultation with the Grantees and approved by the NRCS State Conservationist or his or her designee (State Conservationist). Forest management plans may include a forest stewardship plan, as specified in section 5 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103a); another practice plan approved by the State Forester; or, another plan determined appropriate by the State Conservationist. Grantor shall obtain Grantees' prior written approval to clearcut forest land to establish fields, orchards or pastures. Grantees' approval shall not be unreasonably withheld if such clearcutting is consistent with the Purposes of this Grant.

A forest management plan shall not be required for the following permitted non-commercial activities: (i) cutting of trees for the construction of permitted roads, utilities, buildings and structures on the Protected Property, (ii) cutting of trees for trail clearing, (iii) cutting of trees for domestic use as firewood, or for other domestic uses by Grantor, (iv) removal of trees posing an imminent hazard to the health or safety of persons or livestock, or (v) removal of invasive species.

3. *Non-Developed and Non-Consumptive Recreation and Educational Activities* – Recreational and educational activities that are both non-developed, non-motorized and non-consumptive are permitted if they do not negatively affect the soils and the agricultural operations, and are consistent with the Purpose of this Grant. Non-commercial snowmobiling may be permitted at the discretion of Grantor.

4. *Construction and Maintenance of Roads* – New roads may be constructed if they are within impervious surface limits, approved in advance by Grantees, and necessary to carry out the agricultural operations or other permitted uses on the Protected Property. Maintenance of existing roads documented in the Baseline Documentation Report is permitted; however, existing roads may not be widened or improved unless widening and improving is within impervious surface limits, approved in advance by Grantees, and necessary to carry out the agricultural operations or other permitted uses on the Protected Property.

5. *Fences* – Existing fences may be maintained and replaced. New fences may be installed if they are necessary for agricultural operations on the Protected Property or to mark boundaries of the Protected Property.

6. *On-Farm Energy Production* - Renewable energy production is allowed for the purpose of generating energy for the agricultural and residential needs of the Protected Property. Renewable energy sources on the Protected Property must be approved by Grantees', in their sole discretion, and at a minimum shall be built and maintained in accordance with any local zoning ordinance and applicable State and Federal laws. Renewable energy sources must be built and maintained within impervious surface limits, with minimal impact on the conservation values of the Protected Property and consistent with the Purposes of this Grant, as determined by Grantees'.

7. For the purpose of providing housing exclusively for Grantor who is engaged in farming operations on the Protected Property or for persons employed by the Grantor in farming operations on the Protected Property, and for the employee's family or household members, as a nonmonetary benefit of farm employment, the right to construct, use, maintain, repair, renovate, replace, enlarge and rebuild farm labor housing which may be within an existing building or a new building ("the FLH") together with appurtenant non-residential structures and improvements, including drives, utilities, and water and wastewater systems normally associated with a residence; provided, however, that prior to construction, renovation, replacement, enlargement or rebuilding Grantor shall obtain Grantees' written approval which, in Grantees' sole discretion, may be withheld or given subject to such conditions as the Grantees deem appropriate, if Grantor demonstrates to Grantees' satisfaction that the FLH or alteration thereto is:

- a) necessary to the current and reasonably foreseeable farm business on the Protected Property in order to facilitate the active and long-term economically viable agricultural use of the Protected Property; and
- b) located within a Building Envelope as described in Section III(2) or, if not located within a Building Envelope, that there are specific reasons why the proposed location is necessary to the current and reasonably foreseeable farm business on the Protected Property and otherwise consistent with the Purposes of the Grant; and
- c) designed and sized to be no larger than is necessary to meet the needs of the current and reasonably foreseeable farm business on the Protected Property and to ensure that the Protected Property remains available for production agriculture, affordable and owned by persons actively engaged in farming; and
- d) otherwise consistent with the Purposes of the Grant.

If the FLH is not needed for farm labor housing in the future, temporary alternative uses of the structure deemed by the Grantees in their sole discretion to be consistent with the Purposes of this Grant may be permitted with the prior written approval of the Grantees.

8. In connection with any activities permitted pursuant to Section III(2)(vii) of this Grant, the right to maintain, repair, enlarge, replace and use permitted structures with associated utility services, drives and appurtenant improvements within a Building Envelope. Grantees may approve a new, non-residential, structure for such activities only if an existing structure is not suitable and the new structure is:

- a) fewer than 1500 square feet as an exterior measure of the footprint and no more than 25 feet from the lowest undisturbed ground level to the roof peak;
- b) inclusive of all storage space so that no part of the business is conducted outside of the structure;
- c) of a nature, intensity, scope, size, appearance, type and quantity compatible with the existing agricultural structures;
- d) located in a way that minimizes negative impact on future operations and expansion of agricultural uses; does not interfere with current agricultural operations; and, does not displace farm or forestry storage, use or functions;
- e) non-residential; and,
- f) not inconsistent with the Purposes of this Grant.

No use or structure contemplated under this Section IV(8) shall be commenced, constructed or located without first securing the prior written approval of Grantees, which approval Grantees may deny or condition in their sole discretion. All structures and uses shall conform with all applicable local, state and federal ordinances, statutes and regulations. Grantees' approval may be conditioned upon, without limitation, receipt of copies of any necessary governmental permits and approvals that Grantor obtains for such use or construction. Grantee VHCB shall not approve a new structure for a non-agricultural approved rural enterprise unless the proposed structure meets factors (a) through (f), above. However, VHCB may waive factors (a), (b) or (c) if the Grantees determine that the unique circumstances of the situation warrant waiver and approval.

9. Notwithstanding anything to the contrary contained in Section III(5) of this Grant, the right to construct, maintain, repair, replace, relocate, improve and use systems for disposal of human waste and for supply of water for human consumption (collectively "Systems") on the Protected Property for the two existing single-family residences located on the thirteen (13) acre parcel of land owned by the original Grantor herein at the date of this Grant but excluded from the Protected Property under Schedule A hereto, and for the first single-family residence which may be located on the one(1) acre parcel of land owned by the original Grantor herein at the date of this Grant but excluded from the Protected Property under Schedule A hereto ("Exclusion"). Any such Systems may be constructed, maintained, operated, repaired, replaced, relocated or improved on the Protected Property only if there does not exist within the Exclusion any suitable location for such Systems, under the Vermont Department of Environmental Conservation Wastewater System and Potable Water Supply Rules or the then applicable law or regulations governing Systems (collectively "the Rules"), as determined by a person authorized to make such determination under the Rules retained at Grantor's sole cost and expense. Grantor shall first obtain the written approval of Grantees for the location, relocation, replacement or improvement of such Systems on the Protected Property, which approval shall not be unreasonably withheld nor conditioned, provided that:

- a) All reasonable attempts to locate, relocate, replace or improve the Systems within the Exclusion in a manner that complies with the then current Rules are exhausted; and
- b) Such Systems are located in a manner consistent with the Purposes of this Grant and especially minimize the loss of agricultural soils; and,
- c) Such Systems are designed by a person authorized to do so under the Rules retained at Grantor's sole cost and expense, certified by such person as complying with the Rules, installed in compliance with the Rules, certified by person authorized to do so under the Rules as being installed in accordance with the certified design and approved in accordance with all the then applicable Rules.

After Grantor has obtained Grantees' approval for a System serving the Exclusion, Grantor shall have the right to convey legal access to the successor owners of the Exclusion for construction, operation and maintenance of the System as an appurtenance only to the Exclusion.

10. Notwithstanding anything to the contrary contained herein, the right to construct, use, maintain, repair and replace one (1) tent platform, lean-to or Adirondack shelter not to exceed 300 square feet in area provided, however, that any such structure shall be used exclusively for non-commercial, periodic camping, hunting and recreational purposes, and not for permanent

occupancy; shall not have commercial utility services or an access road improved beyond what is minimally required to afford reasonable vehicular access; and shall be located on non-agricultural land. Grantor shall notify Grantees in writing prior to commencing the placement, construction or relocation of such permitted structure or access so that Grantees may review and approve the proposed location and dimensions of the structure and access, in order to ensure that the dimensions of the structure are in compliance with this section and the structure and access are located in a manner consistent with the Purposes of this Grant. In addition, Grantor may place a limited number of small hunting blinds on the Property in order to carry-out permitted hunting activities, provided that the location of such blinds must be consistent with the Purposes of this Grant.

11. *Other Allowed Uses* – Other uses may be allowed if they do not harm the agricultural use and future viability, and related conservation values of the Protected Property, are consistent with the Purposes of this Grant, and approved in advance by Grantees, in their sole discretion.

12. *Historic or Archaeological Resources.* Existing archaeologically, culturally or historically significant features on the Protected Property including, but not limited to, such features as documented in the Baseline Documentation Report shall be maintained consistent with the guidelines provided in The Secretary of Department of the Interior's Standards for the Treatment of Historic Properties pursuant to 36 CFR 68, as amended. The archaeologically, culturally, or historically significant features may not be altered or removed without Grantees' prior written approval, which approval shall not be given except where the proposed activity is accomplished in accordance with the guidelines provided in The Secretary of The Department of the Interior's Standards for the Treatment of Historic Properties.

13. The right to construct, use, maintain and repair a gravel or otherwise unpaved residential driveway and the right to construct, use, maintain, repair and replace customary residential utilities all within a single corridor not exceeding sixty feet (60') in width extending across the Protected Property from the westerly side of the thirteen (13) acre excluded parcel described in Schedule A attached hereto and incorporated herein for the use and benefit of not more than one single family dwelling which may be located on the one (1) acre parcel of land excluded from this Grant and more particularly described in Schedule A attached hereto and incorporated herein. Also, in the event ownership of the one (1) acre excluded parcel is separated from ownership of the Protected Property, the right to convey or reserve easements for a right of way for ingress and egress on and over said driveway as well as for said customary residential utilities, all within said corridor, for the benefit of not more than one single family dwelling which may be located on said excluded parcel. Said easement corridor shall not exceed sixty feet (60') in width or the minimum width required under applicable state and local regulations, whichever is greater. Prior to constructing the driveway and any such utilities and prior to conveying any such easements, Grantor shall obtain the written approval of Grantees, which approval shall not be unreasonably withheld or conditioned provided, that the proposed driveway, utility or easement is located in the area generally depicted as "ROW" on the Fournier Farm Plan described in said Schedule A, and its design and configuration are consistent with the Purposes of this Grant and otherwise complies with this Section IV(13).

#### V. **Archaeology Zone.**

An archaeology zone, referred to in this Section V as "Archaeology Zone," is hereby designated which shall consist of the one (1) acre area, more or less, as depicted on the Fournier Farm Plan and identified by the State of Vermont as site VT-FR-13. In furtherance of the Purposes of this Grant, Grantor undertakes to do (and to refrain from doing as the case may be) each of the following actions. It is understood that the goals, prescriptions and restrictions of this Section V are in addition to the provisions of Sections III and IV. Where inconsistent, the provisions of this Section V shall supersede the provisions of Sections III and IV; provided, however that the restrictions contained in Section IV(12) shall control:

1. Within the Archaeology Zone, Grantees shall consider the impact of certain proposed structures or activities on the archaeological resources before giving Grantor their prior written approval pursuant to Sections III and IV of this Grant. Grantees may consult with a qualified archaeologist before making their final determination.

In addition to the standard of review required for Grantees' approval under Sections III or IV, Grantees' approval shall not be unreasonably withheld if the structure or improvement can be constructed, completed and used or activity conducted in a manner which protects the archaeological and historical significance of archaeological resources of the Archaeology Zone. Activities that do not require Grantees' approval under Sections III or IV, above, may be conducted within the Archaeology Zone without the need for approval under this Section V. Fencing for agricultural purposes shall not be treated as a structure and may be constructed and maintained in the Archaeology Zone without the prior written approval of Grantees.

2. Grantor shall permit Grantees, or Grantees' designee, access to the Archaeology Zone for the purpose of documenting and conducting research related to the archaeological and historical significance of the archaeological resources of the Archaeology Zone; provided that Grantees shall secure the prior consent of Grantor, which consent shall not be unreasonably withheld or conditioned, provided the nature, duration and timing of Grantees' access does not significantly interfere with Grantor's exercise of rights reserved under this Grant, especially the conduct of agricultural activities. Any such permission may be conditioned upon Grantees, or Grantees' designee returning the surface of the land to as near its original condition as reasonably possible.

3. Grantor shall neither collect nor give permission to any person or entity to collect historical or cultural artifacts on or from any portion of the Archaeology Zone, provided that Grantor may permit the State of Vermont, Division for Historic Preservation to collect historical or cultural artifacts on or from any portion of the Archaeology Zone. All artifacts and objects of antiquity recovered from the Protected Property after the date of this Grant shall be the property of the Grantor unless otherwise agreed by Grantor.

4. This Section V shall not be construed to convey any right to the general public to have access to or otherwise use the Archaeology Zone. The rights and interests under this Section V shall be separately assignable by Grantees.

## **VI. 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 a Grantee becomes aware of an event or circumstance of non-compliance with this Grant, Grantee shall give notice to Grantor and the other Grantees of such event or circumstance of non-compliance via certified mail, return receipt requested, and demand corrective action by Grantor 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 noncompliance 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 such 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 the court determines that Grantor has failed to comply with this Grant, Grantor shall reimburse Grantees for any reasonable costs of enforcement, including court costs and reasonable attorneys' fees, in addition to any other payments ordered by such court. In the event that a Grantee initiates litigation and the court determines that Grantor has not failed to comply with this Grant and that one or more of Grantees have initiated litigation without reasonable cause or in bad faith, then the Grantee(s) who commenced the court proceedings shall reimburse Grantor for any reasonable costs of defending such action, including court costs and reasonable attorneys' fees; provided, however, that this clause shall not apply to the VAAFM and the United States.

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 a Grantee 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 occurred after termination of said prior owner's ownership of the Protected Property.

## **VII. Protection of the United States of America's Interests.**

1. *United States Right of Enforcement.* Under this Grant, the United States is granted the right of enforcement in order to protect the public investment. The Secretary of the United States Department of Agriculture (the Secretary) or his or her assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if the Grantees, or their successors or assigns, fail to enforce any of the terms of this Grant, as determined in the sole discretion of the Secretary. The United States is entitled to recover any and all administrative and legal costs from the Grantees and/or the Grantor, including attorney's fees or expenses, associated with any enforcement or remedial action related to the enforcement of this Grant.

2. *United States Right of Inspection.* The United States will have reasonable access to the Protected Property and may enter the Protected Property from time to time for purposes of inspection (including photographic documentation of the condition of the Protected Property), monitoring compliance with the Agricultural Land Easement Plan and enforcement of the terms of this Grant and the United States Cooperative Agreement with the Grantee VHCB after advance notice to Grantees and Grantor or Grantor's representative, provided, however, in the event of an emergency, the United States may enter the Protected Property to prevent, terminate, or mitigate a potential violation of these restrictions. In the event of an emergency, notice to Grantees and Grantor or Grantor's representative will be given at the earliest practicable time.

## **VIII. Option to Purchase at Agricultural Value.**

Grantees shall have an option to purchase the Protected Property at its agricultural value in accordance with the terms and provisions of this Section VIII ("this Option"). This Option is an integral part of this Grant and constitutes a restriction and a right and interest in real property that runs with the land. This Option shall be perpetual in duration and is given on the following terms and conditions.

1. **Option Trigger.** Grantor shall not sell, transfer or convey the Protected Property, in whole or in part, without first offering the Protected Property for sale to Grantees pursuant to this

Section VIII; provided, however, that the following described transactions shall not trigger Grantees' rights under this Option:

- a) Any mortgage, pledge, or other assignment of the Protected Property to a lender as security for indebtedness, provided the Grantees' interest under this Option is treated as an interest in real estate such that in the event of foreclosure Grantees are deemed necessary parties defendant in such foreclosure case and have the right to redeem the Protected Property from the foreclosure action; and
- b) Any conveyance by the Grantor to Grantor's family, as the latter term is defined in Section IX(9) below, by gift, inheritance, sale or other transfer; and
- c) Any conveyance of the Protected Property to a person who presently earns at least one-half of his or her annual gross income from the "business of farming," as that term is defined in Regulation 1.175-3 issued under the Internal Revenue Code of 1986 and who, in connection with the farming operations on the Protected Property, will continue to earn at least one-half of his or her annual gross income from the "business of farming" ("a Qualified Farmer"); and
- d) Any lease to a Qualified Farmer or a lease having a term of 15 years or less, including renewal rights; provided, however, that any such lease shall expressly provide that, unless otherwise agreed by Grantees, the lease shall terminate and possession shall be delivered free and clear of any rights of the tenant upon a closing of the sale of the Protected Property following exercise of this Option.

This Option shall apply to all other sales and conveyances of the Protected Property, including any sale or conveyance of any interest in the Protected Property including any conveyance by, or conveyance of any interest in a corporation, limited liability company, partnership or other holding entity.

2. **Notice of Intent to Sell.** Whenever Grantor receives an offer from a person or persons ("Buyer") to purchase or lease for a term in excess of fifteen (15) years, including renewal rights, all or any part of the Protected Property including an offer involving property other than the Protected Property ("the Offer"), and Grantor accepts the Offer subject to this Option, Grantor shall deliver to Grantees at their principal places of business by certified mail, return receipt requested, a Notice of Intent to Sell, which notice shall include:

- a) A complete duplicate of the Offer, together with such other instruments as may be required to show the bona fides of the Offer; and
- b) A written description of the Buyer's training and experience as an agricultural producer and an agricultural business plan for the Protected Property, including a description of the agricultural activities to be conducted or facilitated by Buyer, proposed improvements to the Protected Property, and a statement of anticipated agricultural income and expenses for the three-year period following Buyer's acquisition of the Protected Property or, if Buyer has no such training and

experience or intention of operating an agricultural business on the Protected Property, a written statement to that effect; and

- c) If the Buyer is purported to be a Qualified Farmer or family member, the documents necessary to establish the Buyer as such, including the Buyer's most recent federal income tax filing, if applicable; and
- d) The Grantor's current mailing address.

Information delivered to Grantees pursuant to this clause shall remain confidential and shall not be released to any person or entity not a party to this Grant, without the prior consent of Grantor.

- 3. **Exercise of Option.** This Option may be exercised by Grantees as follows:
  - a) A Grantee shall give written Notice of Intent to Exercise not more than thirty (30) days following receipt of the Notice of Intent to Sell described in Section VIII(2); failure by a Grantee to provide such notice shall constitute a waiver of its rights under this Option; and
  - b) Thereafter, Grantor and Grantee shall fix the purchase price for the Protected Property by establishing a Price Agreement in the manner described in Section VIII(4), below.
  - c) A Grantee shall exercise this Option by giving written Notice of Intent to Purchase not more than thirty (30) days following Grantor's and Grantee's establishment of the Price Agreement.

Notices required by this Section VIII(3) shall be delivered to Grantor either personally or by certified mail, return receipt requested to the address provided by Grantor in the Notice of Intent to Sell described in Section VIII(2), above. In the event that more than one Grantee exercises this Option, the Vermont Land Trust, Inc. shall have first priority, the Vermont Housing and Conservation Board second priority, and the Vermont Agency of Agriculture, Food and Markets third priority. The Grantee with highest priority which exercises this Option is hereafter referred to in Sections VIII(4), (5) and (6) as "Grantee."

4. **Purchase Price.** The Purchase Price shall be determined by mutual agreement of Grantor and Grantee; provided that if no such agreement can be reached, the purchase price of the land only shall be the greater of:

- a-1) \$192,000.00 plus an inflation adjustment determined by multiplying the foregoing value by 1 (one) plus the fractional increase calculated from the date hereof in the Consumer Price Index for all Urban Consumers, Northeast, All Items published by the Bureau of Labor Statistics, U.S. Department of Labor, or a successor index published by the United States government to the date of the Offer; or
- a-2) The full fair market value of all Protected Property land subject to the Offer (including the site of any structures) assuming its highest and best use is commercial

agricultural production commonly occurring within the market area where the Protected Property is located on the date of the Offer, as determined by a mutually approved disinterested appraiser selected by Grantor and Grantee, with the expense of such appraisal divided equally between Grantor and Grantee. Permanently installed land improvements, such as in-ground irrigation systems, farm roads, and drainage tiling shall be considered part of the land. This appraisal shall take into consideration the permitted and restricted uses set forth in, and the impact on value caused by the Grant.

With respect to any agricultural, forestry or minor incidental structures and improvements in existence as of the date of the Offer, then in addition to the foregoing land value, the Purchase Price shall also include:

- b) The value of all such structures and improvements on the Protected Property as of the date of the Offer excluding all land (which is included in the Section VIII(4)(a) valuation, above). The value of the structures and improvements shall be determined using the replacement cost approach to valuation (i.e., the cost to replace the structures and improvements with those of comparable size and utility, less depreciation and functional obsolescence) by a mutually approved disinterested appraiser selected by Grantor and Grantee, with the expense of such appraisal divided equally between Grantor and Grantee.

With respect to any residence(s) in existence as of the date of the Offer, then in addition to the foregoing land value, the Purchase Price shall also include:

- c) The value of the residence and its appurtenant structures and improvements as of the date of the Offer excluding the value of the land upon which these structures sit (which is included in the Section VIII(4)(a) valuation, above). The value of the residence and appurtenant structures and improvements shall be determined using the replacement cost approach to valuation (i.e., the cost to replace the residence, structures and improvements with those of comparable size and utility, less depreciation and functional obsolescence) by a mutually approved disinterested appraiser selected by Grantor and Grantee, with the expense of such appraisal divided equally between Grantor and Grantee.

Grantor and Grantee shall establish the Purchase Price by either entering into a written agreement fixing the Purchase Price as provided in this Section VIII(4), within ten working days of reaching mutual agreement or, if no such agreement is reached, the Purchase Price shall be based upon the appraised values which shall be the Purchase Price unless another Purchase Price is mutually agreed upon in writing by the parties within ten working days after the last party's receipt of the appraisals. The passage of said ten working days shall constitute the effective date of establishing the Purchase Price. ("Price Agreement")

5. **Entry onto the Protected Property.** After receiving the notice from Grantor described in Section VIII(2), above, and upon reasonable notice to the Grantor, the Grantee shall have the right to enter upon the Protected Property from time to time for the purpose of preparing for the purchase and disposition of the Protected Property, including but not limited, to preparing

appraisals, conducting soils tests or engineering studies, advertising, showing prospective buyers or assignees, or obtaining other information about the Protected Property. Grantee's entry onto or testing of the Protected Property shall be conducted in a manner that minimizes any disturbance to the land and to the use and enjoyment of the Protected Property by the Grantor or any tenants in possession.

6. **Closing of the Purchase.** If this Option is exercised, the parties shall close on the sale on or before thirty (30) days from the delivery of the Notice of Intent to Purchase described in Section VIII(3)(c), above, unless otherwise agreed. The following conditions shall apply to said closing:

- a) Grantor shall, by Vermont Warranty Deed, deliver good, clear, record and marketable title to the Grantee, free of all liens or other encumbrances (including discharge or release of outstanding mortgages), sufficient for the Grantee to secure title insurance at Grantee's sole expense. Grantee agrees to accept title subject to: (i) customary utility distribution easements, (ii) rights of the public to use roads laid out by municipalities, the state or federal government, (iii) rights of way and other easements that do not, in the Grantee's opinion, materially impair beneficial use of the Protected Property; and, (iv) the terms and conditions of this Grant. The state of title to the Protected Property shall be determined by a title examination paid for by the Grantee.
- b) Grantor agrees to use reasonable efforts to deliver marketable title as set forth in Section VIII(6)(a), above. In the event Grantor is unable to give marketable title, then the Grantee may elect to terminate its exercise of this Option. The Grantee shall have the right to elect to accept such title as Grantor can deliver and to pay the purchase price without reduction.
- c) Grantor agrees to obtain at its sole expense any and all permits and approvals required under law or regulation for the conveyance of the Protected Property to Grantee under this Option. The parties shall extend the closing date as necessary to enable Grantor to obtain all such final permits and approvals.
- d) Grantor represents to Grantee that Grantor is not aware of any hazardous waste having been dumped or placed upon the Protected Property. Grantor will update this representation in writing upon the Grantee's delivery of the Notice of Intent to Exercise described in Section VIII(3)(a), above. Grantor agrees that the Grantee may, at the Grantee's expense, perform any and all tests and/or inspections necessary to confirm these representations. In the event that the Grantee discovers that hazardous wastes have been dumped or placed upon the Protected Property, the Grantee may at the Grantee's option declare its exercise of this Option to be null and void.
- e) The Grantor and the Grantee shall prorate property taxes as of the date of closing.
- f) The Grantor shall not physically alter the Protected Property or the improvements on the Protected Property or enter into any lease after a Grantee delivers the Notice

of Intent to Exercise provided in Section VIII(3)(a), above, and while the Grantee may purchase pursuant thereto, except to perform generally accepted agricultural practices and normal repairs. In the event any structure is substantially destroyed by fire or other casualty, Grantee may elect to (1) proceed to closing and accept the proceeds of any insurance policy Grantor may have with respect to such destruction; or (2) if such insurance proceeds are less than the value of the structure as determined under Section VIII(4), above, proceed to closing and accept the proceeds of said insurance policy and reduce the purchase price by the difference between such value and insurance proceeds; or (3) withdraw its election to exercise this Option.

- g) The Protected Property shall be conveyed free of all leases, tenancies, tenants and occupants, unless Grantee otherwise agrees in writing.
- h) All personal property, livestock, machinery and equipment not included in the sale shall be removed from the Protected Property, and all other waste and debris shall be removed from the Protected Property prior to closing. Grantor and Grantee will jointly inspect the Protected Property 24 hours prior to closing.
- i) After closing, this Option shall remain in full force and effect with respect to all subsequent conveyances of the Protected Property, except as identified in Section VIII(1), above.

7. **Partial Release of Option.** At the request of Grantor, Grantees shall execute a partial release of their rights under this Option Agreement ("the Partial Release"), and upon the first to occur of the following events, the Grantees shall immediately deliver the Partial Release to the Swanton Town Clerk for recording in the Swanton Land Records:

- a) Grantees' failure to deliver the Notice of Intent to Exercise as described in Section VIII(3)(a), above;
- b) Grantees' failure to deliver the Notice of Intent to Purchase as described in Section VIII(3)(c), above; or
- c) Grantees' election to terminate its exercise of this Option based on title defects as provided in Section VIII(6)(b), hazardous materials as provided in Section VIII(6)(d), or destruction of structures as provided in Section VIII(6)(f).

Should no Grantee exercise this Option as provided in Section VIII(3), above, or should a Grantee fail to close following its delivery of the Notice of Intent to Purchase, Grantor may proceed to close on the sale to the Buyer on the terms and conditions described in the Notice of Intent to Sell, within twelve (12) months of the delivery of said Notice to Grantees. Provided, however, this Option shall remain in full force and effect with respect to all subsequent conveyances of the Protected Property, except as identified in Section VIII(1) above.

8. **Partial Assignment by Grantees.** A Grantee may partially assign its rights under this Option, provided:

- a) No such assignment shall be made prior to Grantor and Grantee establishing the Price Agreement described in Section VIII(4), above;
- b) Such assignment shall be in writing, with the assignee undertaking to discharge all obligations of Grantee with respect to purchase of the Protected Property, and a copy of the written assignment shall be delivered to Grantor;
- c) The assignee shall be a party which, in the reasonable opinion of the Grantee, will use or will facilitate the use of the Protected Property for commercial agricultural production; and
- d) The partial assignment shall pertain only to a single exercise of this Option in response to a discrete Notice of Intent to Sell delivered to Grantees. While no consent of Grantor shall be required for said single exercise, no Grantee shall otherwise assign all of its rights and interests under this Option without the prior written consent of Grantor.

#### **IX. General 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 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. Upon the request of Grantor, Grantees shall deliver to Grantor, in written recordable form, any approval, disapproval, election, or waiver given by Grantees pursuant to this Grant.

2. Grantor agrees that the construction of any buildings, structures, or improvements, or any use of the land otherwise permitted under this Grant, or the subdivision and separate conveyance of any land excluded from this Grant in Schedule A attached hereto, shall be in accordance with all applicable ordinances, statutes, and regulations and at Grantor's sole expense.

3. It is further agreed that the Protected Property is accurately depicted and described in both the Fournier Farm Plan and a Baseline Documentation Report ("BDR") signed by the original Grantor on or about the date of this Grant and held by Grantee VLT, on behalf of all Grantees. Grantees may use the Fournier Farm Plan or BDR in enforcing this Grant, but are not limited in their use of the Fournier Farm Plan and BDR to show a change of conditions.

4. Grantees shall transfer the development rights, option to purchase, 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. No such assignment limitation shall apply to the access easement which shall be separately assignable.

5. *Extinguishment and Condemnation.* This Grant vests a right of enforcement in the United States and additional real property interests in the Grantees. These rights may only be extinguished with the necessary approval of the Grantees and the United States, as specified in this Grant. Due to the Federal interest in this Grant, the United States must consent to any condemnation action affecting the Protected Property. If any entity with condemnation authority (condemning agency) proposes to condemn the Protected Property, NRCS must be notified immediately by the condemning agency and Grantees, and the consent of the United States must be received by the condemning agency before any condemnation action may proceed with respect to the Federal interest in this Grant.

The Grantees and the United States stipulate to have a fair market value of \_\_\_\_\_ percent (70.6 %), hereinafter the "Proportionate Share," of the fair market value of the Protected Property unencumbered by this Grant. The Proportionate Share has been determined at the time of conveyance of this Grant by dividing the fair market value of this Grant (\$461,000) by the fair market value of the Property without this Grant (\$653,000). The Proportionate Share will remain constant over time.

If this Grant is extinguished, terminated, or condemned, in whole or in part, then the Grantor must reimburse Grantees and the United States an amount equal to the Proportionate Share of the fair market value of the Protected Property unencumbered by this Grant. The fair market value of the Grant will be determined at the time this Grant is terminated, extinguished, or condemned by an appraisal that meets the Uniform Standards of Professional Appraisal Practice (USPAP) or Uniform Acquisition Standards or Federal Land Acquisition (UASFLA) that is completed by a certified general appraiser and approved by the Grantee and the United States.

The Proportionate Share paid to the Grantees and the United States must be allocated as follows: (a) to the Grantees or their designee(s), \_\_\_\_\_ percent (\_\_\_ %) of the Proportionate Share; and, (b) to the United States \_\_\_\_\_ percent (\_\_\_ %) of the Proportionate Share, representing the proportion each party contributed to the purchase price of this Grant. The Proportionate Share of the Grantees also includes \_\_\_\_\_ percent (\_\_\_ %) of the appraised value of this Grant, donated by the Grantor to the Grantees, if any. Until such time as the Grantees and the United States receive the Proportionate Share from the Grantor or the Grantor's successor or assign, the Grantees and the United States each have a lien against the Property for the amount of the Proportionate Share due each of them. The Grantees or their designee(s) must use their allocation of the Proportionate Share in a manner consistent with the conservation purposes of the Grant. If proceeds from termination, extinguishment, or condemnation are paid directly to Grantees, the Grantees must reimburse the United States for the amount of the Proportionate Share due to the United States.

6. 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 said 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. Grantees shall be entitled to re-record this Grant, or to record a notice making reference to the existence of this Grant, in the Town of Swanton Land Records as may be necessary

to satisfy the requirements of the Record Marketable Title Act, 27 V.S.A., Chapter 5, Subchapter 7, including 27 V.S.A. §§603 and 605.

8. 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, however, 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.

9. The term "Grantor" includes the heirs, executors, administrators, successors, and assigns of the original Grantor, R. J. Fournier & Sons Farm, Inc. The term "Grantees" includes the respective successors and assigns of the original Grantees, VLT, VAAFm and VHCB. The term "family" includes: (a) any spouse of Grantor and any persons related to Grantor by blood to the 4th degree of kinship or by adoption, together with spouses of family members, (b) a corporation, partnership or other entity which is wholly owned and controlled by Grantor or Grantor's family (as defined herein), (c) any estate of Grantor or Grantor's family, and (d) all owners of a Grantor corporation, partnership, trust or other entity who are related to each other by blood to the 4th degree of kinship or by adoption, together with spouses of family members.

10. 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.

11. *General Indemnification.* Grantor shall indemnify and hold harmless Grantees and the United States, their employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs of actions, or sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which Grantees and/or the United States may be subject or incur relating to the Protected Property, which may arise from, but are not limited to, Grantor's negligent acts or omissions or Grantor's breach of any representation, warranty, covenant, or agreements contained in this Grant, or violations of any Federal, State, or local laws, including all Environmental Laws (as defined below).

12. *Environmental Warranty.* Grantor warrants that it is in compliance with, and shall remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with or any liability under any Environmental Law relating to the operations or conditions of the Protected Property. Grantor further warrants that it has no actual knowledge of a release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable Federal and state law.

Moreover, Grantor hereby promises to hold harmless and indemnify Grantees and the United States against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Protected Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Protected Property.

Grantor's indemnification obligation shall not be affected by any authorizations provided by Grantees or the United States to Grantor with respect to the Protected Property or any restoration activities carried out by Grantees at the Protected Property; provided, however, that Grantees shall be responsible for any Hazardous Materials contributed after this date to the Protected Property by Grantees.

"Environmental Law" or "Environmental Laws" means any and all Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect.

"Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.

13. If any Grantee takes legal title to Grantor's interest in the Protected Property, the Grantee acquiring title shall commit the monitoring and enforcement of the Grant to another Grantee until the Grantee acquiring title conveys title to a successor Grantor.

14. This Grant is created pursuant to Chapter 34 of Title 10, Conservation and Preservation Rights and Interests (10 V.S.A. 821-823) and Chapter 155 of Title 10, Acquisition of Interests in Land by Public Agencies (10 V.S.A. 6301 – 6309), and this Grant shall be governed by and construed in accordance with the laws of the State of Vermont to effectuate the Purposes of the Grant. 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.

15. *Amendment.* This Grant may be amended only if, in the sole and exclusive judgment of the Grantees and United States, by and through the Chief of NRCS, such amendment is consistent with the Purposes of this Grant and complies with all applicable laws and regulations. The Grantees must provide timely written notice to the Chief of NRCS of any proposed amendment(s). Prior to the signing and recordation of the amended Grant, such amendment(s) must be mutually agreed upon by the Grantees, Grantor, and United States, by and through the Chief of NRCS. Any purported amendment that is recorded without the prior approval of the United States will be considered null and void.

16. *Boundary Line Adjustments.* Boundary line adjustments may be permitted by Grantees either by approval or by amendment. The approval of only the Grantees is required in the case of an amendment or other action related to boundary adjustments: (i) for technical errors made in the survey or legal description of the Protected Property; or (ii) where the acreage of the

Protected Property will be increased; or (iii) where the acreage of the Protected Property will not decrease by the greater of 1% of its original acreage or 2 acres. All other boundary line adjustments must also be approved by the United States by and through the Chief of NRCS. If necessary, an amendment to Schedule A of this Grant shall be properly executed and duly recorded.

17. *Subordination.* Any mortgage or lien arising after the date of this Grant shall be subordinate to this Grant.

18. *Merger.* The Grantor and Grantees explicitly agree that it is their express intent, forming a part of the consideration hereunder, that the provisions of this Grant are to last in perpetuity, and that to that end no purchase or transfer of the underlying fee interest in the Protected Property by or to any Grantee, the United States, or any successor or assignee will be deemed to eliminate the terms of this Grant, or any portion thereof, pursuant to the doctrine of "merger" or any other legal doctrine.

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

TO HAVE AND TO HOLD said granted development rights, option to purchase, and a perpetual conservation easement and restrictions, with all the privileges and appurtenances thereof, to the said Grantees, **VERMONT LAND TRUST, INC., VERMONT AGENCY OF AGRICULTURE, FOOD AND MARKETS,** and **VERMONT HOUSING AND CONSERVATION BOARD,** their respective successors and assigns, and the UNITED STATES and its assigns to the extent of its enforcement rights, to their own use and behoof forever, and the said Grantor, **R. J. FOURNIER & SONS FARM, INC.** (aka R.J. Fournier & Sons, Inc. and Rene J. Fournier & Sons, Farm, Inc.), for itself and its heirs, executors, administrators, successors, and assigns, does covenant with the said Grantees and the UNITED STATES, their successors and assigns, that until the ensealing 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 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 herein set my hand at \_\_\_\_\_, Vermont this \_\_\_\_ day of \_\_\_\_\_, 2015.

GRANTOR  
R. J. FOURNIER & SONS FARM, INC.

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

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

At \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, 2015, duly authorized

agent of R. J. Fournier & Sons Farm, Inc., personally appeared and \_\_\_\_\_ acknowledged this instrument, by \_\_\_\_\_ sealed and subscribed, to be \_\_\_\_\_ free act and deed and the free act and deed of R. J. Fournier & Sons Farm, Inc., before me.

\_\_\_\_\_  
Notary Public  
My commission expires: 02/10/2019

**VERMONT HOUSING AND CONSERVATION BOARD ACCEPTANCE**

The Vermont Housing and Conservation Board hereby acknowledges, approves, and accepts, the foregoing Grant and the rights and obligations conveyed therein.

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

**STATE OF VERMONT  
COUNTY OF WASHINGTON, SS.**

At Montpelier, Vermont on this \_\_\_\_\_ day of \_\_\_\_\_, 2015, personally appeared \_\_\_\_\_, duly authorized agent of the **Vermont Housing and Conservation Board**, and he/she acknowledged this instrument, by him/her sealed and subscribed, to be his/her free act and deed and the free act and deed of the Vermont Housing and Conservation Board.

Before me, \_\_\_\_\_  
Notary Public  
My Commission Expires: 2/10/2019

The Natural Resources Conservation Service, United States Department of Agriculture, an agency and Department of the United States Government, hereby accepts and approves the foregoing conservation easement deed and the rights conveyed therein, on behalf of the United States of America.

\_\_\_\_\_  
State Conservationist  
Natural Resources Conservation Service  
United States Department of Agriculture

**STATE OF VERMONT)  
COUNTY OF CHITTENDEN)**

On this \_\_\_\_\_ day of \_\_\_\_\_, 2015, before me, the undersigned, a notary public

in and for the State, personally appeared \_\_\_\_\_ known or proved to me to be the person whose signature appears above, and who being duly sworn by me, did say that he or she is the State Conservationist of the Natural Resources Conservation Service, United States Department of Agriculture, is authorized to sign on behalf of the agency and acknowledged and accepted the rights conveyed by the deed to be his or her voluntary act and deed.

In witness whereof, I have hereunto set my hand and official seal the day and year first above written.

\_\_\_\_\_  
Notary Public, State of Vermont  
My Commission Expires 02/10/2019

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**SCHEDULE A  
PROTECTED PROPERTY**

Being all and the same lands and premises, with any and all structures and improvements that may be situated thereon, described as Parcel 1 in the Warranty Deed conveyed to Grantor by Rene J. Fournier and Noella M. Fournier, dated July 14, 1975, and recorded in Book 87, Page 219 of the Swanton Land Records.

**Excepted and excluded** from this description of the Protected Property are the following twelve parcels of land:

1. A thirteen (13.0) acre parcel located on the northwesterly side of Campbell Bay Road, and is more particularly described as follows, all bearings are referenced to "Grid North:"  
  
 Beginning at the intersection of the westerly edge of the Campbell Bay Road right of way (assumed 3 rods wide) and the northerly boundary of land now or formerly belonging to Allen and Doreen Pigeon; thence proceeding  
 Westerly a distance of 665 feet, more or less, along the northerly boundary of Pigeon; thence turning and proceeding  
 North 11° East a distance of 600 feet, more or less, along the Protected Property to a point; thence turning and proceeding  
 North 90° East a distance of 200 feet, more or less, along the Protected Property to a point; thence turning and proceeding  
 North 11° East a distance of 370 feet, more or less, along the Protected Property to the southwest corner of the Building Envelope described in Schedule B attached hereto and incorporated herein ; thence turning at a right angle and proceeding  
 South 79° East a distance of 270 feet, more or less, along the southerly boundary of the Building Envelope to a point; thence turning and proceeding  
 South 10° West a distance of 250 feet, more or less, along the southerly boundary of the Building Envelope to a point; thence turning and proceeding  
 South 79° East a distance of 225 feet, more or less, along the southerly boundary of the Building Envelope to a point on the westerly boundary of land now or formerly belonging to Jon and Linda Barrette; thence turning and proceeding  
 Southerly a distance of 285 feet, more or less, along the westerly boundary of Barrette to a point on the westerly edge of the Campbell Bay Road right of way; thence proceeding  
 Southerly a distance of 505 feet, more or less, along the westerly edge of the Campbell Bay Road right of way to the point of beginning.

Grantor does freely give, grant, sell, convey and confirm unto Grantees, and their respective successors and assigns, forever, a perpetual and separately assignable easement for a right-of-way; said easement being on, over, under and across that certain thirteen (13) acre parcel of land described above as being excluded from the Protected Property, and being more particularly described as follows:

An easement fifty (50) feet in width for limited pedestrian and vehicular access on, over, under and across the existing private road known as Leo Drive running northerly from

Campbell Bay Road to and through the Protected Property, and on over and across the existing private road known as Pickle Point Road running westerly from Leo Drive through the Protected Property. Said access is depicted as "ROW" the Fournier Farm Plan. NOT DEPICTED ON MAP

Such access shall be for limited pedestrian and vehicular use for the purposes of monitoring and enforcement by Grantees in connection with this Grant. No public use or access is permitted by this conveyance. The rights conveyed herein are in addition to, not in lieu of, the covenants and restrictions otherwise conveyed by this Grant.

In the event of a conveyance of all or any portion of the Protected Property separate from the above-described 13 acre excluded parcel or a conveyance of said excluded parcel separate from the Protected Property, the Grantors shall convey or reserve an easement for access.

2. A one (1.0) acre parcel located in the southwest corner of land of Grantor, and is more particularly described as follows:

Beginning at the northwest corner of land now or formerly of the William Smolinski Sr. and Josephine Smolinski Revocable Trust; thence proceeding Northerly a distance of approximately 220 feet, more or less, along Lake Champlain to the southwest corner of land now or formerly belonging to Alvin Fournier; thence turning and proceeding Easterly a distance of 205 feet, more or less, along the southerly boundary of Alvin Fournier to a point; thence turning and proceeding Southerly a distance of approximately 225 feet, more or less, along the Protected Property to a point on the northerly boundary of land now or formerly belonging to Allen and Doreen Pigeon; thence turning and proceeding Westerly a distance of 205 feet, more or less, along the northerly boundary of Pigeon and the northerly boundary of Smolinski to the point of beginning.

3. A four (4.0) acre parcel defined as a fifty foot strip of land centered on all portions of the existing private roads known as Leo Drive and Pickle Point Road outside of the thirteen acre excluded parcel described above.

In the event of a conveyance of all or any portion of the Protected Property separate from the above-described 4.4 acre excluded parcel or a conveyance of said excluded parcel separate from the Protected Property, the Grantors shall convey or reserve an easement for access for all uses which may be permitted on the Protected Property under this Grant from the existing private roads known as Leo Drive and Pickle Point Road to the Protected Property.

4. A one-half (0.5) acre parcel located along the northerly boundary of Grantor, and is more particularly described as being depicted as "50FT. EASEMENT (RIGHT OF WAY) TO BE GRANTED TO OGONOWSKI BY FOURNIER" on a survey entitled "Lot Line Adjustment, R.J. Fournier & Sons, Inc., Town of Swanton, Vermont" by Steven M. Brooks, dated August 23, 1999, and recorded in Slide #105A in the Swanton Land Records.

5. A parcel of land conveyed by Grantor to Arnold Essner and Louisa Essner by Warranty Deed dated November 24, 1981, and recorded in Book 98, Page 22 of the Swanton Land Records.

6. A parcel of land conveyed by Grantor to Richard LeClair and Marilyn LeClair by Warranty Deed dated September 7, 1993, and recorded in Book 128, Page 261 of the Swanton Land Records.
7. A parcel of land conveyed by Grantor to David LaFontaine, Maryanne LaFontaine, Peter LaFlamme and Sandra LaFlamme by Warranty Deed dated December 13, 2002, and recorded in Book 187, Page 158 of the Swanton Land Records.
8. A parcel of land conveyed by Grantor to Peter LaFlamme and Sandra LaFlamme by Warranty Deed dated December 13, 2002, and recorded in Book 187, Page 153 of the Swanton Land Records.
9. A parcel of land conveyed by Grantor to David LaFontaine and Maryanne LaFontaine by Warranty Deed dated December 13, 2002, and recorded in Book 187, Page 148 of the Swanton Land Records.
10. A parcel of land conveyed by Grantor to Jason Calhoun and Amanda Calhoun by Warranty Deed dated December 28, 2004, and recorded in Book 216, Page 412 of the Swanton Land Records.
11. A parcel of land conveyed by Grantor to R.J.C. Realty Co., LLC by Corrective Warranty Deed dated September 2, 2006, and recorded in Book 238, Page 146 of the Swanton Land Records.
12. A parcel of land comprising 123 acres, more or less, of farmland located on the easterly side of Campbell Bay Road in Swanton,

Meaning and intending to include in this description of the Protected Property all of the land with the buildings and improvements thereon lying northwesterly of Town Highway #9 (also known as Campbell Road), in the Town of Swanton, Vermont, **except as excluded above**, and generally described as containing 96 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, building envelopes or ecological protection zones on a plan entitled "**Vermont Land Trust - Fournier Farm, Town of Swanton, Franklin Co., VT, 2015**" signed by the Grantor and VLT (referred to throughout this Grant and its Schedules as "Fournier Farm Plan"). The Fournier Farm Plan is based upon Vermont Base Map digital orthophotos and other information available to VLT 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 Fournier Farm Plan and any metes and bounds descriptions herein are intended solely for the use of the Grantor and Grantees 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 Fournier Farm Plan

is kept by VLT in its Stewardship Office. **The Fournier Farm 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.

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**SCHEDULE B  
BUILDING ENVELOPE**

The "Building Envelope" referred to in Section III(2) of this Grant is located on both sides of the 50 foot excluded strip centered on Leo Drive as described in Schedule A above, and contains five and one half (5.5) acres, more or less, (excluding the 50 foot strip), and the perimeter of which is more particularly described as follows, all bearings are referenced to "Grid North":

Beginning at a the northeast corner of the thirteen acre excluded parcel described in Schedule above , said point being northerly a distance of 285 feet, more or less, along the westerly boundary of land now or formerly belonging to Jon and Linda Barrette from its intersection with the westerly edge of the Campbell Bay Road right of way; thence proceeding North 79° West a distance of 225 feet, more or less, along the northerly boundary of the thirteen acre excluded parcel; thence turning and proceeding North 10° East a distance of 250 feet, more or less, along the northerly boundary of the thirteen acre excluded parcel; thence turning and proceeding North 79° West a distance of 270 feet, more or less, along the northerly boundary of the thirteen acre excluded parcel; thence turning at a right angle and proceeding North 11° East a distance of 405 feet, more or less, across the Protected Property to a point; thence turning at a right angle and proceeding South 79° East a distance of 505 feet, more or less, across the Protected Property to a point on the westerly boundary of land now or formerly belonging to Alec and Susan Campbell; thence turning and proceeding Southerly a distance of 655 feet, more or less, along the westerly boundary of Campbell and the westerly boundary of Barrette to the point of beginning.