

Agency of Agriculture, Food & Markets
116 State Street
Montpelier, VT 05620-2901
www.VermontAgriculture.com

TO: Peter Shumlin, Governor

FROM: Charles R. Ross, Jr., Secretary, Vermont Agency of Agriculture, Food & Markets
Charles R. Ross, Jr. Deputy Secretary for Secretary Ross

DATE: September 3, 2013

RE: Acquisition of Development Rights – Sawyer Bay Farm, South Hero

Your approval is requested for the acquisition of development rights, conservation restrictions, option to purchase, and right of enforcement of the United States on 178.58 acres of farmland in South Hero, which will be purchased and simultaneously conserved by Eric and Hannah Noel and their partners Bob Fireovid and Joan Falcao.

The South Hero Selectboard, Planning Commission, 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

The Sawyer Bay Farm is an incredible agricultural resource. It is 90% prime and statewide soils with over 150 acres of tillable land with tile drainage. The infrastructure is in very good condition with several places for storage, a 70 by 150 foot solar barn, and a large former dairy barn that has been renovated. The farm has over 1,100 feet of frontage on Lake Champlain. This frontage is along a very narrow strip of land between West Shore Road and the lake and is not a very safe place for cars to pull over. For this reason, public access is not included in the project. West Shore Road is however used very heavily by summer guests to the lake community, and maintaining the open land is an important part of the aesthetics and support for the project.

VLT and SHLT selected Eric and Hannah Noel and their partners Bob Fireovid and Joan Falcao as the farm buyers for this project. Eric and Hannah are leaders in Vermont agriculture; Hannah is on the VHCB Ag Viability committee, and Eric is president of the Vermont Grass Farmers Association and on the Board of Vermont Beef Producers. Eric is a consultant working to educate farmers on practices that improve soils and water quality. Eric, Hannah, Bob, and Joan will own the farm together. They have started contact with three other Champlain Island farm producers to aggregate products to offer through a larger multi-farm CSA.

II. Need

Conservation of the Sawyer Bay Farm, one of the highest conservation priorities of the South Hero Land Trust (SHLT), will be the culmination of many years of hard work by SHLT and VLT to secure this prime parcel of farmland in the South Hero community. The parcel had been approved for subdivision into six parcels; the former owner had obtained all local and state permits, including an Act 250 permit, required to subdivide and develop the farm into six lots.



**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 178.58 acres, more or less, of land owned by Eric and Hannah Noel, Bob Fireovid, and Joan Falcao located in the Town of South Hero, Vermont, by the Vermont Agency of Agriculture, Food and Markets. The Grant is to be recorded in the Land Records of the Town of South Hero.

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.

11/12/13
Date

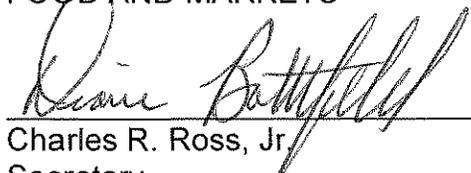
STATE OF VERMONT



Peter Shumlin
Governor

11/6/13
Date

VERMONT AGENCY OF AGRICULTURE,
FOOD AND MARKETS



Charles R. Ross, Jr.
Secretary
*Deputy Secretary
for Secretary Ross*

Vermont Land Trust

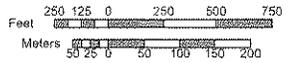
Willey W&C Farm
Town of South Hero
Grand Isle Co., VT

September 2013

VLT Project #130929 VHCB #2013-068-001

The Willey W&C Farm Conservation Plan is based on 2011 DigitalGlobe-Microsoft orthophotos.

1:5,000 1 inch = 416.7 feet



Reference(s):

- 1) "Wright Farm & Sawyer Bay Subdivision, South Hero, Vermont" by Donald L. Hamlin Consulting Engineers, Inc., dated 9/15/10.
- 2) "McBride Subdivision, South Hero, Vermont" by Donald L. Hamlin Consulting Engineers, Inc., dated 9/15/10.

Protected Property
Complex Boundary

Lake Champlain

Suhsset View Rd. (TH #6)

Barn Complex
± 10.7 acres

West Shore Rd. (TH#6)

FLH Site

Station Rd. (TH#1)



This map is not a survey or subdivision plan, and should not be used or construed for such purposes. It was prepared without the benefit of field measurements or extensive site research. It is intended solely to assist the owner(s) of the conserved land and the holder(s) of the conservation easement in the administration and interpretation of the conservation easement by clearly depicting the presumed boundaries of the protected property, calculating the approximate acreage, and showing the approximate locations of any excluded lands, farmstead or homestead complex, farm labor housing complex, or special treatment areas.

THIS MAP IS NOT A SURVEY

Reviewed and Accepted by:

Eric Noel _____ Date _____

Hannah Noel _____ Date _____

Robert L. Fireovid _____ Date _____

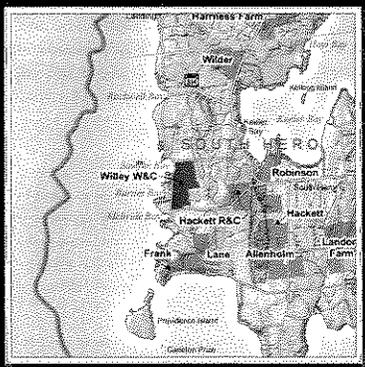
Joan M. Falcao _____ Date _____

Duly Authorized Agent of Vermont Land Trust, Inc. _____ Date _____

ACREAGE INFORMATION*

Tillable	137.87 acres
Pasture	30.01 acres
Barn Complex	10.70 acres
Total Protected Property:	± 178.58 acres

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



239000

239000

238000

238000

TOWN OF SOUTH HERO
333 US Route 2
P.O. Box 175
South Hero, Vermont 05486
802-372-4841/5552

SELECT BOARD

April 8, 2013

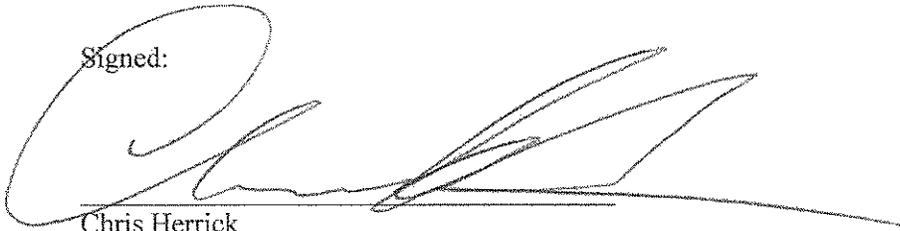
To: South Hero Land Trust
From: Town of South Hero Select Board
Re: Sawyer Bay Farm Project

On behalf of the South Hero Select Board, I offer our board's support to the South Hero Land Trust in its efforts to conserve the Sawyer Bay Farm.

The Sawyer Bay Farm is a valuable agricultural, natural, and scenic resource. The prospect of continued active agricultural use of this land, and land conservation in general, are in keeping with the town plan and important to maintaining the rural character of South Hero and the Champlain Islands. The property's agricultural and natural resources are important community assets and conserving this area will be of great benefit to the community.

Thank you for your work on this project.

Signed:



Chris Herrick

TOWN OF SOUTH HERO

333 US Route 2
P.O. Box 175
South Hero, Vermont 05486
802-372-4841/5552

PLANNING COMMISSION

April 8, 2013

To: South Hero Land Trust
From: Town of South Hero Planning Commission
Re: Sawyer Bay Farm Project

On behalf of the South Hero Planning Commission, I offer our board's support to the South Hero Land Trust in its efforts to conserve the Sawyer Bay Farm.

The Sawyer Bay Farm is a valuable agricultural, natural, and scenic resource. The prospect of continued active agricultural use of this land, and land conservation in general, are in keeping with the town plan and important to maintaining the rural character of South Hero and the Champlain Islands. The property's agricultural and natural resources are important community assets and conserving this area will be of great benefit to the community.

Thank you for your work on this project.

Signed:



CHAIR

Todd Cox



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

April 4, 2013

Minner Hobbs
South Hero Land Trust
PO Box 455
South Hero, VT 05486

Dear Minner:

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

Sawyer Bay Farm

South Hero

The Commission offers their support to the South Hero 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,


Bethany Remmers
Assistant Director

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

KNOW ALL PERSONS BY THESE PRESENTS that **ERIC NOEL** and **HANNAH NOEL** of South Hero, Vermont and **ROBERT L. FIREVOID** of Greenbelt, Maryland and **JOAN M. FALCAO**, of Orlando, Florida, on behalf of themselves and their heirs, executors, successors and assigns (hereinafter collectively referred to as "Grantor"), pursuant to Title 10 V.S.A. Chapters 34 and 155 and in consideration of the payment of Ten Dollars and other valuable consideration paid to its full satisfaction, does freely give, grant, sell, convey, and confirm unto the **VERMONT LAND TRUST, INC.**, a non-profit corporation organized under the laws of the State of Vermont, with its principal offices in Montpelier, Vermont, and 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 ("VAAFM"), 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 in certain lands consisting of 178.58 acres, more or less, with the buildings and improvements now or hereafter situated thereon (hereinafter "Protected Property"), located in the Town of South Hero, County of Grand Isle, 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 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 purpose of the Federal Farm and Ranch Lands Protection Program is to protect the agricultural use and related conservation values of eligible land by limiting non agricultural uses of that land. In order to achieve that purpose, the Secretary of the U.S. Department of Agriculture shall facilitate and provide funding for the purchase of conservation easements and other interests in eligible land. (16 USC 3838h and 3838i). Under the authority of the Farm and Ranch Lands Protection Program, the United States Department of Agriculture's Natural Resources Conservation Service ("NRCS") has provided federal funds to Grantee Vermont Housing and Conservation Board to assist in the acquisition of this Grant. In exchange for its funding and to help protect the public investment, the United States is granted a right of enforcement, set forth in detail below.

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.

I. Purposes of the Grant.

Grantor and Grantees acknowledge that the Purposes of this Grant are as follows:

1. Consistent with the goals set forth in 10 V.S.A. §§ 821 and 6301, the primary purpose of this Grant is to conserve productive agricultural and forestry lands and to promote the sustainable management of soil resources in order to facilitate active and economically viable farm use of the Protected Property now and in the future.

2. As a secondary objective, 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 objective of encouraging sustainable management of soil resources will be further advanced by the Grantor's agreement to work cooperatively with NRCS to limit soil erosion on highly erodible land ("HEL") in accordance with NRCS standards.

4. The objective 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.

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

- a) 33 acres of agricultural soils of prime significance;
- b) 130 acres of agricultural soils of statewide significance;
- c) 8,290 feet of frontage on Sunset View Road, West Shore Road and Station Road, public highways with scenic vistas;
- d) 1,100 feet of frontage on Lake Champlain; and
- e) historic Phelps barn of scenic and historic significance.

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. Restricted Uses of Protected Property.

The restrictions hereby imposed upon the Protected Property, and the acts which Grantor shall do or refrain from doing, are as follows:

1. No residential, commercial, industrial, or mining 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. The Protected Property shall be used for agricultural, forestry, educational, non-commercial recreation, and open space purposes only.
2. 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.
3. No rights-of-way, or easements for ingress or egress, driveways, roads, utilities, or other easements or rights shall be constructed, developed, granted, or maintained into, on, over, under, or across the Protected Property, without the prior written permission of Grantees, except as otherwise specifically permitted under this Grant, and as appear of record prior to the date of this Grant. Grantees may grant permission for any rights-of-way, or easements for ingress or egress, driveways, roads, utilities, other easements or rights, if they determine, in their sole discretion, that any such rights-of-way, easements for ingress or egress, driveways, roads, utilities, other easements or rights are consistent with the Purposes of this Grant.
4. 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 below. Grantees, with the permission of Grantor, may erect and maintain signs designating the Protected Property as land under the protection of Grantees.
5. The placement, collection, or storage of trash, refuse, human waste, or any other unsightly or offensive material on the Protected Property shall not be permitted except at such locations, if any, and in such a manner as shall be approved in advance in writing by Grantees, in their sole discretion. The on-site storage and spreading of agricultural inputs including, but not limited to, lime, fertilizer, pesticides, compost or manure for agricultural practices and purposes, the storage of feed, and the temporary storage of trash generated on the Protected Property in receptacles for periodic off-site disposal, shall be permitted without such prior written approval.
6. There shall be no disturbance of the surface, including, but not limited to, filling, excavation, removal of topsoil, sand, gravel, rocks or minerals, or change of the topography of

the land in any manner, except as may be reasonably necessary to carry out the uses permitted on the Protected Property under this Grant. In no case shall surface mining of subsurface oil, gas, or other minerals be permitted.

7. As required by section 1238I of the Food Security Act of 1985, as amended, the Grantor shall conduct all agricultural operations on the Protected Property in a manner consistent with a conservation plan for highly erodible land ("conservation plan") prepared in consultation with NRCS and approved by the Conservation District. This conservation plan shall be developed using the standards and specifications of the NRCS Field Office Technical Guide and 7 CFR Part 12 that are in effect on **(INSERT EASEMENT SIGNATURE DATE)**. However, the Grantor may develop and implement a conservation plan that proposes a higher level of conservation that could include protecting and restoring stream equilibrium, wetlands, riparian and floodplain functions, and is consistent with the NRCS Policies and Field Office Technical Guide standards and specifications. NRCS shall have the right to enter upon the Property, with advance notice to the Grantor, in order to monitor compliance with the conservation plan.

8. In the event of non-compliance with the conservation plan, NRCS shall work with the Grantor to explore methods of compliance and give the Grantor a reasonable amount of time, not to exceed twelve months, to take corrective action. If the Grantor does not comply with the conservation plan, NRCS will inform Grantee VHCB of the Grantor's non-compliance. Grantee VHCB shall take all reasonable steps (including efforts at securing voluntary compliance and, if necessary, appropriate legal action) to secure compliance with the conservation plan following written notification from NRCS that (a) there is a substantial, ongoing event or circumstance of non-compliance with the HEL conservation plan, (b) NRCS has worked with the Grantor to correct such non-compliance, and (c) Grantor has exhausted its appeal rights under applicable NRCS regulations. Grantor shall be liable for any costs incurred by NRCS its successors or assigns as a result of Grantor's negligence and/or failure to comply with the requirements of this Grant as it relates to the conservation plan referenced herein.

9. If the NRCS standards and specifications for highly erodible land are revised after the date of this Grant based on an Act of Congress, NRCS will work cooperatively with the Grantor to develop and implement a revised HEL conservation plan. The provisions of this section apply to the highly erodible land conservation requirements of the Farm and Ranch Lands Protection Program and are not intended to affect any other natural resources conservation requirements to which the Grantor may be or become subject.

10. The Protected Property shall not be subdivided, partitioned or conveyed in separate parcels, 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, except as otherwise specifically permitted in this Grant. In addition, a subdivision of the Protected Property for agricultural purposes may be permitted with the prior written approval of the Grantees and the NRCS State Conservationist. Such approval shall require a determination by Grantees and the NRCS State Conservationist that each resulting parcel qualifies as "eligible land" as defined under the Farm and Ranchlands Protection Program ("FRPP") at 16 U.S.C. 3838h(2)(A).

11. No use shall be made of the Protected Property, and no activity thereon shall be

permitted which is or is likely to become inconsistent with the Purposes of this Grant. Grantor and Grantees acknowledge that, in view of the perpetual nature of this Grant, they are unable to foresee all potential future land uses, future technologies, and future evolution of the land and other natural resources, and other future occurrences affecting the Purposes of this Grant. Grantees, therefore, in their sole discretion, may determine whether (a) proposed uses or proposed improvements not contemplated by or addressed in this Grant, or (b) alterations in existing uses or structures, are consistent with the Purposes of this Grant.

12. Impervious surfaces, whether existing or permitted, including pavement, flooring, rooftops and any other surface which prevents the direct percolation of water into the ground, shall not exceed 2% of the area of the Protected Property. This limit does not include NRCS approved conservation practices on the Protected Property.

13. The existing abandoned residence located in the southwesterly area of the Protected Property may be demolished and removed or rendered inaccessible in the interest of public safety, but shall not be otherwise altered, renovated, used or occupied in any manner or for any purpose without first obtaining the written approval of the Grantees for one of the uses which may be permitted under Sections III(3), (7), (8), (9) or (10) of this Grant. In no event shall this paragraph be construed to permit a residential use of said abandoned residence other than one of those which may be approved under Section III(7) as an alternate FLH site or under Section III(8).

III. Permitted Uses of the Protected Property.

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

1. The right to establish, re-establish, maintain, and use cultivated fields, orchards, and pastures together with the right to construct, maintain, and repair fences and gravel or other permeable surfaced access roads for these purposes, all in accordance with sound agricultural practices and sound husbandry principles; provided, however, that 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.

2. The right to conduct maple sugaring operations, and the right to harvest timber and other wood products, together with the right to construct and maintain roads necessary for both such activities, in accordance with sound forestry practices and in accordance with a forest management plan for which Grantor has received the prior written approval of Grantees. Grantor may conduct maple sugaring operations, and may harvest firewood for heating residences and structures located on the Protected Property, both on existing woods roads only, without submission and approval of a plan. Grantees' approval of forest management plans that may be submitted from time to time shall not be unreasonably withheld or conditioned, if such plans have been approved by a professional forester and if such plans are consistent with the Purposes of this Grant.

3. The right to construct, maintain, repair, renovate, replace, enlarge, rebuild, and use new and existing barns, sugar houses, or similar non-residential structures or facilities, together with necessary access drives and utilities for agricultural and forestry uses, on the

Protected Property; provided, however, that (a) the structures are used exclusively for agricultural or forestry purposes, and (b) any new construction, other than normal maintenance and repair, has been approved in writing in advance by Grantees. Grantees' approval may include designation of a "complex" (meaning an area or areas of the Protected Property within which certain structures are or shall be grouped together) surrounding the structures and shall not otherwise be unreasonably withheld or conditioned; provided, however, that the structure or other improvement is located in a manner which is consistent with the Purposes of this Grant. Grantor shall not deem unreasonable a condition by Grantees that certain structures must be located within an existing complex or a complex which may be designated in the future as provided in this Section III.

4. The right to use, maintain, establish, construct, and improve water sources, courses, and bodies within the Protected Property for uses permitted in this Grant; provided, however, that Grantor does not unnecessarily disturb the natural course of the surface water drainage and runoff flowing over the Protected Property. Grantor may disturb the natural water flow over the Protected Property in order to improve drainage of agricultural soils, reduce soil erosion or improve the agricultural potential of areas used for agricultural purposes, but shall do so in a manner that has minimum impact on the natural water flow and is otherwise consistent with the Purposes of this Grant and complies with all applicable laws and regulations. The construction of ponds or reservoirs shall be permitted only upon the prior written approval of Grantees, which approval shall not be unreasonably withheld or conditioned; provided, however, that such pond or reservoir is located in a manner which is consistent with the Purposes of this Grant. Notwithstanding the foregoing, after obtaining the prior written approval of Grantees, which approval shall not be unreasonably withheld or conditioned, Grantor may disturb the existing water flow over the Protected Property as part of a state, federal, or other qualified conservation program to restore wetland and floodplain function, and the natural course of surface waters, including practices that encourage long-term stream equilibrium conditions.

5. The right to clear, construct, and maintain trails for non-commercial walking, horseback riding, skiing, and other non-commercial, non-motorized recreational activities within and across the Protected Property, all in a manner consistent with the Purposes of this Grant. Non-commercial snowmobiling may be permitted at the discretion of Grantor.

6. The right to maintain, repair, renovate, replace, enlarge, rebuild, and use: (a) the existing farm buildings for non-residential, agricultural uses, (b) the existing non-residential appurtenant structures and improvements, including drives and utilities, normally associated with a farm, and (c) construct, maintain, repair, renovate, replace, enlarge, rebuild, use and occupy new farm buildings for non-residential, agricultural uses and appurtenant structures and improvements, including drives and utilities, normally associated with a farm, all within the designated Barn Complex without the prior written approval of Grantees. With the prior written approval of Grantees, 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 outside of the Barn Complex for the benefit of buildings or structures permitted in the Barn Complex, 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. The Barn Complex is an area consisting of ten and seven tenths (10.7) acres, more or less, and is more particularly described in Schedule B attached hereto and incorporated herein, and is depicted on the Sawyer

Bay Farm Plan described in Schedule A attached hereto and incorporated herein. Grantor shall notify Grantees in writing prior to commencing construction on any new structure or improvement within the Barn Complex.

7. The right to construct, maintain, repair, renovate, replace, enlarge, rebuild, and use one (1) farm labor housing unit ("FLH"), together with appurtenant non-residential structures and improvements, including drives and utilities, normally associated with a residence; provided, however, that the FLH shall be (a) occupied by Grantor or at least one person who is a member of Grantor's family or who is employed on the farm, and (b) located in the area depicted as "FLH Site" on the Sawyer Bay Farm Plan. The FLH shall consist of no more than 2,500 square feet of total floor area measured from the exterior walls, excluding the attic crawl space, attached garage, and any floor completely below grade level. Grantees in their sole discretion may permit an increase over the 2,500 square foot limit, provided, however, such larger structure is deemed necessary and found by Grantees to have no greater negative impact on the conservation values and affordability goals underlying the Purposes of this Grant than the original size. Grantor shall notify Grantees in writing prior to commencing construction on any new structure or improvement in the area depicted as FLH Site. Upon construction of the FLH, Grantees, in their sole discretion, may designate a Farm Labor Housing Complex around it no larger than is necessary to accommodate the FLH and its appurtenant structures. In the event the FLH is not required for housing a farm employee, Grantor, or a member of Grantor's family, Grantor may rent the FLH to other persons for successive lease terms not to exceed one year each, but shall not otherwise transfer ownership or possession of the FLH. The FLH shall not be conveyed separately from the Protected Property, but may be subdivided with the prior written approval of Grantees if such subdivision is required by state or local regulation. Grantees, in their sole discretion, may permit, in a written letter of approval, an alternative FLH site; provided, however, such an alternative FLH site is (i) located in a manner consistent with the Purposes of this Grant as stated in Section I, above, and (ii) found by Grantees to have no greater negative impact on the conservation values underlying the Purposes of this Grant than the original FLH site.

8. 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 an existing building complex or, if not, 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.

The FLH shall not be conveyed separately from the Protected Property, but may be subdivided with the prior written approval of Grantees if such subdivision is required by state or local regulation.

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.

9. The right to conduct rural enterprises consistent with the Purposes of this Grant, especially the economically viable use of the Protected Property for agriculture, forestry and open space and the conservation of agriculturally and silviculturally productive land. In connection with such rural enterprises, the right to maintain, repair, enlarge, replace and use permitted structures with associated utility services, drives and appurtenant improvements within the Barn Complex or other designated complex permitted by this Section III. Grantees may approve a new, non-residential, structure for an approved rural enterprise only if an existing structure is not suitable and the new structure is:

- a) located within the permitted Barn Complex or other designated complex;
- b) 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;
- c) inclusive of all storage space so that no part of the business is conducted outside of the structure;
- d) of a nature, intensity, scope, size, appearance, type and quantity compatible with the existing agricultural structures;
- e) 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;
- f) non-residential; and
- g) not inconsistent with the Purposes of this Grant.

No use or structure contemplated under this Section III(9) 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 (g), above. However, VHCB may waive factors (b), (c) or (d) if the Grantees determine that the unique circumstances of the situation warrant waiver and approval.

10. 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. 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.

IV. Historic Building

Grantor and Grantees acknowledge that the Phelps Barn circa 1825 situated within the Barn Complex depicted on the Sawyer Bay Farm Plan and more particularly described in Schedule B attached hereto and made a part hereof ("the Barn") is an outstanding historical resource important to Vermont's architectural heritage because it is an excellent example of a Bank barn.

Grantor shall consider the Secretary of Interior's Standards for Rehabilitation (or such successor standard identified by Grantees) in planning additions and physical or structural alterations to the Barn. Further, notwithstanding the provisions of Permitted Use Section III above, Grantor shall not move, demolish, remove or raze the Barn, physically alter or remove the Barn's exterior, make any addition to the Barn, or structurally alter the Barn without providing written notice to Grantees at least thirty (30) days prior to the commencement of such activities (the "notice period"). Upon request by Grantees, Grantor shall (i) contact the Vermont Division for Historic Preservation (or any successor historic preservation expert identified by Grantees) within seven (7) days of the request and (ii) consult with the Division (or any successor historic preservation expert identified by Grantees) within the notice period, but in no event shall Grantor be compelled to comply with any recommendation of the Division for Historic Preservation.

V. 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.

VI. Enforcement Right of United States of America.

Grantees covenant and agree that:

1. Grantees shall periodically monitor the Protected Property to assure compliance with the terms and conditions of this Grant and, if an event of non-compliance or violation is discovered, Grantees shall take all reasonable steps to secure compliance with this Grant, including efforts at securing voluntary compliance and, if necessary, appropriate legal action.

2. In the event that Grantees fail to enforce this Grant, the United States has a right to enforce this Grant, which shall be exercised by mailing a written notice (the "Notice") by certified mail to Grantees or the last known address of any successors or assigns. Said Notice shall declare that the right of enforcement is being exercised and shall state the specific event of non-compliance which caused the action. Grantees shall have a period of sixty (60) days from the date of their receipt of said Notice to correct the non-compliance. If, in the opinion of the United States, the non-compliance is not cured within said sixty (60) day period, the United States' right of enforcement shall become final. The rights of the United States contained in this Section shall not terminate or otherwise alter Grantees' interests in this Grant. The United States shall have the right to recover any and all administrative and legal costs from Grantee VHCB, including attorney's fees or expenses associated with any enforcement or remedial action as it relates to the enforcement of this Grant.

VII. 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 VII ("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 or an undivided interest therein, in whole or in part, nor shall an ownership interest in an entity Grantor be conveyed or transferred by a principal of an entity Grantor (including, but not limited to, transfers by and between owners, shareholders, members, and partners of an entity Grantor); nor shall any other interest in a Grantor which is a corporation, limited liability company, partnership or other entity be conveyed or transferred without first offering the Protected Property for sale to Grantees pursuant to this Section VII; 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 of an interest in the Protected Property from one individual Grantor to another, or from one owner of an entity Grantor to another owner of the entity Grantor, which is occasioned by the death of such an individual Grantor or an owner of an entity Grantor; and
- c) Any conveyance by the Grantor to Grantor's family, as the latter term is defined in Section VIII below, by gift, inheritance, sale or other transfer, provided the person(s) to whom the Protected Property, or an interest therein, would be conveyed are determined by the Grantees, in their sole discretion, to have adequate training and experience as an agricultural producer and an acceptable agricultural business plan for the Protected Property; and
- d) Commencing on _____, 2018 **[plug in a date five (5) years after the date of this Grant]**, 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
- e) Commencing on _____, 2018, 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 an undivided interest in the Protected Property, and any conveyance or transfer of an ownership interest in an entity Grantor by a principal of an entity Grantor (including but not limited to, transfers by and between owners, shareholders, members, and partners of an entity Grantor), or any other conveyance of any interest in a Grantor which is a corporation, limited liability company, partnership or other 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, or an offer that is otherwise a triggering event as described above, including proposed transfers of an ownership interest in an entity Grantor in which case the Buyer shall be deemed to be the person or entity proposing to acquire the ownership interest ("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 VII(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 VII(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 VII(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 VII(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 VII(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) \$304,750.00 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 VII(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 VII(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 VII(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 VII(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 VII(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 VII(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 VII(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 VII(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 VII(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 VII(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 South Hero Town Clerk for recording in the South Hero Land Records:

- a) Grantees' failure to deliver the Notice of Intent to Exercise as described in Section VII(3)(a), above;
- b) Grantees' failure to deliver the Notice of Intent to Purchase as described in Section VII(3)(c), above; or

- c) Grantees' election to terminate its exercise of this Option based on title defects as provided in Section VII(6)(b), hazardous materials as provided in Section VII(6)(d), or destruction of structures as provided in Section VII(6)(f).

Should no Grantee exercise this Option as provided in Section VII(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 VII(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 VII(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.

VIII. 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 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 Sawyer Bay 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 Sawyer Bay Farm Plan or BDR in enforcing this Grant, but are not limited in their use of the Sawyer Bay 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.

5. Due to the federal interest in this Grant, the Grant may not be extinguished by eminent domain without the advance approval of the United States. Upon receipt of notification of any pending condemnation action brought by any government entity affecting and/or relating to the Protected Property, Grantor shall notify Grantees and the United States, in writing, within fifteen (15) days of receipt of said notification. Any proceeds from extinguishment shall be allocated between Grantor and Grantees in accordance with the value of their respective interests as determined by an appraisal commissioned by Grantees at the time of extinguishment; provided, however, that the allocation of proceeds to Grantees shall be no less than 79% of the full fair market value of the Protected Property exclusive of the value of improvements. Grantor and Grantees agree that 79% is the relative value of the conservation restrictions as compared to the unrestricted value of the Protected Property as of the date of this Grant. Grantees shall use any proceeds from extinguishment to preserve undeveloped and open space land in order to protect the aesthetic, agricultural, educational, scientific, forestry and natural resources of the State through non-regulatory means. The United States shall receive, at the time this Grant is extinguished or terminated, its share of the Grant based on the appraised fair market value of this Grant at the time this Grant is extinguished or terminated. The United States' share shall be proportionate to its percentage of its original investment. Since the proportional share of the United States in the fair market value of VHCB's interest in this Grant is one-hundred percent (100%), the proportional share applicable to the amount of any proceeds from extinguishment received by VHCB shall be 100% for the United States and 0% for VHCB.

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 South Hero 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, Eric Noel, Hannah Noel, Robert L. Fireovid and Joan M. Falcao. 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. 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 Grantor 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.

12. 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 Protected Property, including but not limited to, ones arising from or connected to 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 the actions or inactions of Grantor as owner or operator of the premises, or those of Grantor's agents. Grantor's indemnification obligation shall not be affected by any authorizations provided by Grantees to Grantor with respect to the Protected Property or any restoration activities carried out by Grantees or the United States at the Protected Property.

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 or Modification of Grant – This Grant may be amended or modified only if such amendment or modification furthers or is consistent with the Purposes of this Grant. Any amendment or modification must be mutually agreed upon by the Grantor and Grantees under this Grant, comply with all applicable laws and regulations, and be signed and duly recorded. The United States must receive timely notice of the proposed amendment and/or modification prior to signing and recordation. No substantive amendment shall be made without the express written approval of NRCS.

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. 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 the local 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, and the covenants and restrictions on the 5.08-acre parcel of land excluded from this Grant, 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, **ERIC NOEL, HANNAH NOEL, ROBERT L. FIREVID and JOAN M. FALCAO**, for themselves and their heirs, executors, successors, and assigns, do covenant with the said Grantees and the UNITED STATES, their successors and assigns, that until the ensealing of these presents, they are the sole owners of the premises, and have 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 not intending hereby to acknowledge the right to use or develop the Protected Property pursuant to permits and approvals of record in any manner that is not consistent with the rights, restrictions, terms and conditions of this Grant which rights to use or develop shall be deemed abandoned and extinguished; and they hereby engage to warrant and defend the same against all lawful claims

whatever, except as aforesaid.

I herein set my hand at _____, Vermont this ____ day of _____, 2013.

GRANTOR

Eric Noel

Hannah Noel

Robert L. Fireovid

Joan M. Falcao

STATE OF _____
_____ COUNTY, ss.

At _____, this ____ day of _____, 2013, Eric Noel, Hannah Noel, Robert L. Fireovid and Joan M. Falcao, personally appeared and they acknowledged this instrument, by them sealed and subscribed, to be their free act and deed, before me.

Notary Public
My commission expires: 02/10/2015

Approved by the VERMONT HOUSING AND CONSERVATION BOARD:

_____ By: _____
Date Its Duly Authorized Agent

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

COUNTY OF _____)
STATE OF VERMONT)

On this ____ day of _____, 2013, 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 02/10/2015

=====

**SCHEDULE A
PROTECTED PROPERTY**

Being all and the same lands and premises, with any and all structures and improvements that may be situated thereon, conveyed to Grantor by warranty deed of Vermont Land Trust, Inc, dated _____, 2013 and recorded in Book _____, Page _____ of the South Hero Land Records.

Meaning and intending to include in this description of the Protected Property all of the land with the buildings and improvements thereon lying on both sides of Town Highway #6 (also known as West Shore Road), northerly of Town Highway #1 (also known as Station Road) and southerly of Town Highway #8 (also known as Sunset View Road) in the Town of South Hero, Vermont and generally described as containing 178.58 acres, more or less.

NOTICE: Unless otherwise expressly indicated, the descriptions in this Schedule A and in any subsequent Schedules are not based on a survey or subdivision plat. The Grantor and Grantees have used their best efforts to depict the approximate boundaries of the Protected Property and any excluded parcels, complexes or special treatment areas on a plan entitled "**Vermont Land Trust** – Sawyer Bay Farm, Town of South Hero, Grand Isle Co., VT, _____ 2013" signed by the Grantor and **VLT** (referred to throughout this Grant and its Schedules as "Sawyer Bay Farm Plan"). The Sawyer Bay 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 Sawyer Bay 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 Sawyer Bay Farm Plan is kept by VLT in its Stewardship Office. **The Sawyer Bay 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.

=====
SCHEDULE B
BARN COMPLEX

The "Barn Complex" referred to in Section III(6) of this Grant contains ten and seven tenths (10.7) acres, more or less, and is more particularly described as follows, all bearings are referenced to "Grid North:"

Beginning at a point on the easterly edge of the West Shore Road right of way, said point being northerly a distance of 905 feet, more or less, along the West Shore Road right of way from a steel pipe marking the northwest corner of the "McBride Lot"; thence proceeding Northerly a distance of 840 feet, more or less, along the easterly edge of the West Shore Road right of way to a point; thence turning and proceeding South 89° East a distance of 435 feet, more or less, across the Protected Property to a point; thence turning and proceeding South 02° East a distance of 165 feet, more or less, across the Protected Property to a point; thence turning and proceeding North 87° East a distance of 140 feet, more or less, across the Protected Property to a point; thence turning and proceeding South 02° East a distance of 640 feet, more or less, across the Protected Property to a point; thence turning and proceeding South 87° West a distance of 625 feet, more or less, across the Protected Property to the point of beginning.