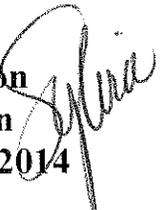


Agency of Agriculture, Food & Markets  
116 State Street  
Montpelier, VT 05620-2901  
[www.VermontAgriculture.com](http://www.VermontAgriculture.com)

## MEMO

**To:** Sarah London  
**From:** Sylvia Jensen   
**Date:** October 16, 2014  
**Re:** Governor's Acceptance & Approval

Attached you will find a Governor's Acceptances for the Harvey Farm in Rochester. A memo outlining the project, map, and draft easement are also included for your review. As you know, 6 V.S.A. §14 requires the Governor approve grants of development rights to the VT Agency of Agriculture, Food, and Markets.

Attached are two maps utilizing ANR data layers showing no hazardous wastes on this farm. Harvey Farm's neighbors to the east and north of their land have been identified as a "waster generator" and "underground storage tank (operating)" site. The Harvey Farm does not own any of these parcels.

Secondly, Section VII has a notice provision to DEC lasting 30 days requiring the Grantor to notify DEC if they plan on selling. During the notice period DEC can confer with grantor, grantees, and the buyer. Grantor shall not complete any sale, transfer, or conveyance until the end of the notice period.

I have reviewed the documents and obtained VAAFMM signatures. Please do not hesitate to contact me via email ([sylvia.jensen@state.vt.us](mailto:sylvia.jensen@state.vt.us)) or phone if you have any questions (782-3388).

Once signed please email me for pick up.



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

TO: Peter Shumlin, Governor

FROM:

For Charles R. Ross, Jr., Secretary, Vermont Agency of Agriculture, Food & Markets



DATE: October 7, 2014

RE: Acquisition of Development Rights – Richard S. Harvey Trust, Rochester

Your approval is requested for the acquisition of development rights, conservation restrictions, option to purchase, and right of enforcement of the United States on 167 acres of farmland in Rochester owned by Richard S. Harvey, Trustee of the Richard S. Harvey Trust.

The Rochester Selectboard and the Two Rivers-Ottawaquechee Regional Commission indicate their support of the conservation of this parcel, as evidenced by the attached letters.

#### I. Description of Property

Located a mile and a half south of Rochester village, Riverbend Farm is one of only three major farm operations remaining in Rochester. They all rely on the rich bottomlands of the White River. Richard Harvey has been farming for a very long time, and he wants to keep at it for the foreseeable future. He and his brother started their dairy operation in 1955 and worked together until 1983, when Richard bought his brother out. He continued to milk his dairy herd until 1996, at which time he transitioned the farm to a beef operation. Today, with his daughter Julia, Richard manages a herd of 25 bred cows and 25 calves. In addition, they produce \$5,000 of sweet corn and over 8000 round bales of hay, selling about half of them to horse customers. The plan is for Julia to eventually take over the operation.

Riverbend Farm possesses 83 acres of prime soils and 18 acres of statewide-significant soils. Of the 66 tillable acres, Richard plants 15 acres in corn and about 51 acres in hay. He rents an additional 16 acres. Running through it for over a mile, the dominant feature of Riverbend Farm is the White River. For scenic beauty, it's hard to beat biking or driving north on Route 100 along the River and past the succession of farms through Rochester.

Recognizing the River's central importance to his farm operation, Richard has belonged to the White River Partnership for over 15 years. He cooperated with the Partnership on a major project in 2000 involving the placement of 1600 feet of rock revetments and tree planting to stabilize his farm's riverbank and improve fish habitat. He has been a firm believer in riparian buffers. However, Tropical Storm Irene largely wiped out the White River Partnership project and took out significant sections of riparian buffer. Since that time, working with DEC River Scientist Gretchen Alexander, Richard also carefully considered the option of including a River Corridor Management Area (RCMA) as part of our proposed conservation easement. Due to the impacts of Irene and the potential implications of future flood events, however, he does not wish to commit to having the RCMA in his conservation easement at this time. He is similarly reluctant to commit to a riparian buffer of a specific



width. However, he recently spoke with NRCS staff about his plans to plant more trees and will continue to consider CREP enrollment and a future "overlay" RCMA easement.

The future of farming in Rochester rests with the remaining farm operations, and it is a pivotal time in the community's history. Tropical Storm Irene hit the community with a vengeance, but folks in Rochester have rallied to put things back in some semblance of normality. The farmers in town are showing similar resilience. Conservation funding from VHCB for the Harvey application will help strengthen the local farm economy, help pave the way for an intergenerational transfer of the farm, and provide us with an opportunity to keep conversations going about river protection options.

## **II. Need**

The sale of development rights will strengthen the local farm economy and assist in the affordable intergenerational transfer of the farm.

## **III. Source of Funds**

The purchase price for the easement with the option to purchase at agricultural value is \$122,000. VHCB approved a grant for this project in the amount of \$126,000 (\$122,000 for easement purchase and \$4,000 for third-party costs).

Financial leverage for this conservation effort includes a \$3,000 bargain sale equal to 2.5% of the easement purchase. In addition, a landowner contribution of \$1,220 (equal to 1% of the easement purchase) will be used toward the stewardship endowment.

**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 167 acres, more or less, of land owned by the Richard S. Harvey, Trustee of the Richard S. Harvey Trust located in the Town of Rochester, Vermont, by the Vermont Agency of Agriculture, Food and Markets. The Grant is to be recorded in the Land Records of the Town of Rochester.

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.

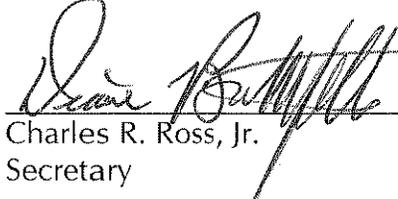
11/5/14  
Date

STATE OF VERMONT

  
\_\_\_\_\_  
Peter Shumlin  
Governor

10/15/14  
Date

VERMONT AGENCY OF AGRICULTURE,  
FOOD AND MARKETS

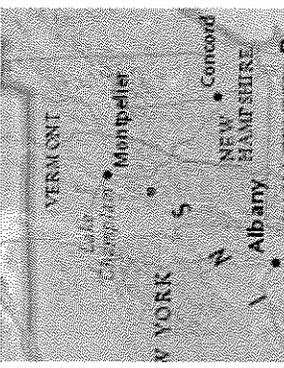
*For*   
\_\_\_\_\_  
Charles R. Ross, Jr.  
Secretary





**Natural Resources Atlas**  
Vermont Agency of Natural Resources

vermont.gov



**LEGEND**

- Landfills
  - OPERATING
  - CLOSED
- Hazardous Waste Site
- Hazardous Waste Generators
- Brownfields
- Underground Storage Tank (w/ Waste Water Facilities)

**NOTES**

Map created using ANR's Natural Resources Atlas



1: 14,663  
October 15, 2014

**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.

745.0      0      372.00      745.0 Meters  
1" = 1222 Ft.      1cm = 147 Meters  
THIS MAP IS NOT TO BE USED FOR NAVIGATION

WGS\_1984\_Web\_Mercator\_Auxiliary\_Sphere  
© Vermont Agency of Natural Resources





**Natural Resources Atlas**  
Vermont Agency of Natural Resources

vermont.gov

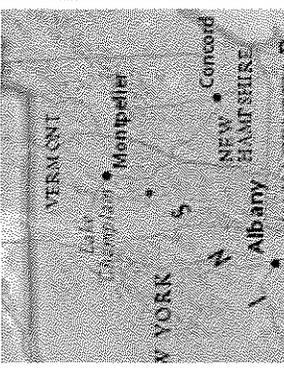


1: 7,757  
October 15, 2014



**LEGEND**

- Landfills
  - OPERATING
  - CLOSED
- Hazardous Waste Site
- Hazardous Waste Generators
- Brownfields
- Underground Storage Tank (w/ Waste Water Facilities)



**NOTES**

Map created using ANR's Natural Resources Atlas

**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.

394.0 0 197.00 394.0 Meters  
1" = 646 Ft. 1cm = 78 Meters  
THIS MAP IS NOT TO BE USED FOR NAVIGATION  
WGS\_1984\_Web\_Mercator\_Auxiliary\_Sphere  
© Vermont Agency of Natural Resources



# Vermont Land Trust

Harvey R Farm  
Town of Rochester  
Windsor Co., VT

October 2014

VLT Project #131080 VHCB #2014-030-001

### ACREAGE INFORMATION\*

Tillable	64.5 acres
Open Land	21.5 acres
Woods	66.5 acres
Wetland/Open Water	13.2 acres
Barn Complex	1.3 acres

**Total Protected Property ± 167.0 acres**

**Excluded Land ± 235.0 acres**

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

Protected Property  
Complex Boundary  
Excluded Land  
Right of Way

**Excluded  
± 233 acres**

**East ROW**

**West ROW**

**Barn  
Complex  
± 1.3 acres**



The Harvey R Farm Plan is based on the following State of Vermont Base Map 1:5000 orthophoto(s):  
Emerson, #128148, 2012;  
Mount Cushman, #128152, 2012;  
Mount Reeder, #124152, 2012;  
Taicville, #124148, 2012

1:5,000      1 inch = 416.7 feet

Feet      250 125 0 250 500 750

Meters      50 25 0 50 100 150 200

**Reference(s):**  
The boundaries of the Protected Property are based on surveys entitled:  
"Survey Based on the Record for Marlin W. & Doris R. Bowen, Rochester, Vermont" by Richard F. Luma, dated 6/28/87  
"Bleir H. Campbell, D.V.M. Fomer Bernal Property in Lower Rochester" by Richard F. Luma, dated 1/31/02

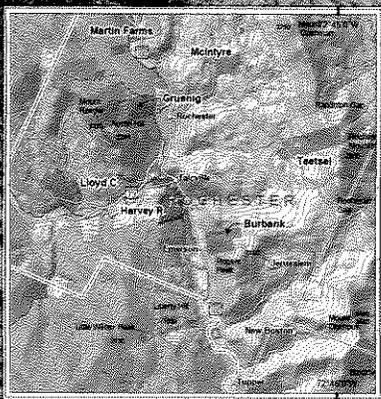
*This map is not a survey or subdivision plat, and should not be used or construed for such purposes. It was prepared without the benefit of field measurements or extensive title research. It is intended solely to assist the owner(s) of the conserved land and the holder(s) of the conservation easement in the administration and interpretation of the conservation easement by clearly depicting the presumed boundaries of the protected property, calculating the approximate acreages, 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:**

Richard S. Harvey, Trustee of the Richard S. Harvey Trust, u/t/a      Date  
May 6, 2005

Duly Authorized Agent of Vermont Land Trust, Inc.      Date



151000  
150000  
149000

151000  
150000  
149000





Rochester Town Office  
P. O. Box 238  
Rochester, Vt. 05767  
767-3631

July 16, 2013

Bob Linck  
Vermont Land Trust  
PO Box 850  
Richmond, VT 05477

RE: Pierce and Harvey Properties Rochester, VT

Dear Bob,

Thank you for attending the July 8, 2013 Selectboard meeting and presenting the proposal to conserve portions of the Pierce and Harvey farm properties. It was very helpful to have you available to answer questions from the Board and the public.

The Board voted at the meeting to send this letter of support for the proposed purchase by the Vermont Land Trust of conservation easements on the two properties.

Please contact me if you require anything further.

Sincerely,

  
Larry Straus  
Selectboard, Chair





# TWO RIVERS-OTTAUQUECHEE

William B. Emmons, III, Chairman  
Peter G. Gregory, AICP, Executive Director

## REGIONAL COMMISSION

July 11, 2013

Vermont Housing and Conservation Board  
58 East State Street  
Montpelier, VT 05602

Re: Conservation of Riverbend Farm (Rochester, VT)

Dear Members of the Vermont Housing and Conservation Board,

I am writing to express support for the conservation of the Riverbend Farm currently owned by Richard Harvey in Rochester, Vermont. Mr. Harvey would like to conserve 167 acres of his farm along the White River. This conservation project is consistent with the goals and policies of the Two Rivers-Ottawaquechee Regional Commission (TRORC) which represents thirty municipalities across the Upper Valley, including Rochester.

Conservation of the property would secure 167 acres of working farmland operated since 1955 as a dairy, then later a beef farm. Riverbend Farm possesses 84 acres of prime agricultural soil and 18 acres of statewide significant soils. The farm currently produces 15 acres of corn, 55 acres of hay and the grazing of 25 bred cows and 25 calves annually. Riverbend Farm is one of only three major farm operations in Rochester.

This conservation project would meet the goals of TRORC's Regional Plan, and help to implement its recommendations. For instance, our goals and policies include the following:

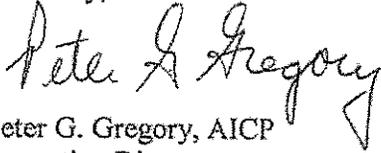
- "Encourage the conservation, wise use and management of the region's agricultural and forestry resources, to maintain its environmental integrity, and to protect its unique and fragile natural features" (V(B)(1));
- "Protect the region's rural agricultural character, scenic landscape, and recreational resources" (V(B)(2));
- "Reduce fragmentation of forest and agricultural lands" (V(B)(6));
- Use "public or private funds for purchase of development rights, or fee purchase of agricultural and forest land for conservation purposes from willing landowners..." (V(D)(3)(c)). Both the Vermont Housing and Conservation Board (VHCB) and the Vermont Land Trust are referenced here for their ability "to acquire interest or easements on significant farm and forest lands" (V(D)(3)(c)).

By implementing the above listed goals, this conservation project will help conserve working farmland from future impacts such as subdivision, development, or other uses that would inhibit

128 King Farm Road, Woodstock, VT 05091  
802.457.3188, fax: 802.457.4728, [www.trorc.org](http://www.trorc.org)

agricultural activities or degrade significant natural resources. I strongly urge you to support this project. Please feel free to get in touch with me if I can be of further assistance.

Sincerely,

A handwritten signature in cursive script that reads "Peter G. Gregory". The signature is written in dark ink and is positioned above the typed name.

Peter G. Gregory, AICP  
Executive Director

Cc: Bob Linck, Central Vermont Director of the Vermont Land Trust

Draft Date: 9/29/2014

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

KNOW ALL PERSONS BY THESE PRESENTS that **RICHARD S. HARVEY, TRUSTEE of the Richard S. Harvey Trust**, u/t/a May 6, 2005, of Rochester, County of Windsor, State of Vermont, on behalf of himself and his 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 his 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 in certain lands consisting of 167 acres, more or less, with the buildings and improvements now or hereafter situated thereon (hereinafter "Protected Property") located in the Town of Rochester, County of Windsor, 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) 83 acres of agricultural soils of prime significance;
  - b) 18 acres of agricultural soils of statewide significance;
  - c) 66.5 acres of managed woodland, including an area of Sugar Maple-Ostrich Fern Riverine Floodplain Forest, a natural community of statewide significance;
  - d) 11.5 acres of wetlands;
  - e) 2,735 feet of frontage on Vermont Route #100 and State Garage Road, public highways with scenic vistas;
  - f) traversed by 6,000 feet of the White River; and
  - g) in the vicinity of one (1) other property previously protected by Grantees.

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 \_\_\_\_\_, 2014. 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 his 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.

### **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 appurtenant structures and improvements, including drives and utilities, normally associated with a farm; and (c) in addition, the right to construct, maintain, repair, renovate, replace, enlarge, rebuild, use and occupy new farm buildings for non-residential, agricultural uses and appurtenant non-residential 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 1.3 acres, more or less, and is more particularly described in Schedule B attached hereto and incorporated herein, and is depicted on the Harvey R Farm Plan described in Schedule A attached hereto and incorporated herein. Grantors shall notify Grantees in writing prior to commencing construction on any new structure or improvement within the Barn Complex.

7. 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 a 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 a 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(7) 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.

8. 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 first single-family residence which may be located on the two (2) 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.

9. The right to construct, use, maintain, repair and replace one (1) camp being no more than fifteen (15) feet high as measured from the average undisturbed ground level to the roof peak and no more than 600 square feet in total useable floor area, or, in the alternative, 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 camp and access, in order to ensure that the dimensions of the structure are in compliance with this section and the camp 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. 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 his behalf, at his direction or with his 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 his right of action against such third party to Grantees, join Grantees in any suit or action against such third party, or appoint a Grantee his 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.

## V. 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.

## VI. 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 VI ("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. It is agreed that if Grantees exercise this Option, Grantor shall include in the conveyance of the Protected Property a perpetual non-exclusive fifty-foot (50') wide easement for all means of ingress, egress and utilities on, over and across the existing right of way connecting the Protected Property and Town Highway #35 (also known as State Garage Road) in the Town of Rochester in a generally southerly direction (the "West ROW") and a perpetual non-exclusive thirty-foot (30') wide easement for all means of ingress, egress and utilities on, over and across the existing right of way connecting the Protected Property and Town Highway #35 (also known as State Garage Road) in the Town of Rochester in a generally easterly and southerly direction (the "East ROW"), all at no additional cost to Grantees. The West ROW and the East ROW were retained by Grantor in the Warranty Deed conveyed to the State of Vermont, dated March 29, 1999, and recorded in Book 64, Page 358 of the Rochester Land Records. The general location of these two easements is depicted as "West ROW" and "East ROW" on the Harvey R Farm Plan.

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 VI; 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 VIII 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 VI(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 VI(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 VI(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 VI(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 VI(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) \$155,000.00 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 VI(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.

Grantor and Grantee shall establish the Purchase Price by either entering into a written agreement fixing the Purchase Price as provided in this Section VI(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 VI(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 VI(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 Protected Property and the East ROW and the West ROW, 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 VI(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 his 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 VI(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 VI(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 VI(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 VI(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 Rochester Town Clerk for recording in the Rochester Land Records:

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

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

**VII. Notice to DEC.** Grantor and Grantees acknowledge that a significant portion of the Protected Property lies within the corridor of the White River, a sensitive, erosive river. Grantor and Grantees also acknowledge that the Vermont Agency of Natural Resources, Department of Environmental Conservation ("DEC") has an interest in the management of such corridor in order to enhance and accommodate floodplain functions thereby reducing erosion and flood damage. Notwithstanding the provisions of Section VI above, Grantor shall not sell, transfer or convey the Protected Property, in whole or in part, without providing written notice of such intended transfer to the DEC at its principal place of business by certified mail, return receipt requested. The DEC shall have thirty (30) days following receipt of such notice (the "Notice Period") to confer with Grantor, Grantees and the Buyer regarding the corridor and the management thereof. Grantor shall not complete any such sale, transfer or conveyance until the end of the Notice Period.

**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, 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 Harvey R 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 Harvey R Farm Plan or BDR in enforcing this Grant, but are not limited in their use of the Harvey R 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 43.1% of the full fair market value of the Protected Property exclusive of the value of improvements. Grantor and Grantees agree that 43.1% 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 \_\_\_ percent (\_\_\_%), the proportional share applicable to the amount of any proceeds from extinguishment received by VHCB shall be \_\_\_% for the United States and \_\_\_% 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 Rochester 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 successors and assigns of the original Grantor, Richard S. Harvey, Trustee of the Richard S. Harvey Trust, u/t/a May 6, 2005. 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, 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, **RICHARD S. HARVEY, TRUSTEE of the Richard S. Harvey Trust**, u/t/a May 6, 2005, for himself and his successors and assigns, does covenant with the said Grantees and the UNITED STATES, their successors and assigns, that until the ensembling of these presents, he 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 he 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 \_\_\_\_\_, 2014.

GRANTOR

\_\_\_\_\_  
Richard S. Harvey, Trustee  
of the Richard S. Harvey Trust,  
u/t/a May 6, 2005

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

At \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, 2014, Richard S. Harvey personally appeared and he acknowledged this instrument, by him sealed and subscribed, to be his free act and deed, individually and in his legal capacity as Trustee of the Richard S. Harvey Trust, u/t/a May 6, 2005, before me.

\_\_\_\_\_  
Notary Public  
My commission expires: 02/10/2015

Approved by the VERMONT HOUSING AND CONSERVATION BOARD:

\_\_\_\_\_  
Date By: \_\_\_\_\_  
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 CHITTENDEN)  
STATE OF VERMONT)

On this \_\_\_\_ day of \_\_\_\_\_, 2014, 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 Trust Deed of Richard S. Harvey dated May 6, 2005, and recorded in Book 78, Page 244 of the Rochester Land Records.

**Excepted and excluded** from this description of the Protected Property are the following two (2) parcels of land:

1. A two-acre parcel, located westerly of Vermont Route 100 and being more particularly described as follows, all bearings are referenced to "Grid North:"

Beginning at a point on the westerly sideline of the Vermont Route 100 right of way, said point marking a southeast corner of lands n/f Allen and the northeast corner of the exclusion herein described; thence proceeding South 15° East 290 feet more or less, along the westerly sideline of the Vermont Route 100 right of way; thence turning and proceeding South 79° West 310 feet more or less, along the Protected Property; thence turning and proceeding North 14° 45' West 280 feet more or less, along the Protected Property to a southwest corner of lands n/f Allen; thence turning and proceeding North 77° East 310 feet more or less, along a southerly boundary of lands n/f Allen to the point of beginning.

2. A two hundred and thirty three (233) acre parcel being that portion of the land conveyed in the above referenced deed lying on the easterly side of Vermont Route #100 in Rochester.

Meaning and intending to include in this description of the Protected Property all of the land with the buildings and improvements thereon lying on the westerly side of Vermont Route #100 and on both sides of Town Highway #35 (also known as State Garage Road), in the Town of Rochester, Vermont, except as excluded above, and generally described as containing 167 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 - Harvey R Farm, Town of Rochester, Windsor Co., VT, October 2014" signed by the Grantor and VLT (referred to throughout this Grant and its Schedules as "Harvey R Farm Plan"). The Harvey R 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 Harvey R 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 Harvey R Farm Plan is kept by VLT in its Stewardship Office. **The Harvey R 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 1.3 acres, more or less, located westerly of Vermont Route 100 and is more particularly described as follows, all bearings are referenced to "Grid North:"

Beginning at a point on the westerly sideline of the Vermont Route 100 right of way (assumed 3 rod width) said point marking a southeast corner of lands n/f Calnan and a northeast corner of the Barn Complex herein described; thence proceeding  
South 29° East 235 feet more or less, along the westerly sideline of the Vermont Route 100 right of way; thence turning and proceeding  
South 64° 30' West 130 feet more or less, across the Protected Property; thence turning and proceeding  
North 83° 45' West 155 feet more or less, across the Protected Property; thence turning and proceeding  
North 34° 15' West 155 feet more or less, across the Protected Property to a southerly boundary of lands n/f Calnan; thence turning and proceeding  
North 65° East 270 feet more or less, along a southerly boundary of lands n/f Calnan to the point of beginning.

-----