

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

KNOW ALL PERSONS BY THESE PRESENTS that **MARC CESARIO** and **CHERYL CESARIO** of Cornwall, County of Addison, State of Vermont, on behalf of themselves and their heirs, executors, administrators, successors, and assigns (hereinafter collectively “Grantor”), pursuant to Title 10 V.S.A. Chapters 34 and 155 and in consideration of the payment of Ten Dollars and other valuable consideration paid to Grantor’s full satisfaction, do 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”), and the **VERMONT HOUSING AND CONSERVATION BOARD**, a public instrumentality of the State of Vermont with its offices in Montpelier, Vermont (“VHCB”), and their respective successors and assigns (hereinafter collectively “Grantees”) as tenants in common, forever, the development rights option to purchase at agricultural value and a perpetual conservation easement and restrictions (hereinafter known as the “Grant”) in certain lands consisting of 125 acres, more or less, with the buildings and improvements now or hereafter situated thereon (hereinafter “Protected Property”) located in the Town of Cornwall, County of Addison, State of Vermont, said Protected Property being more particularly described in Schedule A attached hereto and incorporated herein. Grantor also gives, grants, sells, conveys and confirms unto the UNITED STATES OF AMERICA, by and through the United States Department of Agriculture (“USDA”) Natural Resources Conservation Service (“NRCS” or “UNITED STATES”) acting on behalf of the Commodity Credit Corporation, as its interest appears herein, a right of enforcement.

The Agricultural Conservation Easement Program (“ACEP”), 16 U.S.C. 3865 et seq., and 7 CFR 1468 et seq. facilitated and provided funding for the purchase of this Grant, an agricultural land easement under ACEP, on the Protected Property for the purpose of protecting the agricultural use and future viability, and related conservation values, of the Protected Property by limiting nonagricultural uses of the Protected Property.

The development rights hereby conveyed to Grantees shall include all development rights except those specifically reserved by Grantor herein and those reasonably required to carry out the permitted uses of the Protected Property as herein described. The development rights and option hereby conveyed are rights and interests in real property pursuant to Title 10 V.S.A. §§ 823 and 6303. The conservation restrictions hereby conveyed to Grantees consist of covenants on the part of Grantor to do or refrain from doing, severally and collectively, the various acts set forth below, to the extent those acts relate to Grantor and not exclusively to Grantees. Grantor and Grantees acknowledge that the conservation restrictions constitute a servitude upon the land and run with the land. The Grantor and Grantees and their respective heirs, successors, agents, assigns, lessees, and any other person claiming under them shall comply with all terms, conditions and restrictions of this Grant.

I. Purposes of the Grant & Agricultural Land Easement Plan.

A. Purposes of the Grant

1. Consistent with the goals set forth in 10 V.S.A. §§ 821 and 6301, the Grantor, Grantees and the United States acknowledge that this Grant is acquired with its primary purpose being to protect in perpetuity the agricultural use and future viability of the Protected Property. The primary purpose includes the purpose of promoting 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. Grantor, Grantees and the United States acknowledge the following secondary purposes: to conserve scenic, open space, wildlife habitat, and other natural resources associated with the Protected Property; to improve the quality of life for Vermonters; and, to maintain for the benefit of future generations the essential characteristics of the Vermont countryside. Natural resource conservation includes, but is not limited to, landform and vegetation changes that may accommodate riparian, floodplain and wetland functions, and therefore protects natural flowages and stream equilibrium conditions.

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

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

- a) 17 acres of agricultural soils of prime significance which are 14% of the Protected Property;
- b) 93 acres of agricultural soils of statewide significance which are 74% of the Protected Property;
- c) 73 acres of managed forest;
- d) 3,280 feet of frontage on Vermont Route 74, a public highway with scenic vistas;
- e) in the vicinity of four (4) other properties previously protected by Grantees;
- f) streams, including Beaver Brook and its tributaries, that, with wooded buffers and natural flow, provide an array of ecological benefits including maintaining water quality and providing corridors for species movement;
- g) an occurrence of Sand Over Clay Forest, a rare natural community in Vermont
- h) documented habitat for Canada sanicle (*Sanicula canadensis var. canadensis*), a rare to uncommon plant in Vermont
- i) wetlands, including open, shrub, forested, seepage, and riparian wetlands; and,
- j) additional wetland, upland, and riparian habitat for wildlife.

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."

B. Agricultural Land Easement Plan

1. As required by 16 U.S.C. Section 3865a, agricultural production and related uses of the Protected Property are subject to an Agricultural Land Easement Plan (“ALE Plan”), as approved by NRCS, to promote the long-term viability of the land to meet the Purposes of this Grant. The ALE Plan, and any modifications or updates thereto, must also be approved by the Grantor and the Grantees. Grantor agrees the use of the Protected Property will be subject to the ALE Plan.

The ALE Plan is incorporated by reference and must not include any provisions inconsistent with the Purposes of this Grant. The Grantees and Grantor agree to update the ALE Plan in the event the agricultural uses of the Protected Property change. A copy of the current ALE Plan is kept on file with the Grantees.

The Grantees must take all reasonable steps to secure Grantor’s compliance with the ALE Plan. In the event of substantial or ongoing noncompliance with the ALE Plan or the requirement to update the ALE Plan, NRCS may notify the Grantees. NRCS will give the Grantees and Grantor a reasonable amount of time, not to exceed 180 days, to take corrective action. If Grantees fail to enforce the terms of this Grant, including, but not limited to compliance with the ALE Plan, the United States may exercise its right of enforcement.

II. Restricted Uses of Protected Property.

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

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

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

(i) agricultural production and related uses conducted in accordance with the ALE Plan;

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

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

(iv) commercial enterprises related to agriculture or forestry including, but not limited to, agri-tourism, processing, packaging, and marketing of farm or forest products, farm machinery repair and small-scale farm wineries; and

(v) small-scale commercial enterprises compatible with agriculture or forestry, including but not limited to cafes, shops, and studios for arts and crafts.

3. *Construction on the Protected Property* – All new structures and improvements must be located within the Barn Complex, containing approximately 6.5 acres and described in Schedule B which is appended to and made a part of this Grant, and is depicted on the Cesario Farm Plan described in Schedule A attached hereto and incorporated herein.

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

Utilities to serve approved buildings or structures, including on-farm energy structures allowed under Section II(2)(ii) or Section III(6), and agricultural structures that neither individually nor collectively have an adverse impact on the agricultural use and future viability and related conservation values of the Protected Property may be built outside of the Complex with prior written approval of the Grantees provided that the utilities or agricultural structures are consistent with the ALE Plan described in Section I Paragraph B. Without limiting the foregoing, and with the prior written approval of Grantees, the Grantor may construct, maintain, repair, replace, relocate, improve and use systems for disposal of human waste and for supply of water for human consumption (collectively “Systems”) on the Protected Property outside of the Complex for the benefit of buildings or structures permitted in the 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. Grantor shall notify Grantees in writing prior to commencing construction on any new structure or improvement within the Complex.

Notwithstanding anything to the contrary contained herein, Grantees may approve, in their sole discretion, up to an additional four (4) complexes; provided that the location of each complex is approved by the NRCS State Conservationist prior to any construction in such complex.

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

5. *Granting of easements for utilities and roads* – Grantor shall not grant or modify easements for public or private utilities and/or roads or other rights or interests when the utility, road, right or interest will adversely impact the agricultural use and future viability and related conservation values of the Protected Property as determined by the Grantees in consultation with the Chief of NRCS or his or her designee. Without limiting the foregoing, Grantor shall not grant or modify easements for public or private utilities and/or roads or other rights or interests without Grantees’ prior written approval, such approval to be granted, conditioned or denied in Grantees’ sole discretion. Notwithstanding anything to the contrary contained herein, Grantor may grant

additional conservation rights and interests to a qualified holder as those terms are defined in 10 V.S.A. Section 821 provided such grants do not provide easements for utilities and/or roads.

6. *Signage* - 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 activities approved pursuant to Section II(2) above. Grantees, with the permission of Grantor, may erect and maintain signs designating the Protected Property as land under the protection of Grantees.

7. *Waste and Dumping* – There shall be no accumulation or dumping of trash, refuse, sewage, junk or toxic materials on the Protected Property. This restriction will not prevent generally accepted agricultural or wildlife management practices, such as creation of brush piles, composting, or the storage of farm machinery, organic matter, agricultural products, or agricultural byproducts on the Protected Property.

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

(i) dam construction to create ponds for agricultural use, fire protection, or wildlife enhancement, or wetland restoration, enhancement or creation, in accordance with the ALE Plan;

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

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

(iv) agricultural activities conducted in a manner not inconsistent with the ALE Plan.

9. *Oil, Gas, or Mineral Exploration and Extraction* – Mining or extraction of soil, sand, gravel, oil, natural gas, fuel, coal, or any other mineral substance owned by Grantor as of the date of this Grant or later acquired by Grantor, using any surface mining, subsurface mining, or dredging method, from the Protected Property is prohibited. In no case shall surface mining of subsurface oil, gas, or other minerals be permitted. If a third party owns or leases the oil, natural gas, or any other mineral substance at the time this ALE is executed, and their interests have not been subordinated to this ALE, the Grantor must require, to the greatest extent possible, that any oil, natural gas, and mineral exploration and extraction conducted by such third party is conducted in accordance with this paragraph 9.

10. *Subdivision* – For purposes of this Grant, the Protected Property described in Schedule A hereto is considered to be one (1) parcel of land. Separate conveyance of a portion of

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

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

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

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

c. The Chief of NRCS determines that the:

- i. Parcels resulting from the subdivision of the Protected Property will meet ACEP land eligibility requirements of 16 U.S.C. § 3865 et seq. as enacted on the date the Protected Property was enrolled in ACEP, including the allocation of the impervious surface limitation between the subdivided parcels; and
- ii. The resulting parcel will not be below the median size of farms in the county as determined by most recent United States Department of Agriculture's National Agricultural Statistical Survey (NASS).

After Grantor receives written approval from Grantees and the Chief of NRCS, the Grantor shall give Grantees and the Chief of NRCS written notice prior to making a division of the Protected Property. Grantor shall pay Grantees an additional stewardship endowment in an amount consistent with Grantees' policies at the time that Grantor exercises its subdivision right pursuant to this Section II(11) as a consequence of creating separately owned farm units. The resulting parcels of land shall remain subject to this Grant. The division, subdivision or separate conveyance of a parcel of the Protected Property as provided in this Section II(11), will not affect the right of the Grantor, or Grantor's heirs, successors, or assigns to make any additional divisions of the Protected Property. The Grantor making the conveyance retains the right to make further approved divisions of the Protected Property unless the permitted divisions are allocated by that Grantor in the instrument

creating the division or other recorded instrument.

12. *Limitation on Impervious Surfaces* -- Impervious surfaces will not exceed seven percent (7%), of the Protected Property, excluding NRCS-approved conservation practices. Impervious surfaces are defined as material that does not allow water to percolate into the soil on the Protected Property; including, but not limited to, residential buildings, agricultural buildings with or without flooring, paved areas, and any other surfaces that are covered by asphalt, concrete, or roofs. This limitation does not include public roads or other roads owned and controlled by parties with superior rights to those rights conveyed to Grantees by this Grant.

In the event the Protected Property is subdivided as provided for in Section II(11) the total cumulative impervious surface of the subdivided parcels shall not exceed the impervious limitation referenced above. The Grantor, with Grantees' approval, shall allocate the impervious surface limit among the subdivided parcels and ensure said impervious surface limitation is clearly defined in each subdivided parcel's recorded instrument.

III. Permitted Uses of the Protected Property.

The provisions of this Grant and associated schedules will not be interpreted to restrict the types of agricultural uses that can function on the Protected Property, so long as the agricultural uses are not inconsistent with the ALE Plan. Permitted uses of the Protected Property include the specific uses allowed pursuant to Section II(2) above and the following activities, subject to the qualifications stated below:

1. *Agricultural Production* - The production, processing, and marketing of agricultural crops and livestock is permitted provided it is conducted in a manner not inconsistent with the terms of the ALE Plan.

2. *Forest Management and Timber Harvest* - Forest management and timber harvesting is permitted, provided all forest management and timber harvesting is carried out in accordance with all applicable local, State, Federal, and other governmental laws and regulations and to the extent reasonably practicable, in accordance with current, generally accepted best management practices for the sites, soils, and terrain of the Protected Property. In addition, forest management and timber harvesting, other than for conducting maple sugaring operations using existing woods roads and as otherwise provided below, must be performed in accordance with a written forest management plan, prepared by a professional resource manager, and approved by the Grantees. 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. If the Protected Property contains contiguous forest that exceeds the greater of 40 acres or 20 percent of the Protected Property, the forest management plan must be included as a part of the ALE Plan required under Section I, above. Forest management plans may include a forest stewardship plan, as specified in section 5 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103a); another practice plan approved by the State Forester; or, another plan determined appropriate by the State Conservationist. Grantor shall obtain Grantees' prior written approval to clearcut forest land to establish fields, orchards or pastures. Grantees' approval shall not be unreasonably withheld if such clearcutting is consistent with the Purposes of this Grant.

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

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

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

5. *Fences* – Fences may be maintained and replaced and new fences installed if they are necessary for agricultural operations on the Protected Property, to protect the WPZ and EZP as provided in Sections IV and V below, or to mark boundaries of the Protected Property.

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

7. *Barn Complex* -- The right to 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. The Barn Complex is an area consisting of 6.5 acres, more or less, and is more particularly described in Schedule B attached hereto and incorporated herein, and is depicted on the Cesario 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.

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 a complex as described in Section II(3); and
- c) designed and sized to be no larger than is necessary to meet the needs of the current and reasonably foreseeable farm business on the Protected Property and to ensure that the Protected Property remains available for production agriculture, affordable and owned by persons actively engaged in farming; and
- d) otherwise consistent with the Purposes of the Grant.

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

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

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

No use or structure contemplated under this Section 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. Grantees shall not approve a new structure for a non-agricultural commercial or industrial activity unless the proposed structure meets factors (a) through (f), above. However, Grantees may waive factors (a), (b) or (c) if the Grantees determine that the

unique circumstances of the situation warrant waiver and approval.

The restrictions of this Section III (9) shall not apply to renewable energy structures approved by Grantees under Sections II(2)(ii) or III(6) for construction outside a Complex under Section II(3).

10. Notwithstanding anything to the contrary contained herein, 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 but not within the Ecological Protection Zone and Wetland Protection Zone described in Sections IV and V, below. 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 as an additional designated Complex for such non-commercial camping, hunting and recreational purposes only, 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.

11. *Other Allowed Uses* – 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.

IV. Ecological Protection Zone.

The Ecological Protection Zone comprises a state-significant area of Sand Over Clay Forest on sandy forested slopes above the Beaver Brook riparian area. The Ecological Protection Zone consists of approximately _____ () acres, more or less, more particularly described as _____ and is generally depicted as “__ acre EPZ” on the Cesario Farm Plan (hereafter the “EPZ”). The boundaries of the EPZ may be changed from time to time by mutual agreement of Grantors and Grantees, as established by a written agreement recorded in the Cornwall Land Records and depicted on a new Farm Plan signed by Grantors and Grantees.

Within the EPZ, the goals, prescriptions, and restrictions of this Section IV are in addition to the provisions of Sections II and III of this Grant, and where inconsistent, the provisions of this

Section IV shall control.

Within the EPZ the following shall apply:

1. Protection of the Sand Over Clay Forest, as well as the natural communities that naturally develop in the future in the EPZ, and the ecological processes that sustain them, shall be Grantors' and Grantees' highest priority in approving and conducting all activities.
2. All management activities, including without limitation forest management, recreational management and ecological management, shall focus on the goals of a) maintaining soil integrity, natural hydrology, and water quality values, and b) maintaining the natural structure and species composition of the natural communities present or communities that may develop naturally over time, informed by the best current ecological science.
3. All forest management activities shall be conducted pursuant to a forest management plan that is consistent with the Purposes of this Grant and this Section IV. Any such activities shall employ all applicable recommended practices described in the regulations entitled "Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont" promulgated by the Vermont Department of Forests, Parks and Recreation, dated August 15, 1987, as may be amended from time to time (the "AMPs"). Management of the EPZ shall be informed by the best current ecological understanding of the unique characteristics at this site and the natural communities it supports. Silvicultural methods shall strive to mimic the natural, low-intensity disturbance regime specific to the Sand Over Clay Forest as well as natural communities that naturally develop in the future in this physical setting.
4. Grantees' approval of a forest management plan submitted pursuant to Section III(2) and IV(3), above, shall not be unreasonably withheld or conditioned; provided that such plan: (i) is consistent with the Purposes of this Grant and with the provisions of this Section IV; and (ii) such plan has been approved by a professional forester.
5. Limited agricultural activities consistent with the Purposes of this Grant and with the provisions of this Section IV may be permitted in Grantees' sole discretion.
6. In the context of acting under this Section IV, Grantors and Grantees may confer about what constitutes the best available ecological science; provided that, Grantees' interpretation thereof shall control.

V. Wetland Protection Zone.

The Protected Property includes certain lands containing and buffering wetlands hereby made subject to special protections to protect the water quality and the ecological processes associated with such wetlands. Such wetlands are herein designated as the "Wetland Protection Zone" or "WPZ". The WPZ is more particularly described as an open riparian complex flanking Beaver Brook and is generally depicted as "WPZ" on the Cesario Farm Plan. The boundaries of the WPZ may be changed from time to time by mutual agreement of Grantor and Grantees, as established by and depicted on a new Farm Plan signed by Grantor and Grantees and maintained on file with Grantee VLT.

Within the WPZ, the goals, prescriptions, and restrictions of this Section V are in addition to the provisions of Sections II and III of this Grant, and where inconsistent, the provisions of this Section V shall control.

Within the WPZ the following shall apply:

1. Protection or restoration of the ecological functions of the wetland natural communities, as well as the natural communities that naturally develop in the future in the WPZ, and the ecological processes that sustain them, shall be Grantor's and Grantee's' highest priority.

2. All management activities, including without limitation forest management and ecological management, shall focus on the goals of a) maintaining or restoring soil integrity, natural hydrology, and water quality, and b) maintaining the natural structure and species composition of the natural communities present or communities that may develop naturally over time, informed by the best current ecological science.

3. There shall be no agricultural activities (including without limitation the grazing or pasturing of animals), except as may be approved by Grantee(s) in its/their sole discretion.

4. All forest management activities shall be conducted pursuant to a forest management plan that is consistent with the Purposes of this Grant and this Section V. Without limiting the foregoing, the installation of new roads and trails shall require Grantee's' prior written approval.

In the context of acting under this Section V, Grantor(s) and Grantee(s) may confer about what constitutes the best available ecological science; provided that, Grantee's' interpretation thereof shall control.

VI. Enforcement of the Covenants and Restrictions.

Grantees shall make reasonable efforts from time to time to assure compliance by Grantor with all of the covenants and restrictions herein. In connection with such efforts, Grantees may make periodic inspection of all or any portion of the Protected Property, and for such inspection and enforcement purposes, Grantees shall have the right of reasonable access to the Protected Property. In the event that a Grantee becomes aware of an event or circumstance of non-compliance with this Grant, such Grantee shall give notice to Grantor and the other Grantees of such event or circumstance of non-compliance, and with respect to Grantor such notice shall be 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 without limitation staff time and professional consultation costs, 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 United States.

Grantor is responsible for the acts and omissions of persons acting on their behalf, at their direction or with their 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 their right of action against such third party to Grantees, join Grantees in any suit or action against such third party, or appoint a Grantee their attorney in fact for the purpose of pursuing an enforcement suit or action against such third party.

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

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

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

1. *United States Right of Enforcement.* Pursuant to 16 U.S.C. Section 3865 et seq., the United States is granted the right of enforcement that it may exercise only if the terms of this Grant are not enforced by Grantees. The Secretary of the United States Department of Agriculture (the Secretary) or his or her assigns, on behalf of the United States, may exercise this right of

enforcement under any authority available under State or Federal law if the Grantees, or their successors or assigns, fail to enforce any of the terms of this Grant, as determined in the sole discretion of the Secretary.

In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement or remedial action related to the enforcement of this Grant from the Grantor, including, but not limited to, attorney's fees and expenses related to Grantor's violations. In the event the United States exercises this right of enforcement, and to the extent not recovered from the Grantor first, it is entitled to recover any and all administrative and legal costs associated with any enforcement of this Grant from the Grantees, including, but not limited, attorney's fees and expenses related to Grantees' violations or failure to enforce the Grant against the Grantor, up to the amount of the United States contribution to the purchase of the ALE.

The Grantees will annually monitor compliance and provide the United States with an annual monitoring report that documents that the Grantees and Grantor are in compliance with the Grant and the ALE Plan. If the annual monitoring report is insufficient or is not provided annually, or if the United States has evidence of an unaddressed violation, as determined by the Secretary, the United States may exercise its right of inspection. For purposes of inspection and enforcement of the terms of this Grant, the ALE Plan and the United States Cooperative Agreement with the Grantees, the United States will have reasonable access to the Protected Property with advance notice to Grantees and Grantor or Grantor's representative. In the event of an emergency, the United States may enter the Protected Property to prevent, terminate, or mitigate a potential or unaddressed violation of these restrictions and will give notice to Grantees and Grantor or Grantor's representative at the earliest practicable time.

2. *General Disclaimer and Grantor Warranty.* The United States, its employees, agents, and assigns disclaim and will not be held responsible for Grantees' or Grantor's negligent acts or omissions or Grantees' or Grantor's breach of any representation, warranty, covenant, or agreements contained in this Grant, or violations of any Federal, State, or local laws, including all Environmental Laws (as defined below) including, without limitation, those that give rise to liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs of actions, or sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which the United States may be subject or incur relating to the Protected Property.

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

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

Furthermore, Grantor warrants the information disclosed to Grantee and United States regarding any past violations or non-compliance with Environmental Laws and associated remedial actions, or any past releases of Hazardous Materials and any associated remedial actions is complete and accurate.

Moreover, Grantor hereby promises to hold harmless and indemnify Grantees and the United States against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Protected Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Protected Property. Grantor's indemnification obligation shall not be affected by any authorizations provided by Grantees or the United States to Grantor with respect to the Protected Property or any restoration activities carried out by Grantees at the Protected Property; provided, however, that Grantees shall be responsible for any Hazardous Materials contributed after this date to the Protected Property by Grantees.

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

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

VIII. Option to Purchase at Agricultural Value.

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

conditions.

1. **Option Trigger.** Grantor shall not sell, transfer or convey the Protected Property, in whole or in part, without first offering the Protected Property for sale to Grantees pursuant to this Section VIII; provided, however, that the following described transactions shall not trigger Grantees' rights under this Option:

- a) Any mortgage, pledge, or other assignment of the Protected Property to a lender as security for indebtedness, provided the Grantees' interest under this Option is treated as an interest in real estate such that in the event of foreclosure Grantees are deemed necessary parties defendant in such foreclosure case and have the right to redeem the Protected Property from the foreclosure action; and
- b) Any conveyance by the Grantor to Grantor's family, as the latter term is defined in Section IX(8) below, by gift, inheritance, sale or other transfer; and
- c) Any conveyance of the Protected Property to a person who presently earns at least one-half of his or her annual gross income from the "business of farming," as that term is defined in Regulation 1.175-3 issued under the Internal Revenue Code of 1986 and who, in connection with the farming operations on the Protected Property, will continue to earn at least one-half of his or her annual gross income from the "business of farming" ("a Qualified Farmer"); and
- (d) Any lease to a Qualified Farmer or a lease having a term of 15 years or less, including renewal rights; provided, however, that any such lease shall expressly provide that, unless otherwise agreed by Grantees, the lease shall terminate and possession shall be delivered free and clear of any rights of the tenant upon a closing of the sale of the Protected Property following exercise of this Option.

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

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

- a) A complete duplicate of the Offer, together with such other instruments as may be required to show the bona fides of the Offer; and
- b) A written description of the Buyer's training and experience as an agricultural producer and an agricultural business plan for the Protected Property, including a

description of the agricultural activities to be conducted or facilitated by Buyer, proposed improvements to the Protected Property, and a statement of anticipated agricultural income and expenses for the three-year period following Buyer's acquisition of the Protected Property or, if Buyer has no such training and experience or intention of operating an agricultural business on the Protected Property, a written statement to that effect; and

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

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

3. **Exercise of Option.** This Option may be exercised by Grantees as follows:

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

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

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

- a-1) \$_____ plus an inflation adjustment determined by multiplying the foregoing value by 1 (one) plus the fractional increase calculated from the date hereof in the Consumer Price Index for all Urban Consumers, Northeast, All Items published by the Bureau of Labor Statistics, U.S. Department of Labor, or a successor

index published by the United States government to the date of the Offer; or

- a-2) The full fair market value of all Protected Property land subject to the Offer (including the site of any structures) assuming its highest and best use is commercial agricultural production commonly occurring within the market area where the Protected Property is located on the date of the Offer, as determined by a mutually approved disinterested appraiser selected by Grantor and Grantee, with the expense of such appraisal divided equally between Grantor and Grantee. Permanently installed land improvements, such as in-ground irrigation systems, farm roads, and drainage tiling shall be considered part of the land. This appraisal shall take into consideration the permitted and restricted uses set forth in, and the impact on value caused by the Grant.

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

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

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

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

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

5. **Entry onto the Protected Property.** After receiving the notice from Grantor described in Section VIII(2), above, and upon reasonable notice to the Grantor, the Grantee shall have the right to enter upon the Protected Property from time to time for the purpose of preparing for the purchase and disposition of the Protected Property, including but not limited, to preparing appraisals, conducting soils tests or engineering studies, advertising, showing prospective buyers or assignees, or obtaining other information about the Protected Property. Grantee's entry onto or testing of the Protected Property shall be conducted in a manner that minimizes any disturbance to the land and to the use and enjoyment of the Protected Property by the Grantor or any tenants in possession.

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

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

- e) The Grantor and the Grantee shall prorate property taxes as of the date of closing.
- f) The Grantor shall not physically alter the Protected Property or the improvements on the Protected Property or enter into any lease after a Grantee delivers the Notice of Intent to Exercise provided in Section VIII(3)(a), above, and while the Grantee may purchase pursuant thereto, except to perform generally accepted agricultural practices and normal repairs. In the event any structure is substantially destroyed by fire or other casualty, Grantee may elect to (1) proceed to closing and accept the proceeds of any insurance policy Grantor may have with respect to such destruction; or (2) if such insurance proceeds are less than the value of the structure as determined under Section VIII(4), above, proceed to closing and accept the proceeds of said insurance policy and reduce the purchase price by the difference between such value and insurance proceeds; or (3) withdraw its election to exercise this Option.
- g) The Protected Property shall be conveyed free of all leases, tenancies, tenants and occupants, unless Grantee otherwise agrees in writing.
- h) All personal property, livestock, machinery and equipment not included in the sale shall be removed from the Protected Property, and all other waste and debris shall be removed from the Protected Property prior to closing. Grantor and Grantee will jointly inspect the Protected Property 24 hours prior to closing.
- i) After closing, this Option shall remain in full force and effect with respect to all subsequent conveyances of the Protected Property, except as identified in Section VIII(1), above.

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

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

Should no Grantee exercise this Option as provided in Section VIII(3), above, or should a Grantee fail to close following its delivery of the Notice of Intent to Purchase, Grantor may proceed to close on

the sale to the Buyer on the terms and conditions described in the Notice of Intent to Sell, within twelve (12) months of the delivery of said Notice to Grantees. Provided, however, this Option shall remain in full force and effect with respect to all subsequent conveyances of the Protected Property, except as identified in Section VIII(1) above.

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

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

IX. General Provisions.

1. Where Grantor is required, as a result of this Grant, to obtain the prior written approval of Grantees before commencing an activity or act, and where Grantees have designated in writing another organization or entity which shall have the authority to grant such approval, the approval of said designee shall be deemed to be the approval of Grantees. Grantor shall reimburse Grantees or Grantees' designee for all extraordinary costs, including staff time, incurred in reviewing the proposed action requiring Grantees' approval; but not to include those costs which are expected and routine in scope. Upon the request of Grantor, Grantees shall deliver to Grantor, in written recordable form, any approval, disapproval, election, or waiver given by Grantees pursuant to this Grant.

2. Grantor agrees that the construction of any buildings, structures, or improvements, or any use of the land otherwise allowed 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 local, state and Federal ordinances, statutes, and regulations, including Federal drug laws, and at Grantor's sole expense.

3. It is further agreed that the Protected Property is accurately depicted and described in both the Cesario 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 Cesario Farm Plan or BDR in enforcing this Grant, but are not limited in their use of the Cesario 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. *Extinguishment, Termination and Condemnation.*

a) ALE Requirements. This Grant constitutes a real property interest immediately vested in the Grantees. This Grant may be extinguished or terminated in whole or in part only in accordance with the laws of the State of Vermont and, as applicable, the Internal Revenue Code, as amended, and the regulations promulgated thereunder. In addition, the interests and rights under this Grant may only be extinguished or terminated with the written approval of the Grantees and the United States. Due to the Federal interest in this Grant, the United States must review and approve any proposed extinguishment, termination, or condemnation action that may affect its Federal interest in the Protected Property.

With respect to a proposed extinguishment, termination, or condemnation action Grantees and the United States stipulate that the fair market value the Grant is seventy nine and seven-tenths percent (79.7%), hereinafter the "Proportionate Share," of the fair market value of the land unencumbered by this Grant. The Proportionate Share has been determined at the time of conveyance of this Grant by dividing the fair market value of this Grant by the fair market value of the Property without this Grant. The Proportionate Share will remain constant over time.

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

Unless otherwise provided in Subparagraph 5 (b) below, the allocation of the Proportionate Share between the Grantees and the United States must be as follows: (a) to the Grantees or their designee(s), _____ percent of the Proportionate Share; and, (b) to the United States _____ percent of the Proportionate Share. Until such time as the Grantees and the United States receive the Proportionate Share from the Grantor or the Grantor's successor or assign, the Grantees and the United States each have a lien against the Protected Property for the amount of the Proportionate Share due each of them. The Grantees or their designee(s) must use their allocation of the Proportionate Share in a manner consistent with the conservation purposes of the Grant. If proceeds from termination, extinguishment, or condemnation are paid directly to Grantees, as required by Subparagraph 5(b) below, or to the United States, each party agrees to reimburse the other parties up to the amount of the allocation of Proportionate Share to which they are entitled, as set forth in this Subparagraph 5(a), unless the federal Treasury Regulations require otherwise. If Grantees receive more than their Proportionate Share as set forth in this Subparagraph 5(a) because

of the Treasury Regulation requirements of Subparagraph 5(b) below, Grantees must obtain the United States' written approval of their use of such additional funds to achieve conservation purposes that are consistent with the Purposes of this Grant.

b) For Purposes of a Federal Income Tax Deduction. As provided for in Section 1.170A-14(g)(6)(i) of the Treasury Regulations, if a subsequent unexpected change in the conditions surrounding the Protected Property arise in the future which makes impossible or impractical the continued use of the Protected Property for the conservation purposes set forth herein, this Grant may be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. For the purposes of Grantor's claim of a federal income tax deduction under Internal Revenue Code Section 170(h) and associated Treasury Regulations, the fair market value of the Grant at the time of condemnation, termination or extinguishment shall be determined by multiplying (i) the fair market value of the Protected Property unencumbered by the Grant at the time of termination by (ii) the ratio of the value of the Grant at the time of this Grant to the value of the Protected Property without deduction for the value of the Grant at the time of the Grant. The ratio referred to in the preceding sentence shall be established by a qualified appraisal for federal income, gift and estate tax deduction purposes, pursuant to Treasury Regulation §1.170A-13 and §1.170A-14(h), and the ratio shall remain constant.

Pursuant to Treasury Regulation 1.170A-14(g)(6)(ii), after termination of this Grant, in whole or in part, on a subsequent sale, exchange or involuntary conversion of the Protected Property, Grantees must be entitled to a portion of the proceeds that is at least equal to the proportionate value of the Grant as established by this Subparagraph 5(b). All of Grantees' proceeds, as determined above, must be used by the Grantees in a manner consistent with the conservation purposes of this Grant.

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. 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.

8. The term "Grantor" includes the heirs, executors, administrators, successors, and assigns of the original Grantor, Marc Cesario and Cheryl Cesario. The term "Grantees" includes the respective successors and assigns of the original Grantees, Vermont Land Trust, Inc. and Vermont Housing and Conservation Board. 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.

9. 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.

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

11. 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.

12. 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.

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

14. *Boundary Line Adjustments.* All boundary line adjustments must be approved by the Grantees and United States by and through the Chief of NRCS. If necessary, an amendment to Schedule A of this Grant shall be properly executed and duly recorded.

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.**, 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, **MARC CESARIO** and **CHERYL CESARIO**, for themselves and their heirs, executors, administrators, successors, and assigns, do covenant with the said Grantees and the UNITED STATES, their successors and assigns, that until the ensembling 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 they hereby engage to warrant and defend the same against all lawful claims whatever, except as aforesaid.

We herein set our hands at _____, Vermont this ____ day of _____, 20__.

GRANTOR

Marc Cesario

Cheryl Cesario

STATE OF VERMONT
_____ COUNTY, ss.

At _____, this ____ day of _____, 20__, Marc Cesario and Cheryl Cesario personally appeared and they acknowledged this instrument, by them sealed and subscribed, to be their free act and deed, before me.

Print Name: _____
Notary Public, State of Vermont
Commission No. _____
My Commission Expires: 01/31/2021

VERMONT LAND TRUST, INC. ACCEPTANCE

The Vermont Land Trust, Inc. hereby acknowledges, approves, and accepts, the foregoing Grant and the rights and obligations conveyed therein.

Date

By: _____
Its Duly Authorized Agent

STATE OF VERMONT
COUNTY OF _____, SS.

At _____, Vermont on this _____ day of _____, 20____, personally appeared _____, duly authorized agent of the **Vermont Land Trust, Inc.**, and he/she acknowledged this instrument, by him/her sealed and subscribed, to be his/her free act and deed and the free act and deed of the Vermont Land Trust, Inc., before me.

Print Name: _____
Notary Public, State of Vermont
Commission No: _____
My Commission Expires: 01/31/2021

VERMONT HOUSING AND CONSERVATION BOARD ACCEPTANCE

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

Date

By: _____
Its Duly Authorized Agent

STATE OF VERMONT
COUNTY OF WASHINGTON, SS.

At Montpelier, Vermont on this _____ day of _____, 20____, personally appeared _____, duly authorized agent of the **Vermont Housing and Conservation Board**, and he/she acknowledged this instrument, by him/her sealed and subscribed, to be his/her free act and deed and the free act and deed of the Vermont Housing and Conservation Board, before me.

Print Name: _____
Notary Public, State of Vermont
Commission No: _____
My Commission Expires: 01/31/2021

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**SCHEDULE A
PROTECTED PROPERTY**

Being all and the same lands and premises, with any and all structures and improvements that may be situated thereon, conveyed to Grantor by warranty deed of Beaver Brook Properties, LLC dated on or about even date herewith and to be recorded in the Town of Cornwall Land Records.

Meaning and intending to include in this description of the Protected Property all of the land with the any buildings and improvements thereon lying on the northerly side of Vermont Route 74, in the Town of Cornwall, Vermont, and generally described as containing 125 acres, more or less.

NOTICE: Unless otherwise expressly indicated, the descriptions in this Schedule A and in any subsequent Schedules are not based on a survey or subdivision plat. The Grantor and Grantees have used their best efforts to depict the approximate boundaries of the Protected Property and any excluded parcels, complexes or ecological protection zones on a plan entitled “**Vermont Land Trust - Cesario Farm**, Town of Cornwall, Addison Co., VT, _____ 20__” signed by the Grantor and Vermont Land Trust, Inc. (“VLT”) (referred to throughout this Grant and its Schedules as “Cesario Farm Plan”). The Cesario 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 Cesario 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 Cesario Farm Plan is kept by VLT in its Stewardship Office. **The Cesario Farm Plan is not a survey and must not be used as a survey or for any conveyance or subdivision of the land depicted thereon.**

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

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

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**SCHEDULE B
BARN COMPLEX**

The “Barn Complex” referred to in Section II(3) of this Grant contains 6.5 acres, more or less, located northerly of Vermont Route 74, and is more particularly described as follows, all bearings are

referenced to "Grid North:"

Beginning at a point on the northerly sideline of the Vermont Route 74 right of way, said point being South 38° 30' West, 615 feet more or less, along the northerly sideline of the Vermont Route 74 right of way from an iron pin marking a southwest corner of lands n/f Rowe and a southeast corner of the Protected Property; thence proceeding South 38° 45' West 905 feet more or less, along the northerly sideline of the Vermont Route 74 right of way; thence turning and proceeding North 5° 45' West 750 feet more or less, across the Protected Property; thence turning and proceeding North 80° East 635 feet more or less, across the Protected Property; thence turning and proceeding South 6° 30' East 150 feet more or less, across the Protected Property to the point of beginning.

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