

GRANT OF DEVELOPMENT RIGHTS, CONSERVATION RESTRICTIONS,  
PUBLIC ACCESS EASEMENT and RIGHT OF ENTRY

KNOW ALL PERSONS BY THESE PRESENTS that the STATE OF VERMONT, AGENCY OF NATURAL RESOURCES, on behalf of itself and its successors and assigns (hereinafter "Grantor"), pursuant to Title 10 V.S.A. Chapters 34 and 155, and the 1999 Budget Adjustment Act, Section 87a (iii), and in consideration of the payment of Ten Dollars and other valuable consideration paid to its full satisfaction, does freely give, grant, sell, convey and confirm unto the VERMONT LAND TRUST, a non-profit corporation organized under the laws of the State of Vermont, with its principal offices in Montpelier, Vermont, and the VERMONT HOUSING AND CONSERVATION BOARD, an independent board of the State of Vermont with its offices in Montpelier, Vermont, and their respective successors and assigns (hereinafter "Grantees") tenants in common, forever, the development rights, perpetual conservation easement restrictions, public access easement, and right of entry (all as more particularly set forth below) in a certain tract of land (hereinafter "Protected Property") situated in the Towns of Ferdinand and Maidstone, Essex County, State of Vermont, the Protected Property being more particularly described in Schedule A attached hereto and incorporated herein.

Since Grantor is acquiring the Protected Property in two separate conveyances, the Protected Property shall consist of land described herein as well as land described in a future Grant of Development Rights, Conservation Restrictions, Public Access Easement and Right of Entry conveyed by Grantor to Grantees Vermont Land Trust and the Vermont Housing and Conservation Board (hereinafter "Second Grant"). Except for the description of the land conveyed, the Second Grant shall be identical to this Grant. Upon conveyance of the Second Grant, Grantor and Grantees agree that all right, title and interest in the lands conveyed by this Grant and the Second Grant shall merge and shall be the Protected Property subject to this Grant.

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, perpetual conservation easement restrictions, public access easement, and right of entry hereby conveyed to Grantees consists of covenants on the part of Grantor to do or refrain from doing, severally and collectively, the various acts set forth below. It is hereby acknowledged that the development rights, perpetual conservation easement restrictions, public access easement, and right of entry shall constitute a servitude upon and shall run with the land.

I. Purposes of this Grant and Management Plans.

A. Statement of Purposes

Grantor and Grantees acknowledge that the following Primary and Secondary Purposes shall apply to the Protected Property (hereinafter "Purposes of this Grant"):

1. As primary purposes, a) to conserve and protect biological diversity, wildlife habitat, natural communities, and native flora and fauna on the Protected Property, and the ecological processes that sustain these natural resource values as these values exist on the date of this instrument and as they may evolve in the future and b) to foster compatible pedestrian recreational use and utilization of the Protected Property; and
2. As secondary purposes, a) to provide for non-commercial public recreational use while confining more intensive uses (such as motorized, mechanized and equestrian access) to identified recreational corridors, provided such intensive uses are conducted in a manner that minimizes negative impacts on the natural resource values of the Protected Property; b) to conduct sustainable management and utilization of wildlife resources; c) to conduct sustainable management of forest resources; and d) to protect the Protected Property's remote, undeveloped, and scenic open space resources for present and future generations, provided that these secondary purposes are consistent with the primary purposes.
3. These objectives will be advanced by conserving the Protected Property because it possesses the following attributes:
  - a) Eight major ponds, all of which encompass Natural Heritage Sites, are found on the Protected Property, most of which also have large areas of undeveloped shoreline and wilderness character, and have surrounding wetlands and uplands that provide critical wildlife habitat, including black duck nesting areas.
  - b) Over 11 miles of Paul Stream, a riparian resource of statewide significance, which represents most of its streambed and watershed.

- c) Over 14 species listed by the Nongame and Natural Heritage Program as rare or endangered, and seven high-quality, natural community types. These natural communities include Ferdinand Bog and Dennis Pond/Mud Pond Wetland Complex, both of which are of ecoregional importance, and the Dennis Pond complex contains a high concentration of rare species and important natural communities. In addition to rare plant species, rare animals include but are not limited to the Gray Jay, Osprey, Loons, and Black-backed three-toed Woodpecker.
- d) Critically important nesting habitat for a large number of neotropical migratory birds, habitat for large mammals such as white-tailed deer, bears, moose, and bobcat, and is potentially suitable habitat for two rare mammals, American marten and the lynx. The diversity of habitat types on the Protected Property is quite wide, including wetland complexes, beaver drainages, deer wintering areas, concentrations of moose, extensive hardwood, softwood, and mixed forest stands.
- e) It abuts Maidstone State Forest, the nearly 2,000 acre Wenlock WMA, and what will become a 26,000 acre addition to Conte National Fish & Wildlife Refuge. It is also in near proximity to approximately 20,000 acres of public land in the Victory Basin area and approximately 126,000 acres subject to permanent forestry easements, including 84,000 acres of working forest land which will be resold, subject to easements protecting forestry and habitat values and providing for public recreational access pursuant to a Public Access Easement held by the Agency of Natural Resources and the Vermont Housing and Conservation Board;
- f) It has been used by area residents for utilization of fish and wildlife resources, dispersed recreational purposes, including fishing, hiking, hunting, snowmobiling, and trapping, and contains a portion of the Statewide Snowmobile Trail System (SSTS) currently managed by the Vermont Association of Snow Travelers (VAST).
- g) It contains some of the least roaded terrain in northern Vermont, and has an outstanding remote character.
- h) It is a large forested block connecting the White Mountain forests with the forested landscape of Northeastern Vermont and the Northern Green Mountains which provides for species movement between landscapes.
- i) It contains productive forestland with a mixed hardwood and softwood cover that is suitable for sustainable forest management.

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

#### B. Management Plans.

Grantor shall, from time-to-time and in collaboration with The Nature Conservancy ("TNC"), develop comprehensive Management Plans for the Protected Property (hereafter "Management Plans") which Management Plans shall provide for the use and management of the Protected Property in a fashion which is consistent with and advances the Purposes of this Grant.

Prior to the final adoption of each of the Management Plans, Grantor and TNC shall:

- (a) solicit appropriate comment or involvement from the Towns of Ferdinand and Maidstone, the Citizens Advisory Council (or successor body if one is established), the general public, United States Fish and Wildlife Service and the owners of the adjacent working forest lands protected by easements; (b) develop such Management Plans (as well as any subsequent revisions, amendments or updates) in a timely manner; and (c) provide Grantees with a copy of each of the Management Plans.

At a minimum, the Management Plans shall identify actions necessary to accomplish the following: (a) create and manage Special Treatment Area(s) on the Protected Property where the highest ecological values predominate and the most resource sensitive recreational uses are placed, (b) provide for the identification and protection of natural communities, wildlife habitats and other ecologically sensitive and/or important areas, (c) provide for sustainable utilization of fish and wildlife resources, (d) provide for and manage the public recreation on the Protected Property, (e) provide a plan for road maintenance that minimizes impacts on water quality and provides meaningful access to the property, (f)



create a plan for reducing the number of camps on the Protected Property, as leases expire or are terminated, and using remaining camps for public recreational, educational, management or research purposes, (g) identify and address the management needs of the recreational uses that may need special or more intensive management focus, such as equestrian or mountain-bike trails, (h) provide for meaningful recreational links to private and public lands; and (i) identify opportunities for sustainable wildlife habitat and forest management activities as provided below.

C. Annual Conference.

Grantor shall provide Grantees with a reasonable opportunity to meet and confer with Grantor at least annually to review proposed management activities and to evaluate management activities commenced in the previous years. Grantor and Grantees shall invite the Vermont Land Trust ("VLT") to attend this conference regarding matters which impact adjacent working forest land subject to easements protecting forestry and habitat values and providing for public recreational access. During such meetings:

1. Grantor shall report on the status of Management Plans and the timetable for implementation;
2. Grantor and Grantees shall discuss any activities permitted by this Grant but requiring prior written approval or consultation with Grantees.
3. Grantor shall disclose and discuss any plans it may have for the application of herbicides and pesticides, consistent with the limitations of paragraph II(10) of this Grant.
4. Grantor shall describe the location, objectives, and estimated timing of sustainable forestry activities, if any; and
5. Grantor shall describe plans for management of Special Treatment Areas pursuant to Section IV 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. The Protected Property shall be used for habitat conservation, natural area, non-commercial recreation, forestry, and open space purposes only, except as otherwise specifically permitted under this Grant. 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 by this Grant.
2. No rights-of-way, easements of ingress or egress, driveways, roads, or utility lines or easements shall be constructed, developed or maintained into, on, over, under, or across the Protected Property without the prior written permission of Grantees, which approval shall not be unreasonably withheld or conditioned if such use is consistent with the Purposes of this Grant.
3. There shall be no signs, billboards, or outdoor advertising of any kind erected or displayed on the Protected Property; provided, however, that Grantor may erect and maintain reasonable signs including but not limited to signs indicating the name of the Protected Property and its ownership by Grantor, boundary markers, directional signs, memorial plaques, informational and interpretive signs, and signs limiting access or use (subject to the limitations of Section IV, below). With prior written permission of Grantor, Grantees may erect and maintain signs designating the Protected Property as land under the protection of Grantor and Grantees.
4. The placement, collection or storage of trash, human waste, or any other unsightly or offensive material on the Protected Property shall not be permitted except at locations, if any, and in manner which is consistent with this Grant and permitted by the Management Plans. The temporary storage of trash in receptacles for periodic off-site disposal shall be permitted.
5. There shall be no disturbance of the surface, including but not limited to filling, excavation, removal of topsoil, sand, gravel, rocks or minerals, or change of the topography of the land in any manner, except as may be reasonably necessary to carry out the uses permitted on the Protected Property under the terms of this Grant and the Management Plans. In no case shall surface mining of subsurface oil, gas, or other minerals be permitted.

6. Grantor shall not give, grant, sell, convey, subdivide, transfer, mortgage, pledge or otherwise encumber the Protected Property without the prior written approval of Grantees.

7. There shall be no off-road operation of motorized vehicles on the Protected Property except for property management, trail grooming and/or maintenance, and for emergency purposes, and excepting that snowmobiling may be permitted as provided for in the Management Plan. There shall be no all-terrain vehicle use permitted on the Protected Property except for emergency or management purposes. However, Grantor may permit motor-driven wheelchairs or all-terrain vehicles for use by handicapped persons on the Protected Property if consistent with the Purposes of this Grant, including access permitted by paragraphs III(1) and III(12). For purposes of this Grant, all-terrain vehicles include motorized four-wheel, three-wheel and two-wheeled or tracked vehicles.

8. There shall be no manipulation of natural watercourses, wetlands, or other water bodies, nor shall there be activities conducted on the Protected Property which would be detrimental to water purity, or which could alter natural water level or flow, except as is minimally necessary to carry out the uses permitted on the Protected Property under this Grant. This paragraph shall not preclude the use of water flow devices on beaver dams to protect roads, recreation corridors, or private property.

9. Grantor shall not plant or broadcast on the Protected Property any genetically modified organisms, transgenic organisms, or organisms replicated through genetic manipulation such as cloning or any exotic species, defined as species which are not native to the north-eastern region of the United States, without prior consultation with the Grantees. Grantor and Grantees shall determine, prior to any planting or broadcasting, that such planting or broadcasting will have a beneficial ecological effect (including the examination of the unintended consequences on other species, particularly food chains) and will not be contrary to the Primary Purpose of this Grant.

10. No herbicide or pesticide shall be used on the property without prior consultation with the Grantees. Grantor and Grantees shall determine that such use is to control exotic species, or a pest or disease outbreak that exceeds normal ecological processes because of anthropological disturbance within the landscape; shall be by the narrowest spectrum, least persistent materials available; and shall not be contrary to the primary purpose of this Grant.

11. No motorized watercraft (except slow-speed electric trolling motors) shall be used on any waterbody within the Protected Property.

12. No use shall be made of the Protected Property, and no activity thereon shall be permitted which, in the reasonable opinion of Grantees, is or is likely to become inconsistent with the Purposes of this Grant.

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

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

1. The right to use the Protected Property for all types of non-commercial, non-motorized, dispersed outdoor recreational purposes [including, but not limited to: boating, cross-country skiing, fishing, hiking, hunting (including training and using hunting dogs), snowshoeing, swimming, trapping and wildlife observation] consistent with the Purposes of this Grant and permitted under the Management Plan.

2. Intensive, concentrated uses of the Protected Property for motorized access such as by vehicles or snowmobiles, for non-motorized, mechanized recreation such as mountain biking, for access by disabled persons, for equestrian trails, and for hiking trails may be permitted in the discretion of Grantor, but shall be located in identified, mapped recreation corridors consistent with the Purposes of this Grant and permitted under the Management Plan.

3. The right to use the Protected Property to conduct all activities allowed by the Management Plans, provided that such activities are reasonably necessary to carry out the Purposes of this Grant and are consistent with this Grant. This paragraph III (3) shall not be construed to authorize the construction of new structures not otherwise specifically permitted by this Grant.

4. The right to conduct sustainable forest and wildlife management together with the right to construct and maintain roads necessary for such activities, in accordance with a forest management plan which has been developed in collaboration with the Vermont Department of Fish and Wildlife, Vermont Department of Forests, Parks and Recreation and TNC which forest management plan shall be a component of the Management Plans. In developing the forest management plan, Grantor shall incorporate the following principles of sustainable forest management:



- a) design all roads and management activity to minimize degradation of water quality, and not less than the standards in the publication "Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont", a Vermont Department of Forests, Parks, and Recreation publication dated August 15, 1987 (or such successor standard approved by Grantees);
- b) maintain the long-term integrity of the forest ecosystem, including the following components: soil productivity, riparian buffers, native biodiversity, naturally occurring community and species mix, and retention of appropriate numbers and size range (including large diameter examples) of coarse woody debris and standing large trees, both living and dead, in various stages of cavity formation, snag development, and decay; and
- c) use silvicultural techniques and prescriptions which use the structure (eg. vertical structure and crown closure), function (eg. age class distributions, special habitats or food sources, and riparian buffers), and dynamics (eg. gap size, distribution and rates of formation) of the natural forest as a model for guidance. These examples are not intended to be limiting or all inclusive, but rather illustrate issues to be considered in forest management planning since knowledge about sustainable forestry will continue to evolve and the specificity of mimicking natural forest processes may vary depending upon location and any specific goals for wildlife and biodiversity management.

Grantor and Grantees acknowledge and agree that the techniques and standards for management of forests and wildlife will differ greatly depending on whether a management activity will take place within Special Treatment Areas designated pursuant to Section IV of this Grant ("STA") or outside of a STA. Nothing in this section is designed to preclude management for a specific wildlife species or forest age structure in the area outside of a STA, while any forest management within a STA would be strictly limited to ecological restoration or mimicking a natural ecological process that will enhance the biological integrity of the STA.

5. The right to temporarily or permanently close, maintain, repair, improve, and replace existing recreational trails, together with the right to clear, construct, repair, improve, maintain and replace new trails, provided that the location, use and construction of such new trails are consistent with the Purposes of this Grant and permitted by the Management Plans.
6. The right to maintain, repair, improve, and replace existing roads and associated improvements and the right to construct new roads and associated improvements, provided that such new roads are consistent with this Grant and permitted by the Management Plans
7. Notwithstanding paragraph III(6), if Grantor proposes to construct new roads which are not expressly permitted by the Management Plans, Grantor shall first secure the prior written approval of Grantees for construction of such roads, which approval shall not be unreasonably withheld or conditioned if construction is consistent with the Purposes of this Grant and the Management Plans.
8. After consultation with Grantees, the right to construct parking facilities for members of the public using the Protected Property, and provided that the size and location of such parking facilities are consistent with the Purposes of this Grant and permitted by the Management Plans.
9. After consultation with Grantees, the right to establish dispersed tent sites and a concentrated camping area for seasonal public recreational use on the Protected Property, provided that the number, location, scale, management, and volume of use of said sites and/or camping area is consistent with the Purposes of this Grant and permitted by the Management Plans and provided further that such tent sites comply with the Vermont Department of Forests, Parks, and Recreation rules and regulations governing camping on state lands. Notwithstanding this paragraph III(9), no concentrated camping areas shall be established in any Special Treatment Area designated pursuant to Section IV of this Grant.
10. After consultation with Grantees, the right to construct, maintain, repair and replace additional structures reasonably necessary to support the uses permitted by this Grant (including, for example, a free-standing rest room facility, a visitors' contact station or back-country lean-tos), provided that the number, location, scale and use of such structures are consistent with the Purposes of this Grant and permitted by the Management Plans.
11. The right to establish and/or maintain carry-in canoe or car-top boat access points to the ponds found on the Protected Property, provided the location and scale and volume of such use, both initially and as it may evolve over time, is consistent with the ecological Purposes of this Grant and the

Management Plans. Careful attention shall be paid to preventing the introduction of exotic species via such boat use.

12. The exclusive right to occupy, lease, use, repair, maintain, improve, demolish, replace, abandon or vacate, the existing seasonal camps and associated small outbuildings situated on the Protected Property, provided that the Grantor shall not extend the term of leases for seasonal camps beyond the time specified in the 1999 Budget Adjustment Act, except in accordance with a use permitted under paragraph III(14), and:

- a) Such structures shall not be improved by the provision of electrical or other public utility services, or by road or driveway access (beyond any such improvements or access that may exist on the date of this Grant).
- b) Such structures are used for recreational purposes on an intermittent basis and not for year-round, continuous residential occupancy.
- c) Such structures do not exceed 800 square feet of floor space, excepting that existing, larger camp structures may be maintained but not replaced with a structure larger than 800 square feet.

Seasonal camp access drives may be relocated after consultation with Grantees and provided the new drive corridor is consistent with the Purposes of the Grant. Grantor may permit camp lessees to use snowmobiles as a means of ingress or egress under a license issue by Grantor.

13. After consultation with Grantees, the right to construct, occupy, lease, use, repair, maintain, improve, demolish, replace, abandon or vacate new seasonal camps and associated small outbuildings on sites which are vacant as of the date of this Grant and the right to relocate any seasonal camps and associated improvements referenced in the preceding paragraph, provided that such activity is consistent with the Purposes of this Grant and permitted by the Management Plans.

14. After consultation with Grantees, at the expiration or termination of leases for seasonal camps, the right to non-commercial use of some seasonal camps for public recreational, educational, management or research purposes, provided that the continued presence of the structure and proposed non-commercial use is consistent with the Purposes of this Grant and permitted by the Management Plans.

15. The right to extract sand and gravel from the Protected Property, provided such materials are used exclusively for the maintenance of roads or driveways situated on the Protected Property, lands of the United States Fish and Wildlife Service (USFWS), adjacent state lands or adjacent protected working forest lands formerly owned by Champion International. Sand and gravel may not be sold commercially but may be exchanged or bartered for the maintenance of the above roads subject to a maintenance agreement with the USFWS or the owner of the adjacent, protected working forest lands. Such extraction shall occur at existing sites (or at new sites permitted by Management Plans) and under conditions detailed in the Management Plan and designed to minimize the effect of the extraction areas on the Purposes of this Grant. Creation of new extraction pits not expressly permitted by Management Plans shall require the prior written approval of the Grantees, which approval shall not be unreasonably withheld if the new extraction pits are consistent with the Purposes of the Grant and the Management Plans.

16. The right to issue special use permits or licenses authorizing the non-commercial use of the Protected Property for recreational, educational, or research purposes, provided that any such permit or license is for uses consistent with the Purposes of this Grant, and provided that such permit or license does not authorize any use of or action on the Protected Property otherwise prohibited by this Grant.

17. The right to charge the public reasonable use costs for maintaining and managing public use of the Protected Property including, but not limited to, snowmobile, bicycle, equestrian access to corridors and permitted use of seasonal camps, dispersed tent sites, concentrated camping areas or other areas where Grantor provides recreational services in addition to access. If, pursuant to this Grant or the Public Access Easement on working forest lands which abut the Protected Property, Grantor designates another organization to manage recreational use, Grantor shall have the right to require membership in such organization, provided that such a requirement is consistent with Grantor's obligations under the Public Access Easement and this paragraph III(16). Except where concentrated or group pedestrian use requires a special use permit or license pursuant to paragraph 15 of this Grant or the Public Access Easement, use costs or membership shall not be required for pedestrian (and associated motor vehicle) access to the Protected Property.

#### IV. Special Treatment Areas.



1. Grantor and Grantees acknowledge that the Protected Property contains significant biological and ecological resources and that the management of these resources shall be directed toward ecological restoration, mimicking natural ecological processes and allowing the natural communities found within Special Treatment Area(s) to progress toward their mature representation rather than managing for a specific species or maintaining a specific age of a community that prevents it from cycling through its oldest representations.
2. In collaboration and by mutual agreement, Grantor and TNC, shall identify, map, develop a management plan for and manage Special Treatment Area(s) ("STA") on the Protected Property in a manner that advances the Purposes of this Grant, the Management Plans and the principles contained in this Section IV. The STA Management Plan (as well as subsequent revisions, amendments or updates) shall be part of the Management Plans.
3. Grantor and Grantees agree that management of the STA shall be based on the following principles:
  - (a) The STA shall be an area with the highest ecological integrity, with natural ecological processes as intact as possible. This specifically includes allowing all natural communities to cycle through their oldest representations and to be subject to natural, ecological processes of all scales;
  - (b) Management shall be ecosystem and natural community based rather than single species based, though single species management may be needed to restore or maintain biodiversity values or ecological processes (particularly for species rare because of human causes or for species that have lost their natural predation) or to eliminate exotic species;
  - (c) Management for high ecological integrity is a very long-term process. All current management decisions should advance the goal of allowing the STA to function as an ecosystem with minimal intervention;
  - (d) Management should be based on best available knowledge concerning the management of ecological systems and natural areas;
  - (e) Public recreational uses of the STA shall be permitted, managed and located in a manner which minimizes the impact of such activities on the ecology of the STA, provided that such uses are consistent with the ecological purpose of this Grant, this Section IV and are permitted by the STA Management Plan; and
  - (f) No use of the STA shall be permitted to continue if such use is or is likely to become inconsistent with this Section IV or will have a negative impact on the ecology of the STA. Current uses of the STA which are inconsistent with this Section IV shall be phased out within a reasonable time in a manner consistent with this Grant.
4. The STA shall include the following biological and ecological resources:
  - a) Ferdinand Bog Watershed - A large, diverse wetland complex of five natural communities, two of which (dwarf shrub bog and poor fen) have been ranked by the Vermont Agency of Natural Resources, Nongame and Natural Heritage Program (hereafter NNHP) as high-quality examples. Ferdinand Bog is valuable habitat for a wide range of wildlife, including waterfowl, wading birds, deer, and moose. This area is of statewide and ecoregional importance.
  - b) Dennis/Mud Pond Watersheds - Mud Pond is a NNHP site of statewide importance. The pond is a small, remote tannic-water body and the wetlands include a dwarf shrub bog with three rare plants. Mud Pond and its wetlands are part of a larger wetland complex that includes Dennis Pond. This larger complex is of ecoregional importance: the complex includes six rare plant species, a wide array of natural communities, and high quality wildlife habitat.
  - c) South America Pond Watershed - This pond is a NNHP site of statewide significance because it is a remote, undisturbed softwater pond community that is also potential nesting habitat for loons. One rare plant of statewide significance, the northeastern bladderwort, is associated with the pond.
  - d) West Mountain Pond Watershed - This shallow, tannic-water pond is a NNHP site that contains two rare aquatic plant species of statewide significance, and the watershed includes

a northern white cedar swamp natural community (also a NNHP) of statewide significance. In addition there are at least two bogs near the pond, one of which is a lowland shrub bog that is part of the wetlands that include the cedar swamp.

- e) Extensive areas of mesic northern hardwood and mixed forests which are contiguous with the above-referenced watersheds and which provide evolutionary and ecological functions and a baseline for scientific knowledge. Unfragmented mature examples of these natural communities are extremely rare in Vermont and may present an opportunity to develop an example in this biophysical region.

5. Within the STA described herein, the provisions of this Section IV are in addition to the provisions of Sections I, II, III and V of this Grant and where inconsistent, the provisions of Section IV shall supercede the provisions of Sections I, II, III and V, except that the rights afforded by Section III(12) to existing seasonal camps, associated drives and outbuildings within the STA shall prevail over inconsistent provisions of this Section IV until the leases expire or are terminated in accordance with this Grant and the Management Plans.

#### V. Public Access.

Grantor covenants and agrees that Grantor shall permit access to the Protected Property by the general public for activities permitted by the terms and conditions of this Grant and the Management Plans.

#### VI. Right of Entry.

Grantor, State of Vermont, Agency of Natural Resources, on behalf of itself and its successors and assigns, does freely give, grant, sell, convey and confirm unto Grantees and their respective successors and assigns as tenants in common, forever, an executory interest in the form of a right of entry (all as more particularly set forth below) in and to the Protected Property more particularly described in Schedule A attached hereto and incorporated herein. Grantor covenants and agrees as follows:

1. Grantor shall use and maintain the Protected Property exclusively for uses permitted under this Grant, consistent with the Purposes of this Grant.
2. Grantor shall periodically inspect the Protected Property to assure Grantor's compliance with the terms and conditions of this Grant and shall report the results of the inspections to Grantees.
3. Grantor shall take all reasonable steps to correct any violation of the terms and conditions of this Grant in the event a breach is discovered.
4. Grantor shall not give, grant, sell, convey, subdivide, transfer, mortgage, pledge or otherwise encumber the Protected Property without the prior written approval of Grantees.

In the event Grantor takes or fails to take any action which could result in a breach or could reasonably be interpreted as expressing an intent to breach the obligations set forth in this Section, Grantees reserve the right of entry for conditions broken or an executory interest, which right, if exercised by Grantees upon such breach of, or intention to breach, the above covenants, shall be exercised by mailing a notice of violation ("Notice") by certified mail to Grantor. The Notice shall declare that the power of termination has been exercised and shall state the breach which caused the action. Grantor shall have a period of sixty (60) days from the date of its receipt of the Notice to correct the breach causing the termination. If in the reasonable opinion of Grantees the breach is not cured within said sixty-day period, the termination shall become final and a copy of the Notice shall be recorded in the Towns of Ferdinand, Brunswick and Maidstone Land Records. Grantees' rights and remedies under this Section V shall be in addition to the rights and remedies set forth in Section VI, below. No delay or omission by Grantees in the exercise of its rights under this Section V shall impair Grantees' rights under this clause or be construed as a waiver of the right of entry.

#### VII. Enforcement of the 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 the terms and conditions herein set forth, Grantees 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. In the event there has been an event or circumstance of non-compliance which is corrected through negotiation and voluntary compliance, Grantor shall, at Grantees' request, reimburse Grantees for all reasonable costs incurred in investigating the non-compliance and in securing its correction.

Failure by Grantor to cause discontinuance, abatement, or such other corrective action as may be demanded by the Grantee within a reasonable time after receipt of notice and reasonable opportunity to take corrective action shall entitle the Grantee 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 the Grantee to corrective action on the Protected Property, if necessary. If the court determines that Grantor has failed to comply with this Grant, Grantor shall reimburse the Grantee 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 the Grantee has 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 that this clause shall not apply to any Grantee protected by the doctrine of sovereign immunity. 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. 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.

The remedies described herein are in addition to, and not in limitation of, any other remedies available to the Grantees at law, in equity, or through administrative proceedings. No delay or omission by the Grantees in the exercise of any right or remedy upon any breach of Grantor shall impair the 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 said prior owner's ownership or control of the Protected Property has terminated.

#### VIII. Miscellaneous Provisions.

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

2. It is hereby agreed that the construction of any buildings, structures or improvements, or any use of the land otherwise permitted under this Grant, shall be in accordance with all applicable ordinances, statutes and regulations of the Towns of Ferdinand and Maidstone and the State of Vermont.

3. The Grantees shall transfer the development rights, right of first refusal, 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.

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

5. In any deed or lease conveying an interest in all or part of the Protected Property, Grantor shall make reference to the conservation easement, restrictions, and obligations described herein and shall indicate that this easement and restrictions are binding upon all successors in interest in the Protected Property in perpetuity. Grantor shall also notify Grantees of the name(s) and address(es) of Grantor's successor(s) in interest.

6. Grantees shall be entitled to rerecord this Grant, or to record a notice making reference to the existence of this Grant, in the Towns of Ferdinand and Maidstone 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.

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 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" shall include the successors and assigns of the original Grantor, the State of Vermont, Agency of Natural Resources, its successors and assigns as to the Protected Property or any portion thereof. The term "Grantees" shall include the respective successors and assigns of the original Grantees, The Vermont Land Trust and Vermont Housing and Conservation Board.

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

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

TO HAVE AND TO HOLD said granted development rights, right of first refusal, and conservation easement and restrictions, with all the privileges and appurtenances thereof, to the said Grantees, VERMONT LAND TRUST and VERMONT HOUSING AND CONSERVATION BOARD, their respective successors and assigns, to their own use and behoof forever, and the said Grantor, STATE OF VERMONT, AGENCY OF NATURAL RESOURCES, for itself and its successors and assigns, does covenant with the said Grantees, their successors and assigns, that until the ensembling of these presents, it is the sole owner of the premises, and has good right and title to convey the same in the manner aforesaid, that the premises are free from every encumbrance, except easements and use restrictions of record as set forth in Schedule B attached hereto and incorporated herein, and it hereby engages to warrant and defend the same against all lawful claims whatever.

IN WITNESS WHEREOF, John Kassell, duly authorized agent of State of Vermont, Agency of Natural Resources, sets his hand and seal this 6<sup>th</sup> day of August, 1999.

Signed, sealed and delivered  
In The Presence Of:

Shirley M. DeLoatch  
Witness

STATE OF VERMONT, AGENCY OF  
NATURAL RESOURCES

By: John Kassell  
Its Duly Authorized Agent

STATE OF VERMONT  
CHITTENDEN COUNTY, ss.

At Burlington, this 6<sup>th</sup> day of August, 1999, John Kassell, duly authorized agent of the State of Vermont, Agency of Natural Resources, personally appeared and he acknowledged this instrument, by him sealed and subscribed, to be his free act and deed and the free act and deed of the State of Vermont, Agency of Natural Resources, before me.

Shirley M. DeLoatch  
Notary Public  
My commission expires: 2/10/2003

Approved by the VERMONT HOUSING AND CONSERVATION BOARD:

8/06/99  
Date

By: Shirley M. DeLoatch  
Its Duly Authorized Agent