



MEGAN R. LUDWIG
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February 1, 2008

Mrs. Susan M. Hudson, Clerk
Vermont Public Service Board
112 State Street, Drawer 20
Montpelier, VT 05620-2701

Re: Southern Loop Project
Public Service Board Docket No. 7373; Motion in Limine

Dear Mrs. Hudson:

Enclosed for filing in the above-referenced docket please find an original and six copies of Petitioners' Motion in Limine to Exclude Evidence with Respect to Vermont Land Trust Restrictions on the Ferenbach Parcel.

Petitioners respectfully request that the Board set a deadline of February 8, 2008 for responses to this Motion and issue a ruling on the Motion by the end of February prior to the commencement of discovery in March.

Very truly yours,

Megan R. Ludwig

Enclosure

cc: Service List

2390417.1

PSB Docket No. 7373 -- SERVICE LIST

Parties:

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2360888.1

**STATE OF VERMONT
PUBLIC SERVICE BOARD**

Petition of Vermont Transco, LLC, and
Vermont Electric Power Company, Inc.
(collectively, "VELCO"), and Central Vermont
Public Service Corporation ("CVPS") for a
Certificate of Public Good, pursuant to 30
V.S.A. § 248, for the "**Southern Loop Project**,"
located in Vernon, Guilford, Brattleboro,
Dummerston, Newfane, Brookline, Townshend,
Grafton, Windham, Andover, Chester, Ludlow
and Cavendish, Vermont, consisting of the
following elements: (1) a new, approximately
51-mile, 345 kV transmission line between
Vernon-Cavendish, to be built parallel to and
within the same utility right-of-way as
VELCO's existing Vernon-Cavendish 345 kV
line; (2) a new VELCO 345/115 kV Vernon
substation, to be located just north of the
Vermont Yankee Nuclear Power Station; (3) a
new 345/115/46 kV Newfane substation; (4) a
new, approximately one-mile, 345 kV
transmission line loop between the new
Newfane substation and the new Vernon-
Cavendish 345 kV line; (5) expansion of
VELCO's Coolidge substation in Cavendish,
Vermont; and (6) the implementing of
incremental energy efficiency to defer
transmission upgrades in Southern Vermont

Docket No. 7373

MOTION IN LIMINE TO EXCLUDE EVIDENCE WITH RESPECT TO
VERMONT LAND TRUST RESTRICTIONS ON THE FERENBACH PARCEL

NOW COME Vermont Electric Power Company, Inc. and Vermont Transco LLC
(collectively "VELCO") and Central Vermont Public Service Corporation ("CVPS," and with
VELCO, "Petitioners"), and move to exclude in Limine evidence relating to restrictions and
plans relevant to easement rights of the Vermont Land Trust, Inc. ("Vermont Land Trust")
associated with land owned by Carl Ferenbach, III and Judy W. Ferenbach. Such evidence
should be excluded from the record in this proceeding on the basis that the Vermont Land Trust

restrictions and plans are irrelevant as they are subject to VELCO's pre-existing exclusive easement rights to erect and maintain utility lines on the Ferenbach parcel, and any evidence with respect to these subordinate interests will unnecessarily consume valuable discovery and litigation time, waste resources and detract from other critical issues in this docket.

I. Background

The parcel owned by the Ferenbachs is subject to a recorded utility easement dated November 20, 1970 between the Ferenbachs' predecessors Winston B. Lewis, Myron S. Lewis and Victor L. Lewis and VELCO (the "VELCO Easement"). *See* Attachment 1. The VELCO Easement grants VELCO "the perpetual, exclusive right and easement to erect, construct, maintain, reconstruct, relocate, operate and remove electric transmission, distribution and communication *lines* (which may be erected at different times and at such voltages as the Grantee [VELCO] ... may from time to time determine)" *Id.* (emphasis added). In addition, the VELCO Easement grants VELCO the right at any and all times to enter on land of the Ferenbachs to remove vegetation within and outside of the easement which in VELCO's opinion may interfere with the successful operation of the line or lines, and to gain access to the easement area with motor vehicles and construction equipment for the purpose of constructing, operating, inspecting and repairing any and all structures which VELCO may erect. *Id.* The VELCO Easement further commits the grantors and their heirs to defend VELCO against all claims. *Id.*

The Ferenbachs acquired the property by warranty deed dated September 30, 1999. *See* Attachment 2. They bought the property subject to VELCO's 1970 Easement as well as a 1995 conservation easement granted by the Ferenbachs' predecessor-in-title to the Vermont Land Trust. *See* Attachment 3. The Land Trust deed imposes certain development restrictions,

including a requirement that “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 the Grantee.”

Attachment 3, Section II.2. However, the Land Trust deed itself expressly acknowledges that the parcel is subject to a pre-existing VELCO Easement.¹ Attachment 3, Schedule A.

By its Order dated January 10, 2008, the Vermont Public Service Board granted the Ferenbachs permissive intervention pursuant to Board Rule 2.209(B), limited to the interests specifically identified in the Ferenbachs motion to intervene -- i.e., impacts to their property with respect to wetlands, a stream, bodies of water, a trail system, the ecosystem and natural botanical and biological communities, forestry management plans, aesthetics and the natural beauty, rare and irreplaceable natural areas, and Vermont Land Trust restrictions and plans -- and any other impacts to natural resources on their property that the Ferenbachs discover through further investigation. Order of 1/10/08 at 3. The Order reminded the parties that they were free to seek the exclusion of evidence if the Ferenbachs took an excessively expansive view of the scope of the their intervention. *Id.*

II. Argument

A. Standards Applied By The Board

Under Board Rule 2.216(A), evidentiary matters are governed by Section 810 of the Vermont Administrative Procedures Act, which provides in pertinent part:

In contested cases:

(1) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in civil cases in the superior courts of this state shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted (except where precluded

¹ Petitioners note that the Land Trust deed includes an incorrect reference to the book and page of the VELCO Easement. This error is not material, as the VELCO easement is recorded in the chain of title and therefore the Ferenbachs had notice of its existence.

by statute) if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs

3 V.S.A. § 810(1); *see also In re Central Vermont Public Service Corp.*, 141 Vt. 284, 292 (1982). The statute dictates that evidence should be excluded from the record if it is irrelevant to the proceeding. Irrelevant evidence is evidence that has no probative value. Docket No. 6545, Order of 1/31/02 at 6. Irrelevant evidence is not otherwise admissible under the Rules of Evidence, and likewise is not of a type “commonly relied upon” by the Board.

The Board has broad discretion in making evidentiary rulings before technical hearings. *See Lamb v. Geovjian* 165 Vt. 375, 379 (1996) (“A trial court has broad discretion in its pretrial evidentiary rulings.”). A motion in limine can help focus the evidence and issues for hearing. *See State v. Dubois* 150 Vt. 600, 602-03 (1988) (explaining that motion in limine can limit issues for trial where possible). The Board has, therefore, previously granted motions in limine for purposes of administrative economy and to promote efficient case management. *See* Docket No. 5825, Order of 9/14/95; *see also* Docket No. 6596, Order of 1/23/02 at 5, fn. 16 (observing that, while the excluded issue had “implications” affecting the rate investigation proceeding, it did not present issues that must be resolved in that docket). Granting this motion to limit evidence of the conservation easement is consistent with the Board’s prior determinations.

The Vermont Land Trust conservation easement is irrelevant to this proceeding *as a matter of law* because, as discussed below, VELCO holds exclusive easement rights to the land encumbered by the VELCO Easement, and the Land Trust restrictions are subject to VELCO’s pre-existing rights. Any evidence relating to restrictions imposed by the Land Trust deed would be irrelevant, would not be helpful to the Board and would lead to confusion, prejudice and delay. Moreover, any such evidence would amount to a waste of valuable resources and time in discovery, testimony preparation, and hearings. The Board has received intervention requests from a total of nine parties – the Ferenbachs, the towns of Newfane, Brookline, Cavendish and Brattleboro, the Conservation Law Foundation, ISO-New England, the Vermont Land Trust and the Vermont Public Power Supply Authority. VELCO asks the Board to consider the potential

drain on all parties resources if the Board permits discovery, testimony, and cross examination on irrelevant issues and evidence in this complex docket.

B. VELCO's Exclusive Easement

The VELCO Easement confers a "perpetual and exclusive" easement to VELCO to "to erect, construct, maintain, reconstruct, relocate, operate and remove electric transmission, distribution and communication lines." See Attachment 1. The law of exclusive easements favors interpretation of such interests as giving the grantee the right to exclude everyone but the grantor from the easement area, so long as the grantor does not interfere with the easement holder's rights. Jon W. Bruce and James W. Ely, Jr., *The Law of Easements and Licenses*, § 1:28 (2001); see also 3 Powell, *Powell on Real Property* §§ 34.02[1], 34.14; *City of Pasadena v. California-Michigan Land & Water Co. ("City of Pasadena")*, 17 Cal.2d 576, 578-579, 110 P.2d 983, 985 (1941); *Hoffman v. Capitol Cablevision System, Inc.*, 52 A.D.2d 313, 315, 383 N.Y.S.2d 674, 676 (3d Dept. 1976).

The holder of a dominant estate is entitled to use of an easement "in a manner that is reasonably necessary for the convenient enjoyment of the servitude." Restatement (Third) Property, Servitudes § 4:10 (2000); see also *Rowe v. Lavanway*, 2006 Vt. 47, ¶ 23, 904 A.2d 78 (2006). Here, the VELCO Easement is unequivocal in the rights conferred to VELCO as grantee. The VELCO Easement expressly allows for erection of one or more transmission lines, of unspecified voltages, and additional clearing and access using vehicles and construction equipment. These broad allowances extend to precisely the type of activities proposed by VELCO in connection with the Southern Loop Project.

The subsequent rights acquired by the Vermont Land Trust are expressly subject to and limited by VELCO's pre-existing recorded, exclusive easement. They cannot further limit VELCO's rights. Moreover, by operation of the VELCO Easement, the Ferenbachs are obligated to "warrant and defend" VELCO's exclusive easement rights "against all claims and demands whatsoever." Thus, the Board need not look further than the language of the two deeds

to reach the conclusion that the Land Trust easement is unenforceable as to the land encumbered by the VELCO Easement.

Moreover, even if the Land Trust deed failed to include such an express reservation, fundamental principles of property law dictate that an easement recorded first in time has priority over after-acquired interests in property. *See Moore v. Center*, 124 Vt. 277, 282, 204 A.2d 164 (1964); *Sargent v. Gagne ("Sargent")*, 121 Vt. 1, 9, 147 A.2d 892 (1958). Although a servient owner has the right to grant additional easements to the same land, the servient owner is precluded from granting subsequent easements that interfere with the interests of the first-in-time exclusive easement, without the consent of the owners of both estates. *See Sweezy v. Neel*, 179 Vt. 507, 512, 904 A.2d 1050 (2006) (Vermont law forecloses a servient owner from unilaterally altering established easements); *Sargent*, 121 Vt. at 12; *see also* Bruce and Ely, *supra*, § 8:17; *see generally* Restatement (Third) of Property (Servitudes) § 4.12 (2000); Easement as Precluding Subsequent Acquisition of Easement in Same Land by Third Person, 133 ALR 1200; *Ephrata Area School v. County of Lancaster*, No. 70 MAP 2006, *4 (Pa. December 27, 2007); *City of Pasadena, supra*. VELCO has not consented to or released its exclusive easement rights vis the Land Trust restrictions.

C. Conclusion


Petitioners respectfully submit that the Board should exclude as irrelevant any evidence the Ferenbachs or any other party seek to enter into the record with respect to interests in land which interfere with VELCO's exclusive easement rights on the Ferenbach property. Not only does the plain language of the 1995 conservation easement itself clearly limit the scope of development rights by referencing the existing VELCO Easement, but the principles of exclusive easements further support the fact that VELCO holds a superior right to the encumbered land, which rights cannot be interfered with absent VELCO's consent. The proposed Project is entirely within the scope of VELCO's exclusive and perpetual rights under the easement, and any evidence related to the Land Trust restrictions would be irrelevant, contrary to the applicable

deeds and governing rules of law, and unnecessarily consume valuable litigation time, waste resources and detract from other critical issues in this docket. Petitioners therefore respectfully request that the Board grant their Motion in Limine and exclude the aforementioned evidence.

DATED at Burlington, Vermont, this 1st day of February, 2008

Respectfully submitted,

VERMONT ELECTRIC POWER COMPANY,
INC. AND VERMONT TRANSCO, LLC

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CORPORATION

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2374353.3

Right of Way
 Winston B. Lewis,
 Myron S. Lewis and
 Victor L. Lewis
 To Vermont Electric Power Company, Inc.

Know All Men by These Presents: THAT, WE, WINSTON B. LEWIS of the City of Annapolis in the County of Anne Arundel and State of Maryland; MYRON S. LEWIS of the City of Westport in the County of Fairfield and State of Connecticut and VICTOR L. LEWIS of Chicago in the County of Cook and State of Illinois (hereinafter called the Grantor), for and in consideration of the sum of One Dollar and other valuable consideration paid by the VERMONT ELECTRIC POWER COMPANY, INC. (hereinafter called the Grantee), a corporation duly authorized and existing according to law with its office and principal place of business in the City of Rutland, in the County of Rutland and State of Vermont, the receipt whereof is hereby acknowledged, do hereby GIVE, GRANT, BARGAIN, SELL AND CONVEY unto the said Grantee, its successors and assigns, the perpetual, exclusive right and easement to erect, construct, maintain, reconstruct, relocate, operate and remove electric transmission, distribution and communication lines (which may be erected at different times and at such voltages as the Grantee, its successors and assigns may from time to time determine) consisting of suitable and sufficient poles and towers with wires and/or cables strung thereon for the transmission of electricity and the transmission of intelligence by electricity, together with all necessary foundations, anchors, guys, braces, fittings, equipment and appurtenances, including buried ground wires or cables, under, over and upon a strip of land owned by us in the town of Townshend in the County of Windham and State of Vermont bounded and described as follows:

Descriptions of Locations #1 and #2 contained on Rider attached hereto.

This rider is attached to and made part of easement grant dated November 30, 1970 by Winston B., Myron S. and Victor L. Lewis to Vermont Electric Power Company, Inc.

LOCATION #1:

Beginning at a point in the property division line between lands now or formerly of G. Campbell Taylor on the south and lands of the Grantors on the north, said point being located about 310 feet southwesterly of the intersection of stone walls on the west side of a discontinued road, said distance being measured along the property division line and stone wall between lands now or formerly of said G. Campbell Taylor on the south and lands of the Grantors on the north; thence running on a straight course of about North 11° 39' West a distance of 1,410 feet, more or less, to a point in the centerline of the highway leading to the Grantors house; thence running in a southeasterly direction along the centerline of said highway 425 feet, more or less, to the intersection of said highway with a highway running northeasterly and a highway running southerly; thence running southerly on the west edge of said highway running southerly a distance of 1,000 feet, more or less, to the intersection of said stone walls mentioned above; thence running in a southwesterly direction a distance of 310 feet, more or less, to the point and place of beginning.

LOCATION #2:

Beginning at a point in the property division line between lands now or formerly of Raymond G. Clayton on the east and lands of the Grantors on the west, said point being located about 250 feet northerly of the junction of a stone wall that runs westerly along the highway that leads to the Grantors house, said distance being measured along the easterly property line of the Grantors and the westerly property line of said Raymond G. Clayton; thence running on a straight course of about North 11° 39' West a distance of 1,440 feet, more or less, to a point in the property division line between lands of the Grantors on the south and lands now or formerly of John Norris on the north; thence running in an easterly direction a distance of 300 feet, more or less, along said property division line to a point; thence running on a straight course of about South 11° 39' East a distance of 750 feet, more or less, to

32 V.E.P. 029, 21
 ACKNOWLEDGMENT
 Made before me this 1st day of August, 1970, by
 Winston B. Lewis, Myron S. Lewis and Victor L. Lewis
 State of Vermont
 Date

W.B.L. 3-4-70, 1970

a point in the property division line and stone wall between lands of the Grantors on the west and lands now or formerly of said Raymond G. Clayton on the east; thence running along said stone wall and property division line a distance of 81.0 feet, more or less to the point of beginning.

The exact location of said survey line is to be selected by the Grantee after its final surveys have been completed.

Title to the foregoing lands and premises was acquired by decree of distribution in the estate of Oms B. Lewis which decree was issued by the Probate Court of the District of Windham and which decree is recorded in the Town Clerk's office of the Town of Townshend in Book Page

Together with the right, within said strip of land, to cut down, trim, burn and remove with shears any and all trees, underbrush and vegetation or parts thereof growing within or overhanging the limits of said strip (the first clearing may be for less than the full width and may be widened from time to time to the full width) and to remove all structures and obstructions which are now found within the limits of said strip; also, by planting, trimming and cutting, to control the location, size and quality of the trees and other vegetation within said strip.

Together with the permanent right at any and all times to enter on adjacent land of the Grantors, their heirs and assigns, and cut or trim and remove such trees growing outside the limits of said right of way strip which may, in the opinion of the Grantee, its successors and assigns, interfere with or be likely to interfere with, the successful operation of said line or lines now or hereafter to be constructed on said right of way strip above described; also, to install, maintain and replace anchors and guy wires on land of the Grantors adjacent to and lying outside of the land above described to support the Grantee's electric line or lines at angle points.

The Grantors for themselves, their heirs, executors, administrators and assigns, hereby covenant and agree to and with the Grantee, its successors and assigns, that they will not erect or maintain any building or other structure, or permit the erection or maintenance of any building or other structure, of any kind or nature upon the above described strip, and will not place, permit or allow any material of any kind or nature to be piled up, or accumulate on, or be removed from the said right of way strip above described so as to change the grade of the surface of the ground any and all of which, in the opinion of the Grantee, its successors and assigns, would endanger or interfere with the operation or maintenance of said line or lines constructed along and across said strip.

Together, also, with the right at all times to cross and recross our other premises by convenient and reasonable approaches to gain access to the above described strip on foot and with teams, motor vehicles and construction equipment for the purpose of constructing, operating, inspecting and repairing any and all structures or fixtures of every kind and nature which the Grantee, its successors and assigns, may erect, construct, maintain and operate upon the above described right of way strip, this right of access may be confined to routes designated by us if such designated routes are practicable and acceptable to the Grantee, its successors and assigns; provided, however, that this right of access must be exercised in a careful manner and the Grantee, its successors and assigns, shall reimburse the Grantors for all physical damage to the lands, buildings, structures, installations and crops thereon in the exercising of this right of access.

RESERVING, NEVERTHELESS, unto the Grantors their heirs, executors, administrators and assigns the right to cross and recross said strip at such places as may be necessary in using the lands adjacent to said strip, provided, however, any such crossing and recrossing shall not interfere with the rights herein granted and shall be exercised in a careful manner, and the grantor reserves the right to designate the location and extend of such necessary crossings and further

reserving to the grantors, their heirs, executors, administrators and assigns the right to use said strip in any manner which does not interfere with the use of said strip by Grantee, its successors and assigns for the easement purposes described above.

The Grantee, its successors and assigns shall have the right to assign to others, in whole or in part, any or all of the rights, privileges and easements hereinbefore set forth.

TO HAVE AND TO HOLD the above granted rights and easements, with all privileges and appurtenances thereunto belonging, unto the said Grantee, its successors and assigns forever, to it and their own proper use, benefit and behoof; and also We, the said Grantors do for ourselves and our heirs, executors and administrators covenant with the said Grantee, its successors and assigns that at and until the sealing of these presents We are well seized of said premises as a good indefensible estate in fee simple, and have good right to sell and convey the rights and easements aforesaid in manner and form above written, and that the same are free from all encumbrances whatsoever, and furthermore We, the said Grantors bind ourselves and our heirs forever to warrant and defend the same to the said Grantee and its successors and assigns forever against all claims and demands whatsoever, except.... Exceptions are set forth on Rider attached hereto

that nothing herein contained shall be deemed to be a covenant with respect to or warranty or undertaking to warrant or defend against any claims, rights or title of any person or persons other than grantors in or to any part of the above-described strip falling in or used for road, highway or cemetery purposes; and except that damages for breach or breaches of warranties, covenants and undertakings hereunder (express and implied) and liability of grantors, their heirs, executors and administrators hereunder shall be limited to and shall not exceed the following: in the event of a final adjudication, in any suit to which the grantors, their heirs, executors and administrators are parties or of which they have due notice and opportunity to defend, by a Court of competent jurisdiction, which is not appealable or from which no appeal is taken within allowable time, that Grantee, its successors and assigns, are not entitled to use of the above-granted rights and easements because grantors do not have the right on the date hereof to validly grant the above-granted rights and easements, grantors, their heirs, executors and administrators shall repay to grantee, its successors and assigns a sum equal to \$500.00 per acre for as much of the above-described strip as to which such adjudication is made, and grantors for themselves, their heirs, executors and administrators reserves the right to defend or otherwise be parties to or participate in any suit or litigation in which any issue is presented which contests the right of grantors to grant the above-granted rights and easements; and except that the above-granted rights and easements shall terminate if Grantee, its successors and assigns at any time abandon or cease to use said right of way strip for the purposes above set forth. This rider is attached to and made part of easement grant dated November 20, 1970 from Winston B., Myron S. and Victor L. Lewis to Vermont Electric Power Company, Inc.

PROVIDED, NEVERTHELESS, that if the said Grantee, its successors or assigns shall fail to pay or cause to be paid to the said Grantors, their heirs, executors, administrators or assigns, the sum of Nine Thousand (\$9,000.00) Dollars on or before one (1) month from the date hereof, then this conveyance to be null, void and of no effect whatsoever, otherwise to be and remain in full force and virtue. Anyone of the herein named Grantors is hereby authorized and empowered to discharge of record the foregoing conditions.

IN WITNESS WHEREOF we have hereunto set our hands and seals this 20th day of November A.D., 1970

In Presence of:

John G. Roun 1	}	Winston B. Lewis	I.S.
Virginia E. Mitchers	}	Winston B. Lewis	
Natalie R. Corbin	}	Myron S. Lewis	I.S.
John C. Gilman	}	Myron S. Lewis	
Patricia A. Hynous	}	Victor L. Lewis	I.S.
Margaret V. Brennan	}	Victor L. Lewis	

W. S. L. 3-4-75-4, 1970

STATE OF MARYLAND)
COUNTY OF ANNE ARUNDEL) SS.

BE IT REMEMBERED, that on the 5th 30th day of October November
A. D. 1970, personally appeared Winston B. Lewis signer and sealer
of the foregoing written instrument and acknowledged the same to be
his free act and deed.

NOTARIAL SEAL Before me, M. Joan Graham
Notary Public

VIRGINIA LEWIS
NOTARY PUBLIC
MY COMMISSION EXPIRES MAR. 31, 1974

STATE OF CONNECTICUT)
COUNTY OF FAIRFIELD) SS.

BE IT REMEMBERED, that on the 6th day of December A.D. 1970 personally
appeared Myron S. Lewis signer and sealer of the foregoing written
instrument and acknowledged the same to be his free act and deed.

Before me, Virginia Lewis
Notary Public

NOTARIAL SEAL

STATE OF ILLINOIS)
COUNTY OF COOK) SS.

BE IT REMEMBERED, that on the 20th day of November A.D. 1970 personally
appeared Victor L. Lewis signer and sealer of the foregoing written
instrument and acknowledged the same to be his free act and deed.

Before me, Lucille E. Rath
Notary Public

NOTARIAL SEAL

~~I/We hereby certify that the payment set forth in the foregoing
condition has been made in full and that said condition is hereby
discharged.~~

~~Dated the --- day of --- A.D. --19~~

~~In Presence of-~~

Received for record December 18, A.D. 1970, at 9 o'clock and 30 min.,
A. M.

Attest: *[Signature]*
Town Clerk

WARRANTY DEED

Buckley, Dennis J.
To: Ferenbach, Carl & Judy

ATTACHMENT 2

WARRANTY DEED

KNOW ALL PERSONS BY THESE PRESENTS That I, DENNIS J. BUCKLEY of Rye in the County of Westchester and State of New York, Grantor, in the consideration of One Dollar and other valuable consideration paid to our full satisfaction by CARL FERENBACH and JUDY FERENBACH of Boston in the County of Middlesex and Commonwealth of Massachusetts, Grantees, by these presents, do freely GIVE, GRANT, SELL, CONVEY AND CONFIRM unto the said Grantees, CARL FERENBACH and JUDY FERENBACH, husband and wife, as tenants by the entirety, and their heirs and assigns forever, a certain piece of land in Townshend in the County of Windham and State of Vermont, described as follows, viz:

See Schedule A attached.

TO HAVE AND TO HOLD said granted premises, with all the privileges and appurtenances thereof, to the said Grantees, CARL FERENBACH and JUDY FERENBACH, husband and wife, as tenants by the entirety, and their heirs and assigns, to their own use and behoof forever; And I the said Grantor, DENNIS J. BUCKLEY for myself and my heirs, executors and administrators, do covenant with the said Grantees, CARL FERENBACH and JUDY FERENBACH, and their heirs and assigns, that until the en sealing of these presents I am the sole owner of the premises, and have good right and title to convey the same in manner aforesaid, that they are FREE FROM EVERY ENCUMBRANCE, except as aforesaid; And I hereby engage to WARRANT AND DEFEND the same against all lawful claims whatever, except as aforesaid.

IN WITNESS WHEREOF, I hereunto set our hands and seals this 30th day of September, 1999.

In the Presence of:

John M. Rowland
Witness

Dennis J. Buckley
DENNIS J. BUCKLEY

STATE OF NEW YORK
COUNTY OF WESTCHESTER } ss.

At 300 N. PLACE RYE, NY this 30th day of September, 1999, DENNIS J.

BUCKLEY personally appeared and he acknowledged this instrument, by his sealed and subscribed, to be his free act and deed.

Notary Public for the State of New York
9050
10-009

Before me John M. Rowland
Notary Public
My Commission Expires: 12/31/2000

JOHN M. ROWLAND
NOTARY PUBLIC, State of New York
No. B2R0864064 Qual. In Westchester Co.
Commission Expires December 31, 2000

SCHEDULE A

Beginning at a point at a corner of walls located on the northerly side of Town Highway No. 26 marking the southeast corner of premises now or formerly of Carl Ferenbach and Judy Ferenbach at a corner of lands now or formerly of Kurt W. and Mary E. Adams;

Thence turning and running along the northerly side of said Town Highway No. 26 the following courses and distances:

S 83° 01' 00" W, a distance of 60.53 feet to a point;
 S 78° 42' 50" W, a distance of 491.22 feet to a point;
 S 70° 56' 20" W, a distance of 188.69 feet to a point;
 S 66° 00' 00" W, a distance of 38.8 feet at the corner of lands now or formerly of Richard T. Ritter;

Thence continuing along lands of said Ritter S 66° 00' 00" W, a distance of 180.29 feet to a point;

Thence S 41° 29' 50" W, a distance of 77.53 feet to a point;

Thence S 41° 43' 10" W, a distance of 432.68 feet to a point marking the southeast corner of a six acre parcel now or formerly of Ferenbach;

Thence turning and crossing said Town Road No. 26 to a point at a juncture of stone walls on the southerly side of said Town Highway No. 26;

Thence running S 71° 51' 50" E, a distance of 701.45 feet along a stone wall and lands of Norman E. and June Ellen E. Lott;

Thence continuing S 62° 22' 55" E along lands of Lott, a distance of 494.45 feet to a point for a corner;

Thence turning at right angles and running S 27° 27' 55" W along a stone wall, a distance of 244.11 feet to a point for a corner;

Thence turning and running S 02° 37' 40" W partially along a stone wall, a distance of 669.25 feet to a point for a corner;

Thence turning and running S 63° 28' 05" E along said stone wall, a distance of 86.03 feet to a point for a corner;

Thence continuing S 64° 30' 00" E, a distance of 60.18 feet to a point for a corner;

Thence continuing S 64° 21' 50" E along a stone wall, a distance of 146.3 feet to a point for a corner;

Thence turning and running N 27° 29' 25" E along a stone wall and lands of William E. and Nancy W. Eckart, a distance of 768.54 feet to a point for a corner;

Thence turning and running N 53° 50' 55" E across the right of way of Vermont Electric Power Co., Inc. along a stone wall, a distance of 315.92 feet to a point for a corner;

Thence turning and running in a general northwesterly direction along lands now or formerly of Leon Kozlowski, Jr. and Beryl S. Kozlowski N 9° 01' W, a distance of 909.17 feet to a point for a corner;

Thence turning and running in a general northeasterly direction along lands now or formerly of Kozlowski N 80° 32' E, a distance of 200.67 feet to a point on the easterly side of a trail road;

Thence turning and running in a general northerly direction along lands now or formerly of Kozlowski N 8° 32' W along the

easterly boundary of the trail road a distance of 688.59 feet to a point at a stone wall at the intersection of the trail road and Town Highway No. 26;

Thence turning and running N 75° 17' 15" E along the southerly side of said Town Highway No. 26, a distance of 35.35 feet to a point for corner set at a juncture of stonewalls;

Thence running N 54° 38' 10" W, along the southerly side of said Town Highway No. 26 and a stone wall, a distance of 347.79 feet to a corner at the end of the stone wall;

Thence running N 73° 19' 05" W along the southerly side of said highway, a distance of 93.15 feet to a point for a corner;

Thence running S 78° 15' 15" W along the southerly side of said highway across a barway to a point for a corner;

Thence continuing north across said highway to a point for a corner to the point marking the point and place of beginning, containing 41.1 acres, more or less.

The above described premises are all of the land owned of the Grantor, Dennis Buckley, lying southerly of said Town Highway No. 26.

Being all and the same land and premises conveyed to Dennis J. Buckley by quit claim deed of Dennis J. Buckley and Joanna J. Buckley dated 12 September 1997, recorded in Volume 66, Page 399 of the Townshend Land Records.

Further meaning and intending hereby to convey a portion of the 51.40 acre parcel conveyed to Dennis J. Buckley and Joanna J. Buckley by Warranty Deed of Winston B. Lewis, Myron S. Lewis and Victor L. Lewis dated September 14, 1988, recorded in Book 52, Page 426 of the Townshend Land Records, excepting and reserving therefrom the following:

1. A 10.267 acre parcel of land located on the southeasterly side of Town Highway No. 26 and conveyed to Leon Kozlowski, Jr. and Beryl F. Kozlowski by Warranty Deed dated July 14, 1990, and recorded in Book 55, Page 104 of the Townshend Land Records as depicted on survey entitled "Lot 3 of Buckley Land in Townshend, Vermont Capital 4: John T. Hanneman" prepared by T.E. Schreyer, Jr. Dated April 25, 1990, drawing number 905.

Said 51.4 acre parcel is more particularly described on a survey entitled "Boundary Survey Now or Formerly of the Oma Barnes Lewis Estate, Town Highway No. 26, Wiswall Hill, prepared for Dennis Buckley, Townsend (sic), Vermont," by Parrish Land Surveying date of survey 7/88, date of plan 8/88, revised 12/12/88 and 12/16/88, filed in the Townshend Land Records.

2. The premises are conveyed subject to a Grant of Development Rights and Conservation Restrictions from Dennis J. Buckley and Joanna J. Buckley to the Vermont Land Trust, Inc. dated 27 December 1995 and recorded in Volume 63, Page 242 of the Townshend Land Records, as amended by Quit Claim Deeds of Dennis J. Buckley and Joanna J. Buckley dated 29 December 1997, recorded in Volume 67, Page 85 of the Townshend Land Records and Notice of Exercise of Right to Create Homestead Complex and Approval of Location of Homestead Complex dated 23 January 1998 recorded in Volume 67, Page 86 of the Townshend Land Records.

3. The premises are further conveyed subject to the following:

1. Easement Deed dated 18 December 1978 to Vermont Electric Power Co., Inc. recorded in Book 40, Page 190 of the Townshend Land Records, however, conveying herewith such rights as are reserved to the Grantors therein.

2. All such rights which the general public may have acquired or the Town of Townshend may own in easement for highway purposes over and upon Town Highway No. 26, so-called which is a part of the above described premises.

3. Those rights for the erection of and maintenance of electrical lines, power poles and appurtenances as were conveyed by the easement deed of Owa B. Lewis to Central Vermont Public Service Corporation dated 28 June 1949, recorded in Book 34, Page 99-100 of the Townshend Land Records.

4. Utility easement to Vermont Electric Power Co., Inc. recorded in Volume 40, Page 226 of the Townshend Land Records.

5. Utility easements to Central Vermont Public Service Corporation recorded in Book 34, Page 99 of the Townshend Land Records.

6. Lien of the Vermont Current Use Program.

7. Further excepting such additional rights or easements which may exist of record or upon the ground for power lines, road or cemetery purposes.

Further reserving to C.H. Willard and J.C. Taft, their heirs and assigns all rights that they may have to quarry soapstone and other mineral rights as reserved in their deed to Frank L. Adams dated 6 November 1912 recorded in Book 34, Page 28 of the Townshend Land Records.

The Grantor excepts and reserves to himself and his children the right to enter upon the premises to visit the graves of his pets. This right shall expire upon the death of the last to survive of Grantor and his children.

Received for record November 1, A.D., 1999 at 9:35AM

Attest:

Cynthia Davis
Cynthia Davis, Town Clerk

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ATTACHMENT 3

GRANT OF DEVELOPMENT RIGHTS AND CONSERVATION RESTRICTIONS

WHEREAS, DENNIS J. BUCKLEY and JOANNA J. BUCKLEY are the owners in fee of certain real property in Townshend, Vermont, which has aesthetic, recreational, and natural resource values in its present state; and

WHEREAS, this property contains 87.87 acres (more or less) of undeveloped land in agricultural and forestry use, which provides wildlife habitat as well as recreational opportunities; and

WHEREAS, the VERMONT LAND TRUST, INC. is a publicly supported non-profit corporation incorporated under the laws of the State of Vermont, and qualified under Sections 501(c)(3) and 170(h) of the Internal Revenue Code, whose purpose is to preserve undeveloped and open space land in order to protect the aesthetic, recreational, cultural, educational, scientific and natural resources of the state through non-regulatory means, thereby reducing the burdens on state and local governments; and

WHEREAS, the economic health of Vermont is closely linked to its agricultural and forest lands, which not only produce food products, fuel, timber and other products, but also provide much of Vermont's scenic beauty, upon which the state's tourist and recreation industries depend; and

WHEREAS, the State of Vermont has repeatedly sought to foster the conservation of the state's agricultural, forest, and other natural resources through planning, regulation, land acquisition, and tax incentive programs, including, but not limited to, Title 10 V.S.A. Chapter 151 (Act 250); Title 24 V.S.A. Chapter 117 (Regional and Municipal Planning and Development Act); Title 10 V.S.A. Chapter 155 (Acquisition of Rights and Interests in Land); Title 32 V.S.A. Chapter 124 (Current Use Taxation); Title 32 V.S.A. Chapter 231 (Property Transfer Tax); Title 32 V.S.A. Chapter 235 (Land Gains Tax); Joint Resolution #43 adopted by the Vermont House and Senate in February 1982 endorsing the voluntary transfer of interests in agricultural land through agreements between farmland landowners and private land trusts; and Title 10 V.S.A. Chapter 15 (Housing and Conservation Trust Fund); and

WHEREAS, the conservation of this property as open space land is consistent with and in furtherance of the town plan adopted by the Town of Townshend, the regional plan adopted by the Windham Regional Commission, and the purposes set forth in Title 10, Vermont Statutes Annotated, Section 6301;

NOW, THEREFORE.

KNOW ALL PERSONS BY THESE PRESENTS that DENNIS J. BUCKLEY and JOANNA J. BUCKLEY, of Rye, Westchester County, New York, on behalf of themselves and their heirs, successors and assigns (hereinafter "Grantors"), in consideration of Ten Dollars and other valuable consideration paid to their full satisfaction by the Vermont Land Trust, Inc., do freely give, grant, sell, convey and confirm unto the VERMONT LAND TRUST, INC., a non-profit corporation with its principal offices in Montpelier, Vermont, and its successors and assigns (hereinafter "Grantee") forever, the development rights and a perpetual conservation easement and restrictions (as more particularly set forth below) in a certain tract of land situated in the Town of Townshend, Vermont (hereinafter "Protected Property"), said Protected Property being more particularly described in Schedule A attached hereto and incorporated herein.

The development rights hereby conveyed to the Grantee shall include all development rights except those specifically reserved by the Grantors herein and those reasonably required to carry out the permitted uses of the Protected Property as herein described. The conservation easement and restrictions hereby conveyed to the Grantee consist of covenants on the part of the Grantors to do refrain from doing, severally and collectively, the various acts set forth below. It is hereby acknowledged that these covenants shall constitute a servitude upon the land and run with the land. Grantee accepts such covenants in order to achieve the Purposes set forth in Section I, below.

I. Purposes of the Grant.

Grantors and Grantee acknowledge that the Purposes of this Grant are as follows (hereafter "Purposes of Grant"):

- 1) To contribute to the implementation of the policies of the State of Vermont designed to foster the conservation of the state's agricultural, forest, and other natural resources through planning, regulation, land acquisition, and tax incentive programs;

Buckley Conservation Restrictions
Page 2

- 2) To conserve productive forestry uses, wildlife habitats, non-commercial recreational opportunities and activities, and other natural resource and scenic values of the Protected Property for present and future generations.
- 3) To advance these objectives by conserving the Protected Property because it possesses the following attributes:
 - (i) 30 acres of managed forest land;
 - (ii) wetlands, which include important wildlife habitat, on the northerly side of an approximately 11-acre beaver pond, part of which lies on the Protected Property;
 - (iii) in close proximity to 276.5 acres of land previously protected by Grantee;
 - (iv) visible from Wiswell Hill Road (T.R. #26); and
 - (v) 1,500 feet of frontage on Wiswell Hill Road.

Grantors and Grantee recognize these agricultural, silvicultural, scenic and natural values of the Protected Property, and share the common purpose of conserving these values by the conveyance of the conservation easement and restrictions and development rights, to prevent the use or development of the property for any purpose or in any manner which would conflict with the maintenance of these agricultural, silvicultural, scenic and natural resource values. Grantee accepts such conservation easement and restrictions and development rights in order to conserve these values for present and future generations.

II. Restricted Uses of Protected Property.

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

1. The Protected Property shall be used for agricultural, forestry, educational, non-commercial recreation, and open space purposes only. No residential, commercial, industrial, or mining activities shall be permitted, and no building, structure or appurtenant facility or improvement shall be constructed, created, installed, erected or moved onto the Protected Property, except as specifically permitted under this Grant.
2. Except as otherwise specifically permitted under this Grant, 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 the Grantee. Grantee may grant such permission if it determines, in its sole discretion, that any such improvement would be consistent with the Purposes of this Grant, and not adversely affect the agricultural and forestry potential or the scenic beauty of the Protected Property.
3. There shall be no signs, billboards, or outdoor advertising of any kind erected or displayed on the Protected Property; provided, however, that the Grantors may erect and maintain reasonable signs indicating the name of the Protected Property, boundary markers, directional signs, signs restricting hunting or trespassing on the Protected Property, memorial plaques, temporary signs indicating that the Protected Property is for sale or lease, signs informing the public that any agricultural or timber products are for sale or are being grown on the premises, political or religious signs, and signs informing the public of a home occupation or accessory use approved pursuant to paragraph III(15) below. Grantee, with the permission of Grantors, may erect and maintain signs designating the Protected Property as land under the protection of the Grantee.
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 such locations, if any, and in such a manner as shall be approved in advance in writing by Grantee. The storage and spreading of manure, lime, or other fertilizers for agricultural practices and purposes and the temporary storage of trash in receptacles for periodic off-site disposal shall be permitted without such prior written approval.
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. In no case shall surface mining of subsurface oil, gas, or other minerals be permitted.

6. The Protected Property shall not be subdivided or conveyed in separate parcels without the prior written permission of the Grantee, except as expressly provided in Section III of this Grant.

7. No use shall be made of the Protected Property, and no activity thereon shall be permitted which, in the reasonable opinion of the Grantee, is or may possess the potential to become inconsistent with the purposes of this Grant as stated in Section I, above.

III. Permitted Uses of the Protected Property.

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

8. The right to establish, reestablish, maintain, and use cultivated fields, orchards, and pastures in accordance with generally accepted agricultural practices and sound husbandry principles, together with the right to construct, maintain and repair access roads for these purposes.

9. The right to conduct maple sugaring operations and to harvest timber and other wood products, together with the right to construct and maintain roads necessary for such activities, in accordance with generally accepted forestry practices and in accordance with a forest management plan for which Grantors have received the prior written approval of Grantee, except that Grantors may conduct maple sugaring operations and may harvest firewood for heating residences and structures located on the Protected Property without submission and approval of a plan. Grantee's 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 do not violate the terms of this Grant. Disapproval by Grantee of a forest management plan proposing a clearcut (removal of more than 75% of the basal area) shall not be deemed unreasonable. However, Grantee may approve such plan in its discretion if consistent with the purposes of this Grant, such as to permit the planting of different species of trees or the establishment or reestablishment of a field, pasture, or garden.

10. The right to construct and maintain barns, sugar houses, or similar structures or facilities, together with necessary access drives and utilities, on the Protected Property, provided that they are used exclusively for agricultural or forestry purposes, and provided further that such construction has been approved in writing in advance by the Grantee. Grantee's approval shall not be unreasonably withheld or conditioned, provided the structure or facility is located in a manner which is consistent with the Purposes of this Grant as stated in Section I, above.

11. The right to utilize, maintain, establish, construct, and improve water sources, courses, and bodies within the Protected Property for uses otherwise permitted hereunder, provided that Grantors do not unnecessarily disturb the natural course of the surface water drainage and runoff flowing over the Protected Property, except where such disturbance is made in order to improve the drainage of areas used for agricultural purposes. The construction of ponds or reservoirs shall be permitted only upon the prior written approval of Grantee, which approval shall not be unreasonably withheld or conditioned provided such pond or reservoir is located in a manner which is consistent with the Purposes of this Grant as stated in Section I, above. Grantor shall have the right to expand the existing 11 acre beaver pond, located on or near the southerly boundary of the Protected Property adjacent to land now or formerly of Lot, by no more than an additional two (2) acres of land immediately adjacent to the existing pond and configured in a manner that conforms to the natural contours of the land. The exercise of such right shall not require Grantee's prior approval, however, Grantor shall notify Grantee prior to commencement of construction on any enlargement of said pond.

12. The right to clear, construct, and maintain trails for walking, horseback riding, skiing, and other non-motorized recreational activities within and across the Protected Property. Snowmobiling may be permitted at the discretion of the Grantors.

13. The right to create a total of three (3), two-acre Homestead Complexes on the Protected Property; provided, however, that (i) one (1) Homestead Complex ("Homestead Complex-North") shall be located on the northerly side of Town Highway #26 and two (2) Homestead Complexes ("Homestead Complex-South A" and "Homestead-Complex-South B") shall be located on the southerly side of Town Highway #26; and (ii) each shall be located in a manner consistent with the Purposes of this Grant as stated in Section I, above. Upon the delivery of each Homestead Complex description to Grantee, and the receipt of Grantee's prior written approval for the location of said Homestead Complex, which approval shall not be unreasonably withheld or conditioned provided that said Homestead Complex location complies with the provisions of this paragraph,

Buckley Conservation Restrictions
Page 4

Grantors shall have the right to construct and maintain, repair, renovate, enlarge and rebuild one (1) single-family dwelling within each Homestead Complex, together with the necessary driveways, utilities and appurtenant structures normally associated with a dwelling. If necessary, said driveways and utilities may be located outside of each Homestead Complex on the Protected Property. Grantors shall notify Grantee in writing prior to commencing construction on any new structure or improvement within each Homestead Complex. The right to create Homestead Complex-South A and Homestead Complex-South B shall be personal to the Grantors Dennis J. Buckley and Joanna J. Buckley, and if not exercised within their individual lifetimes shall expire automatically upon the death of the survivor of the original Grantors, Dennis J. Buckley and Joanna J. Buckley.

14. Provided that the right described in paragraph 13, above, to create Homestead Complex-South A and Homestead Complex-South B have not expired, the right to subdivide Homestead Complex-South A and Homestead Complex-South B, together with no more than an additional 8.1 acres (or the minimum acres then required by the zoning laws of the Town of Townshend, if greater than 10.1 acres), directly contiguous (without gaps or gores) to said Homestead Complexes, from the Protected Property. Grantors shall obtain the prior written approval of the Grantee for such subdivision, which approval shall not be unreasonably withheld or conditioned, provided subdivision boundaries shall be located in such a manner is consistent with the Purposes of this Grant as stated in Section I, above.

15. The right to conduct any gainful home occupation or profession in the residences referred to in paragraph 13, above, provided any such activity is confined within the residence and is conducted primarily by persons who reside in the dwelling. Further, the right to engage in accessory uses of the Protected Property, provided such uses are related to the principal agricultural, forestry and open space uses of the Protected Property, and are subordinate and customarily incidental to those principal uses. Grantors shall not engage in any such home occupation or accessory use of the Protected Property without first securing the prior written permission of the Grantee, which permission may be withheld if Grantee determines, in its sole discretion, that the occupation, profession or accessory use would be inconsistent with the Purposes of this Grant as stated in Section I, above.

IV. Enforcement of the Restrictions.

Grantee shall make reasonable efforts from time to time to assure compliance by Grantors with all of the covenants and restrictions herein. In connection with such efforts, Grantee may make periodic inspection of all or any portion of the Protected Property, and for such inspection and enforcement purposes, the Grantee shall have the right of reasonable access to the Protected Property. In the event that Grantee becomes aware of an event or circumstance of non-compliance with the terms and conditions herein set forth, Grantee shall give notice to Grantors of such event or circumstance of non-compliance via certified mail, return receipt requested, and demand corrective action 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, Grantors shall reimburse Grantee all reasonable costs, including staff time, incurred in investigating the non-compliance and in securing its correction.

Failure by Grantors to cause discontinuance, abatement, or such other corrective action as may be demanded by Grantee within a reasonable time after receipt of notice and reasonable opportunity to take corrective action shall entitle 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 Grantee to corrective action on the Protected Property, if necessary. If such Court determines that Grantors have failed to comply with this Grant, Grantors shall reimburse Grantee for any reasonable costs of enforcement, including Grantee's staff time, court costs and reasonable attorneys' fees, in addition to any other payments ordered by such Court. In the event that Grantee initiates litigation and the court determines that the Grantors have not failed to comply with this Grant and that Grantee has initiated litigation without reasonable cause or in bad faith, then Grantee shall reimburse Grantors for any reasonable costs of defending such action, including court costs and reasonable attorneys' fees. 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 Grantee 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 Grantee at law, in equity, or through administrative proceedings.

No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantors shall impair Grantee's 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, where the event or circumstance of non-compliance shall have occurred after said prior owner's ownership or control of the Protected Property has terminated.

V. Miscellaneous Provisions.

1. Where Grantors are required, as a result of this Grant, to obtain the prior written approval of Grantee before commencing an activity or act, and where Grantee has 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 the Grantee. Grantors shall reimburse Grantee or Grantee's designee for all extraordinary costs, including staff time, incurred in reviewing the proposed action requiring Grantee's approval; but not to include those costs which are expected and routine in scope. When Grantee has authorized a proposed action requiring approval under this Grant, Grantee shall, on request, provide Grantors 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 Town of Townshend and the State of Vermont.

3. Grantee shall transfer the development rights and conservation easement and restrictions conveyed by Grantors herein only to a qualified conservation organization that agrees to enforce the conservation purposes of this Grant, in accordance with the regulations established by the Internal Revenue Service governing such transfers.

4. In the event the development rights or conservation restrictions conveyed to the Grantee herein are extinguished by eminent domain or other legal proceedings, Grantee shall be entitled to any proceeds which pertain to the extinguishment of Grantee's rights and interests. Any proceeds from extinguishment shall be allocated between Grantors and Grantee 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 encumbered by this Grant, as determined by any qualified appraisal performed at the direction of the Grantors in the year of this conveyance. Grantee shall use any such proceeds to preserve undeveloped and open space land in order to protect the aesthetic, cultural, educational, scientific and natural resources of the state through non-regulatory means.

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

6. Grantee shall be entitled to re-record this Grant, or to record a notice making reference to the existence of this Grant, in the Town of Townshend 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. The term "Grantors" shall include the heirs, executors, and administrators of the original Grantors, Dennis J. Buckley and Joanna J. Buckley. The term "Grantee" shall include the successors and assigns of the original Grantee, 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, conservation easement and restrictions, with all the privileges and appurtenances thereof, to the said Grantee, VERMONT LAND TRUST, INC., its successors and assigns, to their own use and behoof forever, and the said Grantors, DENNIS J. BUCKLEY and JOANNA J. BUCKLEY, for themselves, and their heirs, successors and assigns, do covenant with the said Grantee, its successors and assigns, that until the unstating 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, and they hereby engage to warrant and defend the same against all lawful claims whatever.

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IN WITNESS WHEREOF, we set our hands and seals this 27th day of December, 1995.

Signed, sealed and delivered

In The Presence Of

Sharon M. Clark

Camille F. O'Hara

Witness to DJB & JJB

Robert M. Heston

Witness to DJB & JJB

Notary Public

STATE OF New York
Dutchess COUNTY, ss.

Grantors

Dennis J. Buckley

Dennis J. Buckley

Joanna J. Buckley

Joanna J. Buckley

At NY NY, this 27th day of December, 1995, Dennis J. Buckley and ~~Joanna J. Buckley~~ personally appeared and ~~they~~ acknowledged this instrument, by ~~them~~ sealed and subscribed, to be ~~their~~ free act and deed, before me.

Charles R. Bowen
Notary Public

My commission expires:

at Rye, N.Y., this 27th day of December, 1995, Joanna J. Buckley personally appeared and she acknowledged this instrument, by her sealed and subscribed, to be her free act and deed, before me.

(For Dennis J. Buckley)

Robert Labra

CHARLES R. BOWEN
NOTARY PUBLIC, STATE OF NEW YORK
NO. 41-1200781
QUALIFIED IN DUTCHESS COUNTY
COMMISSION EXPIRES NOV 4, 1997

ROBERT LABRA
Notary Public, State of New York
No. 4874105
Qualified in Dutchess County
Commission Expires November 5, 1998

