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March 13 A.D. 19 95
at 12 O'clock 15 minutes P M
and recorded in Book 102 Pages 690-700
Attest Arlene H. Deguer Town Clerk

Lyon Conservation Restrictions

**GRANT OF DEVELOPMENT RIGHTS AND
CONSERVATION RESTRICTIONS**

ACKNOWLEDGEMENT

Return Received (including Certificates
and, if Required, Act 250 Disclosure
Statement) and Tax Paid. 95-252

Signed Arlene H. Deguer Clerk

Date March 13, 1995

WHEREAS, the Vermont Housing and Conservation Board (the "Board") is a public instrumentality of the State of Vermont existing by virtue of the Vermont Housing and Conservation Trust Fund Act, 10 V.S.A. §311 (the "Act"), which provides grants and loans to eligible entities for projects which fulfill the dual goals of creating affordable housing for Vermonters and conserving and protecting Vermont's agricultural land, historic properties, important natural areas and recreational lands;

WHEREAS, the Town of Williston (the "Town") is the owner of certain land near the town offices of Williston consisting of approximately twenty (24) acres of land;

WHEREAS, the Town and the Board have signed Grant Agreement #94-059 (the "Agreement") which requires, in part, that in return for a grant in the amount of Thirty Five Thousand Dollars (\$35,000) the Town use at least 16 acres of the Protected Property for public open recreation space or conservation land purposes only. Such use restriction shall be a perpetual servitude on the Protected Property to provide recreational opportunities and activities and protect natural resource and scenic values;

WHEREAS, the Williston Town Plan states that the Town should pursue acquisition of lands to conserve the historic character of the village district and to preserve a greenspace area from unwanted over development, to reserve the right for future generations to determine the level of development, if any, which should occur on this land, and to concentrate the efforts of the Town's development activities within an identified area of the property;

WHEREAS, the Town and Board agree that as soon as the Town identifies the portion of the land, not to exceed eight (8) acres, needed and suitable for development, the Board will release said land from the conservation restrictions contained herein.

WHEREAS, the Vermont Land Trust is a 501(c)(3) conservation organization wishing to assist the Town of Williston and the Board in carrying out the conservation of the property and monitor and enforce this Grant if the Board is unable or unwilling to do so;

WHEREAS, the parties agree that no use shall be made of the property restricted by this Grant and no activity shall be permitted which is or may possess the potential to become inconsistent with the intent of this Grant, such intent being the conservation and preservation of the natural and historic integrity and scenic beauty of the property, its use for public open recreation space and conservation purposes;

release of dev. Rights
vol 41 pg 365-368

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KNOW ALL PERSONS BY THESE PRESENTS that the TOWN OF WILLISTON, on behalf of itself and its successors and assigns (hereinafter "Grantor"), pursuant to the authority granted in Title 10 V.S.A. Chapters 34 and 155 and in consideration of the payment of One Dollar and other valuable consideration paid to its full satisfaction, does freely give, grant, sell, convey and confirm unto the VERMONT HOUSING AND CONSERVATION BOARD, a public instrumentality of the State of Vermont with an address of 136 1/2 Main Street, Montpelier, Vt. 05602 and its successors and assigns (hereinafter "Grantee"), the development rights, right of first refusal, and a perpetual conservation easement and restrictions (all as more particularly set forth below) in a certain tract of land (hereinafter "Protected Property") situated in the Town of Williston, Chittenden County, State of Vermont, and being more particularly described, as follows:

Being a parcel of land containing 24.20 acres, more or less, located southerly of Route 2 (a/k/a Williston Road) shown and depicted on a plan entitled "Subdivision of Land of H. Warren Lyon, Williston, Vermont" prepared by DuBois & King, Inc., dated October 1989, and recorded at Map Book 11, Page 55, Map Slide #295B of the Town of Williston Land Records. Being all and the same land and premises conveyed to the Town of Williston by Warranty Deed of H. Warren Lyon dated October 17, 1994 and recorded in Volume 102, Page 232 of the Town of Williston Land Records.

The development rights hereby conveyed to the Grantee shall include all development rights except those specifically reserved by the Grantor 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 consists of covenants on the part of the Grantor to do or 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 conserve public recreational opportunities and activities, and other natural resource and scenic values of the Protected Property for present and future generations.

I. Purposes of the Grant.

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

- 1) Consistent with the goals set forth in 10 V.S.A. §6301, the primary purpose of this Grant is to conserve the open space and historic integrity of the lands surrounding Williston Village.

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- 2) As a secondary objective, to conserve scenic and natural resources associated with the Protected Property, to improve the quality of life for Vermonters, and to maintain for the benefit of future generations the essential characteristics of the Vermont countryside.
- 3) These objectives will be advanced by conserving the Protected Property because it maintains the historic and scenic character of Williston Village, and will provide open space, and recreational opportunities for current and future generations.

The Grantor shall develop a management plan for the Protected Property (the "Management Plan"), which shall be consistent with the Purposes of this the Grant. The Management Plan shall be developed, and future amendments or updates to the Management Plan shall be made, with appropriate public input. Such input shall be consistent with applicable laws, regulations, policies and procedures governing ownership and management of the Protected Property. Copies of the Management Plan, including any amendments or updates thereto, shall be provided to Grantee.

Grantor and Grantee recognize these historic, open space, recreational, scenic and natural values of the Protected Property, and share the common purpose of conserving these values by the conveyance of conservation restrictions, development rights and right of first refusal, to prevent the use or development of the property for any purpose or in any manner which would conflict with the maintenance of these historic, open space, scenic and natural resource values. Grantee accepts such conservation restrictions, development rights and right of first refusal in order to conserve these values for present and future generations.

II. Restricted Uses

Except for those permitted uses specified below, 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 public open space, public recreation and conservation purposes only. The Grantor shall maintain the Protected Property in an open condition or in active agricultural use by cropping, mowing, brush-hogging or cutting larger scrub vegetation. No building or structures shall be constructed, created, erected or moved onto the Protected Property, except as permitted by 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 Grantee. Grantee may grant such permission if they

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determine, in their sole discretion, that any such improvement would be consistent with the Purposes of this Grant, and not adversely affect the historic, natural and recreational significance or the scenic beauty of the Protected Property.

3. There shall be no signs, billboards, or outdoor advertising of any kind erected or displayed; provided, however, that the Grantor may erect and maintain reasonable signs indicating the name of the property, boundary markers, directional signs, signs informing the public about reasonable use, memorial plaques, or historical markers.

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 temporary storage of trash in receptacles for periodic off-site disposal, shall be permitted without such prior written approval.

5. Except as permitted by the Management Plan or as may be reasonably necessary to carry out the uses permitted by the Management Plan, there shall be no disturbance of the surface of the Protected Property 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. In no case shall surface mining of subsurface oil, gas or other minerals be permitted.

6. Except as provided in paragraph 10, the Protected Property shall not be leased, subdivided or conveyed without the prior written permission of the Grantee.

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

III. Permitted Uses

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

8. The right to conduct all activities allowed by the Management Plan, provided that such activities are reasonably necessary to carry out the Purposes of this Grant, including, but not limited to, the right to clear, construct, and maintain trails for walking, skiing, bicycling and other non-motorized recreational activities within and across the Protected Property.

9. Notwithstanding paragraph 1, the right to construct, maintain, repair and replace benches and playground equipment for children and to seed, plant, cultivate and

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maintain public lawns and vegetable or flower gardens and the right to construct, maintain repair and replace structures (but not buildings) such as walkways, planters, benches, fountains, works of art, sitting walls and other improvements which will enhance the pedestrian environment.

10. Notwithstanding paragraphs 1-7, the right to develop, subdivide or convey in separate parcels up to eight (8) acres of the Protected Property with access to U.S. Route 2 for the purpose of development (the "Development Area"), provided that the activities within the Development Area do not, in the opinion of Grantee, unreasonably interfere with activities on the balance of the Protected Property or the Purposes of the Grant. Upon delivery to the Grantee of a survey of the Development Area, Grantee shall execute a document, in recordable form, fully releasing said Development Area from all terms and conditions of this Grant, provided that any such release shall be subject to perpetual covenant enforceable by Grantee or the Vermont Land Trust, Inc. prohibiting the use of the Development Area for commercial or industrial purposes, but not prohibiting reasonable commercial activities incidental to residential use.

11. In the event Grantor and Grantee are unable to agree on whether the proposed activities within the Development Area described in paragraph 10 unreasonably interfere with activities on the balance of the Protected Property, following the written request of the Grantee, said matter shall be submitted for binding arbitration. The arbitrator shall be selected by the parties or by the American Arbitration Association if the parties cannot agree on an arbitrator. The costs of arbitration shall be shared equally by the parties, unless otherwise determined by the arbitrator due to one party being unreasonable or otherwise dilatory. The decision of the arbitrator shall be binding on the parties. The parties shall select an arbitrator within two weeks of the submission of an issue to arbitration, and every reasonable effort shall be made to complete arbitration of any dispute within thirty (30) days of the selection of an arbitrator.

Where Grantor is required, as a result of this Grant, to obtain the prior written approval of the Grantee before commencing an activity or act, and where the 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. Grantee's approval shall not be unreasonably withheld or delayed. Grantor 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.

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 Williston and the State of Vermont.

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IV. Enforcement of the Restrictions.

Grantee 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, 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 Grantor of such event or circumstance of non-compliance via certified mail, return receipt requested, and demand corrective action by the 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 reimburse Grantee all reasonable costs incurred in investigating the non-compliance and in securing its correction.

Failure by the 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 the Grantor has failed to comply with this Agreement, 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 Grantee initiates litigation and the court determines that the Grantor has not failed to comply with this Agreement and that the Grantee has initiated litigation without reasonable cause or in bad faith, then the Grantee shall reimburse Grantor 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 the Grantee at law, in equity, or through administrative proceedings.

No delay or omission by the Grantee in the exercise of any right or remedy upon any breach of Grantor shall impair the 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.

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V. Right of First Refusal.

The Grantor hereby gives to the Grantee a Right of First Refusal to purchase the Protected Property which shall be of perpetual duration. The conditions of this Right of First Refusal shall be such that whenever the Grantor decides to sell the Protected Property and receives a written offer from a responsible person or persons to purchase all or any part of the Protected Property, Grantor shall deliver to the Grantee by certified mail, return receipt requested, a duplicate original of the written offer, together with an affidavit of good faith signed by the offeror and the offeree. The Grantee may elect to purchase the premises for the offered price and upon such other terms and conditions not less favorable to the Grantor than those contained in the offer by giving to the Grantor by certified mail, return receipt requested, written notice of such election within ninety (90) days after delivery of the offer to the Grantee. If the Grantee does not elect to meet such offer within the ninety-day period, Grantor may accept the offer as written. This right of first refusal shall not apply to the "Development Area" described in paragraph 11 after Grantee has executed a document releasing said Development Area from all terms and conditions of this Grant.

VI. Miscellaneous Provisions.

1. The Grantee shall transfer the development rights and conservation restrictions conveyed by Grantor herein only to a state agency, municipality or qualified organization, as defined in Title 10 V.S.A. Section 6301a, in accordance with the laws of the State of Vermont and the regulations established by the Internal Revenue Service governing such transfers.

2. The rights and interests conveyed to Grantee herein shall be subject to a right of reentry vested in the Vermont Land Trust, Inc., a Vermont non-profit conservation organization with a principal place of business located at 8 Bailey Avenue, Montpelier, Vermont. By its written approval of this Grant, the Vermont Land Trust, Inc. ("VLT") covenants and agrees as follows:

a) Where the Grantee must seek VLT's prior written approval pursuant to paragraph VI (3), below, such approval shall not be unreasonably withheld or conditioned by VLT if the action proposed by the Grantee is consistent with the Purposes of the Grant; and

b) VLT shall not give, grant, sell, convey, transfer, mortgage, pledge or otherwise encumber the right of reentry contained herein without the prior written approval of the Grantee, provided that Grantee shall not unreasonably withhold approval of VLT's transfer of the right of reentry if the proposed transferee is a governmental entity or qualified conservation organization that undertakes to assist Grantor and Grantee in assuring the conservation of the Protected Property;

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3. By its approval and acceptance of this Grant, Grantee, Vermont Housing and Conservation Board, covenants and agrees as follows:

- a) Vermont Housing and Conservation Board shall not alter, amend, modify or terminate any term or condition of this Grant without first securing the prior written approval of VLT;
- b) Vermont Housing and Conservation Board shall not give, grant, sell, convey, transfer, mortgage, pledge or otherwise encumber the Grant without the prior written approval of VLT;
- c) Vermont Housing and Conservation Board shall periodically monitor the Protected Property to assure compliance with the terms and conditions of this Grant and shall, upon request, report the results of the monitoring to VLT;
- d) Vermont Housing and Conservation Board shall take all reasonable steps to secure compliance with the terms and conditions of this Grant in the event a breach is discovered, including efforts at securing voluntary compliance, and if necessary, appropriate legal action.

In the event Vermont Housing and Conservation Board 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 obligation set forth above, VLT reserves the right of reentry for conditions broken or an executory interest, which right, if exercised by VLT, upon such breach, or intention to breach, the above covenants shall be exercised by mailing a Notice of Violation ("Notice") by certified mail to Vermont Housing and Conservation Board, or the last known address of any successor or assign. Said Notice shall declare that the power of termination has been exercised and shall state the breach which caused the action. Vermont Housing and Conservation Board shall have a period of sixty (60) days from the date of its receipt of said Notice to correct the breach causing the termination. If in the reasonable opinion of VLT the breach is not cured within said 60 day period and Grantee does not request arbitration, the termination shall become final and a copy of the Notice shall be recorded in the Town of Williston Land Records.

(4) In the event VLT and Grantee are unable to agree on whether Grantee 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 obligation set forth above, following the written request of VLT or Grantee, said matter shall be submitted for binding arbitration. The arbitrator shall be selected by the parties or by the American Arbitration Association if the parties cannot agree on an arbitrator. The costs of arbitration shall be shared equally by the parties, unless otherwise determined by the arbitrator due to one party being unreasonable or otherwise dilatory. The decision of the arbitrator shall be binding on the parties. The parties shall

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select an arbitrator within two weeks of the submission of an issue to arbitration, and every reasonable effort shall be made to complete arbitration of any dispute within thirty (30) days of the selection of an arbitrator.

5. 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 Grantees' rights and interests. Any proceeds from extinguishment shall be allocated between Grantor and Grantee in accordance with the value of their respective interests as determined by an appraisal commissioned by Grantee at the time of extinguishment, provided that the allocation of proceeds to Grantee shall be no less than 15% of the full fair market value, exclusive of the value of improvements. Grantee shall use any such proceeds to preserve undeveloped and open space land in order to protect the aesthetic, cultural, educational, scientific, agricultural, forestry and natural resources of the state through non-regulatory means.

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

7. Grantee shall be entitled to rerecord this Grant, or to record a notice making reference to the existence of this Grant, in the Town of Williston Land Records as may be necessary to satisfy the requirements of the Record Marketable Title Act, 27 V.S.A., Chapter 5, Subchapter 7, including 27 V.S.A. §§603 and 605.

8. The term "Grantor" shall include the successors and assigns of the original Grantor, Town of Williston. The term "Grantee" shall include the respective successors and assigns of the original Grantee, 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.

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

TO HAVE AND TO HOLD said granted development rights and conservation easement and restrictions, with all the privileges and appurtenances thereof, to the said Grantee, VERMONT HOUSING AND CONSERVATION BOARD, its respective successors and assigns, to their own use and behoof forever, and the said Grantor, Town of Williston, for itself and its successors and assigns, does covenant with the said Grantee, its successors and assigns, that until the ensembling of these presents, it is the sole owner of the premises and

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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 and it hereby engages to warrant and defend the same against all lawful claims whatever.

IN WITNESS WHEREOF, the duly authorized agent for the TOWN OF WILLISTON and pursuant to appropriate authority, hereunto sets ___ hand and seal this 13 day of MARCH, 1995.

TOWN OF WILLISTON, GRANTOR:

E. Kathy Amickon
Witness

Kathryn K. Snyder

Bert Moffatt
Its Duly Authorized Agent

STATE OF VERMONT
CHITTENDEN COUNTY SS.

At Williston, Vermont this 13 day of MARCH 1995, BERT MOFFATT 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 TOWN OF WILLISTON

Before me,

Kathryn K. Snyder
Notary Public exp: 2/10/99

Approved by the VERMONT HOUSING AND CONSERVATION BOARD

By: [Signature]
Its Duly Authorized Agent

Date: 3.9.95

Approved by the VERMONT LAND TRUST, INC.

By: [Signature]
Its Duly Authorized Agent

Date: 3/9/95

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ACKNOWLEDGEMENT OF ARBITRATION

We understand that Section III (paragraph 11) and Section VI (paragraph 4) of this instrument contain agreements to arbitrate. After signing this document we understand that we will not be able to bring a lawsuit concerning any dispute that may arise which is covered by the arbitration agreement set forth in paragraphs III(11) and VI(4), unless it involves a question of constitutional or civil rights. Instead, we agree to submit any such dispute to an impartial arbitrator. We understand that the arbitration provisions of this instrument are limited exclusively to matters set forth in said paragraphs.

[Signature]
Vermont Housing and Conservation Board

Dated: 3.9.95

[Signature]
Town of Williston

Dated: 3-13-95

[Signature]
Vermont Land Trust, Inc.

Dated: 3/9/95

END OF DOCUMENT