

**GRANT OF DEVELOPMENT RIGHTS AND CONSERVATION RESTRICTIONS**

KNOW ALL PERSONS BY THESE PRESENTS that AUSTIN C. CLEAVES of East Montpelier, Washington County, Vermont, on behalf of himself and his heirs, successors and assigns (hereinafter "Grantor"), pursuant to the authority granted in Title 10 V.S.A. Chapter 155 and in consideration of the payment of Ten Dollars and other valuable consideration paid to his full satisfaction, does freely give, grant, sell, convey and confirm unto the VERMONT LAND TRUST, INC., a non-profit corporation with its principal offices in Montpelier, Vermont, the VERMONT DEPARTMENT OF AGRICULTURE, an agency of the State of Vermont, the VERMONT HOUSING AND CONSERVATION BOARD, an independent board of the State of Vermont, and the TOWN OF EAST MONTPELIER, a municipality duly organized under the laws of the State of Vermont, and their respective successors and assigns (hereinafter "Grantees") jointly and severally forever, the development rights, right of first refusal, access easement, 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 East Montpelier, Washington County, State of Vermont, said Protected Property being more particularly described in Schedule A attached hereto and incorporated herein.

The development rights hereby conveyed to the Grantees 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 Grantees consist 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. Grantees accept such covenants in order to conserve productive agricultural and 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.

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 agricultural, forestry, educational, non-commercial recreation, and open space purposes only. No residential, commercial, industrial, or mining activities shall be permitted, and no building or structure shall be constructed, created, erected or moved onto the property, except as specifically permitted under this Grant. In the event the agricultural land on the Protected Property lies fallow for more than two years, the Grantor shall cooperate with the Grantees to ensure that the land remains in an open condition and in active agricultural use.
2. No rights-of-way, easements of ingress or egress, driveways, roads, or utility lines shall be constructed, developed or maintained into, on, over, under, or across the Protected Property, except as specifically permitted under this Grant.
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 restricting hunting or trespassing on the property, memorial plaques, temporary signs indicating that the property is for sale or lease, and signs informing the public that any agricultural or timber products are for sale or are being grown on the premises. Grantees, with the permission of Grantor, may erect and maintain signs designating the property as land under the protection of the Grantees.
4. The placement, collection or storage of trash, human waste, or any unsightly or offensive material on the Protected Property shall not be permitted except at such locations, if any, and in such a manner as shall be approved in advance in writing by Grantees. The storage and spreading of manure, lime, or other fertilizer for agricultural practices and purposes 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.

**EAST MONTPELIER TOWN CLERK'S OFFICE**  
**RECEIVED FOR RECORD**  
THE 18th DAY OF June A.D. 19 91  
AT 9 O'CLOCK 07 MINUTES A M AND  
RECORDED IN LAND RECORDS, BOOK 45 PAGE 311-16  
ATTEST Sylvia M. Josi TOWN CLERK

6. The Protected Property shall not be subdivided or conveyed in separate parcels without the prior written permission of the Grantees.

7. No use shall be made of the Protected Property, and no activity thereon shall be permitted which, in the reasonable opinion of the Grantees, is or may possess the potential to become inconsistent with the intent of this Grant, such intent being the protection of environmental systems, the encouragement of the sound utilization and conservation of agricultural and forest resources, and the preservation of the scenic beauty of the Protected Property.

Permitted Uses of the Protected Property. Notwithstanding the foregoing, Grantor 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.

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 Grantor has received the prior written approval of Grantees, except that Grantor 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. Grantees' approval of forest management plans that may be submitted from time to time shall not be unreasonably withheld or conditioned, if such plans have been approved by a professional forester and if such plans do not violate the terms of this Grant. Disapproval by the Grantees of a forest management plan proposing a clearcut (removal of more than 75% of the basal area) shall not be deemed unreasonable. However, the Grantees may approve such plan in their 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 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 Grantees. Grantees' approval shall not be unreasonably withheld or conditioned, provided the structure or facility is located in a manner which will minimize the loss of the agricultural and forestry potential or the scenic beauty of the Protected Property.

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 the Grantor does not unnecessarily disturb the natural course of the surface water drainage and runoff flowing over the 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 Grantees, which approval shall not be unreasonably withheld or conditioned.

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 Grantor.

13. Notwithstanding the provisions of Paragraph 10, the right to maintain, repair, renovate, enlarge or rebuild the existing single-family dwelling, the existing two-family dwelling, and existing farm buildings, and associated structures and improvements, together with the right to construct new structures and improvements normally associated with a dwelling or farm within a designated Farmstead Complex without the prior written approval of the Grantees. The Farmstead Complex is an area consisting of 5.5 acres, more or less, and is depicted on a plan entitled "Vermont Land Trust - Cleaves Farm, East Montpelier, VT" (hereafter "Cleaves Farm Plan") held by Grantees and counter-signed by the original Grantor Austin Cleaves.

Where Grantor is required, as a result of this Grant, to obtain the prior written approval of the Grantees before commencing an activity or act, and where the 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 the Grantees. Grantor shall reimburse Grantees or Grantees' designee for all reasonable costs, including staff time, incurred in reviewing the proposed activity or act requiring Grantees' approval.

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 East Montpelier and the State of Vermont.

**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, the 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 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 Grantees 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 a 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 or Grantees who commenced the court proceedings 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 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 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 by 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, 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.

**Right of First Refusal.** The Grantor hereby gives to the Grantees, jointly and severally, a Right of First Refusal to purchase the Protected Property. The conditions of this Right of First Refusal shall be such that whenever the Grantor 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 Grantees by certified mail, return receipt requested, a duplicate original of the written offer, together with such other instruments as may be required to show the bona fides of the offer. A Grantee may elect to purchase the premises at 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 Grantees. In the event that more than one Grantee shall exercise the Right of First Refusal, the Vermont Housing and Conservation Board shall have first priority, the Department of Agriculture second priority, the Vermont Land Trust, Inc., third priority, and the Town of East Montpelier, fourth priority. If the Grantees do 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 any gift or bequest without consideration, nor to any sale or conveyance of the Protected Property to a member of the Grantor's family or to a corporation which is wholly owned and controlled by the Grantor or members of the Grantor's family. Members of the family shall include the Grantor's spouse, children (natural

and adopted), parents and their descendants. The Right of First Refusal shall apply to all other sales and conveyances of the Protected Property.

Public Access. The Grantor shall permit public access to a two-rod wide footpath across the Protected Property. Such access shall be for non-motorized, pedestrian recreational use only. Grantees shall have the right to construct, manage, use and maintain the footpaths for public recreational use, provided Grantees shall first notify Grantor of the name of the entity or organization that will be responsible for maintenance and management of the footpath. The footpath shall be located substantially as depicted on the Cleaves Farm Plan or such other location mutually agreed upon by the parties.

The Grantees may limit or restrict use of the access in the public interest. The Grantees shall consult with the Grantor from time to time about the use and maintenance of said access, and shall take reasonable steps to correct any erosion problems caused by the public use and to minimize any adverse impacts upon Grantor's use and enjoyment of the Protected Property.

Miscellaneous Provisions. The Grantees shall transfer the conservation easement and 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.

In the event the development rights or conservation easement and restrictions conveyed to the 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.

In any deed conveying an interest in all or part of the Protected Property, Grantor 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. Grantor shall also notify the Grantee of the name(s) and address(es) of Grantor's successor(s) in interest.

The term "Grantor" shall include the heirs, executors, administrators, successors and assigns of the original Grantor, Austin C. Cleaves. The term "Grantees" shall include the respective successors and assigns of the original Grantees Vermont Land Trust, Inc., Vermont Department of Agriculture, Vermont Housing and Conservation Board and Town of East Montpelier.

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, access easement, and conservation easement and restrictions, with all the privileges and appurtenances thereof, to the said Grantees, VERMONT LAND TRUST, INC., VERMONT DEPARTMENT OF AGRICULTURE, VERMONT HOUSING AND CONSERVATION BOARD, and TOWN OF EAST MONTPELIER, their respective successors and assigns, to their own use and behoof forever, and the said Grantor, AUSTIN C. CLEAVES, for himself and his heirs and assigns, does covenant with the said Grantees, their successors and assigns, that until the ensembling of these presents, he is the sole owner of the premises, and has good right and title to convey the same in the manner aforesaid, that the premises are free from every encumbrance, except those of record, and he hereby engages to warrant and defend the same against all lawful claims whatever.

IN WITNESS WHEREOF, I set my hand and seal this 12 day of June, 1991.

Signed, sealed and delivered  
In The Presence Of:

GRANTOR

Charlotte S. Langer  
Witness to ACC

Austin C. Cleaves  
Austin C. Cleaves

Sarah D. Reed  
Witness to ACC

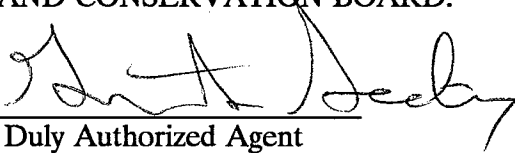
STATE OF VERMONT  
WASHINGTON COUNTY, ss.

At Montpelier, this 12 day of June, 1991, Austin C. Cleaves personally appeared and he acknowledged this instrument, by him sealed and subscribed, to be his free act and deed.

Before me,   
Notary Public  
My commission expires:

Accepted and approved by the VERMONT HOUSING AND CONSERVATION BOARD:

6/10/91  
Date

By   
Its Duly Authorized Agent

**SCHEDULE A**

**PROTECTED PROPERTY**

Being all and the same lands and premises conveyed to Grantor by the following deeds recorded in the East Montpelier Land Records:

- Parcel 1. Quit Claim Deed of Joseph W. Foti to Grantor, Lyle P. Young, and Kate F. Young, dated May 16, 1962, and recorded in Book 20, Page 423. The said Lyle P. Young is now deceased, the interest therein of Kate F. Young being conveyed to Grantor by Quit Claim Deed dated September 27, 1977 and recorded in Book 29, Page 8.
- Parcel 2. Warranty Deed of Earle C. Daniels and Clopha P. Daniels, dated December 13, 1976, and recorded in Book 27, Page 450.
- Parcel 3. Warranty Deed of Lawrence Moran, Annette Moran and the Barre Trust Company to Grantor and Kate A. Cleaves, dated February 2, 1965, and recorded in Book 23, Page 60.
- Parcel 4. Warranty Deed of Isabel Hall to Grantor and Kate A. Cleaves, dated September 10, 1964, and recorded in Book 23, Page 35.
- Parcel 5. Warranty Deed of Clement Rock and Cecile S. Rock to Grantor and Kate A. Cleaves, dated March 9, 1971 and recorded in Book 25, Page 228.

**Excepting and reserving** from the above-described parcels those parts heretofore conveyed by the following deeds:

1. Warranty Deed of Grantor and Kate A. Cleaves to David T. Gill and Valerie M. Gill dated September 14, 1973 and recorded in Book 27, Page 62.
2. Warranty Deed of Grantor and Kate A. Cleaves and Montpelier National Bank to Thomas W. Kech and Beverly M. Kech dated September 7, 1972 and recorded in Book 25, Page 448.
3. Warranty Deed of Grantor and Kate A. Cleaves to Clifton C. Wright and Shirley B. Wright dated June 29, 1971 and recorded in Book 25, Page 269.
4. Warranty Deed of Grantor and Kate F. Young to Duane Wells and Marjorie Wells dated October 23, 1968 and recorded in Book 23, Page 482, said conveyance having been corrected by Quit Claim Deed dated December 3, 1968 and recorded in Book 23, Page 490.
5. Warranty Deed to Robert Utton and Patricia Utton dated December 16, 1986 and recorded in Book 35, Page 417.
6. Warranty Deed to Charlotte S. Langer and Marilyn S. Wingersky dated November 24, 1986 and recorded in Book 35, Page 412.

All right, title, claim and interest in and to the above-described land and premises was conveyed by Kate A. Cleaves to Grantor by Decree and Order of the Washington Superior Court dated July 18, 1974 and recorded in Book 24, Page 383.

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

Vermont Property Transfer Tax 30 V.S.A. Chap. 231

**ACKNOWLEDGEMENT**

Return Rec'd - Tax Paid Board of Health Cert Rec'd.  
Vt. Land Use & Development Plans Act Cert Rec'd.

Return No. 1214-91  
Signed Shirley M. J. [Signature], Clerk  
Date 18 June 91