

PURCHASE AND SALE AGREEMENT

THIS AGREEMENT is entered into upon the dates below by and between **WALTER J. BERTHIAUME** and **DIANE M. BERTHIAUME** of Fairfax, Vermont (collectively "Seller") and the **VERMONT LAND TRUST, INC.**, a Vermont nonprofit corporation with offices in Montpelier, Vermont ("Buyer").

1. **Description of Property.** The property which is the subject of this Agreement consists of 329 acres, more or less, of land and buildings located in Fairfax, Vermont ("Property"). The Property consists of all and the same lands and premises conveyed to Seller by Warranty Deed of Walter J. Berthiaume, Diane M. Berthiaume and Lee Berthiaume, dated January 24, 2013 and recorded in Book 226, Page 145 of the Fairfax Land Records. The Property is generally depicted on the map attached to this Agreement as Exhibit A and incorporated herein.

2. **Sale.** The Seller hereby agrees to sell the Property to the Buyer, and the Buyer hereby agrees to buy the Property from the Seller subject to the terms and conditions herein.

3. **Purchase Price.** The purchase price shall be the fair market value of the Property in its conserved state subject to the two (2) conservation easements contemplated by: (a) a Purchase and Sale Agreement between Seller and Buyer of on or about even date herewith on 206 acres of the Property; and (b) a Pledge Agreement between Seller and Buyer on or about even date herewith on 123 acres of the Property (together "the Conservation Easements"); all as determined by qualified real estate appraisal by Larson Appraisal Services, but not more than Three Hundred and Ten Thousand Dollars (\$310,000.00) to be paid in cashier's or treasurer's check or wire transfer at closing ("the Purchase Price").

4. **Deposit.** Upon the execution of this Agreement, the Buyer shall pay to William Brooks, Esq., as escrow agent, the sum of Five Thousand Dollars (\$5,000.00) as earnest money. Such sum shall be applied to the purchase price at the time of closing, or shall be returned to the Buyer in the event Seller is unable to give marketable title. In the event the Buyer fails to complete the purchase, the escrow agent shall pay the earnest money to the Seller as liquidated damages, providing Seller was willing and able to complete the sale as agreed. The Escrow Agent's responsibility shall be limited to discharging the obligations described in this instrument. Excepting with respect to intentional or grossly negligent acts or omissions by the Agent in derogation of the requirements of this instrument, all parties to this Agreement will defend, indemnify and hold harmless the Agent, from all losses, damage, liabilities, claims and expenses which may arise or be asserted against it arising from any acts, omissions, neglect, or fault of Agent or the parties to this Agreement, as the case may be, or their respective agents, servants, employees, licensees, customers, or invitees.

5. **Contingencies.** The sale is subject to the following contingencies:

- a) Seller shall, by Vermont Warranty Deed, deliver good, clear, record and marketable title to the Buyer, free of all liens or other encumbrances (including discharge or release of outstanding mortgages), sufficient for the Buyer to secure title insurance at the Buyer's sole expense. The Buyer agrees to accept title subject to (i) customary utility distribution easements, (ii) water rights subject to the Public Trust Doctrine, (iii) rights of the public to use roads laid out by municipalities, the state or federal government, (iv) rights of way and other easements that do not, in the Buyer's option, materially impair beneficial use of the Property, (v) Current Use lien, and (vi) the Conservation Easements. The state of title to the Property shall be determined by a title examination obtained by the Buyer.

- b) Seller agrees to use reasonable efforts to deliver marketable title as set forth in Paragraph (a), above. Seller's use of reasonable efforts to so deliver title includes the expenditure of up to \$1,000.00, including attorney's fees, to remove title defects and encumbrances (excepting payment of the principal, interest and penalties due under any liens and mortgages which are Seller's obligation and shall not be included in the \$1,000.00 expenditure cap) identified by the Buyer. In the event Seller is unable to give marketable title, then the Buyer may elect to terminate this Agreement, in which event the deposit shall be returned to the Buyer. The Buyer shall have the right to elect to accept such title as Seller can deliver and to pay the purchase price without reduction.
- c) Approval of this transaction by the Board of Trustees of the Vermont Land Trust.
- d) The approval and receipt by Buyer of a Grant Agreement from the Vermont Housing and Conservation Board by May 29, 2015 for not less than \$435,000.00, plus reasonable costs incurred or to be incurred by the Buyer, for the Buyer's purchase of the Conservation Easement on the 206-acre portion of the Property. Buyer may, in its sole discretion, waive this contingency.
- e) The approval and receipt by Buyer of funds in the form of loans, grants, donations and/or contributions totaling not less than the Purchase Price, plus reasonable costs incurred or to be incurred by the Buyer in performing under this Agreement.
- f) Closing on the Conservation Easements.
- g) Buyer's receipt of professional inspection reports and tests on or before June 30, 2015 showing the one (1) existing dwelling and farm buildings on the Property to be free of any substantial structural and mechanical defects and that the dwelling is serviced by a potable water supply and a functioning wastewater disposal system which reports and tests shall be secured at Buyer's sole expense.

If the above contingencies are not fulfilled by the dates noted above, or if the remaining contingencies are not fulfilled by the date of closing, the Sellers or Buyer may (i) terminate this Agreement, in which event the deposit money and interest thereon, if any, shall be returned to Buyer, or (ii) extend in writing the time for fulfillment of the contingencies.

6. **Permits.** The Seller and the Buyer enter into this Agreement with the understanding that the Property is not the subject of any existing local or state permits or approvals, is in compliance with all local and state law and regulations, and that the conveyance of the Property as contemplated herein will not require any new local or state permits or approvals. Should it be determined that this understanding is incorrect, the Seller and the Buyer shall reach agreement on how the deficiency will be rectified which may include the extension of the Closing Date, if necessary.

7. **Property Disturbances.** No timber shall be harvested from the Property, nor shall Seller physically alter the Property during the pendency of this Agreement, without the prior written consent of Buyer. In the event standing timber is substantially damaged or destroyed by fire, storm or other cause, Buyer may in its discretion elect either to (a) terminate this Agreement and Buyer's escrow payment shall be refunded to the Buyer, or (b) negotiate in good faith with Seller on the value of lost timber, and a corresponding abatement of the purchase price. "Substantial damage"

as used in this clause shall mean loss of 25% or more of the value of standing timber. Further, in the event the farmhouse or barns are substantially destroyed by fire or other casualty and are not repaired or replaced with substantially similar facilities, Buyer may elect to terminate this Agreement, in which event the deposit, together with interest thereon if any, shall be returned to Buyer.

8. **Condition of the Property.** No later than March 15, 2016, Seller shall fulfill the following requirements with respect to the condition of the Property:

- (1) Seller shall have all machinery, equipment, hay, feed, debris and other waste removed from the Property, meaning to include removal from the farm buildings on the Property; and
- (2) The farmhouse must be free of all tenancies and occupants and be vacant and broom clean

9. **Entry onto the Property.** Upon reasonable notice to the Seller, the Buyer shall have the right to enter upon the Property from time to time for the purposes of:

- a) Preparing for the purchase, protection and disposition of the Property, including but not limited to conducting inspections, surveys, preparing appraisals, conducting soils tests or engineering studies, and obtaining other information about the Property; and
- b) Conducting non-intrusive tours of the Property reasonably necessary to show it to prospective buyers from the Buyer or to secure private and public contributions in support of the Buyer's purchase and perpetual conservation of the Property. Seller acknowledges that Buyer may assign its rights and obligations under this Agreement or enter into a purchase and sale agreement for its sale of the Property contingent upon Buyer's acquisition of the Property from Seller.

The Buyer's entry onto the Property, and its activities on the Property as permitted herein shall occur at the sole risk of Buyer. The Buyer shall indemnify, hold Sellers harmless and defend Sellers from and against any and all claims, liens, damages, losses and causes of action which may be asserted by the Buyer or the Buyer's employees and agents or any third party as a result of any such entry. The Buyer's entry onto or testing of the Property shall be conducted in a manner that minimizes any disturbance to the land and to the use and enjoyment of the Property by Sellers or any tenants in possession. Subsequent to completing said inspections, surveys and tests, the Buyer shall, at its sole expense, return the Property as nearly as is practicable to its presently existing state.

10. **Closing and Possession.** Closing shall be on or before March 31, 2016, at a time and a location mutually determined by the parties. Except as provided in paragraph 17, below, Seller shall deliver possession of the Property to Buyer on the date of the closing, free of all leases, tenancies and tenants in possession.

11. **Risk of Loss.** During the period between the date of this Agreement and the transfer of title, the risk of loss shall be on the Seller, and Seller shall continue to carry insurance on the Property. In the event any of the buildings on the Property are destroyed or damaged and are not restored to their present condition by the date of closing, the Buyer may either accept title to the Property and receive the benefit of all insurance proceeds recovered on account of the destruction or damage, or terminate this Agreement and recover the earnest money.

12. **Hazardous Waste.** The Sellers warrant and represent to the Buyer that they are not aware of any hazardous waste or materials having been dumped or placed upon the Property. The Sellers agree that the Buyer may, at Buyer's expense, perform any and all tests and/or inspections necessary to confirm this warranty and representation. In the event that the Buyer discovers that hazardous wastes or materials have been dumped or placed upon the Property, Buyer may at Buyer's option notify Seller in writing of Buyer's election to declare this contract to be null and void and have returned to it the earnest money deposit. Said declaration shall become final unless, within ten (10) days of their receipt of said notice, Sellers elect in their discretion to remedy the hazardous materials condition and Sellers so notify Buyer in writing, which notice shall describe the steps that will be taken, and schedule for such remediation.

13. **Private Water Supply.** The Property is served by a private potable water supply and Buyer hereby acknowledges receipt from the Seller of the Vermont Department of Health publication "Testing Drinking Water from Private Water Supplies" in satisfaction of the requirements of 27 V.S.A. §616.

14. **Lead-Based Paint.** Based upon representations made by Seller and Buyer's own investigation and information, it is agreed that the Property includes pre-1978 residential real estate and, therefore, is subject to Federal (EPA/HUD) Lead-Based Paint Regulations. The parties have entered into a Lead-Based Paint Addendum which is attached hereto as Exhibit B and is incorporated hereby in this Agreement. As per the attached addendum and Paragraph 12, above, Buyer will inspect the property for lead-paint and/or lead-based paint hazards as part of the building inspection.

15. **Costs.** Property taxes shall be prorated by Seller and Buyer as of the date of closing. The Buyer shall pay all costs incidental to recording of the deed. While Vermont property transfer tax and/or land gains tax might ordinarily apply to the sale of the Property, conveyance of the Property to the Buyer as an IRC Sec. 501(c)(3) organization for farm and forest land conservation purposes may render this transaction exempt from property transfer and land gains taxation. At closing, the Seller shall pay to the Buyer Five Thousand One Hundred Fifty Dollars (\$5,150.00) toward expenses and costs incurred by the Buyer in connection with this transaction, including legal fees, appraisal fees, advertising and staff time.

16. **Non-Foreign Affidavit.** Seller warrants and represents that (i) Seller is not a foreign person as defined by Section 1445 of the Internal Revenue Code of 1986, as amended; (ii) Seller is either a United States citizen or a domestic trust; (iii) Seller's federal tax identification number will be as set forth on the Vermont Property Transfer Tax Return to be executed at the closing; and (iv) Seller is a Vermont resident as defined by the State of Vermont. Seller shall provide Buyer with a FIRPTA certification at closing.

17. **Binding Effect, etc.** The terms of this Agreement shall be interpreted in accordance with the laws of the State of Vermont. The Property shall not be sold, conveyed, leased or otherwise transferred without the prior written consent of Buyer. This Agreement may be entered into and notices sent hereunder by facsimile or other electronic transmission ("fax") provided that the obligated party's signature appears on the fax and that the original of the document sent by fax signed by the obligated party is hand delivered or mailed not more than five calendar days after the date of the fax transmission. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement. Either party may record a memorandum of the existence of this Agreement in the Fairfax Land Records, but this agreement shall not be recorded.

18. **Assignment.** This Agreement shall be binding upon and enforceable by the undersigned parties and their respective successors, heirs, and assigns. The Buyer may assign its rights and obligations under this Agreement to another deemed by it qualified to perform; or to an entity formed by the Buyer for the purpose of holding title to the Property. No other transfer or assignment of this Agreement to any third party shall be effective without the prior written consent of both parties. If requested by Buyer, upon reasonable terms and conditions the Seller shall permit the qualified farmer to whom Buyer may assign this Agreement or with whom Buyer enters into a purchase and sale agreement to Purchase the Property to use the agricultural land on the Property pending acquisition of the Property.

19. **Agent.** Seller warrants and represents to Buyer that they have not procured the services of a broker or realtor in connection with the sale of the Property under this Agreement and will indemnify and hold Buyer harmless against the claims of any person(s) making claim to a commission for the sale of the Property under this Agreement, including placement into an escrow account from closing proceeds any commission claimed to be owed by a broker or realtor in order to enable closing hereunder.

SELLER

Date

Walter Berthiaume
Walter J. Berthiaume

Date

Diane M. Berthiaume
Diane M. Berthiaume

BUYER
VERMONT LAND TRUST, INC.

10/23/14
Date

By RIFSA
Its Duly Authorized Agent

Accepted by Escrow Agent:

William Brooks
William Brooks, Esq.

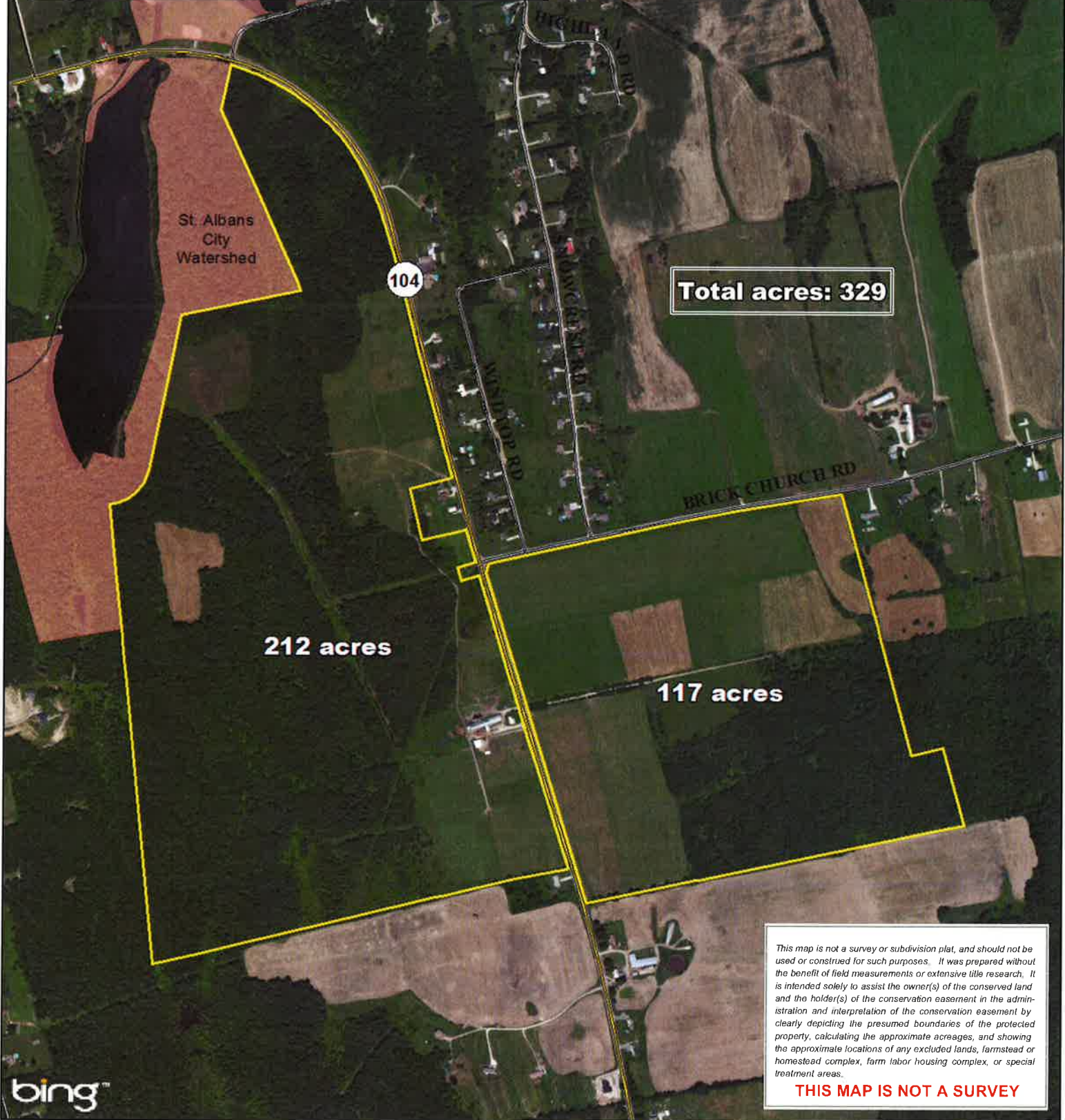
Orthophoto Map

Vermont
Land
Trust

Property: Berthiaume W&D


Location: Fairfax, Vermont

8 Bailey Avenue Montpelier, VT 05602



This map is not a survey or subdivision plat, and should not be used or construed for such purposes. It was prepared without the benefit of field measurements or extensive title research. It is intended solely to assist the owner(s) of the conserved land and the holder(s) of the conservation easement in the administration and interpretation of the conservation easement by clearly depicting the presumed boundaries of the protected property, calculating the approximate acreages, and showing the approximate locations of any excluded lands, farmstead or homestead complex, farm labor housing complex, or special treatment areas.

THIS MAP IS NOT A SURVEY

 Subject Property

9-24-14

Scale: 1:10,000

0 375 750 1,125 1,500
Feet

