

**PROPRIETARY GROUND LEASE AGREEMENT**

This Proprietary Ground Lease Agreement (hereinafter "the Agreement") made and entered into this 11 day of December, 2002, between Wellspring Land Cooperative, a Vermont corporation (hereinafter "Cooperative"), as lessor, and Mimi Arnstein & PARKER NICHOLS, of Marshfield, VT, (hereinafter "Associates"), as lessee(s), witnesseth:

WHEREAS, the Cooperative is organized in part for the purpose of acquiring, holding and managing residential, farm and forest land to assure its long-term affordability and responsible stewardship.

WHEREAS, in furtherance of the purpose to assure long-term affordability, it is the policy of the Cooperative to eliminate or reduce speculative profit from the leased premises and from the transfer price of structures upon the leased premises.

WHEREAS, Associates are in accord with such purposes and policies.

WHEREAS, it is mutually understood and agreed by the parties that the terms and conditions of this Agreement serve to directly further such purposes and policies and to enhance the marketability of the leased premises and structures thereon by facilitating their transfer at an affordable price to succeeding low and moderate income persons.

AND WHEREAS, the terms and conditions of this Agreement, despite their unusual nature, have been freely and knowingly accepted by the parties hereto.

THEREFORE, the Cooperative and Associates enter into this Agreement upon the following terms and conditions.

**SECTION 1: TRANSFER, TERM AND RESERVATIONS**

(a) The Cooperative hereby leases to Associates, as joint tenants with the right of survivorship / tenants in common [select one if there is more than one Associate, otherwise cross out both alternatives], and Associates hereby accept from the Cooperative, upon the terms and conditions set forth in this Agreement, the possession, occupancy and use of the leasehold premises (hereinafter "the Homesite") described below:

A portion of Wellspring Land Cooperative Lot #1 on a survey prepared by Gregory DuBois dated August 13, 1993 and revised August, 1999, and on file in Survey Plat # 69A in the land records of the town of Marshfield. Said portion is outlined in the attached addendum drawing: "Arnstein-Nichols Homesite".

This agreement shall be subject to a grant of development rights and conservation restrictions conveyed by Walter L. and Mary G. Brenneman to the Vermont Land Trust, Inc., the Vermont Department of Agriculture and the Vermont Housing and Conservation Board, dated May 5, 1989, and recorded in Book 39, Page 363 of the Marshfield Land Records.

(b) The Homesite shall include an easement upon contiguous land which is owned by the Cooperative and which is not subject to other ground lease agreements (hereinafter "Common Lands"). Such easement shall be for all reasonable uses of Common Lands related to the possession, occupancy and use of the Homesite, provided such uses are consistent with both this Agreement and the purposes and policies of the Cooperative as expressed herein. The Homesite shall also include rights of

access to water and septic facilities to the extent that the Homesite was serviced by such facilities prior to the date of this Agreement.

(c) This Agreement shall commence on the 11 day of December, ~~2002~~, run for twenty (20) years, and expire on the 10 day of December, ~~2022~~, unless terminated sooner under the provisions of this Agreement.

(d) Associates shall have the right to renew this Agreement for an unlimited number of additional terms. Such right shall be exercisable through a written notice provided to the Cooperative during the twelve months prior to the expiration of this Agreement, but the inadvertent failure to provide such notice shall not constitute a forfeiture of the right to renew. No provision of this Agreement shall be construed as a limitation on the express intent of the Cooperative to endow Associates forever with the sole right of perpetual renewal. The Cooperative hereby expressly states its intention to be bound by Associates' right of perpetual renewal through successive renewal periods forever or as long as Associates shall so determine, subject to the provisions of this Agreement.

(e) The Cooperative reserves to itself all rights of any kind to natural resources in or upon the Homesite including, but not limited to, minerals and other extractive resources, timber, water, etc., with the specific exceptions set forth in Sections 1(b) and 3(b) hereof. However, the Cooperative agrees not to remove or extract natural resources from the Homesite without the permission of Associates. If such permission is granted, the Cooperative agrees to conduct such activities in a manner consistent with sound ecological and conservation principles and the land management plan required by Section 3(i) hereof and with as little disruption to Associates as possible.

## SECTION 2: CARRYING CHARGES

(a) In consideration of the possession, occupancy and use of the Homesite and related easements and rights, Associates agree to pay Carrying Charges to the Cooperative during the term of this Agreement. The Carrying Charge shall be the portion of the costs and expenses and other expenditures of the Cooperative related to the property of which the Homesite is a part which are fairly and reasonably allocated to the Homesite, as determined by the governing body of the Cooperative, plus any additional amounts owing in accordance with the terms of this Agreement. It is understood that Carrying Charges may be increased or decreased from time to time for shortfalls and excesses in estimates of expenditures and cash requirements, whether attributable to foreseen or unforeseen events. Carrying Charges shall be payable in advance in monthly installments. Such Carrying Charges shall initially be Thirty-five and 4/100 dollars (\$ 35 -) per month payable on the 1 day of each month, until the governing body of the Cooperative shall otherwise direct by notice to Associates.

(b) If Associates fail to pay any Carrying Charges or assessments provided for in this Agreement within NINETY (90) days of the date when due, Associates shall pay a late charge of ONE percent (1%) of such amount or amounts for each Month period of delinquency, or part thereof. Such late charge shall be added to the following month's Carrying Charges and considered additional Carrying Charges.

(c) Carrying Charges and assessments provided for in this Agreement shall be paid by check or money order made payable to "Wellspring Land Cooperative" and mailed or hand delivered to the Treasurer of the Cooperative. Associates shall pay all charges to the Cooperative upon the terms and at the times herein provided without any deduction on account of any set-off or claim which Associates may have against the Cooperative, except as otherwise provided in this Agreement.

(d) The Cooperative may, in its sole discretion, reduce, delay or waive all or part of the Carrying Charges at any time if it determines that Associates are unable to pay the fee by reason of personal hardship or incapacity.

## SECTION 3: USE OF HOMESITE

(a) Associates agree to use the Homesite only for the purposes of residence and other activities incidental to residency, including gardening and other production for use or consumption. Business activities may be conducted on the Homesite only with the express consent of the Cooperative, but the Cooperative agrees to permit such activities unless they pose a threat to the peace and harmony of other current or prospective lessees or are inconsistent with the terms and conditions of this Agreement or the purposes and policies of the Cooperative as expressed herein. If such consent is given, the Cooperative reserves the right to unilaterally revoke such consent at any time that actual business activities do, or are perceived by the Cooperative to, pose such a threat.

(b) Associates may, for their personal use on the Homesite only, cut and use a reasonable amount of timber for firewood, construction, etc., and extract a reasonable amount of water. Other natural resources may be extracted only under the following conditions. Any such activity on the Homesite or on Common Lands may occur only after agreement has been reached on the land management plan required by Section 3(i) hereof or express permission has been granted by the Cooperative. Any such activity on Common Lands may proceed only with the express permission of, and under terms and conditions determined by, the Cooperative. Any such activities on the Homesite or on Common Lands must be conducted in a manner consistent with sound ecological and conservation principles and the land management plan so that the Homesite and its resources are protected and the ecological balance is maintained or restored.

(c) Associates agree to use the Homesite and Common Lands only in an ecologically sound manner, maintaining the purity of water and air, the productivity of the soil, and the integrity of the landscape, and disposing of any wastes in a safe and sanitary manner. Associates further agree to use the Homesite and Common Lands only in a manner that is respectful of other lessees and the surrounding community, causing no harm or nuisance to any of them.

(d) Associates agree to safeguard the Homesite against damage, waste or trespass and to maintain the Homesite and Improvements in good, safe, and habitable condition in all respects and in full compliance with all applicable laws, ordinances, rules, regulations and orders of any governmental authority with jurisdiction over matters concerning the condition, use or occupancy of the Homesite and all insurance companies insuring all or any part of the Homesite or Improvements.

(e) Associates agree to obtain the consent of the Cooperative for any use of the Homesite or Common Lands for which there is any reasonable doubt as to its consistency with the terms and conditions of this Agreement or the purposes and policies of the Cooperative as expressed herein.

(f) Associates agree to take responsibility for the use of the Homesite and Common Lands by members of their family or household group and visitors and shall, as appropriate, make them aware of the spirit, intent and terms of this Agreement.

(g) Associates shall have the right to undisturbed enjoyment of the Homesite. The Cooperative shall not interfere with the personal lives, associations, expressions or actions of Associates, except to the extent necessary to enforce the terms and conditions of this Agreement.

(h) Associates agree to share in the costs of building and maintaining fences, roads and other improvements on Common Lands by payment of assessments during the term of this Agreement, as determined by the governing body of the Cooperative. Assessments shall be paid in such monthly installments as is determined by the governing body of the Cooperative.

(i) Associates agree, together with the Cooperative, to develop and to periodically review and update a land management plan that sets forth the natural characteristics of the Homesite and Common Lands and ecologically sound principles and practices for its use and improvement.

(j) The Cooperative shall have the right to inspect the Homesite and the use thereof by Associates at any reasonable time and in any reasonable manner, but only for a legitimate purpose related to the terms and conditions of this Agreement.

#### SECTION 4: TAXES AND ASSESSMENTS

(a) Associates agree to bear full and sole responsibility for any real estate taxes or other governmental charges due on Improvements and to pay such amounts directly to taxing authorities. The Cooperative agrees to bear full and sole responsibility for any real estate taxes or other governmental charges due on the Homesite and to pay such amounts directly to taxing authorities.

(b) In the event that Associates fail to pay real estate taxes or other charges for which they are responsible, the Cooperative may, but shall not be obligated to, pay such amounts and increase Carrying Charges by an equal amount.

(c) In the event that the Cooperative fails to pay real estate taxes or other charges for which it is responsible, Associates may, but shall not be obligated to, pay such amounts and decrease Carrying Charges by an equal amount.

#### SECTION 5: BUILDINGS AND IMPROVEMENTS

(a) It is the express intention of the parties that Associates shall own all buildings and other improvements made to or on the Homesite by or on behalf of them (herein "Improvements"), subject to the terms and conditions set forth in this Agreement.

(b) Associates shall, at Associates' sole expense, maintain the Homesite and Improvements in accordance with the provisions of this Agreement. The Cooperative shall maintain any pre-existing water and septic facilities as described in Section 1(b). The Cooperative shall not be required to furnish any other services or facilities or to make any other repairs to the Homesite or Improvements, and Associates hereby assume the full and sole responsibility for furnishing all such services or facilities.

(c) Associates shall have the right to sever and remove their Improvements upon termination of this Agreement, irrespective of the extent to which they may be attached to the Homesite. The parties acknowledge that some damage or defacement may occur as a result of Associates' exercise of the right of severance and removal of Improvements. The potential of such damage shall in no way infringe on Associates' right of removal, but Associates shall be under an affirmative obligation to minimize such damage and to make every reasonable effort to return the Homesite to its original contours and vegetation. Associates shall provide the Cooperative a reasonable opportunity to review and approve all removal plans prior to initiation.

#### SECTION 6: LIENS

(a) No lien for services, labor or materials resulting from Associates' construction or alteration of Improvements shall attach to the Cooperative's title to the Homesite, Common Lands or other property owned by the Cooperative. Associates shall not suffer or permit any such lien to be filed against such property. If any such lien shall at any time be filed, Associates shall within sixty (60) days after notice of the filing thereof cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or as otherwise permitted by law. If Associates shall fail to cause such lien to be discharged within such period, then, in addition to any other right or remedy of the Cooperative, the Cooperative may, but shall not be obligated to, discharge the same by paying the amount at issue. Associates in good faith and at their own expense may contest the validity of any such asserted lien, provided Associates have furnished a bond in an amount set by statute or otherwise sufficient to release the property from such lien. Any amounts paid by the Cooperative hereunder in respect of such liens shall be deemed to be an additional Carrying Charge payable by Associates upon demand.

(b) No lien for services, labor or materials resulting from the Cooperative's construction or alteration of improvements to Common Lands shall attach to

Associates' title to Improvements, interest in the Homesite or other property owned by Associates. The Cooperative shall not suffer or permit any such lien to be filed against such property. If any such lien shall at any time be filed, the Cooperative shall within sixty (60) days after notice of the filing thereof cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or as otherwise permitted by law. If the Cooperative shall fail to cause such lien to be discharged within such period, then, in addition to any other right or remedy of Associates, Associates may, but shall not be obligated to, discharge the same by paying the amount at issue. The Cooperative in good faith and at its own expense may contest the validity of any such asserted lien, provided the Cooperative has furnished a bond in an amount set by statute or otherwise sufficient to release the property from such lien. Any amounts paid by Associates hereunder in respect of such liens shall be deemed to be a reduction of Carrying Charges payable by Associates.

#### SECTION 7: LIABILITIES

(a) Associates agree that they shall assume sole responsibility and liability to any persons and authorities, related to the possession, occupancy and use of the Homesite. The Cooperative agrees that it shall assume sole responsibility and liability to any persons and authorities, related to the possession, occupancy and use of Common Lands.

(b) Each party shall defend, indemnify and hold the other harmless against all liabilities and claims for damage or injury to person or property from any cause on or about their respective interests. Each party waives all claims against the other for damage or injury to person or property on or about their respective interests arising, or asserted to have arisen, from any cause whatsoever.

(c) Notwithstanding the foregoing, Associates shall remain liable (and the Cooperative shall not indemnify and defend Associates against nor waive such claims of liability) for damage or injury due to the negligent or intentional acts or omissions of Associates or Associates' agents or employees. Notwithstanding the foregoing, the Cooperative shall remain liable (and Associates shall not indemnify and defend the Cooperative against nor waive such claims of liability) for damage or injury due to the negligent or intentional acts or omissions of the Cooperative or the Cooperative's agents or employees.

(d) In the event that either party shall be required to pay any sum whatsoever which is the other party's responsibility or liability, such other party shall reimburse the former for such sum and for reasonable expenses caused thereby, as a separate disbursement or an adjustment to Carrying Charges hereunder.

(e) In the event that either party shall be required to pay any sum whatsoever on behalf of the other party, such other party agrees to reimburse the former for such sum and for reasonable expenses caused thereby, as a separate disbursement or an adjustment to Carrying Charges hereunder.

#### SECTION 8: TRANSFERS BY ASSOCIATES

(a) Except as otherwise specifically provided in this Agreement, Associates shall not sell, convey, assign, sublease or otherwise transfer or dispose of their interest in the Homesite or Improvements, or any portion thereof, other than to Qualified Transferees and for a consideration that does not exceed the Transfer Price (as determined in accordance with Section 9 hereof). Such transfer shall be further subject to the Cooperative's option to purchase and right of approval (as set forth in subsections (e), (f) and (g) of this Section). Any purported sale, conveyance, assignment, sublease or other transfer or disposal that does not comply with such restrictions shall be null and void. Qualified Transferees shall mean a person or group of persons whose household income is less than or equal to one hundred percent (100%) of median income for Washington County or the State of Vermont Nonmetro, whichever is greater, adjusted for family size. The restrictions upon Qualified Transferees shall not be applicable to the extent that limitations on Transfer Price result in no forbearance of consideration, or a nominal amount of such forbearance, or to the extent that diligent efforts have

failed, or are reasonably expected to fail, to locate any Qualified Transferees because of restrictions on the ability of such persons to obtain necessary loans or for other objectively-determined reasons.

(b) Notwithstanding the foregoing, Associates may enter into temporary subleases or other assignments that do not exceed six (6) consecutive months in duration, but only with the prior written consent of the Cooperative, which consent shall not be unreasonably withheld. In the event of such a sublease, Associates agree that the terms and conditions of the sublease shall be consistent with the terms and conditions of this Agreement and that sublease fees shall not exceed the Carrying Charges under this Agreement.

(c) Notwithstanding the foregoing, Associates may mortgage or otherwise assign their interests in the Homesite and Improvements as security for a loan.

(d) Notwithstanding the foregoing, upon the death of Associates and the passing by will or intestate succession of their interest in the Homesite and Improvements to any natural person or persons, such legatee(s) or distributee(s) may, with the consent of the Cooperative, become new lessees under this Agreement by assuming in writing its terms and conditions within one (1) year after Associates' death. The Cooperative agrees that it will consent to such a transfer unless it can demonstrate good cause why such consent should not be granted.

(e) In each event that Associates contemplate a transfer to a third party, other than that which may be permitted under subsections (b), (c) or (d) of this Section, then Associates shall give written notice to the Cooperative ("Notice of Intent to Transfer") no less than sixty (60) days prior to the contemplated closing of such transaction. Such notice shall identify the intended transferee and the nature of the intended transfer, disclose the intended consideration for such transfer and include information sufficient to verify the status of the intended transferees as a Qualified Transferees. No sale, assignment, transfer or other disposition shall be effective unless and until such notice is received by the Cooperative and the Cooperative either: (i) approves the transfer or fails to respond to the Notice of Intent to Transfer within forty-five (45) days of receipt of such notice, in which case such failure shall be deemed to constitute an approval of the transfer; or (ii) provides notice of its election to exercise its option to purchase within forty-five (45) days of receipt of such notice and the procedures set forth in subsections (f) or (g) hereof are complied with.

(f) If the Cooperative timely provides notice of its election to exercise its option to purchase following receipt of a Notice of Intent to Transfer, the Cooperative shall have the option to purchase the Improvements at the lesser of the bona fide offering price of the intended transferee or the Transfer Price. The Cooperative shall exercise such option within ninety (90) days of receipt of the Notice of Intent to Transfer, or its option will expire.

(g) If such option to purchase shall for any reason become unenforceable, the Cooperative shall nevertheless have a right of first refusal to purchase the Improvements at the highest bona fide offering price. Such right shall be as specified in Section 11 hereof. Any sale or other transfer contrary to this subsection, when applicable, shall be null and void.

(h) In order to ensure the unique purposes and intended effects of this Agreement, neither this Agreement nor the leasehold estate of Associates in the Homesite shall be subject to involuntary assignment, transfer or sale, or to assignment, transfer or sale by operation of law in any manner whatsoever, and any attempt at involuntary assignment, transfer or sale shall terminate this Agreement.

(i) **Associates acknowledge that the terms and conditions of this Section and of Sections 9 and 10 below impose substantial restrictions on their ability to freely transfer, or to realize the full value of, their interests in the Homesite and Improvements. Associates further acknowledge that they knowingly and freely accept such restrictions because of a shared commitment to the purposes sought to be accomplished thereby, namely to avoid undue benefit from speculative profits in real property and to assure perpetual affordability of housing opportunities to succeeding low and moderate income persons.**

SECTION 9: LIMITATIONS UPON TRANSFER PRICE

(a) The following limitations are designed to ensure affordability of housing opportunities to succeeding low or moderate income persons while taking fair account of the investment of labor and capital by Associates. The Transfer Price shall be the lesser of: (i) the fair market value of the Improvements and Associates' interest in the Homesite at the time of the Notice of Intent to Transfer plus the cost of any substantial Improvements that are not recognized by market forces, such as energy efficiency, wiring and plumbing betterments, but only to the extent that the prospective buyer(s) are willing to pay more than the appraised value by reason of such Improvements or (ii) the sum of Associates' actual purchase price for the Improvements plus the Added Value of Capital Expenditures by Associates determined in accordance with subsections (c) and (d) hereof, both as adjusted for general inflation during the period of use and occupancy by Associates, plus fifty percent (50%) of any additional appreciation in fair market value. The foregoing fifty percent limitation on appreciation that may be realized by Associates shall not apply to the extent that a generalized increase in land and housing values limits the ability of Associates to purchase a replacement residence of a size and quality comparable to that of their Improvements and one acre of land. The amount of general inflation shall be determined in accordance with the percentage of change in the Consumer Price Index during the period of use and occupancy by Associates under this and prior Agreements. The Consumer Price Index to be used for this purpose shall be the Consumer Price Index for All Urban Consumers (CPI-U) for all items. If such index is no longer compiled, the adjustment shall be in accordance with the successor to such index, if any, or the most similar or comparable index subsequently compiled.

(b) In the event that the Cooperative reasonably believes that the amount represented by clause (i) in subsection (a) hereof is, or may be, at the time of the Notice of Intent to Transfer below the amount represented by clause (ii), then the market value shall be determined by averaging two appraisals, one done by a licensed appraiser of Associates' choosing at Associates' expense and one done by a licensed appraiser of the Cooperative's choosing at the Cooperative's expense. In the alternative, if both parties agree, the market value may be determined by one appraisal done by a licensed appraiser acceptable to both parties, with the expense being shared equally by the Cooperative and Associates. The appraisal or appraisals shall be conducted by analysis and comparison of comparable properties, disregarding restrictions under this Agreement on the use and transfer of the Homesite and Improvements.

(c) For purposes of determining the Transfer Price, "Capital Expenditures" shall include construction or alteration in connection with an existing or new Improvement which materially enhances the value or prolongs the useful life of the Improvements and which is not merely in nature of a repair which serves primarily to maintain the structure in ordinarily efficient operating condition. All Capital Expenditures shall: (i) comply with all applicable laws, ordinances and regulations; (ii) be consistent with the permitted uses set forth in Section 3 hereof, including the land management plan described in Section 3(i) thereof; and (iii) not be luxury items or otherwise inconsistent with prospective transfer to low or moderate income persons.

(d) The Added Value of Capital Expenditures shall be the cost or value of the Capital Expenditures, whichever is lesser.

(1) Associates shall document the amount of Capital Expenditures by means of detailed receipts and invoices for materials and labor, including receipts for bartered goods and services, or by other documentation reasonably acceptable to the Cooperative. If Associates contribute some or all of the labor for construction, the documentation therefor shall state the number of hours spent on each of the major phases of the work and Associates' valuation of such labor. If Associates shall fail to comply with the documentation requirements of this subsection in such a manner as to compromise the ability to fairly determine the cost of construction, so much of such construction as is affected by such failure shall be valued at an amount unilaterally determined in good faith by the Cooperative.

(2) In order to avoid uncertainty as to the Added Value of Capital Expenditures, Associates may enter into an agreement with the Cooperative as to the amount by which the Transfer Price will be increased, or has been increased, as a result of proposed or completed Capital Expenditures.

#### SECTION 10: TERMINATION

(a) This Agreement shall terminate upon notice by Associates of their specific intent to do so.

(b) This Agreement shall terminate if Associates attempt to sell, convey, assign, sublease or otherwise transfer or dispose of their interests in the Homesite or Improvements, or any portion thereof, in violation of the requirements of Section 8 hereof or if, upon their death, the interests of Associates to the Homesite and Improvements do not pass to one or more persons who become new lessees under the provisions of Section 8(d) hereof.

(c) The Cooperative may terminate this Agreement if Associates have intentionally violated any term or condition of this Agreement in such a manner as to negate or seriously compromise the purposes of the Cooperative as expressed herein or the intended effect of this Agreement, both of which represent the continuing foundation of the relationship between the parties. The Cooperative may also terminate this Agreement if Associates have failed to observe or perform any material term or condition of this Agreement. In the latter case, the Cooperative may not terminate this Agreement without providing Associates thirty (30) days to correct the violation. If correction cannot reasonably be completed within such period, it shall be sufficient to begin such corrections within the 30-day period and continue them promptly to completion.

(d) Upon termination of this Agreement, it shall continue in full force and effect insofar as may be necessary to effectuate an orderly severance or transfer of interests. In such event, Associates shall leave the Homesite peacefully and quietly as soon as practicable without damaging the Homesite in any way. Until Improvements are severed, sold or otherwise transferred in accordance with this Agreement or are abandoned, Associates agree to observe all terms and conditions of this Agreement. Upon abandonment of the Homesite which continues for ninety (90) days, the Cooperative shall have the right to assume ownership of, and title to, all Improvements, subject to an obligation to convey proceeds thereof in accordance with the provisions of subsection (e)(4) hereof.

(e) If this Agreement is terminated, Associates agree to sever their Improvements or to sell or otherwise transfer their interests in the Homesite and Improvements in the following manner:

(1) Within thirty (30) days of such termination, Associates shall give written notice to the Cooperative as to whether or not they intend to sever their Improvements.

(2) If Associates give notice of their intention to sever, they shall do so within a reasonable period of time and in a manner consistent with Section 5(c) hereof. If Associates give notice of their intention not to sever or fail to give such notice within the required time, the Cooperative shall have the option to purchase the Improvements for a price equal to the Transfer Price assigned in accordance with Section 9 hereof. The Cooperative shall have forty-five (45) days after receipt of such notice or after the expiration of the time for receiving such notice within which to give written notice to Associates of its intention to exercise its option to purchase the Improvements and ninety (90) days after such time within which to exercise such option, or its option will expire.

(3) If the Cooperative's option to purchase is not so exercised or expires, Associates may sell or otherwise transfer their interest in the Homesite and Improvements in accordance with Sections 8(a), 8(e) and 8(g) hereof except that the Cooperative shall have no further option to purchase other than as set forth above.



(4) If no acceptable buyer is located within two (2) years of the termination of this Agreement, the Cooperative shall have the right to assume ownership of, and title to, all Improvements. If the Cooperative does so, it shall continue to use all reasonable efforts to sell the Improvements and convey to Associates the proceeds of such sale, up to the Transfer Price assigned in accordance with Section 9 hereof, but less the costs of the sale, any taxes owed on the Improvements since termination, any debts to which such Homesite is subject and any debts owed by Associates to the Cooperative.

(f) If any of the following events shall occur, Associates shall have the right of first refusal to purchase the Homesite, and any part of the Common Lands that may be necessary or appropriate for reasonable use and access to the Homesite, at the cost to the Cooperative that is reasonably and fairly allocable to such property. Such right shall be as specified in Section 11 hereof. Any sale or transfer contrary to this subsection shall be null and void. The events which shall give rise to such right shall be the following:

(1) the Cooperative shall be dissolved or liquidated voluntarily or involuntarily or shall resolve to take such action;

(2) the Cooperative conveys, or resolves to convey, its interest in the Homesite other than as security for a mortgage loan or other than to an organization created to succeed the Cooperative or to a cooperative or nonprofit organization having similar purposes and governance as the Cooperative;

(3) the Cooperative's title to the Homesite is lost by condemnation, forced sale or eminent domain; or

(4) any other events that would thwart the purposes of the Cooperative or the intended effects of the Agreement.

#### SECTION 11: RIGHT OF FIRST REFUSAL

(a) Whenever any party under this Agreement shall have a right of first refusal as to certain property, the following procedures shall apply. If the owner of the property offering it for sale or lease ("Offering Party") shall within the term of this Agreement receive a bona fide third party offer to purchase or lease the property which such Offering Party is willing to accept, the holder of the right of first refusal (the "Holder") shall have the following rights:

(1) Offering Party shall give written notice (the "Notice") of such offer to Holder setting forth (i) the name and address of the prospective purchaser thereof, (ii) the purchase price offered by the prospective purchaser, (iii) all other terms and conditions of the sale, and (iv) all other information that may be required under this Agreement. Holder shall have a period of forty-five (45) days after the receipt of such Notice (the "Election Period") within which to elect to purchase the property on the same terms and conditions as set forth in the Notice. Such election shall be made by written notice given to the Offering Party within the Election Period.

(2) If Holder makes the election to purchase the property, such purchase shall be made within ninety (90) days after such election shall have been made by Holder (or if the Notice shall specify a later date for closing, such date) by performance of the terms and conditions of the Notice, including payment of the purchase price provided therein.

(3) Should Holder fail to make any election within the Election Period, then the Offering Party shall have the right (subject to any other applicable restrictions in this Agreement) to go forward with the sale which the Offering Party desires to accept and to sell the property within one (1) year following the expiration of the Election Period on terms and conditions which are not materially more favorable to the purchaser than those set forth in the Notice. If the sale is not consummated within such period, the Offering Party's right so to sell shall end, and all of the foregoing provisions of this Section shall be applied again to any future offer, all as aforesaid.

#### SECTION 12: MEDIATION AND ARBITRATION

(a) The Cooperative and Associates agree that, should any grievance or dispute arise concerning their respective rights and duties under the terms of this Agreement that cannot be resolved through normal interaction, the following procedures shall be used. This Section shall not, however, apply to any dispute that involves the legal validity of this Agreement or any portion thereof or which raises constitutional or civil rights issues, such issues being subject to binding resolution only by judicial process.

(b) Either party may notify the other by written notice of the initiation of the process of non-binding mediation whereby an impartial mediator may facilitate negotiations between the parties and assist them in developing a mutually acceptable settlement of their dispute. The mediator shall be a person who is agreed upon by both parties. Efforts to achieve a resolution through mediation shall end as soon as either party announces that, despite good faith effort, the parties are unable to resolve their dispute. Neither party may resort to the arbitration procedures below without first utilizing these mediation procedures and pursuing the resolution of the dispute in good faith.

(c) Upon failure of the mediation procedures set forth above to resolve the dispute, the parties may agree upon a disinterested arbitrator or either party may notify the other by written notice of its selection of an arbitrator. Within fifteen (15) days of receipt of such notice, the other party may by written notice to the initiator of the arbitration process select a second arbitrator. These two arbitrators shall select a third arbitrator. If the other party fails to timely name an arbitrator in response to the receiving of the notice from the initiator, the arbitrator selected by the initiator shall be the sole arbitrator.

(1) The arbitrator or arbitrators shall hold a hearing as soon as reasonably possible after the initial notice by the initiator of the arbitration process. At the hearing the parties shall each have an opportunity to present evidence and question witnesses in the presence of each other.

(2) As soon as reasonably possible after the hearing, the arbitrator or arbitration panel shall make a written report to the parties of its findings and decision and the reasons for such decision. The arbitrators shall decide the dispute or claim in accordance with the substantive law of the jurisdiction and what is just and equitable under the circumstances. The decisions and awards of the arbitrator or a majority of the arbitration panel shall be binding and final between the parties.

(d) The parties shall equally share any expenses of the mediation and arbitration process.

**(e) The parties acknowledge that the arbitration procedures in this Section impose substantial restrictions upon their abilities to bring a lawsuit concerning a grievance or dispute that may arise in connection with this Agreement. The parties further acknowledge that they knowingly and freely accept such restrictions in the interests of obtaining a speedy, equitable and cost-effective means of resolving their disputes.**

#### SECTION 13: OTHER TERMS AND CONDITIONS

(a) Associates agree to become associates of the Cooperative and maintain such status in good standing.

(b) Whenever this Agreement requires that a party provide notice to the other party, that notice shall be given in writing and delivered in person or by registered mail to the last known address of the party to be notified. Notice shall be deemed given as of the date on which it is hand delivered or mailed.

(c) Whenever this Agreement requires that a party seek the consent of the other party for some proposed action, that consent must be given or refused, if possible, within thirty (30) days of a request. If a well-informed judgment reasonably requires more time, all reasonable steps will be taken to begin the decision-making process within the thirty-day period and promptly carry it to its conclusion.

(d) Whenever in this Agreement reference is made to Associates or a pronoun is used it shall be construed to represent either the singular or the plural, masculine or feminine, as the case shall demand. The language in all parts of this Agreement shall be construed according to its fair meaning and not strictly for or against either party.

(e) The parties agree that the terms and conditions of this Agreement may be modified only in a written document agreed to and signed by both parties.

(f) The failure of either party to insist, in any particular instance, upon strict observation or performance of the terms and conditions of this Agreement or to exercise any rights set forth in it, shall not be construed as a waiver of the right to do so and all terms and conditions shall remain in full force and effect. No waiver of any term or condition shall be considered a waiver of any other term or condition.

(g) Acceptance by the Cooperative of a Carrying Charge payment from Associates, with the knowledge that Associates are failing to perform or observe any terms or conditions of this Agreement, shall not be deemed a waiver of the right of the Cooperative to take action based on such failures.

(h) If any clause of this Agreement is adjudged to be invalid, such judgment shall not affect the validity of any other clause or give rise to any cause of action by one party against the other.

(i) Either party may, but shall not be required to, prosecute or defend, in its own name or in the name of the other party, any actions or proceedings necessary or appropriate for the protection of title, possession, or any other interest in or to that party's respective interests under this Agreement.

(j) This Agreement sets forth the entire agreement between the parties and is binding upon and inures to the benefit of the parties and their successors in interest.

(k) This Agreement shall be governed by and interpreted in accordance with the laws of the State of Vermont.

(l) This Agreement shall be recorded in the land records of the Town of Marshfield.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as a sealed instrument as of the date first written above.

Wellspring Land Cooperative

(Lessor)

by Lester A Snow  
as its President

and

(Lessee)

(Lessee)