

## GRANT OF DEVELOPMENT RIGHTS AND CONSERVATION RESTRICTIONS

WHEREAS, A. JOHN HOLDEN and POLLY HOLDEN are the owners in fee of certain real property in East Montpelier, Vermont, and which has aesthetic, recreational, and natural resource values in its present state; and

WHEREAS, this property contains 85 acres (more or less) of undeveloped land in agricultural and forestry use, and which provides wildlife habitat as well as recreational opportunities; and

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

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

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

WHEREAS, the parties to this Grant recognize the scenic, agricultural, silvicultural, and natural values of the property, and share the common purpose of conserving these values by the conveyance of conservation restrictions and development rights to prevent the use or development of the property for any purpose or in any manner which would conflict with the maintenance of these scenic and natural resource values; and

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

NOW, THEREFORE,

KNOW ALL PERSONS BY THESE PRESENTS that A. JOHN HOLDEN and POLLY HOLDEN of East Montpelier, Washington County, Vermont, on behalf of themselves and their heirs, successors and assigns (hereinafter "Grantor"), in consideration of Ten Dollars and other valuable consideration paid to their full satisfaction, do freely give, grant, sell, convey and confirm unto the VERMONT LAND TRUST, INC., a non-profit corporation with its principal offices in Montpelier, Vermont, and its successors and assigns (hereinafter "Grantee") forever, the development rights, perpetual conservation easement and restrictions, and an access easement (as more particularly set forth below) in a certain tract of land situated in the Town of East Montpelier, Vermont (hereinafter "Protected Property"), said Protected Property being more particularly described in Schedule A attached hereto and incorporated herein.

The development rights hereby conveyed to the Grantee shall include all development rights except those specifically reserved by the 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 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. Grantee accepts 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.
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 Protected Property, boundary markers, directional signs, signs restricting hunting or trespassing on the Protected Property, memorial plaques, temporary signs indicating that the Protected Property is for sale or lease, and signs informing the public that any agricultural or timber products are for sale or are being grown on the premises. Grantee, with the permission of Grantor, may erect and maintain signs designating the Protected Property as land under the protection of the Grantee.
4. The placement, collection or storage of trash, human waste, or any unsightly or offensive material on the Protected Property shall not be permitted except at such locations, if any, and in such a manner as shall be approved in advance in writing by Grantee. The storage and spreading of manure, lime, or other 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.
6. The Protected Property shall not be subdivided or conveyed in separate parcels 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 the Grantee, is or may possess the potential to become inconsistent with the intent of this Grant, such intent being the protection of environmental systems, and the encouragement of the sound utilization and conservation of agricultural and forest resources.

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 Grantee, 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. Grantee's approval of forest management plans that may be submitted from time to time shall not be unreasonably withheld or conditioned, if such plans have been approved by a professional forester and if such plans do not violate the terms of this Grant. Disapproval by Grantee of a forest management plan proposing a clearcut (removal of more than 75% of the basal area) shall not be deemed unreasonable. However, Grantee may approve such plan in its discretion if consistent with the purposes of this Grant, such as to permit the planting of different species of trees or the establishment or reestablishment of a field, pasture, or garden.
10. The right to construct and maintain barns, sugar houses, or similar structures or facilities on the Protected Property, provided that they are used exclusively for agricultural or forestry purposes, and provided further that such construction has been approved in writing in

advance by the Grantee. Grantee's approval shall not be unreasonably withheld or conditioned, provided the structure or facility is located in a manner which 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 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 Grantee, 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. The right to maintain, repair, renovate, enlarge or rebuild the existing two-family dwelling, the existing cabin, and the existing office structure, along with the maintenance of existing or construction of a new driveway, utilities and other structures and improvements normally associated with a dwelling, cabin or office structure; provided, however, that prior to commencing construction on any new structure or improvement, Grantor shall obtain the prior written approval of the Grantees, which approval shall not be unreasonably withheld or conditioned, provided the structure or improvement is located within the principal building complex, and is located in a manner which will minimize the loss of the agricultural and forestry potential or the scenic beauty of the Protected Property.

14. The right to construct one (1) additional single-family dwelling on the Protected Property, together with the necessary driveway, utilities and appurtenant structures normally associated with a residence, provided, however, that prior to commencing construction, Grantor shall obtain the prior written approval of the Grantee, which approval shall not be unreasonably withheld or conditioned, provided the dwelling and other structures and improvements are located in a manner which will minimize the loss of the agricultural and forestry potential or the scenic beauty of the Protected Property.

15. The right to subdivide the Protected Property into no more than four generally equally sized parcels. Grantor shall obtain the prior written approval of the Grantee for such subdivision, which approval shall not be unreasonably withheld or conditioned, provided subdivision boundaries shall be substantially as depicted on a plan entitled "Property Plan A. John Holden, Jr., East Montpelier, Vermont, prepared by Rodney D. Charron and dated December 1980 (hereinafter "Holden Conservation Plan"), held by Grantee and counter-signed by original Grantor A. John Holden and Polly Holden.

Where Grantor is required, as a result of this Grant, to obtain the prior written approval of Grantee before commencing an activity or act, and where Grantee has designated in writing another organization or entity which shall have the authority to grant such approval, the approval of said designee shall be deemed to be the approval of the Grantee. Grantor shall reimburse Grantees or Grantees' designee for all extraordinary costs, including staff time, incurred in reviewing the proposed action requiring Grantees' 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 East Montpelier, and the State of Vermont.

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 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, including staff time, incurred in investigating the non-compliance and in securing its correction.

Failure by Grantor to cause discontinuance, abatement, or such other corrective action as may be demanded by Grantee within a reasonable time after receipt of notice and reasonable opportunity to take corrective action shall entitle Grantee to bring an action in a court of competent jurisdiction to enforce the terms of this Grant and to recover any damages arising from such non-compliance. Such damages, when recovered, may be applied by Grantee to corrective action on the Protected Property, if necessary. If such Court determines that Grantor has failed to comply with this Agreement, Grantor shall reimburse Grantee for any reasonable costs of enforcement, including Grantee's staff time, court costs and reasonable attorneys' fees, in addition to any other payments ordered by such Court. In the event that Grantee initiates litigation and the court determines that the Grantor has not failed to comply with this Agreement and that Grantee has initiated litigation without reasonable cause or in bad faith, then 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 Grantee at law, in equity, or through administrative proceedings.

No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair Grantee's rights or remedies or be construed as a waiver. Nothing in this enforcement section shall be construed as imposing a liability upon a prior owner of the Protected Property, where the event or circumstance of non-compliance shall have occurred after said prior owner's ownership or control of the Protected Property has terminated.

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. Grantee shall have the right to construct, manage, use and maintain the footpaths for public recreational use, provided Grantee 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 Holden Conservation Plan.

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

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

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, A. John Holden and Polly Holden. The term "Grantee" shall include the successors and assigns of the original, Grantee Vermont Land Trust, Inc.

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

TO HAVE AND TO HOLD said granted development rights, conservation easement and restrictions, and access easement, with all the privileges and appurtenances thereof, to the said Grantee, VERMONT LAND TRUST, INC., its successors and assigns, to their own use and behoof forever, and the said Grantor, A. JOHN HOLDEN and POLLY HOLDEN, for themselves, and their heirs and assigns, does covenant with the said Grantee, its successors and assigns, that until the ensealing of these presents, they are the sole owners of the premises and have good right and title to convey the same in the manner aforesaid, that the premises are free from every encumbrance, except those of record, and they hereby engage to warrant and defend the same against all lawful claims whatever.

IN WITNESS WHEREOF, we set our hands and seals this 25<sup>th</sup> day of November, 1991.

Signed, sealed and delivered  
In The Presence Of:

GRANTOR

Earle Smalley  
Witness to AJH & PH

A. John Holden  
A. John Holden

Cheryl K. Fischer  
Witness to AJH & PH

Polly Holden  
Polly Holden

STATE OF VERMONT  
WASHINGTON COUNTY, ss.

At Montpelier, this 25<sup>th</sup> day of November, 1991, A. John Holden and Polly Holden personally appeared and they acknowledged this instrument, by them sealed and subscribed, to be their free act and deed.

Before me, Charlotte A. Langer  
Notary Public  
My commission expires: 2/10/95

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SCHEDULE A

PROTECTED PROPERTY

Being all of the same lands and premises conveyed to Grantor by the following Warranty Deeds all recorded in the East Montpelier Land Records at the Books and Pages listed below:

1. Arthur R. Corliss and Grace Corliss, dated July 11, 1933 and recorded in Book 14, Pages 416-417 (conveyed to Grantor A. John Holden only) containing 1 acre, more or less.
2. Arthur R. Corliss, dated October 4, 1961, and recorded in Book 20, Page 399, and containing 10.5 acres of land, more or less.
3. Bernard A. Corliss and Edna C. Corliss, dated April 5, 1968, and recorded in Book 23, Page 422, containing 70.5 acres, more or less.
4. Bernard A. Corliss and Edna C. Corliss, dated October 29, 1971, and recorded in Book 25, Page 332, containing 2.25 acres, more or less.

Reference may be made to a plan entitled "Present and Proposed Land Purchases of A. John Holden, Jr., East Montpelier, Vermont", dated August 1967 and prepared by Keller and Lowe, Inc. of Waterbury, Vermont, a copy of which is on file in the East Montpelier Land Records, and to a plan entitled "Property Plan, A. John Holden, East Montpelier, Vermont", prepared by Rodney D. Charron of Montpelier, Vermont and dated December 1980.

Reference may be made to the above described deeds, maps and records, and to the deeds, maps and records referred to therein for a more complete and particular description.

Vermont Property Transfer Tax 32 V.S.A. Chap. 201  
**ACKNOWLEDGEMENT**  
Return Rec'd - Tax Paid Board of Health Cert Rec'd.  
Vt. Land Use & Development Plans Act Cert Rec'd.  
48(4-91)

**EAST MONTPELIER TOWN CLERK'S OFFICE**  
**RECEIVED FOR RECORD**

THIS 2nd DAY OF December A.D. 19 91  
AT 9 O'CLOCK 00 MINUTES 4 M AND  
RECORDED IN LAND RECORDS, BOOK 46 PAGE 304-308

Subscribed: John M. Josi, Clerk  
Signed: 2 December 91  
Date: 2 December 91

ATTEST: John M. Josi TOWN CLERK  
VERMONT LAND TRUST, INC., 8 BAILEY AVENUE, MONTPELIER, VERMONT 05602-2234