

## GRANT OF ACCESS EASEMENT

KNOW ALL PERSONS BY THESE PRESENTS that ROY D. BAIR and JOANNE H. BAIR of East Montpelier, Washington County, Vermont, on behalf of themselves, their 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 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, the VERMONT DEPARTMENT OF AGRICULTURE, FOOD AND MARKETS, an agency of the State of Vermont, and the VERMONT HOUSING AND CONSERVATION BOARD, an independent board of the State of Vermont, and their respective successors and assigns (hereinafter "Grantees") jointly and severally forever, a perpetual and assignable easement for a right-of-way (all as more particularly set forth below), said easement being on, over, under and across all of a certain parcel of land located in the Town of East Montpelier, Vermont (hereafter "Protected Property"), and being more particularly described as follows (hereafter "Easement Area"):

An easement measuring one rod in width passing over and across the Protected Property which is more particularly described in Schedule A attached hereto and incorporated herein. The access easement right of way shall be located as generally depicted on a plan entitled "Vermont Land Trust -- Chapell-Bair Property," countersigned by the original Grantor and maintained in the permanent records of the Grantees (hereafter "the Chapell-Bair Property Plan" or such other location as is mutually approved in writing by Grantors and Grantees.

The right-of-way 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 provide public access to non-commercial recreational opportunities and activities in the Town of East Montpelier for present and future generations.

### I. Permitted Uses by Grantees.

The rights and interests hereby conveyed to the Grantees are as follows:

1. Grantees may permit access within the easement area for public, non-motorized, pedestrian recreational use (meaning to include walking and skiing). With the prior consent of the Grantors, the Easement Area may be used for horseback riding, bicycling, snowmobiling and other non-pedestrian recreational activities. The easement area shall not be used for camping, no fires shall be permitted, and Grantees shall erect no structures within the easement area.

2. Grantees shall have the right, at Grantees' expense to construct, manage, use and maintain a trail within the easement area, provided Grantees shall first notify Grantor of the name of the entity or organization that will be responsible for maintenance, management and liability for the trail. The improved portion of the trail shall not exceed six (6) feet in width within the one rod easement area. The surface of the trail shall be maintained in a natural condition. The trail shall not be graveled, paved or otherwise improved beyond its natural condition without the prior written consent of the Grantor, excepting such improvements which are necessary to correct, control or prevent erosion.

3. While the location of the easement area is generally depicted on the Chapell-Bair Property Plan, the precise location shall be fixed on the ground by mutual consent of the parties, and marked by blazing or signage maintained within the easement area. The location of the trail may be altered from time to time by mutual consent of the parties. The location of the trail shall be determined by Grantor and Grantees by taking into consideration the following goals:

- a) The Grantor's use and quiet enjoyment of the Protected Property for agricultural, forestry and residential purposes;
- b) The Grantees' objective of creating a public recreational trail which provides meaningful public recreational access to the Protected Property, connecting to trail segments on lands adjoining the Protected Property; and
- c) The conservation purposes underlying a Grant of Development Rights, Conservation Restrictions, and Right of First Refusal dated July 29, 1993, and recorded in Book 51, Page 301 of the East Montpelier Land Records, which purposes are identified in Section I of said instrument.

The centerline of the trail as fixed by Grantor and Grantees and as marked or blazed shall constitute the centerline of the easement area, irrespective of any variations in the area's location on the Chapell-Bair Property Plan.

4. Once the trail has been located on the ground by the parties, marked or blazed, and constructed, Grantees shall not cut or remove and additional vegetation, excepting

- a) Grantees may clear brush as required to maintain the trail and maintain existing vistas from the trail, and Grantees may remove dead, dying or diseased vegetation which poses a safety risk to trail users; and
- b) With the prior consent of the Grantor, Grantees may clear vegetation to establish new scenic vistas along the trail.

Grantees shall not employ herbicides, pesticides, growth inhibitors or other toxic substances within the easement area without the prior consent of the Grantor.

5. Grantees shall erect and maintain such fencing and barriers as may be reasonably necessary to prevent motor vehicles from gaining access to the trail, to prevent farm animals from straying onto the trail, and to prevent the public from interfering with Grantor's use of the Protected Property for agricultural, forestry and residential purposes.

6. Grantees shall have the right to restrict or limit public use of and access to the easement area in the public interest.

7. Grantees shall have the right to erect reasonable signs along the trail corridor to inform the public of the trail's location.

## **II. Restrictions on Use by Grantor.**

The restrictions hereby imposed upon the easement area, and the acts which Grantor shall do or refrain from doing, are as follows:

8. Grantor shall use the easement area exclusively for agricultural, non-commercial recreational and open space purposes. No residential, commercial, industrial, or mining activities shall be permitted, and no building or structure shall be constructed, created, erected or moved into the easement area.

9. Grantor shall not cut any timber or trees within the easement area, excepting Grantor may remove dead, diseased or dying trees.

10. There shall be no disturbance of the surface of the land, including but not limited to filling, excavation, removal of topsoil, sand, gravel, rocks or minerals, or change of the topography of the easement area in any manner. In no case shall surface mining of subsurface oil, gas, or other minerals be permitted.

11. No use shall be made of the easement area, 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 to provide public access to non-commercial recreational activities and opportunities.

## **III. Consultation.**

Grantees shall consult with Grantor from time to time about the public use and access and shall take reasonable steps to correct any erosion problems caused by public use and to minimize any adverse impact on Grantor's use and enjoyment of the Protected Property.

## **IV. Compliance with Easement Terms and Binding Arbitration.**

Grantor and Grantees shall take reasonable steps to periodically inspect the easement area to assure compliance with the terms, conditions and limitations of this easement. In the event either party identifies a material violation of this easement, the party shall provide prompt written notice of the violation, including a request for specific corrective action. Reasonable steps shall be taken to investigate and correct the violation within two weeks of receipt of notice. In the event public use of the Easement area materially interferes with Grantor's quiet enjoyment of the Protected Property on a frequent, on going basis, and measures taken by Grantees do not in Grantor's opinion sufficiently abate the interference, Grantor may close the easement area to public access for a period not to exceed two weeks to enable Grantees to take corrective action.

In the event Grantor and Grantees are unable to agree on the trail's location pursuant to Section I(3), above, said matter shall be submitted for binding arbitration. Further, any violation not corrected through the foregoing voluntary mechanisms shall be submitted to binding arbitration. The arbitrator's authority shall include the right to determine whether a violation of the easement by either

Grantor or Grantees has or continues to occur, and what corrective action is appropriate. Further, the arbitrator's authority shall include the right to determine whether public use of the easement area materially interferes with Grantor's quiet enjoyment of the Protected Property on a frequent basis, whether Grantees' corrective action is sufficient, and what additional corrective action should be implemented to achieve the objectives of permitting reasonable public recreational access without materially interfering with Grantor's quiet enjoyment of the Protected Property. The arbitrator shall be selected by the parties or by the American Arbitration Association if the parties cannot agree on an arbitrator. The costs of arbitration shall be shared equally by the parties, unless otherwise determined by the arbitrator due to one party being unreasonable or otherwise dilatory. The decision of the arbitrator shall be binding on the parties.

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

The provisions of this clause with respect to arbitration shall not apply to any knowing and willful violation of the terms of this Grant of Access Easement. In the event that a party to this Grant becomes aware of a knowing and willful violation of the terms and conditions herein set forth, the party shall give notice of such claimed event or circumstance of non-compliance via certified mail, return receipt requested, and demand corrective action sufficient to abate such non-compliance and restore the Easement Area to its previous condition. Failure by the violator to cause discontinuance, abatement, or such other corrective action as may be demanded within a reasonable time after receipt of notice and a reasonable opportunity to take corrective action shall entitle the enforcing party 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.

**V. Notice to Successor Grantors.**

Grantor shall notify successor Grantors of the existence of this Grant and its arbitration provisions. By taking title to the Easement Area, such successor Grantors covenant and agree to comply with the terms and conditions of this Grant, including the provisions concerning arbitration. Such successor Grantors shall execute an "acknowledgement of arbitration" or such other document then required by law to effectuate the binding arbitration provisions of this Grant. To the extent that the binding arbitration provisions of this Grant terminate as a matter of law, then the provisions of Section V with respect to all claimed knowing and willful violations shall apply to all events and circumstances of noncompliance.

**VI. Miscellaneous Provisions.**

The Grantees shall transfer the right-of-way 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 right-of-way 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 easement area, Grantor shall make reference to the right-of-way 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 successors and assigns of the original Grantor, Roy D. Bair and Joanne H. Bair. The term "Grantees" shall include the respective successors and assigns of the original Grantees Vermont Land Trust, Inc., Vermont Department of Agriculture, Food and Markets, and Vermont Housing and Conservation Board.

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

TO HAVE AND TO HOLD said granted right-of-way and restrictions, with all the privileges and appurtenances thereof, to the said Grantees, VERMONT LAND TRUST, INC., VERMONT DEPARTMENT OF AGRICULTURE, FOOD AND MARKETS and VERMONT HOUSING AND CONSERVATION BOARD, their respective successors and assigns, to their own use and behoof forever, and the said Grantor, ROY D. BAIR and JOANNE H. BAIR, for themselves and their heirs, successors and assigns, do covenant with the said Grantees, their 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, they set their hands and seals this 30th day of June, 1994.

Signed, sealed and delivered  
In The Presence Of:

GRANTOR

Susan Winters  
Witness to RDB & JHB  
[Signature]  
Witness to RDB & JHB

Roy D. Bair  
Roy D. Bair  
Joanne H. Bair  
Joanne H. Bair

STATE OF VERMONT  
WASHINGTON COUNTY, ss.

At Montpelier, this 30th day of June, 1994, Roy D. Bair and Joanne H. Bair, personally appeared and they acknowledged this instrument, by them sealed and subscribed, to be their free act and deed.

Before me, [Signature]  
Notary Public  
My commission expires:

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**ACKNOWLEDGEMENT OF ARBITRATION**

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

Laurence W. Myers  
Vermont Housing and Conservation Board

Dated: 7.15.94

George M. Dunsmore  
Vermont Department of Agriculture,  
Food and Markets

Dated: July 12, 94

W. A. Pige  
Vermont Land Trust, Inc.

Dated: 7/8/94

Roy D. Bair  
Roy D. Bair

Dated: June 30 1994

Joanne H. Bair  
Joanne H. Bair

Dated: June 30, 1994

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**SCHEDULE A  
PROTECTED PROPERTY**

Being all and the same lands and premises described as the "Protected Property" in a Grant of Development Rights, Conservation Restrictions and Right of First Refusal" conveyed by the herein Grantor to the Grantees by instrument dated July 29, 1993, and recorded in Book 51, Pages 301-308 of the Town of East Montpelier Land Records.

EAST MONTPELIER TOWN CLERK'S OFFICE  
RECEIVED FOR RECORD

THIS 26th DAY OF July AD., 1994  
AT 9 O'CLOCK 01 MINUTES A M AND  
RECORDED IN LAND RECORDS, BOOK 54 PAGE 154-57  
ATTEST [Signature] TOWN CLERK

Vermont Property Transfer Tax 32 V.S.A. Chap. 231

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

Return No. 34(4-94)  
Signed: [Signature], Clerk  
Date 26 July 94