

## GRANT OF ACCESS EASEMENT

KNOW ALL PERSONS BY THESE PRESENTS that DOROTHY J. SPARROW, PHILIP L. SPARROW, and ROGER B. LELAND, Trustees of the Dorothy J. Sparrow Living Trust pursuant to Declaration of Trust dated August 17, 1993, (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 HOUSING AND CONSERVATION BOARD, an independent board of the State of Vermont, and the TOWN OF EAST MONTPELIER, a Vermont municipality, 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 and across part of a certain parcel of land situated northerly of Gould Hill Road and being a portion of the former Sparrow Farm located in the Town of East Montpelier, Vermont ("Property") as described in Schedule A attached hereto and incorporated herein, and being an easement measuring one rod in width ("the trail") passing over and across that portion of the Property identified as "Access Easement Trail Zone" (hereafter "Easement Area") on a survey entitled "Conservation Easement to be Conveyed to Rural Economic and Community Development on a portion of the Sparrow Farm," dated June 8, 1995, prepared by Vermont Survey and Engineering, Inc., and to be recorded in the East Montpelier Land Records.

The right-of-way easement and restrictions hereby conveyed to the Grantees consist of covenants on the part of the Grantor and Grantees 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 and agree to 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. Effective on the date of this Grant and prior to exercising their right to construct, manage and maintain a trail pursuant to paragraph I(2), Grantees shall have the right to permit access within the easement area for public, pedestrian recreational use (meaning to include walking and skiing) as well as horseback riding, bicycling, and snowmobiling. Motorized recreational use, exclusive of snowmobiles, shall not be permitted. The easement area shall not be used for camping, no fires shall be permitted, and Grantee 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 and management of the trail. Grantees shall secure the prior written approval of Grantor concerning said entity or organization, which approval shall not be unreasonably withheld, provided said entity or organization has the capacity to maintain and manage the trail as required by this instrument. The improved portion of the trail shall not exceed the one rod width of the 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.

3. While the location of the easement area is depicted on the Sparrow Trail Plan, the precise location of the trail 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 Property for wildlife conservation, forestry, agricultural, and residential purposes; and
- b) The Grantees' objective of creating a public recreational trail which provides meaningful public recreational access to the Property, which can be established without undue expense, and which connects to trail segments on lands adjoining the Property.

The centerline of the trail as fixed by Grantor and Grantees and as marked or blazed shall constitute the centerline of the easement conveyed herein, provided the trail lies within the easement area.

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 that Grantees may clear brush as required to maintain the trail and may remove dead, dying or diseased vegetation which poses a safety risk to trail users. 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 have the right to restrict or limit public use of and access to the easement area in the public interest.

## **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:

6. Grantor shall use the easement area exclusively for agricultural, wildlife conservation, 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.

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

8. 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. This clause shall not impair Grantor's right to install, maintain, repair and replace water lines across the easement area.

9. 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 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 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, or are unable to agree about the capacity of the entity managing and maintaining the trail as provided in paragraph I(2), 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 Property on a frequent basis, whether Grantees' corrective action is sufficient, and what additional corrective action and remedies should be implemented to achieve the objectives of permitting reasonable public recreational access without materially interfering with Grantor's quiet enjoyment of the Property. The arbitrator shall also have the right to close the trail for such periods of time and under such conditions as the arbitrator deems necessary to preserve Grantors' quiet enjoyment of the Property, provided no less restrictive corrective action has or would achieve such preservation.

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.

**V. 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 only 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 Property in perpetuity. Grantor shall also notify the Grantees 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, Dorothy J. Sparrow, Philip L. Sparrow, and Roger B. Leland, Trustees of the Dorothy J. Sparrow Living Trust. The term "Grantees" shall include the respective successors and assigns of the original Grantees Vermont Land Trust, Inc., Vermont Housing and Conservation Board and Town of East Montpelier.

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

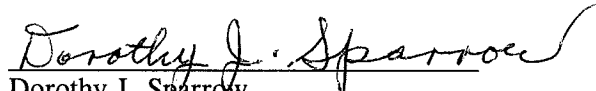
TO HAVE AND TO HOLD said granted right-of-way and restrictions, with all the privileges and appurtenances thereof, to the said Grantees, VERMONT LAND TRUST, INC., VERMONT HOUSING AND CONSERVATION BOARD, and TOWN OF EAST MONTPELIER, their respective successors and assigns, to their own use and behoof forever, and the said Grantor, DOROTHY J. SPARROW, PHILIP L. SPARROW, and ROGER B. LELAND, Trustees of the Dorothy J. Sparrow Living Trust, do covenant with the said Grantees, their respective successors and assigns, that until the ensembling 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 identified in Schedule B attached hereto and incorporated herein, 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 13 day of June, 1995.

Signed, sealed and delivered  
In The Presence Of:

GRANTOR  
TRUSTEES OF THE  
DOROTHY J. SPARROW LIVING TRUST

  
Witness to DJS

  
Dorothy J. Sparrow

  
Witness to DJS

  
Witness to PLS

  
Philip L. Sparrow

  
Witness to PLS

Joanne Bonazzoli  
Witness to RBL

Roger B. Leland  
Roger B. Leland

Mary J. Quiry  
Witness to RBL

STATE OF VERMONT  
WASHINGTON COUNTY, ss.

At Bare, this 14 day of June, 1995, DOROTHY J. SPARROW and PHILIP L. SPARROW, Trustees of the Dorothy J. Sparrow Living Trust pursuant to Declaration of Trust dated August 17, 1993, personally appeared and they acknowledged this instrument, by them sealed and subscribed, to be their free act and deed, and the free act and deed of said Trustees.

Before me, Sharon Hill  
Notary Public

My commission expires:

~~STATE OF VERMONT~~ COMMONWEALTH OF MASSACHUSETTS  
~~WASHINGTON COUNTY~~ County of Worcester, ss.  
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At Northborough, this 13<sup>th</sup> day of June, 1995, ROGER B. LELAND, Trustee of the Dorothy J. Sparrow Living Trust pursuant to Declaration of Trust dated August 17, 1993, personally appeared and he acknowledged this instrument, by him sealed and subscribed, to be his free act and deed, and the free act and deed of said Trustee.

Before me, Joanne Bonazzoli  
Notary Public

My commission expires: 10/16/98

**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.

Dorothy J. Sparrow  
Dorothy J. Sparrow, Trustee

Dated: 6-14-95

Philip L. Sparrow  
Philip L. Sparrow, Trustee

Dated: 6-14-95

Roger B. Leland  
Roger B. Leland, Trustee

Date: 6/13/95

Vermont Housing and Conservation Board  
Vermont Housing and Conservation Board

Dated: 6/15/95

W. S. Park  
Vermont Land Trust, Inc.

Dated: 6/15/95

Alan D. Gough  
Town of East Montpelier

Dated: 6/14/95

**SCHEDULE A  
PROPERTY**

BEING that portion of all and the same lands and premises conveyed by Dorothy J. Sparrow to Philip L. Sparrow, Dorothy J. Sparrow, and Roger B. Leland, Trustees of the Dorothy J. Sparrow Living Trust pursuant to Declaration of Trust dated August 17, 1993, by (i) Quitclaim Deed dated January 3, 1995, recorded on January 9, 1995, in Book 55, Page 48; and (ii) Corrective Warranty Deed dated May 9, 1995, recorded on May 10, 1995, in Book 55, Page \_\_\_\_\_, of the East Montpelier Land Records, lying northerly and easterly of Gould Hill Road;

AND EXCEPTING THEREFROM all of said lands and premises which are situated southerly and westerly of Gould Hill Road, being all and the same lands and premises conveyed on this date by Philip L. Sparrow, Dorothy J. Sparrow, and Roger B. Leland, Trustees of the Dorothy J. Sparrow Living Trust pursuant to Declaration of Trust dated August 17, 1993, to the Vermont Land Trust, Inc.

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

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**SCHEDULE B  
EASEMENTS AND USE RESTRICTIONS**

The following easements and use restrictions of record in the Town of East Montpelier Land Records may be located on and across or otherwise encumber the Property:

1. Power line easement to Washington Electric Co-op dated September 12, 1989, from "Sparrow" recorded on October 16, 1989, in Book 42, Page 426.
2. Power line easement to Washington Electric Co-op dated December 2, 1968, from "Sees" recorded in Book 24, Page 36 (over lands at Book 17, Page 161, Boisvert Lands").
3. Telephone pole and line easement to New England Telephone and Telegraph Company dated August 3, 1994, from Dorothy J. Sparrow, recorded in Book 54, Page 179, on land located on the westerly side of Town Highway #34.
4. Spring rights and pipe line easement of others as set forth in deed dated November 14, 1949, recorded in Book 17, Page 293, which is the further subject of a Water Pipeline and Trail Agreement between Robert and Delia Robinson, Vermont Housing and Conservation Board, Vermont Land Trust, Inc., and the Town of East Montpelier of near or even date herewith and a notice of which is to be recorded in the East Montpelier Land Records.
5. Spring rights as set forth in deed dated May 15, 1946, from Harold C. Sees and Selma E. Sees to John F. Fanning and bertha A. Fanning recorded on May 17, 1946, in Book 17, Page 151 (encumbers lands at Book 17, Page 128, "Parcel B, Montpelier National Bank Lands").
6. State of Vermont, Agency of Natural Resources, Deferral of Permit No. 5-2927 dated May 25, 1994, recorded on June 6, 1994, in Book 53, Page 496, concerning 2.2 acres to be conveyed to Philip and Linda Sparrow contiguous to lands presently owned by them.
7. Terms and conditions of a certain Grant of Development Rights, Conservation Restrictions, and Right of First Refusal of approximate or even date herewith and to be recorded from Dorothy J. Sparrow, Philip L. Sparrow, and Roger B. Leland, Trustees of the Dorothy J. Sparrow Living Trust to United States of America, Department of Agriculture, and Vermont Housing and Conservation Board.

**EAST MONTPELIER TOWN CLERK'S OFFICE**  
**RECEIVED FOR RECORD**  
 THIS 15th DAY OF June A.D., 19 95  
 AT 3 O'CLOCK 01 MINUTES P. M AND  
 RECORDED IN LAND RECORDS, BOOK 55 PAGE 395-400  
 ATTEST [Signature] TOWN CLERK