

## GRANT OF TRAIL EASEMENT

KNOW ALL PERSONS BY THESE PRESENTS that **Fairmont Dairy, LLC**, a limited liability company organized under the laws of the State of Vermont, with its principal offices in East Montpelier, Vermont, on behalf of itself and its successors and assigns (hereinafter “Owner”), pursuant to the authority granted in Title 10 V.S.A. Chapter 20 and Chapter 155 and in consideration of the payment of Ten Dollars and other valuable consideration paid to its full satisfaction, does freely give, grant, sell, convey and confirm unto the **Cross Vermont Trail Association, Inc.**, a non-profit corporation organized under the laws of the State of Vermont, with its principal offices in Montpelier, Vermont, and the **Vermont Housing and Conservation Board**, a public instrumentality of the State of Vermont existing by virtue of 10 V.S.A. § 311, with its offices in Montpelier, Vermont, and their respective successors and assigns (hereinafter collectively “Holders”) forever, a perpetual, non-exclusive and assignable easement for a right-of-way, all as more particularly set forth below (the “Easement”), over a certain parcel of land located in the Town of East Montpelier, Vermont (the “Property”). The Property is more particularly described in **Schedule A** attached hereto and incorporated by reference herein. The location of the right-of-way easement conveyed hereby is more particularly described in **Schedule B** attached hereto and incorporated by reference herein (the “Corridor”). Trails permitted by this Easement shall be located within the Corridor and may be improved as provided below (the “Trails”). This Easement also contains covenants on the part of Owner and Holders to do or refrain from doing various acts as set forth below. It is hereby acknowledged that this Easement constitutes a servitude upon the land and runs with the land in perpetuity. Holders accept this Easement in order to provide public access to recreational opportunities and activities and non-motorized transportation throughout the Corridor.

### I. PURPOSES.

The Purposes of this Easement are to provide permanent and perpetual public, recreational and non-motorized transportation use of the Corridor; to locate the Corridor so that it provides public recreational access and non-motorized transportation across the Property in a manner that enhances the outdoor experience of users; to establish Trails without undue expense; and to implement these purposes without unreasonably disturbing Owner’s quiet use and enjoyment of the Property.

More particularly, the Purposes of this Grant are to permanently establish a section of the Cross Vermont Trail by allowing passage of the Trail across the Property where needed, and furthermore to establish a permanent trail right-of-way on the location of the former public road, now abandoned, called Fassett Road wherever it is located on the Property.

### II. USES.

1. **Public Access:** Holders may permit, in their sole discretion, year-round public access to the Corridor for pedestrian or mechanized, non-motorized recreational or transportation activities, such as walking, skiing, bicycling or riding horses. Motor vehicles are not permitted

except as expressly provided in Section III(4) below. Overnight camping and campfires are not permitted. Holders shall have the right, in their sole discretion, to restrict or limit public use of and access to the Corridor.

2. **Corridor Location:** While the location of the Corridor is generally described in **Schedule B** attached hereto and incorporated by reference herein, the precise location shall be fixed on the ground by mutual agreement of Holders and Owner, and shall be marked by Holders with blazing, signs or otherwise. Owner and Holders shall locate the Corridor in a manner consistent with the Purposes of this Easement and the Grant of Development Rights, Conservation Restrictions, Option to Purchase and Right of Enforcement of the United States conveyed by Owner to Vermont Land Trust, Inc. and Vermont Housing and Conservation Board, dated \_\_\_\_\_, and recorded in Book \_\_\_, Page \_\_\_ of the East Montpelier Land Records (the "Grant") to which this Grant of Trail Easement is subject and subordinate. The width of the Corridor shall be centered on the Trail as built, and in any case shall be sufficient to encompass both Trail structures as built and Trail management activities consistent with the Purposes of this Easement. The Corridor location may be altered at any time by mutual consent of Holders and Owner and with the prior written approval of the Vermont Land Trust, Inc.

### III. OBLIGATIONS.

1. **Trail Construction:** Subject to the limitations contained in the Grant, Holders shall have the right, but not the obligation, to construct, manage, use, repair and maintain Trails which shall not be surfaced with asphalt or concrete at Holders' expense, including the right to construct, maintain, repair and replace permanent or temporary Trail structures. Holders may change the topography of the land and deposit fill material as may be reasonably necessary to build and operate Trails and Trail structures. Trail structures include, but are not limited to: treadway width which is generally at least 3 feet, maximum 20 feet; treadway surface which is firm and slip resistant; treadway running grade which may be predominately 5% or less and, if practicable, also compliant with universal accessibility guidelines; bridges and abutments as needed to span waterways, drainages, and uneven topography; structures as needed to provide lateral support to the Trail, including, but not limited to, retaining walls and graded slopes and embankments necessary to hold the material of said slopes in repose against ordinary erosion in accordance with the standard practice of construction, on both downhill and uphill sides of Trail; and temporary erosion control structures as needed during construction and major maintenance. The Holders may also construct such ditching and culverts as may be reasonably necessary to prevent erosion of Trails and Trail structures, including the right to discharge water through said ditches and culverts away from Trails and onto the property of Owner. Holders shall have the right to temporary storage of construction materials and equipment during periods of Trail construction or major maintenance, at staging areas approved by Owner, which approval shall not be unreasonably denied. Prior to initial Trail construction, installation of Trail structures, Trail relocation within the Corridor, and major Trail maintenance activity, Holders shall give at least two weeks notice to Owner by certified mail, return receipt requested. Trails may be relocated within the established Corridor at the Holders' sole discretion after giving notice to Owner as provided above.

2. **Vegetation Management:** Holders shall not cut or remove any vegetation from

the Property until the Corridor has been located on the ground as provided above. Holders may conduct vegetation management related to Trails within the Corridor, including but not limited to cutting or removal of vegetation from all treadway, from area adjacent to either edge of treadway, and from the area of any structure as may be needed to preserve the integrity of structures, to maintain clear passage over Trails, and for public safety. Holders shall also have the right to plant and maintain, and to prevent the cutting or removal of, vegetation adjacent to Trails as needed for aesthetics and for screening and buffering of Trails, or for other Trail management reasons. Otherwise, Holders may cut or remove additional vegetation only with the prior written consent of Owner. Holders shall not employ herbicides, pesticides, growth inhibitors or other chemicals within the Corridor without the prior written consent of Owner. Owner shall not harvest any trees in the Corridor, once located on the ground as provided above, without the prior written consent of Holders.

3. **Fencing, Barriers and Signs:** Holders, or Owner with Holders' prior written consent, may erect and maintain such fencing and barriers within the Corridor as may be reasonably necessary to manage trail access for public safety, for aesthetics, for screening and buffering of the trail, and for other reasons consistent with the Purposes of this Easement. Holders shall have the right to erect reasonable signs, blazing or other markings within the Corridor to inform the public of the Trail locations or other Trail features. Owner shall not erect fences, barriers or signs that impede access to or use of the Trails, but with Holders' prior approval Owner may erect such fences, barriers or signs as may be reasonably necessary to prevent the public from entering the Property outside the Corridor.

4. **Motor Vehicles:** Owner and Holders may use motorized vehicles and equipment within the Corridor to construct, relocate, maintain, repair and patrol the Trails, and for other reasonable purposes of the Owner, and for medical emergencies. Owner's use of motorized vehicles and equipment within the Corridor shall in no way cause physical damage or other adverse impacts to Trails or Trail structures, but Owner may at its sole expense make repairs and improvements necessary to allow such use, so long as they are consistent with the Purposes of this Easement. Holders agree that snowmobile trails which are part of the Vermont Association of Snow Travelers trail network shall be permitted in the Corridor. Personal assistive mobility devices for use by persons with mobility disability may be permitted in the Corridor.

5. **Other Uses:** Except as specifically permitted by this Easement, no rights-of-way, easements of ingress or egress, driveways, roads, utility lines or other easements shall be granted by Owner or constructed, developed or maintained into, on, over, under, or across the Corridor, without the prior written permission of the Holders. Owner shall use the Corridor exclusively for recreational, agricultural, non-motorized transportation, and open space purposes, except as provided in Section 4 above. No residential or industrial activities shall be permitted, and no building or structure shall be constructed, created, erected or moved into the Corridor, other than the Trail structures mentioned above.

6. **Corridor co-aligned on farm road; Corridor area overlap with agricultural land.** Notwithstanding the above, in those locations where Corridor is co-aligned on an active farm road, Holder's right to construct, maintain and operate a trail shall be in coordination with Owner in order to facilitate shared use of the Corridor/farm road, consistent with the Purposes of

this Grant. In those locations where the Corridor area beyond the trail treadway does overlap with land under active management for growing crops, Holder's right to manage vegetation or place trail related structures, such as signage, within the Corridor beyond the trail treadway shall be subordinate to and in coordination with the Owner's right to manage land for crops, consistent with the Purposes of this Grant.

7. **Accommodation of farm activities: temporary closure to public, education of public.** Owner shall have the right to close the Corridor to public use for not more than ten days per year as may be reasonably required in order to accommodate agricultural activities on the Property, including but not limited to application of herbicides and manure and harvesting carried out on the agricultural land within and adjacent to the Corridor. Owner shall provide Holder reasonable advance notice of such closures. Holder shall take reasonable measures, such as installing and maintaining signage, to educate public trail users about the agricultural activities on the Property and within the Corridor, including timely information about temporary closures of trail to public due to agricultural activities provided Holder has received from Owner sufficient advance notice of closure.

## **V. ENFORCEMENT OF TERMS, CONDITIONS AND LIMITATIONS.**

1. Owner and Holder shall take reasonable steps to periodically inspect the easement area to assure compliance with the terms, conditions, and limitations of this Easement, and for such inspection and enforcement purposes, Holders shall have the right of reasonable access to the Property. In the event that any party to this Grant of Trail Easement 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 four weeks of receipt of notice.

2. In the event any violation is not corrected through the foregoing voluntary mechanisms, Holders shall give written notice to Owner of such event or circumstance of non-compliance by personal service or via certified mail, return receipt requested, and may demand corrective action by Owner sufficient to abate such event or circumstance of non-compliance and restore the easement area to its previous condition. In the event there has been an event or circumstance of non-compliance that is corrected through negotiation and voluntary compliance, Owner shall reimburse Holders all reasonable costs incurred in investigating the non-compliance and in securing its correction.

3. Failure by the Owner to cause discontinuance, abatement or such other corrective action as may be demanded by the Holders within a reasonable time after receipt of notice and reasonable opportunity to take corrective action shall entitle the Holders to bring an action in a court of competent jurisdiction to enforce the terms of this Easement and to recover any damages arising from such non-compliance. Such damages, when recovered, may be applied by the Holders to take corrective action on the Property, if necessary. If the court determines that the Owner has failed to comply with its obligations under this Easement, Owner shall reimburse the Holders for any reasonable costs of enforcement, including court costs and reasonable attorneys' fees, in addition to any other payments ordered by such court. Any Holder may give notice of non-compliance and initiate legal action to enforce this Easement without the consent or approval of any other Holders. In the event that a Holder initiates litigation and the court

determines that the Owner has not failed to comply with this Agreement and that the Holder has initiated litigation without reasonable cause or in bad faith, then the Holder shall reimburse Owner for any reasonable costs of defending such action, including court costs and reasonable attorneys' fees.

4. The parties to this Grant of Trail Easement specifically acknowledge that events and circumstances of non-compliance constitute immediate and irreparable injury, loss and damage to the easement area and accordingly entitle Holders to such equitable relief including, but not limited to, temporary and/or permanent 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 the Holders at law, in equity, or through administrative proceedings.

5. No delay or omission by the Holders in the exercise of any right or remedy upon any breach of Owner shall impair the Holders' 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 Property, where the event or circumstance of non-compliance shall have occurred after said prior owner's ownership or control of the Property has terminated.

## **VI. Miscellaneous Provisions.**

1. Where Owner is required by the terms of this Grant of Trail Easement to obtain the prior written approval of the Holders before commencing an activity or act, the approval of both Holders must be obtained. Where either of the Holders has designated in writing that another organization or entity shall have the authority to grant such approval, the approval of said designee shall be deemed to be the approval of that Holder.

2. It is hereby agreed that the construction of any Trails, Trail Structures or any use of the land otherwise permitted by this Easement, shall be in accordance with all applicable ordinances, statutes, and regulations of the Town of East Montpelier and the State of Vermont.

3. In any deed conveying an interest in all or part of the Corridor, Owner shall make reference to this Grant of Trail Easement and shall indicate that this Easement is binding upon all successors in interest in the Corridor in perpetuity. Owner shall also notify the Holders of the name(s) and address(es) of Owner's successor(s) in interest.

4. The term "Owner" shall include the heirs, successors and assigns of the original Owner, Fairmont Dairy, LLC. The term "Holders" shall include the successors and assigns of the original Holders, Cross Vermont Trail Association, Inc., and the Vermont Housing and Conservation Board.

5. Invalidation of any provision hereof shall not affect any other provision of this Grant of Trail Easement.

TO HAVE AND TO HOLD said granted Easement, with all the privileges and appurtenances thereof, to the said Holders **Cross Vermont Trail Association, Inc.**, and the **Vermont Housing and Conservation Board**, and their successors and assigns, to their own use and behoof forever, and the said Owner, **Fairmont Dairy, LLC**, for itself and its heirs,

successors and assigns, does covenant with the said Holders, their successors and assigns, that until the ensembling of these presents, it is the sole owner of the Property, and has good right and title to convey the same in the manner aforesaid, that the Property is free from every encumbrance, except those of record, and it hereby engages to warrant and defend the same against all lawful claims whatever.

We set our hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

OWNER:

\_\_\_\_\_  
Authorized agent, FairmontDairy, LLC

STATE OF VERMONT  
WASHINGTON COUNTY, ss.

At \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, personally appeared \_\_\_\_\_, duly authorized agent of **Fairmont Dairy, LLC**, and he acknowledged this instrument, by him sealed and subscribed, to be his free act and deed, and the free act and deed of Fairmont Dairy, LLC, before me.

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

Approved by the CROSS VERMONT TRAIL ASSOCIATION, INC.:

\_\_\_\_\_ By: \_\_\_\_\_  
Date Its Duly Authorized Agent

Approved by the VERMONT HOUSING AND CONSERVATION BOARD:

\_\_\_\_\_ By: \_\_\_\_\_  
Date Its Duly Authorized Agent

**SCHEDULE A  
DESCRIPTION OF PROPERTY**

Being all and the same lands and premises conveyed to Owner by:

**TO BE PROVIDED PRIOR TO CLOSING**

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

## SCHEDULE B DESCRIPTION OF CORRIDOR LOCATION

Being the easement area located on **FairmontDairy, LLC** property shown on the map labeled **Schedule C** attached and incorporated herein. The easement area located thereon has three components, each a strip of land with the width indicated below centered on the trail as built and in any case sufficient to encompass trail structures as built and trail management activities as allowed in Section IV of this Grant, and more particularly described as follows:

**1. "Old Fassett Road"**. A strip of land 50 feet in width and 1,050 feet in length, more or less. Beginning at a point near the southwest corner of the Fairmont Lylehaven Lane property in East Montpelier (as described in Schedule A Description attached hereto and incorporated herein) where it abuts the property belonging to Town of East Montpelier. The Corridor follows the bed of a former public road now abandoned, "Old Fassett Road" so called, from west to east along the southern boundary of the Property until it reaches the eastern edge of the Fairmont Farm Lylehaven Lane property, where it abuts the property belonging to Washington Electric Coop. Intending to establish a permanent public trail right-of-way the length of the old road, which may be used as the Cross Vermont Trail route, and may also be used as a trail separate from the Cross Vermont Trail, and which may also be used as a public snowmobile trail.

**2. Trail Corridor along an unnamed brook between Old Fassett Road, so called, and a farm road located on the former Montpelier & Wells River Railroad bed.** A strip of land, 25 feet in width and 800 feet in length, more or less. Beginning at a point on "Old Fassett Road" 225 feet east of where "Old Fassett Road" crosses an unnamed brook, the Corridor runs generally to the north in open country between the brook and agricultural fields, to point where a crossing of the brook may be made, and then continuing northerly still between the brook and the agricultural fields until it reaches the location of the former Montpelier & Wells River Railroad ROW, now a farm road. Intending to create a connection between the "Old Fassett Road" and the old Railroad ROW in order to facilitate a public trail route that would connect ultimately, together with additional Corridor on neighboring properties, to the existing Cross Vermont Trail on the old Railroad ROW to the east of Route 14.

**3. Shared use of a farm road located on the former Montpelier & Wells River Railroad bed.** A strip of land 25 feet in width and 1,800 feet in length, more or less. Beginning at a point where the former Montpelier & Wells River Railroad ROW is extant on the Property, the Corridor follows the former railroad ROW, now a farm road, west to east across the Property to the eastern edge of the Property. Intending to allow the Cross Vermont Trail route to cross the property by allowing the public to share with Owner use of the existing farm road.



### SCHEDULE C

