

GRANT OF TRAIL EASEMENT

KNOW ALL PERSONS BY THESE PRESENTS that **T. WAYNE CLARK** and **HELEN M. CLARK**, **TRUSTEES of the T. WAYNE CLARK LIVING TRUST dated July 20, 1999**, both of Eastbrook, Maine, on behalf of themselves and their successors and assigns ("Owners"), 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 **EAST MONTPELIER TRAILS, INC.**, a non-profit corporation organized under the laws of the State of Vermont with offices in East Montpelier, Vermont, and the **VERMONT HOUSING AND CONSERVATION BOARD**, an independent board of the State of Vermont, and their respective successors and assigns (collectively "Holders") forever, a perpetual, non-exclusive, and assignable easement for a right-of-way all as more particularly set forth below, 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 herein. The location of the right-of-way easement conveyed hereby is more particularly described in Schedule B attached hereto and incorporated herein (the "Corridor"). A trail shall be located within the Corridor and may be improved as provided below (the "Trail"). This Easement also contains covenants on the part of Owners and the 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. Holders accept this Easement in order to provide public access to recreational opportunities and activities throughout the Corridor.

I. PURPOSES.

The purposes of this Easement as set forth in this Section I are hereinafter collectively referred to as the "Purposes of this Easement." Owners and Holders acknowledge that the Purposes of this Easement are to provide permanent and perpetual public, recreational use of the Corridor, and to locate the Corridor so that it provides public recreational access across the Property in a manner that enhances the outdoor experience, to establish a Trail without undue expense, and to implement these purposes while substantially preserving Owners' quiet use and enjoyment of the Property.

II. USES.

1. **Public Access:** Holders may permit, in their sole discretion, public access to the Corridor for four-season, pedestrian or mechanized, non-motorized recreational activities, such as walking, skiing, mountain biking or riding horses. Except as provided below, motor vehicles are not permitted. 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. If use of the Corridor materially interferes with Owners' quiet enjoyment of the Property on a frequent, continuous basis, and measures taken by Holders do not, in Owners' reasonable opinion, sufficiently abate the interference, Owners may close the Corridor for a period not to exceed two weeks to enable Holders to take corrective action. Owners shall provide written notice to Holders of such Corridor closure.

2. **Corridor Location:** While the location of the Corridor is generally described in Schedule B attached hereto and incorporated herein, the precise location shall be fixed on the ground by mutual agreement of Holders and Owners, and marked by blazing, signs or otherwise along the perimeter of the Corridor by Holders. The Corridor location may be altered from time to time by mutual consent of Holders and Owners. Owners and Holders shall locate the Corridor in a manner consistent with the Purposes of this Easement. If Owners and Holders are unable to agree on the Corridor location they

shall submit said matter to binding arbitration as provided in Section IV, below.

III. OBLIGATIONS

1. **Trail Construction:** Holders shall have the right, but not the obligation, at Holder's expense, to construct, manage, use, repair and maintain a Trail, including the right to install, maintain, repair and replace waterbars, steps and other trail surface structures, as well as bridges and/or culverts as necessary to traverse surface waters within the Corridor. Prior to initial Trail installation, Trail relocation within the Corridor, and major maintenance activity, Holders shall give at least two weeks' notice to Owners by certified mail, return receipt requested. The Trail shall not exceed eight (8) feet in width within the twenty five (25) foot wide Corridor. The Trail may be relocated within the Corridor at the Holders' sole discretion after giving notice to Owners 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 clear brush as required to maintain the Trail and may remove dead, dying or diseased vegetation within the Corridor which poses a safety risk to Trail users after the Trail has been constructed; otherwise Holders may cut or remove additional vegetation only with the prior written consent of Owners. Holders shall not employ herbicides, pesticides, growth inhibitors or other chemicals within the Corridor without the prior written consent of Owners. Owners shall not harvest any trees in the Corridor without the prior written consent of Holders, except that Owners may remove dead, diseased or dying trees without prior permission of Holders, provided that Owners have given Holders notice of the proposed activity so that Holders can divert public use of the Trail if necessary.

3. **Fencing, Barriers and Signs:** Holders, or Owners with Holders' prior written consent, may erect and maintain such fencing and barriers within the Corridor as may be reasonably necessary to prevent access to the Trail by motor vehicles. Holders shall have the right to erect reasonable signs, blazing or other markings within the Corridor to inform the public of the Trail location or other Trail features. Owners shall not erect fences, barriers or signs that impede access to or use of the Trail.

4. **Motor Vehicles:** Holders may use motorized vehicles and equipment within the Corridor to construct, relocate, maintain, repair and patrol the Trail, and for medical emergencies. Owners and Holders shall not use or permit the use of motor vehicles within the Corridor, except as specifically provided in this Section III(4). Snowmobiles may be permitted within the Corridor by mutual agreement of Holders and Owners. Holders may permit motor-driven wheelchairs or all terrain vehicles for the use of handicapped persons within the Corridor if consistent with the Purposes of this Easement.

5. **Other Uses:** Except as specifically permitted under this Easement, no rights-of-way, easements of ingress or egress, driveways, roads, utility lines or other easements shall be constructed, developed or maintained into, on, over, under, or across the Corridor, without the prior written permission of the Holders. Owners shall use the Corridor exclusively for recreation and open space purposes. 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 surface structures mentioned above.

IV. COMPLIANCE WITH EASEMENT AND BINDING ARBITRATION.

Owners and Holders shall take reasonable steps to periodically inspect the Corridor to assure compliance with this Easement. In the event that Owners or Holders become aware of an event or

circumstance of non-compliance with this Easement, that party shall give notice to the other 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 Corridor to its previous condition. Any event or circumstance of non-compliance with this Easement not corrected voluntarily shall be submitted to binding arbitration.

The arbitrator's authority shall include the right to determine whether a violation of this Easement by either Owners or Holders 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 Corridor materially interferes with Owners' quiet enjoyment of the Property on a frequent basis, whether Holders' 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 Owners' quiet enjoyment of the Property. The arbitrator's authority shall include the right to temporarily close the Corridor to public use but shall not include the right to permanently close the Corridor.

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.

Notwithstanding the foregoing, Owners and Holders reserve the right to bring an action in a court of competent jurisdiction to (1) secure a temporary restraining order or preliminary injunction to maintain the status quo pending the arbitration of a dispute; (2) enforce a directive issued by an arbitrator to maintain the status quo pending disposition of the arbitration proceeding; or (3) enforce a final order issued by the arbitrator. The prevailing party shall be reimbursed the reasonable costs of enforcement, including staff time, court costs and reasonable attorneys' fees, in addition to any other payments ordered by such Court. The remedies described herein are in addition to, and not in limitation of, any other remedies available to Holders at law, in equity, or through administrative proceedings.

No delay or omission by Holders or Owner in the exercise of any right or remedy shall impair Holders' or Owner's rights or remedies or be construed as a waiver. Nothing in this Section IV shall be construed as imposing a liability upon a prior Owner of the Property or Holders of the Easement, where the event or circumstance of non-compliance has occurred after said prior Owner's ownership or control of the Property or said prior Holders' rights in the Easement have terminated.

V. MISCELLANEOUS PROVISIONS.

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

2. Holders shall be entitled to rerecord this Easement, or to record a notice making reference to the existence of this Easement, in the Town of East Montpelier Land Records as may be necessary to satisfy the requirements of the Record Marketable Title Act, 27 V.S.A., Chapter 5, Subchapter 7,

including 27 V.S.A. 603 and 605.

3. The term "Owners" shall include the successors and assigns of the original Owners, T. Wayne Clark and Helen M. Clark, Trustees of the T. Wayne Clark Living Trust dated July 20, 1999. The term "Holders" shall include the successors and assigns of the original Holders, East Montpelier Trails, Inc. and the Vermont Housing and Conservation Board.

4. Invalidation of any provision hereof shall not affect any other provision of this Easement.

TO HAVE AND TO HOLD said granted Easement, with all the privileges and appurtenances thereof, to the said Holders, East Montpelier Trails, Inc. and Vermont Housing and Conservation Board, and their successors and assigns, to their own use and behoof forever, and the said Owners, T. Wayne Clark and Helen M. Clark, Trustees of the T. Wayne Clark Living Trust dated July 20, 1999, for themselves and their heirs, successors and assigns, do covenant with the said Holders, their successors and assigns, that until the ensembling of these presents, they are the sole owners of the Property, and have 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 they hereby engage to warrant and defend the same against all lawful claims whatever.

IN WITNESS WHEREOF, we set our hands and seals this 23 day of Oct, 2013.

Signed, sealed and delivered
In The Presence Of:

Richard Jinton
Witness to TWC
Berk

Owners
T. Wayne Clark
T. Wayne Clark, Trustee of the
T. Wayne Clark Living Trust
Dated July 20, 1999

Richard Jinton
Witness to HMC
Berk

Helen M. Clark
Helen M. Clark, Trustee of the
T. Wayne Clark Living Trust
Dated July 20, 1999

STATE OF Vermont
Wash COUNTY, ss.

At Montpelier this 23rd day of Oct, 2013, T. Wayne Clark and Helen M. Clark, Trustees of the T. Wayne Clark Living Trust dated July 20, 1999, personally appeared and they acknowledged this instrument, by them sealed and subscribed, to be their free act and deed, before me.

Richard Jinton Berk
Notary Public
My commission expires: 02/10/2015

ACKNOWLEDGMENT 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.


 Owner

Dated: 10/23/13


 Owner

Dated: 10/23/13


 Holder

Dated: 10/10/13


 Holder

Dated: 10.23.2013

**SCHEDULE A
 DESCRIPTION OF PROPERTY**

Being a portion of the lands and premises conveyed to Grantors by Warranty Deed of T. Wayne Clark, dated September 10, 1999, and recorded in Book 65, Page 214 of the East Montpelier Land Records; which was subsequently corrected with respect to the date of the Trust by Corrective Warranty Deed to Grantors dated November 24, 2000 and recorded at Book 68, Page 149 of the East Montpelier Land Records.

**SCHEDULE B
 DESCRIPTION OF CORRIDOR LOCATION**

Being a strip of land measuring twenty five (25) feet in uniform width over and upon a portion of the Property, the centerline of said Corridor being more particularly described in three (3) portions as:

Trail Corridor "A"

Beginning at a point on the southerly edge of the Wheeler Road right of way adjacent to corner "B" as depicted on a survey entitled "T. Wayne Clark Living Trust, Codling & Wheeler Roads, East Montpelier, Vermont" prepared by Wayne D. Lawrence, L.S. dated October 10, 2011, and recorded in Hanging File #82, Page 327 of the East Montpelier Land Records ("the Survey"); thence proceeding

Southeasterly along the westerly boundary of the "Lot 3" as depicted on the Survey; thence proceeding

In a generally southeasterly direction a distance of about 330 feet, more or less, to the southwesterly terminus of Trail Corridor "B" described below; thence proceeding

In a generally southerly direction a distance of about 460 feet, more or less, to the northwesterly

terminus of Trail Corridor "C" described below; thence proceeding
In a generally southwesterly direction a distance of about 1,050 feet as it meanders to the common
boundary of Grantors and Union 32 School District.

Trail Corridor "B"

Beginning at a point on the northerly boundary of Grantors' land adjacent to the northwest corner of
"Lot 2" as depicted on the Survey; thence proceeding
Southwesterly and then southerly a distance of about 1,700 feet, more or less, generally running
along the Grantors' common boundary with land now or formerly belonging to Sanfracon to
a point adjacent to the southerly corner of land now or formerly of Ward; thence proceeding
In a generally westerly direction a distance of 600 feet, more or less, to a point where it intersects
Corridor A described above.

Trail Corridor "C"

Beginning at the southwesterly terminus of a twenty-five (25) foot Trail Corridor conveyed by
Grantors to the Vermont Land Trust, Inc. and the Vermont Housing and Conservation Board
by Grant of Trail Easement dated June 7, 2006 and recorded at Book 93, Pages 484 of the
East Montpelier Land Records; thence proceeding
In a generally northwesterly direction a distance of 2,700 feet, more or less, as it diverges from the
Winooski River to a point where it intersects with Corridor A as described above.

The location of the Trail Corridor is depicted as "2013 Trail Corridor" on Schedule C attached hereto
and incorporated herein.

SCHEDULE C

Codling Rd. (TH #56)

Lot 2
3.27 AC±

2013 Trail Corridor
VHCB and EMT

Lot 4
5.74 AC±
OUT

Lot 1
215.5 AC±

2006 Trail Corridor
to VLT and VHCB

Stream

Winooski River

2013 Trail Corridor
VHCB and EMT

2013 Trail Corridor
VHCB and EMT

Lot 3
5.16 AC±

Wheeler Rd. (TH #53)



TOWN CLERK'S OFFICE
Received Oct 30, 2013 09:28A
Recorded in VOL: 125 PG: 16-
Of East Montpelier Land Records
ATTEST: *Teresa E. Conti*
Teresa E. Conti, Town Clerk

