

*This is a sample easement provided for discussion and illustrative purposes only. Easements for each property will be customized based upon the needs of each landowner and the Path.*

## **GRANT OF TRAIL ACCESS EASEMENT, COVENANTS AND RESTRICTIONS**

**KNOW ALL PERSONS BY THESE PRESENTS**, that \_\_\_\_\_ (hereinafter "**Grantors**"), for themselves, their heirs, successors, and assigns, pursuant to the authority granted in Title 10 V.S.A. Chapters 34 and 155, and in consideration of one dollar and other good and valuable consideration, receipt and sufficiency of which is acknowledged by execution of this Deed, do freely give, grant, sell, convey and confirm unto the **Mad River Path Association, Inc.**, a not-for-profit corporation with its principal place of business at 4061 Main Street, P.O. Box 683, Waitsfield, Vermont, and its successors and assigns (hereinafter "**Grantee**"), forever, a perpetual trail access easement over, on and through a certain tract of land (hereinafter "Easement Area"), as more particularly described in Schedule A, attached hereto, in the Town of \_\_\_\_\_, County of Washington and State of Vermont, said easement being more particularly described as follows, viz.:

Being a perpetual easement over a strip of land measuring \_\_\_\_\_ (\_\_\_\_) feet in width for use by the general public and **Grantee** passing on, over and across a portion of the premises of **Grantors** conveyed to them by \_\_\_\_\_ and depicted on a plan entitled " \_\_\_\_\_ " and attached hereto (hereinafter the "Plan"). In the event of a discrepancy between the written description of the Easement Area and the Plan, the Plan shall control.

### **I. PURPOSES OF THIS GRANT**

**Grantors** and **Grantee** acknowledge that the primary purpose of this Grant is to establish, maintain and provide for general public use and enjoyment a permanent and perpetual recreational trail system (known as the "Mad River Path," and the "Path" hereinafter) in a manner that enhances the outdoor recreation experience and non-motorized transportation network in the Mad River Valley.

The secondary purpose is to preserve the scenic and natural qualities of the Easement Area.

Furthermore, the Easement Area possesses the following attributes: it provides a critical pedestrian link that connects the town-owned Riverside Park with other existing sections of the Path;

- b) it enhances the multi-use recreational purpose of the Mad River Path;
- c) it provides educational opportunities;
- d) it provides scenic views of the Mad River;
- e) it allows connectivity to other, similar recreational trails in the area; and
- f) it is adjacent to a town-owned parcel of land used for recreation purposes.

### **II. USES AND OBLIGATIONS**

**A. Public Access:** The **Grantors** covenant and agree that the Easement Area shall be available to the general public as a recreational pathway for all types of non-motorized, dispersed recreational activity consistent with the purposes of this Grant. The **Grantors** and

**Grantee** agree jointly to prohibit the use of motorized vehicles within the Easement Area except as necessary for a medical emergency or construction and maintenance purposes.

**B. Camping and Fires:** Overnight camping and fires shall be prohibited within the Easement Area.

**C. Corridor Location and Relocation:** The location of the Easement Area is generally described in Schedule A and is depicted on the “\_\_\_\_\_” Plan, both attached hereto and incorporated herein.

The Easement Area location may be altered from time to time by mutual consent of the **Grantee** and **Grantors**, so long as the relocation allows connection to the trail system of **Grantee** on either side of **Grantors**' property and provides a safe, high-quality trail consistent with the purposes of this Grant. Notice of a request for trail relocation shall be given to the other party so that sixty (60) days are provided to ensure uninterrupted use of the trail. Any relocation of the Easement Area at the request of either party shall be evidenced by a document recorded in the \_\_\_\_\_ Land Records and on a map maintained in the office of the Mad River Path Association.

**D. Trail Construction and Maintenance:** **Grantee** shall have the right to construct, reconstruct, repair, maintain, replace, and/or monitor the Path, performing such clearing of trees and vegetation as is reasonably necessary for said purposes and allowable by the State of Vermont. **Grantee** shall not unreasonably cut or remove additional vegetation, except for dead, dying or diseased vegetation that poses a risk to Path users or to the condition of the Path and is allowable by the State of Vermont. **Grantee** shall not use herbicides, pesticides, growth inhibitors or other toxic substances within the Easement Area. **Grantee** shall stack, pile or otherwise remove all slash or debris from the traveled Path and allowed to compost within the Easement Area.

**Grantee** also shall have the right to construct bridges and erosion control structures necessary to maintain a clear, dry passage through the Easement Area including the right to install, maintain, repair and replace waterbars, steps, and other trail surface structures, as well as culverts as necessary to traverse surface waters within the Easement Area. **Grantee** shall provide **Grantors** with thirty (30) days' prior written notice of any such construction plans by first class mail to the address of the Grantors appearing in the Grand List for the Town of \_\_\_\_\_.

**Grantee** shall maintain the Easement Area as part of the Path trail network in a safe condition. If the Easement Area is not maintained in a safe condition, **Grantors** shall have the right to temporarily close the Easement Area until such time as the condition of the Easement Area is brought back to acceptable condition.

**E. Fencing, Barriers and Signs:** **Grantee**, with **Grantors**' prior written consent, may erect and maintain fencing and barriers within the Easement Area as may be reasonably necessary to prevent access to the Path by motor vehicles and/or to discourage pets from straying from the Path onto **Grantors**' or other adjacent landowners' properties. **Grantee**, with **Grantors**' prior written consent, shall have the right to erect reasonable signs, blazing or other markings within the Easement Area to inform the public of the Path location or other Path features. **Grantors** shall not erect fences, barriers or signs that impede access to or use of the Path.

**F. Buildings and Non-recreational Uses:** **Grantors** shall not place structures, landscaping, or other improvements within Easement Area that may prevent or interfere with the ability of **Grantee** and the public to use the Path for the purposes stated in this Grant.

**G. Excavation and Trash:** Except as provided in Section II D, there shall be no disturbance of the surface of the Easement Area, including but not limited to filling, excavation, removal of top soil, sand, gravel, rocks or minerals, or change of the topography of the Easement Area in any manner. Further, there shall be no placement, collection, or storage of trash, human waste, ashes, chemicals, hazardous or toxic substances, or any other unsightly materials within the Easement Area.

**H. Liability:** **Grantors** may close the Easement Area to public use in the event the landowner liability protection afforded by 10 V.S.A. 448 is repealed or altered in a manner which materially increases **Grantors'** liability, or the **Grantee** elects not to provide reasonable insurance coverage or otherwise does not agree to hold **Grantors** harmless against potential liability to public users of the Path.

**I. Miscellaneous:** **Grantee** shall have the right to limit or restrict public use and access to the easement area as necessary and appropriate for the safety of the Path users.

### **III. MANAGEMENT OF TRAIL**

**Grantee** may assign its rights and obligations under this instrument with regard to construction, relocation, and/or management of the Path to an entity or individual (the "Manager") provided that Manager is qualified and has the capacity to perform the Path management functions and **Grantee** first provides notice to the **Grantors** of the name, address and other means of contacting the Manager.

### **IV. COMPLIANCE WITH EASEMENT AND BINDING ARBITRATION**

**Grantee** shall consult with the **Grantors** from time to time, or at **Grantors'** request, about the public use of, and access to, the Easement Area and the Path, and **Grantee** shall take reasonable steps to correct any problems caused by public use of the Path and to minimize any adverse impact on the **Grantors'** use and enjoyment of the Easement Area and any adjoining property owned by **Grantors**.

**Grantors** and **Grantee** shall take reasonable steps to periodically inspect the Easement Area to ensure compliance with the Grant. In the event that **Grantors** or **Grantee** become aware of an event or circumstance of noncompliance with this Grant, that party shall give notice to the other via certified mail, return receipt requested to the most recent address in town's grant list, and demand corrective action sufficient to abate such non-compliance and return Path to its previous condition. Any event or circumstance of non-compliance with this Grant not corrected voluntarily may be submitted to binding arbitration, if agreed to by all parties. The arbitrator shall be selected by the parties, or by the American Arbitration Association if parties cannot agree, with costs shared equally unless otherwise determined by the arbitrator due to one party being unreasonable or otherwise dilatory. If the parties agree to submit to binding arbitration, the arbitrator's authority shall include the right to determine whether a violation of this Grant by either **Grantors** or **Grantee** has occurred or continues to occur, and what corrective action is appropriate. The arbitrator's authority shall include the ability to grant equitable relief as appropriate.

Notwithstanding the foregoing, **Grantee** and **Grantor** reserve the right to bring an action in a court of competent jurisdiction if the parties do not agree to submit to binding arbitration. 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.

## **V. MISCELLANEOUS PROVISIONS**

A. All references herein to the **Grantors** and **Grantee** shall include their heirs, successors and assigns.

B. The **Grantee** shall transfer this Easement 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. By acceptance and recording of a deed conveying Grantee's interests, any transferee affirmatively agrees to be bound by the conditions of this grant.

C. The **Grantor** reserves a right of first refusal to repurchase the rights conveyed hereunder. Such right shall be perpetual in nature and shall run with **Grantor's** retained land. The condition of this right of first refusal shall be such that whenever **Grantee** is prepared to convey its interests, whether for consideration or without consideration, **Grantee** shall provide notice of any such proposed transfer, including the proposed terms and conditions thereof and a copy of any written offer, purchase, agreement or similar document, to the **Grantor**, or its successor, by certified mail. **Grantor**, or its successor, may elect to purchase the interests conveyed hereunder for the sum of one hundred dollars by providing written notice to **Grantee** within 30 days after delivery of notice to the **Grantor**.

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

E. In the event that the interests conveyed hereby are abandoned by the Grantee or its successor, title to the easement area shall automatically revert to the Grantor. Abandonment shall be conclusively established at such time as Grantee or its successor ceases to maintain a footbridge across Clay Brook, or ceases to rebuild the footbridge following damage or destruction, for a period of eighteen months. Abandonment shall also be established at such time as Grantee, or its successor, fails to maintain its legal existence without first having conveyed its interest to another qualified holder.

F. **Grantee** will record this Grant, in the Town of \_\_\_\_\_ Land Records to satisfy the requirements of the Record Marketable Title Act, 27 V.S.A., Chapter 5, Subchapter 7, including V.S.A. 603 and 605.

G. The invalidation of any portion of this Grant of Trail Easement, Covenants and Restrictions shall not affect the validity of any other provision of this Grant.

## **VI. Temporary Easement for Construction Area**

In connection with the aforementioned parcel and permanent easement the following temporary easements and/or rights are conveyed:

The grantors, in consideration of One and No/100 Dollar (\$1.00) paid by the Mad River Path Association, do hereby convey a temporary easement to enter upon land of the grantors, during the period of construction, to install bridge materials and any project demarcation fences and erosion control barriers as necessary, and to keep the erosion control barriers clear of debris and functioning properly throughout the project construction; in an area of \_\_\_\_\_ square meters (\_\_\_\_\_ square feet), more or less. This temporary easement is conveyed for the aforementioned area, during the period of construction, to enter upon land of the grantors for such construction purposes, including the right to cut and dispose of trees, down timber, stubs, brush, bushes, and debris, as necessary and approved by the grantors. The temporary easement and/or rights conveyed will dissolve upon completion of project construction or upon close of the grant period.

TO HAVE AND TO HOLD said granted Trail Access Easement, Temporary Easements, Covenants and Restrictions, with all the privileges and appurtenances thereof, to the said **Grantees**, and their respective successors and assigns, to their own use and behoof forever, and the said **Grantor**, for itself and its successors and assigns, does covenant with the said **Grantees**, their successors and assigns, that until the ensembling of these presents, it is the sole owner of the property in which the Easement Area is located, and has good right and title to the same.

Signed and dated in \_\_\_\_\_, Vermont this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

**GRANTORS**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**STATE OF VERMONT,**  
WASHINGTON COUNTY, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_ to me personally known or otherwise proved to me through satisfactory evidence of identification to be the people whose names are signed on the preceding or attached document, and they acknowledged to me that they signed such document voluntarily for its stated purpose.

Before me,

\_\_\_\_\_  
Notary Public  
My commission expires 02-10-2015

**SCHEDULE A**

**DESCRIPTION OF PROPERTY  
ON WHICH EASEMENT AREA IS LOCATED**

Being a portion of the same lands and premises conveyed to the **Grantors** by Warranty Deed of \_\_\_\_\_ dated \_\_\_\_\_ and recorded in recorded in Book \_\_\_\_\_, Page \_\_\_\_\_ of the land records of the Town of \_\_\_\_\_, Vermont and being further described as follows:

[description of easement area]

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.