

## GRANT OF TRAIL EASEMENT

KNOW ALL PERSONS BY THESE PRESENTS that BRUCE L. PARKER and JUDYTHE A. PARKER (also known as Judythe D. Parker), both of Hinesburg, Vermont, on behalf of themselves, their heirs, executors, administrators, 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 Town of Hinesburg, Vermont, a municipality organized under the laws of the State of Vermont with offices in Hinesburg, Vermont ("Holder") forever, a perpetual, non-exclusive, and assignable easement twenty (20) feet in width for use by the general public and grantee for non-motorized, recreational purposes as more particularly set forth below, over a certain parcel of land located in the Town of Hinesburg, 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 may 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 Holder 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. Holder accepts this Easement in order to provide public access to non-motorized 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 Holder acknowledge that the Purposes of this Easement are to provide permanent and perpetual public, non-motorized, recreational use of the Corridor, and to locate the Corridor so that it provides public recreational access around the perimeter of 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:** Holder may permit, in its sole discretion, public access to the Corridor for four-season, pedestrian, non-motorized recreational activities, such as walking, skiing, and snowshoeing. Except as provided below, motor vehicles are not permitted. Overnight camping and campfires are not permitted. Holder shall have the right, in its 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 Holder 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 Holder to take corrective action. Owners shall provide two weeks' written notice to Holder in advance 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 Holder and Owners, and marked by blazing, signs or otherwise along the perimeter of the Corridor by Holder. The Corridor location may be altered from time to time by mutual consent of Holder and Owners. Owners and Holder shall locate the Corridor in a manner

consistent with the Purposes of this Easement. If Owners and Holder 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:** Holder 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, Holder shall give at least two weeks' notice to Owners by certified mail, return receipt requested. The Trail shall not exceed six feet in width within the 20- foot wide Corridor. The Trail may be relocated within the Corridor at the Holder's sole discretion after giving notice to Owners as provided above.

2. **Vegetation Management:** Holder shall not cut or remove any vegetation from the Property until the Corridor has been located on the ground as provided above. Holder 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 Holder may cut or remove additional vegetation only with the prior written consent of Owners. Holder 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 Holder, except that Owners may remove dead, diseased or dying trees without prior permission of Holder, provided that Owners have given Holder notice of the proposed activity so that Holder can divert public use of the Trail if necessary.

3. **Fencing, Barriers and Signs:** Holder, or Owners with Holder's 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 and farm animals. Holder 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:** Holder shall not use or permit the use of motor vehicles within the Corridor, except as specifically provided in this Section III(4). Holder may use motorized vehicles and equipment within the Corridor to construct, relocate, maintain, repair and patrol the Trail, and for medical emergencies. Owners may cross the trail with agricultural or forestry vehicles from time to time at locations agreed upon with the Holder, and Owners will work with the Holder to erect signage to ensure that such activity does not adversely affect the safety of trail users. Owners and Holder 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 new 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 Holder. Owners shall use the Corridor exclusively for recreation and open space purposes except where farm vehicles or animals may need to cross the corridor from time to time. 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. Liability**

Holder agrees, for itself and its successors and assigns, that it will indemnify, hold harmless and fully reimburse Owners to the full limits of Holder's liability insurance for any costs and expenses (including attorneys' fees and costs) that Owners may incur in regard to the defense of any claims or the payment of any damages, judgments or decrees relating to any injury or damage resulting from the public use of the trail attributable to the design, layout, condition, or construction of the improvements within the Easement Area, except to the extent that the damages or injury claimed is attributable to acts of the Owners. Holder, its successors and assigns, shall at all times maintain ~~commercial-general~~ liability insurance in commercially reasonable amounts and limits to cover the easement granted hereunder, provided Holder officially permits public access to the Corridor. ~~Furthermore, the~~ Owners and their successors and assigns, shall be named as an additional insured on Holder's any such insurance policy of Holder.

Holder, by the recording of this Easement Deed, acknowledges that the trail corridor has been donated to the Town with the intent that the Owners shall receive the full benefits and protection of 19 V.S.A. Section 2309 and 12 V.S.A. Section 5793, as the same may be amended from time to time.

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

Owners and Holder shall take reasonable steps to periodically inspect the Corridor to assure compliance with this Easement. In the event that Owners or Holder becomes 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 Holder 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 Holder's 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 Holder 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 Holder at law, in equity, or through administrative proceedings.

No delay or omission by Holder or Owners in the exercise of any right or remedy shall impair Holder's or Owners' 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 Holder 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 Holder's rights in the Easement have terminated.

#### **VI. 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 Holder of the name(s) and address(es) of Owners' successor(s) in interest.

2. Holder shall be entitled to rerecord this Easement, or to record a notice making reference to the existence of this Easement, in the Town of Hinesburg 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 heirs, successors and assigns of the original Owners, Bruce L. Parker and Judythe A. Parker, The term "Holder" shall include the successors and assigns of the original Holder, the Town of Hinesburg, Vermont.

4. Invalidity 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 Holder the Town of Hinesburg, Vermont, and its successors and assigns, to ~~its~~ their own use and behoof forever, and the said Owners, Bruce L. Parker and Judythe A. Parker, for themselves and their heirs, successors and assigns, do covenant with the said Holder, its 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 \_\_\_\_ day of \_\_\_\_\_, 200\_.

Signed, sealed and delivered  
In The Presence Of:

Owners

\_\_\_\_\_  
Witness to

\_\_\_\_\_  
Witness to

STATE OF \_\_\_\_\_  
\_\_\_\_\_ COUNTY, ss.

At \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, 200\_, \_\_\_\_\_  
and \_\_\_\_\_ personally appeared and they acknowledged this instrument, by them  
sealed and subscribed, to be their free act and deed, before me,

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

**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 V, 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: \_\_\_\_\_

\_\_\_\_\_  
Owner Dated: \_\_\_\_\_

\_\_\_\_\_  
Holder Dated: \_\_\_\_\_

**SCHEDULE A  
DESCRIPTION OF PROPERTY**

Being all and the same lands and premises conveyed to Grantors BRUCE L. PARKER and JUDYTHE A. PARKER (also known as Judythe D. Parker) by:

- 1. Warranty Deed of Joseph A. Martell and Bernadette Martell, dated August 26, 1965, and recorded in Book 31, Page 432 of the Hinesburg Land Records; with reference made to Boundary Agreement dated December 1, 2008 issued by Chittenden Superior Court, Docket No.: S170-07 CnC, recorded in Book 201, Page 266 of the Hinesburg Land Records; and
- 2. Warranty Deed of Ernest P. Giroux and Theresa D. Giroux, dated August 1, 1982, and recorded in Book 48, Page 561 of the Hinesburg Land Records.

**Excepted and excluded** from this description of the ~~Protected~~ Property are the following three parcels of land:

- 1. A three-acre parcel..., all bearings are referenced to "Grid North:"

[Insert metes and bounds description from the Conservation Plan]

2. The land and premises conveyed by Grantors to Lawrence A. Parker and Kimberly L. Parker by Warranty Deed dated July 5, 1985, and recorded in Book 55, Page 26 of the Hinesburg Land Records.

3. The land and premises conveyed by Grantors to Mark McKenna and Lori P. McKenna by Warranty Deed dated May 13, 1985, and recorded in Book 54, Page 330 of the Hinesburg Land Records.

Meaning and intending to include in this description of the Property all of the 37 acres, more or less, lying on the southerly side of Town Highway #\_\_ (also known as Pond Brook Road), in the Town of Hinesburg, Vermont, subject to a Grant of Development Rights and Conservation Restrictions conveyed to Vermont Land Trust, Inc. by BRUCE L. PARKER and JUDYTHE A. PARKER (also known as Judythe D. Parker) dated \_\_\_\_\_ and recorded in Book \_\_, Page \_\_ of the Hinesburg Land Records.

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**SCHEDULE B**  
**DESCRIPTION OF CORRIDOR LOCATION**

Being a 20-foot wide corridor beginning on the southerly sideline of Pond Brook Road and running southwesterly along the easterly boundary of the Property a distance of 1,920 feet, more or less, to a point on the northerly boundary of land now or formerly belonging to Norbert and Estelle Auger. The corridor re-enters the Property on Trillium Lane and then follows Trillium Lane westerly and then northerly a distance of 650 feet, more or less, thence turning and running westerly a distance of 640 feet, more or less, to a point near the westerly boundary of the Property; thence turning and running northerly along and parallel to the westerly boundary of the Property a distance of 1,120 feet, more or less, to the southerly sideline of Pond Brook Road.

The Parker B&J Conservation Plan depicts the approximate location of the centerline of the trail corridor. The precise location of the trail centerline and the boundaries of the twenty foot-wide corridor shall be fixed on the ground by mutual agreement of Holder and Owners, and marked by blazing, signs or otherwise by Holder.

NOTICE: The Parker B&J Conservation Plan is being executed by BRUCE L. PARKER and JUDYTHE A. PARKER (also known as Judythe D. Parker) and the Vermont Land Trust, Inc. in conjunction with the separate conveyance of a Grant of Development Rights and Conservation Restrictions from BRUCE L. PARKER and JUDYTHE A. PARKER (also known as Judythe D. Parker), to the Vermont Land Trust, Inc. on a portion of the Property contemporaneously with the conveyance of this Grant of Trail Easement. A more complete reference to the Parker B&J Conservation Plan can be found in Schedule A of the Grant of Development Rights and Conservation Restrictions recorded herewith in the Hinesburg Land Records.