

ACKNOWLEDGEMENT 32482
Return Received (including Certificates
and, if Required, Act 250 Disclosure
Statement) and Tax Paid. 08-315

DP 08-28
TP# 18:103:178.000

Williston, VT Town Clerk's Office
Received for Record

June 30 AD 2008
at 10 O'clock 42 minutes A M
and recorded in Book 429 Pages 158-164
Attest E. Kathy Amador Town Clerk
asst.

Signed E. Kathy Amador Clerk

GRANT OF TRAIL EASEMENT

Date June 30, 2008

KNOW ALL PERSONS BY THESE PRESENTS that **PATRICK J. O'BRIEN and MILISSA M. O'BRIEN**, both of Hinesburg, Vermont, on behalf of themselves and 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 WILLISTON**, a Vermont municipality ("Holder") 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 Williston, Vermont (the "Property"). The Property is more particularly described in Schedule A attached hereto and incorporated herein. The general location of the right-of-way easement conveyed hereby is more particularly described in Section II(2), below (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 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 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, 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:** Holder may permit, in its sole discretion, public access to the Corridor for four-season, pedestrian or non-motorized recreational activities, such as walking, skiing, or riding horses. 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 written notice to Holder of such Corridor closure.

2. **Corridor Location:** The Corridor shall be 20 feet in width and run across the Property between other lands now or formerly owned by Daniel Boomhower abutting the Property to the north and Michael D. Kaye abutting the Property to the south. The approximate location of the Corridor is shown on a map entitled "O'Brien Trail" prepared by the Town of Williston and kept by the Holder in the Town of Williston Planning and Zoning Office. The precise location of the Corridor shall be fixed on the ground by mutual agreement of Holder and Owner, and the centerline shall be marked by blazing, signs or otherwise. The Corridor location may be altered from time to time by mutual consent of Holder and Owners and with the prior written approval of Vermont Land Trust, Inc. pursuant to Section III(11) of a Grant of Development Rights and Conservation Restrictions conveyed by Owners to Vermont Land Trust, Inc. dated June 27, 2008, and recorded in Book ___, Page ___ of the Williston Land Records ("the Grant"). 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:** Subject to the limitations contained within Section IV of the Grant, 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 five (5) 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, which shall not be unreasonably withheld or delayed. 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. 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 may use motorized vehicles and equipment within the Corridor to construct, relocate, maintain, and repair the Trail, and for medical emergencies. Owners and Holder shall not use or permit the use of motorized vehicles, including, but not limited to, motorcycles, motorized trail bikes, and all-terrain vehicles (ATVs), within the Corridor, except as specifically provided in this Section III(4). Snowmobiles may be permitted within the Corridor by mutual agreement of Holder and Owners. 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. Owners or Owners' employees may cross the Corridor with forestry vehicles and equipment as needed for silvicultural purposes provided that if the Trail is disturbed by such use, Owners will return it to its pre-existing condition as soon as reasonably possible. To the extent that the Corridor is wholly or partially located along an existing forestry road, forestry vehicles may traverse the Corridor for the extent of the concurrency.

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 Holder. 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 structures mentioned in Sections III(1) and (3).

IV. 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 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, or any disagreement as to location of the Corridor under Section II(2), above, 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 shall have the authority to determine the location of the Corridor. 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 Owner in the exercise of any right or remedy shall impair Holder's 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 Holder of the Easement, where the event or circumstance of non-compliance shall have occurred after said prior Owner's ownership or control of the Property or said prior Holder's 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 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 Williston 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, Patrick J. O'Brien and Milissa M. O'Brien. The term "Holder" shall include the successors and assigns of the original Holder, the Town of Williston.

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 Holder, the **TOWN OF WILLISTON**, and its successors and assigns, to its own use and behoof forever, and the said Owners, **PATRICK J. O'BRIEN and MILISSA M. O'BRIEN**, 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 27th day of June, 2008.

Signed, sealed and delivered
In The Presence Of:


Witness to PJO


Witness to MMO

Owners

Patrick J. O'Brien


Milissa M. O'Brien by Patrick J. O'Brien
Her attorney-in-fact

STATE OF VERMONT
CHITTENDEN COUNTY, ss.

At Richmond, this 27th day of June, 2008, Patrick J. O'Brien personally appeared individually and in his capacity as attorney-in-fact for Milissa M. O'Brien and he acknowledged this instrument, by him sealed and subscribed, to be his free act and deed, before me.


Notary Public
My commission expires: 02/10/2011

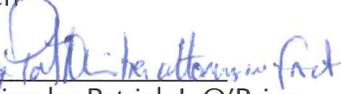
ACKNOWLEDGMENT OF ARBITRATION

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.



Patrick J. O'Brien

Dated: 6-27-08


Milissa M. O'Brien by Patrick J. O'Brien
Her attorney-in-fact

Dated: 6-27-08

Town of Williston

By: 

Duly Authorized Agent

Dated: 6/29/08