

**DECLARATION OF RESTRICTIVE COVENANTS,
SHARED MAINTENANCE AGREEMENT,
AND
CREATION OF HOME OWNER'S ASSOCIATION**

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EAST MONTPELIER ACRES

THIS is a Declaration of Restrictive Covenants, Shared Maintenance Agreement, and Creation of Home Owner's Association made this _____ day of _____, 2017 by **East Montpelier Acres, LLC**, a Vermont Limited Liability Company formed and existing under the laws of the State of Vermont, (hereinafter referred to as the "Declarant"), for itself, and its successors and assigns.

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WHEREAS, Declarant is the owner in fee simple absolute of certain land and premises located in the Town of East Montpelier, County of Washington and State of Vermont, as more particularly described in "Exhibit A" attached to this Declaration and made a part hereof;

WHEREAS, Declarant is the owner of certain buildings and other improvements about to be constructed upon the aforementioned land and premises;

WHEREAS, Declarant desires to subject the land and premises together with the buildings and the improvements thereon, to covenants, restrictions, uses, limitations, obligations, easements, equitable servitudes, charges and liens, pursuant to and in accordance with this Declaration;

NOW THEREFORE, Declarant hereby declares that all the property described on Exhibit "A" attached to this Declaration and made a part hereof, together with the buildings and all improvements heretofore and hereafter constructed thereon and all appurtenances thereto, is hereby subject to the covenants, restrictions, uses, limitations, obligations, easements, equitable servitudes, charges and liens created herein and shall be held, conveyed, leased, occupied, subject to this Declaration, and the By-Laws of the East Montpelier Acres Association (hereinafter "Association"), created hereunder, and the same shall be deemed to run with and bind the land, and shall inure to the benefit of and be enforceable by the Declarant, its successors and assigns, and any person acquiring or owning any interest in said property and improvements, including without limitation, any person, group of persons, corporation, trust, or other legal entity, or any culmination thereof, which holds such interest solely as security for the performance of an obligation.

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SECTION 1
DESCRIPTION OF LAND AND
NUMBER AND DESCRIPTION OF LOTS TO BE CREATED

The land and premises upon which said buildings and improvements are or shall be located is in the Town of East Montpelier, County of Washington, State of Vermont, and the land

and premises, together with improvements heretofore or hereafter constructed made subject to Declaration at this time is more fully described on the Description annexed hereto and made an integral part of this Declaration as *Exhibit "A"*.

The project consists of two (2) lots, being named "Lot 3-A1" consisting of 33.84± acres, with proposed ~~five-bedroom~~ residence and outbuildings and proposed ~~two-bedroom residential~~ accessory dwelling and "Lot 3-A2" consisting of 2.18± acres, with proposed ~~three-bedroom~~ residence. The lots are more particularly described on the Overall Site Plan referenced to, and made a part of *Exhibit "A"*.

SECTION 2
DECLARATION OF RESTRICTIVE COVENANTS

The Lots shall be subject to the following:

1. All lots shall be used for single-family residential purposes only, and no trade or business of any kind may be carried on therein; provided, however, that rental of all or a portion of such unit for residential purposes shall not be a violation of this restriction.
2. No lot may be further subdivided by any purchaser so as to create additional building lots for sale, lease or any other purpose.
3. Said premises and buildings constructed thereon at no time shall be used or occupied for the purpose of any trade, manufacture, or business or as a school, hospital, charitable institution, hotel, inn or place of public resort nor shall anything be done or permitted on said premises which may be or become an annoyance or nuisance to the immediate neighborhood. However, the owners may carry on a small, part-time business within the premises of their own home but shall not have any advertising or display signs on the property and all tools, materials, or equipment necessary for said part-time business shall not be visibly displayed upon the premises;
4. It shall be permissible to store not more than one camper trailer or not more than one motor home upon the premises provided that the same are not used on premises for occupancy.
5. No unregistered automobiles may be parked on the premises unless they are concealed from public view;
6. Burning of trash, refuse, leaves, debris, brush or similar materials shall be prohibited.
7. The maintenance, boarding, breeding or raising of animals, livestock or poultry is specifically prohibited. Domestic pets must be confined or leashed and restricted from the Deer Yard area and/or the Environmentally Sensitive Rural Development Credit Area as shown on Exhibit A. All pets shall be registered and inoculated as required by law. No pets shall be allowed to run free and any nuisance caused by barking or other noise or behavior of pets must be remedied by the owner within 14 days of written notice from the other Lot Owner, and failing such remedy, must be removed from the premises.
8. All plumbing fixtures installed and maintained in any residence constructed upon the property shall be of the water-conserving variety, including, but not limited to, low-flush

toilets, low-flow shower heads, and aerator type or flow-restricted faucets. All utility service connections shall run underground from the respective service pad to the entry of each building. All residences constructed shall conform to the 2015 Residential Energy Code, as amended, enacted and in effect in Vermont at the time of construction or installation of any residence.

9. No solid waste or refuse shall be dumped upon or permitted to remain on any lot or any location with the development outside of the building constructed thereon for a period of more than one week. Each owner shall make regular and prompt arrangements for the removal of all waste material, rubbish and refuse. No hazardous waste shall be stored upon any lot at any time.
10. Each lot owner, their heirs and assigns, shall maintain and replace, as may be necessary, those trees and shrubs which currently exist upon the premises; lawns and landscaping shall be regularly maintained and kept in a neat condition.
11. Each owner shall be subject to and shall comply with the terms and conditions of all State and municipal laws and regulations affecting the use of the lot not otherwise described in this Declaration.

SECTION 3
SHARED MAINTENANCE AGREEMENT

1. The portion of Lot 3-A1 as shown on the Lot 3-A1 Subdivision Survey and marked "Proposed 50' Wide Easement to Lot 3-A2," including turnaround area, is hereby established and declared as a perpetual private right of way and easement over and upon Lot 3-A1 in favor of and benefitting the present and future owners of Lot 3-A2. The Common Driveway is hereby established in perpetuity and shall run with and not be severable from the title to the Property and/or the Lots.
2. The Common Driveway shall be used and enjoyed solely and exclusively as a private common driveway by the owners of Lot 3-A2, their guests and invitees, for vehicular and pedestrian access to the Lot, and for installation of electric, telephone, television and similar utilities and facilities to serve Lot 3-A2. Notwithstanding the foregoing, the Common Driveway may be used by the owners of Lot 3A-2 for any purposes and by anyone they allow.
3. Title to The Common Driveway shall rest and remain with the Owner of Lot 3-A1.
4. No Lot shall be responsible for any maintenance fees for that calendar year unless a foundation has been placed on a Lot by May 1 of such year. Lot 3-A1 shall be responsible for sixty percent (60%) of the annual maintenance costs, reserves and other fees, as determined by the Association. Lot 3-A2 shall be responsible for forty percent (40%) of the annual maintenance costs, reserves and other fees, as determined by the Association.
5. Lot Owners shall meet in East Montpelier, Vermont as part of the Association meeting to establish a budget and assessment for maintenance and repair of the Common Driveway.

The foregoing notwithstanding, Lot Owners may, in lieu of meeting, establish the scope of work and budget by written agreement signed by all Lot Owners.

6. In the event of dispute among the Lot Owners or their representatives with respect to the scope of the work or annual budget, a decision by the Owner of Lot 3-A1 shall be controlling.
7. In the event the Lot Owners fail or are unable to meet and/or approve a scope of work and budget for maintenance and repair of the Common Driveway, any Lot Owner shall have the right upon thirty (30) days written notice to the other Lot Owner to contract for necessary maintenance and repair services.
8. The Lot Owner giving the notice shall, at the end of the thirty day period, have the authority to enter into such contracts for maintenance of the Common Driveway as such Lot Owner may deem reasonable and necessary, and all Lot Owners shall be deemed to have authorized such contracts or agreements and shall be obligated for their share of the costs thereof.
9. If during the thirty (30) day period the Lot Owner receiving notice file written objections to the proposal for maintenance and repair by the Lot Owner giving the notice, then the Lot Owner giving the notice shall not have the authority to act on behalf of or bind the other Lot Owners.
10. In the event the Lot Owners fail or are unable to agree on a maintenance contract or contracts to provide the maintenance services required under these Covenants, then the owner of any of the Lots may, upon written notice to the other Lot Owners, require that the matter be submitted to arbitration pursuant to Chapter 192 of Title 12 of the Vermont Statutes. By acceptance of their deeds to the Lots, each Lot Owner shall be deemed to have acknowledged and understood that these Covenants contain an agreement to arbitrate and that after acceptance of their deeds they acknowledge and agree that they will not be able to bring a lawsuit concerning any dispute which may arise which is covered by this arbitration agreement unless it involves a question of constitutional or civil rights. Instead, each Lot Owner shall be deemed to have agreed to submit such dispute to an impartial arbitrator.
11. As and when bills for maintenance and repair work required and authorized in accordance with this Declaration are rendered by the persons performing the services or providing the materials, copies of such bills shall be submitted to each of the Lot Owners together with an assessment for each Lot Owner's proportionate share of the amount due.
12. The owners of each Lot shall, not later than thirty (30) days following notice of the Assessment, pay their proportionate share of the invoice, either directly to the person providing the services or materials or to the Lot Owner's agent who shall in turn pay the invoice.
13. If a Lot Owner fails to pay their assessment within the time provided under paragraph 12 above, such assessment shall thereafter bear interest at 12 percent per month on such assessment and on any amounts advanced or paid by the other Lot Owner on account of

the delinquent Lot Owner. In addition, there shall be included in the amounts due from the delinquent Lot Owner all costs and expenses, including legal fees, incurred by the other Lot Owner in collecting the assessment from the delinquent Lot Owner and, in the event legal action is instituted to collect the assessment, the party bringing the legal action shall be entitled to an *ex parte* writ of attachment against the property of the delinquent Lot Owner.

SECTION 4
CREATION OF HOMEOWNER'S ASSOCIATION

Declarant hereby creates the East Montpelier Acres Homeowner's Association. The Association shall be comprised of two members; one member per Lot. The Owner, whether singularly or collectively, of each Lot, shall comprise the membership for their respective Lot. Declarant shall hereinafter, adopt By-Laws, which shall govern the operation of the Association. Declarant hereby conveys, deeds, assigns, or otherwise transfers all rights and responsibilities under this Declaration to the East Montpelier Acres Homeowner's Association, including, but not limited to, the designated ownership of any and all stormwater permits for this project, as well as the rights to enforce the covenants and restrictions created in this Declaration.

SECTION 5
USE AND MAINTENANCE OF SHARED STORMWATER SYSTEM

The lands and premises are the subject to the terms and conditions of the stormwater permit # _____, dated _____, and soon to be recorded in the Town of East Montpelier Land Records. Any and all Conditions and restrictions contained in said Stormwater permit are incorporated herein. This includes, but is not limited to, restrictions against use of the lands set aside as the Environmentally Sensitive Rural Development Credit Areas on the Lot 3-A Subdivision Survey.

The Lot Owners hereby agree that each the Association shall collect such annual amounts as the Association may set for the maintenance and upkeep of the shared stormwater system. The Association may also set an amount to be kept as reserves (capital funds) for future repairs and/or upgrades.

For the purposes of the Stormwater permit, the Association shall be the owner of the permit.

SECTION 6
DEER WINTERING AREAS

The lands and premises are the subject to the terms and conditions of Land Use Permit #5W0873, as amended. Collectively, these permits establish an area for deer wintering areas. The deer wintering area is encompassed by the Environmentally Sensitive Rural Development

Credit Areas. These E.S.R.D. areas are shown on the Lot 3-A Subdivision Survey. Any prohibition, requirement, or other condition established by the Land Use Permit, including, but not limited to, the prohibition of dogs entering this area, land tree cutting or timber harvesting only pursuant to an ANR approved harvesting plan, is hereby made a Covenant and restriction against use under this Declaration.

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SECTION 7
PRSERVATION OF PRIME AGRICULTURAL SOILS MITIGATION AREAS

The lands and premises are subject to the terms and conditions of Land Use Permit #5W0873, as amended regarding the preservation of prime agricultural soils. The areas identified for protection are underlying the area marked as Environmentally Sensitive Rural Development Credit Areas. These E.S.R.D. areas are shown on the Lot 3-A Subdivision Survey. Any prohibition, requirement, or other condition established by the Land Use Permit, including, but not limited to, the prohibition of removal or disturbance of the prime agricultural soils shall be followed, those prohibitions, requirements, or other conditions are incorporated herein.

SECTION 8
AMENDMENT OF DECLARATION
and DECLARANT'S RESERVED RIGHTS

The Owners may amend this Declaration only by agreement in writing, executed and acknowledged in the same manner as the Declaration, and recorded in the land records of the Town of East Montpelier. Upon recording, any amendment shall be effective and binding upon all current and future owners and all other persons taking an interest under any current or future owner.

No agreement may lessen, reduce, nullify or otherwise diminish any requirement or condition of any permit in place regarding the property.

SECTION 9
COMPLIANCE AND DEFAULT

1. Each owner shall be governed by and shall comply with the terms of this Declaration and By-Laws of the Association, as the same may be amended from time to time. Specifically, but without limitation, each owner shall be liable for and pay within thirty (30) days of receipt of a statement the following:

- A. All assessments made by the Association to meet present and projected expenses.
- B. The expense of any maintenance, repair, or replacement rendered necessary by an owner's non-compliance with this Declaration or By-

Laws, or his act, neglect, or carelessness, or by that of any member of his family, guests, invitees, agents and patrons, to the extent not covered by insurance carried by the Association.

2. Failure of any owner or other parties to comply with any of the terms contained in this Declaration or By-Laws, as the same may be amended from time to time, shall entitle the Association or Owners to the following relief, in addition to relief granted under applicable law:

- A. Any owner and any other party shall be liable to injunctive relief, to _____ prevent or abate the effects of such violation upon one or more owners or _____ the Association.
- B. Arbitration: The owners and other parties hereby agree that all disputes arising out of or in connection herewith shall be resolved by resort to binding arbitration under the Vermont Arbitration Act and subject to confirmation by a court of competent jurisdiction within the State of Vermont. Further, the parties hereto agree that the costs and expense of said arbitration may be awarded to the prevailing party.
- C. The failure of the Association, the Board of Directors, or any owner to enforce any covenant, restriction, or other provision of the Act, this Declaration or the By-Laws, shall not constitute waiver of the right to do so thereafter.

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SECTION 10

EFFECTIVENESS OF THIS DECLARATION

1. This Declaration shall become effective upon the execution and the filing of the Declaration in the Land Records of the Town of East Montpelier, County of Washington and State of Vermont.

2. This Declaration and the By-Laws shall supplement and not replace or waive any and all rights and obligations provided for any other applicable laws which inure to the benefit of and are binding upon any person affected thereby.

SECTION 11
RESTRICTIVE COVENANTS

All of the terms, provisions and conditions of this Declaration and its Exhibits shall be a covenant running with the land for the benefit of any owner, the Association, and its successors and assigns.

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SECTION 12
MISCELLANEOUS PROVISIONS

1. **Captions:** The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Declaration nor the intent of any provision hereof.
2. **Gender:** The use of the masculine gender in this Declaration shall be deemed to refer to the feminine and neuter gender and the use of the singular shall be deemed to refer to the plural, and vice versa, whenever the context so requires.
3. **Waiver:** No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same irrespective of the number of violations or breaches which may occur.
4. **Invalidity:** The invalidity of any provisions of this Declaration shall not be deemed to impair or affect in any manner the validity, enforceability, or effect of the remainder of this Declaration and, in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

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IN WITNESS WHEREOF, East Montpelier Acres, LLC, has caused the name of its authorized agent to be subscribed hereto on the day and date first above written.

IN PRESENCE OF: EAST MONTPELIER ACRES, LLC

BY: _____
Jason Cote-Wong, Member

STATE OF VERMONT
WASHINGTON COUNTY, ss.

At _____ in said County on this _____ day of _____, 2017, Jason Cote-Wong, Member and duly authorized agent for **East Montpelier Acres, LLC**, personally appeared and he acknowledged this instrument, by him subscribed, to be his free act and deed and the free act and deed of **East Montpelier Acres, LLC**.

Before me,

NOTARY PUBLIC.
Commission Expires: 02/10/2019