

RIGHT OF WAY AND PUBLIC ACCESS EASEMENT FOR RECREATIONAL TRAIL

KNOW ALL PERSONS BY THESE PRESENTS that **LAND CARE AGRI. SERVICES LLC**, a Vermont limited liability company with its principal place of business in Berlin, Vermont, on behalf of itself and its successors and assigns (“Owner”) in consideration of One Dollar and other valuable consideration paid to its full satisfaction, does freely give, grant, sell, convey and confirm unto **EAST MONTPELIER TRAILS, INC**, a non-profit corporation organized under the laws of the State of Vermont with a place of business in East Montpelier, Vermont, and its successors and assigns (“EMTI”) as Primary Holder, and the **TOWN OF EAST MONTPELIER**, a Vermont municipal corporation (“TOWN”) as Secondary Holder (collectively “Holders”) and their successors and assigns forever, a perpetual, non-exclusive, and assignable easement for a right-of-way and public access (“Easement”) as more particularly set forth below, over a certain parcel of land located in the Town of East Montpelier, Vermont (the “Property”). It is hereby acknowledged that this Easement constitutes a servitude upon the land and runs with the land. The Holders accept this Easement in order to provide public access for recreational opportunities and activities throughout the Corridor.

I. EASEMENT DESCRIPTION.

The right of way and public easement shall be a strip of land 25-feet in width and shall cross that portion of Owner’s property located southeasterly of Towne Hill Road on a portion of the lands and premises conveyed to Land Care Agri. Services LLC by the following deeds: Warranty Deed of Dennis R. Hawkins, Hugh M. Hawkins and Susan W. Hawkins dated November 6, 2013, and recorded in Book 125, at pages 106-107 of the Town of East Montpelier Land Records, and Warranty Deed of Dennis R. Hawkins, Hugh M. Hawkins and Susan W. Hawkins dated September 4, 2014, and recorded in Book 128, at pages 12-13 of the Town of East Montpelier Land Records. The location of the Easement conveyed herein is more particularly described in Schedule A 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 the Owner and the EMTI to do or refrain from doing various acts as set forth below.

PURPOSES.

Owner and Holders acknowledge that the Purposes of this Easement are to provide 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 Owner’s quiet use and enjoyment of the Property, and the agricultural use of the Property.

II. USES.

1. **Public Access:** Owner shall permit public access to the Corridor for four-season, pedestrian, non-motorized recreational activities, such as walking or skiing. Bikes and horses are not permitted within the Corridor, except by mutual agreement of Owner and EMTI. Except as provided below, motor vehicles are not permitted. Overnight camping and campfires are not permitted. EMTI shall have the right, in its sole discretion, to restrict or limit public use of and access to the Corridor safety reason and to protect the natural resource, for example, when trail conditions are wet and muddy. If use of the Corridor materially interferes with Owner’s quiet enjoyment of the Property on a frequent, continuous basis, and measures taken by EMTI do not, in Owner’s reasonable opinion, sufficiently abate the interference, Owner may close

the Corridor for a period not to exceed two weeks to enable EMTI to take corrective action. Owner shall provide written notice to EMTI of such Corridor closure.

2. **Corridor Location:** While the location of the Corridor is generally described in Schedule A attached hereto and incorporated herein, the precise location shall be fixed on the ground by mutual agreement of Owner and EMTI, and marked by painted marks, signs or otherwise along the perimeter of the Corridor by EMTI.

III. OBLIGATIONS

1. **Trail Construction:** EMTI shall have the right, but not the obligation, at EMTI's expense, to construct, manage, use, repair and maintain a Trail, including the right to install, maintain, repair and replace water bars, 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, EMTI shall give at least two weeks' written notice to Owner. 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 EMTI's sole discretion after giving notice to Owner as provided above. Nothing in this Easement shall be construed to obligate the Town to construct, manage, use, repair, or maintain the Trail except following a Triggering Event under Section V, and then only to the extent the Town elects to do so.

2. **Vegetation Management:** EMTI shall not cut or remove any vegetation from the Property until the Corridor has been located on the ground as provided above. EMTI 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 EMTI may cut or remove additional vegetation only with the prior written consent of Owner, which shall not be unreasonably withheld. EMTI shall not employ herbicides, pesticides, growth inhibitors or other chemicals within the Corridor without the prior written consent of Owner. Owner shall not harvest any trees in the Corridor without the prior written consent of EMTI, except that Owner may remove dead, diseased or dying trees without prior permission of EMTI, provided that Owner has given EMTI notice of the proposed activity so that EMTI can divert public use of the Trail if necessary.

3. **Fencing, Barriers and Signs:** EMTI, or Owner with EMTI'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. EMTI shall have the right to erect reasonable signs, paint marking, or other markings within the Corridor to inform the public of the Trail location or other Trail features. Owner shall not erect fences, barriers or signs that impede access to or use of the Trail.

4. **Motor Vehicles:** EMTI may use motorized vehicles and equipment within the Corridor to construct, relocate, maintain, and repair the Trail, and for medical emergencies. Owner and EMTI shall not use or permit the use of motor vehicles within the Corridor, except as specifically provided in this Section IV(4). Snowmobiles will not be permitted within the Corridor except by mutual agreement of EMTI, Owner and Vermont Association of Snow Travelers.

5. **Other Uses:** Except as specifically permitted under this Easement, this Easement may be shared with other easements of record existing at the time of this conveyance, but 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 EMTI. Owner shall use the Corridor exclusively for recreation, open space, and agricultural purposes that do not impede the trail. 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.

V. ALLOCATION OF RESPONSIBILITIES BETWEEN HOLDERS.

Prior to a Triggering Event, EMTI, as Primary Holder, shall have sole responsibility for routine monitoring, management, maintenance, landowner relations, and enforcement of this Easement. The Town, as Secondary Holder, shall have no affirmative obligation to monitor, manage, maintain, repair, or enforce this Easement unless and until a Triggering Event has occurred. Following the occurrence of a Triggering Event, the Town may, but shall not be obligated to, assume such responsibilities as it deems reasonably necessary to protect the Easement and public access thereunder, and may exercise the rights of a Holder under this Easement. Any assumption of responsibilities by the Town following a Triggering Event shall be prospective only and shall not include liability for acts or omissions of EMTI occurring prior to the Triggering Event. A Triggering Event shall occur only upon: (a) written notice from EMTI to the Town that EMTI is unable to fulfill its responsibilities as Primary Holder, (b) EMTI's dissolution or cessation of operations, or (c) EMTI's material failure to act after written notice from the Town and a reasonable opportunity to cure.

VI. COMPLIANCE WITH EASEMENT AND BINDING ARBITRATION.

EMTI, as Primary Holder, and the Owner shall take reasonable steps to periodically inspect the Corridor to assure compliance with this Easement. The Town, as Secondary Holder, shall have no independent duty to inspect unless a Triggering Event has occurred. In the event that Owner or EMTI 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 in writing, 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 pursuant to 12 V.S.A. § 5652 *et seq.*

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 acting in bad faith. 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, Owner and EMTI 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 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 at law, in equity, or through administrative proceedings.

Prior to the occurrence of a Triggering Event, EMTI shall bear all costs and expenses incurred by EMTI in connection with enforcement and arbitration under this Section, as well as any costs and expenses, including reasonable attorneys' fees, incurred by the Town arising from its status as Secondary Holder. Following the occurrence of a Triggering Event, the Town may, but shall not be obligated to, assume responsibility for enforcement and arbitration under this Easement, and shall bear its own costs and expenses incurred in connection therewith, subject to allocation by an arbitrator as otherwise provided herein.

VII. MISCELLANEOUS PROVISIONS.

1. It is hereby agreed that the construction of any structures or improvements, or any use of the land otherwise permitted under this conveyance shall be in accordance with all applicable ordinances, statutes, and regulations of the Town in which the property is located and the State of Vermont.

2. Standing to Enforce. Only the Holders and the Owner may bring an action to enforce this Easement and nothing herein should be construed to grant any other individual or entity standing to bring an action hereunder, nor any rights in the Corridor by adverse possession or otherwise. EMTI, as Primary Holder, shall have the exclusive right and responsibility to initiate enforcement actions prior to a Triggering Event. The Town may initiate enforcement only after a Triggering Event has occurred.

3. In any deed conveying an interest in all or part of the Corridor, Owner shall make reference to the public access and trail easement described herein and shall indicate that said Easement is binding upon all successors in interest in the property in perpetuity. Owner shall also notify the Holders of the name(s) and address(es) of Owner's successor(s) in interest.

TO HAVE AND TO HOLD said granted Easement, with all the privileges and appurtenances thereof, to the said East Montpelier Trails, Inc., as Primary Holder, and the Town of East Montpelier, as Secondary Holder, and their respective successors and assigns, to their own use and behoof forever; and the said Owner, Land Care Agri. Services LLC, for itself and its successors and assigns, does covenant with the said Holders and their respective successors and assigns that until the execution of these presents, it is the sole owner of the Property, and has good right and title to convey the same in the manner aforesaid, that the Property is free from every encumbrance, and it hereby engages to warrant and defend the same against all lawful claims whatever.

IN WITNESS WHEREOF, Land Care Agri. Services LLC, by its Member and Duly Authorized Agent, sets its hand and seal this ____ day of _____, 20____.

LAND CARE AGRI. SERVICES LLC

By: _____
Michael A. Brown
Member and Duly Authorized Agent

STATE OF VERMONT
WASHINGTON COUNTY

At East Montpelier this ____ day of _____, 2025, Michael A. Brown personally appeared for himself and as Member and Duly Authorized Agent for Land Care Agri. Services LLC and he acknowledged this instrument, by him subscribed, to be his free act and deed and the free act and deed of Land Care Agri. Services LLC.

Before me,

Notary Public

Print Name: _____

Commission No. _____

My Commission Expires: 01/31/2027

[SEAL]

SCHEDULE A
[MAP]

DRAFT

ACKNOWLEDGMENT OF ARBITRATION

Land Care Agri. Services LLC, East Montpelier Trails, Inc., and the Town of East Montpelier understand that this Right of Way and Public Access Easement for a Recreational Trail includes an agreement to arbitrate. After signing this document, Land Care Agri. Services and LLC, East Montpelier Trails, Inc., and the Town of East Montpelier agree that they will not be able to bring a lawsuit against each other over the Easement conveyed hereabove, unless it involves a question of constitutional or civil rights. Land Care Agri. Services LLC, East Montpelier Trails, Inc, and the Town of East Montpelier agree to submit any such dispute to an impartial arbitrator and understand that the arbitration provisions in the Easement are exclusively limited to the matters set forth therein.

LAND CARE AGRI. SERVICES LLC

By: _____ **Date** _____

EAST MONTPELIER TRAILS ASSOCIATION, INC.

By: _____ **Date** _____

TOWN OF EAST MONTPELIER

By: _____ **Date** _____
Selectboard Chair, Duly Authorized