

PUBLIC ACCESS EASEMENT DEED

KNOW ALL PERSONS BY THESE PRESENTS, that ELWIN A. NEILL, JR. and ELWIN A. NEILL, SR. both of the Town of Waitsfield, in the County of Washington, and State of Vermont, Grantors, for themselves, their heirs, successors and assigns in consideration of One Dollar and other valuable consideration the receipt and satisfaction of which is hereby acknowledged to them paid by the Town of Waitsfield, a Vermont Municipal Corporation, located in the County of Washington, and State of Vermont, Grantee, hereby give, grant, sell, convey and confirm unto the said Grantee, TOWN OF WAITSFIELD, its successors and assigns forever, a perpetual public access easement and right-of-way for the purpose of providing and maintaining a recreational pathway for public use and access over, on and through the Property, described in Schedule A, attached hereto, in the Town of Waitsfield, County of Washington, and State of Vermont, said easement being described as follows:

Being a strip of land measuring 25 feet in width passing on, over and across a portion of Grantors' property and situated not more than 25 feet from the top of the westerly bank of the Mad River, as it may exist from time to time (the "easement area"). Said easement area, which may be improved with a bicycle and pedestrian pathway not to exceed seven feet in width (the "trail"), is as depicted on a plan entitled "Vermont Land Trust-Neill property, Waitsfield, Vermont" (the "Neill Property Plan"), dated June 1999, Project No. 400297, drawn by Kirsten Seibert, on file with the Vermont Land Trust and attached hereto as Schedule B. This public access easement shall include a right of the public to use the easement area and trail as a means to travel to and from the westerly bank of the Mad River for recreational and other uses of that waterway.

For purposes of any necessary construction, a temporary easement and right-of-way five feet on each side of the above-granted permanent easement and right-of-way is hereby granted. Said temporary easement and right-of-way shall expire once construction is completed and the recreational pathway is open to the public. This conveyance also includes an easement for the purpose of erecting, maintaining and replacing any signs in the easement area that are necessary and appropriate to affect and implement the rights and obligations of the parties hereto.

Said Easement and right-of-way shall be used by the public as a recreational and bicycle pathway subject to the condition that no motorized traffic, including, but not limited to motorcycles, trail bikes and snowmobiles, shall be allowed to use the easement area and trail, except emergency vehicles and motorized vehicles used by the Grantee, or its agents for the purpose of patrolling and maintaining the easement area and trail, and maintaining any appurtenant structures. Motorized vehicles shall also be permitted to use the easement area and trail for the purpose of removing gravel from the Mad River, as set forth below. The easement area shall not be used for camping, and no fires shall be permitted therein. Horses and other animals capable of providing human transportation are also prohibited from using the easement area, except that horses and other animals may cross the easement area to gain access to adjoining lands.

Grantee, its successors and assigns, shall have the right, to construct, reconstruct, repair, maintain, replace, patrol, level, fill and drain the trail within the easement area. The surface of the trail shall be maintained in its natural condition, and shall not be graveled or otherwise improved beyond such condition without the prior written consent of Grantors, except that Grantee may employ fill material to remediate any unreasonably wet areas. The trail shall not be paved.

The initial location of the trail shall be fixed on the ground by mutual consent of the parties, and may be relocated from time to time also by mutual consent of the parties. Once the trail has been located on the ground, marked and/or blazed, and constructed, Grantee shall not unreasonably cut or remove any additional vegetation, except that Grantee may clear brush as required to maintain the trail, and may remove dead, dying or diseased vegetation which poses a risk to trail users. Grantee shall not under any circumstances employ herbicides, pesticides, growth inhibitors or other toxic substances within the easement area.


Grantor shall permit Grantee and/or the Mad River Path Association, or its agents, to construct, maintain, repair, replace and use one information board, of rustic design, with a small roof, and two (2) benches for public use (the "board and benches") on the Property, as described in Schedule A, in a location to be mutually agreed by the above-stated parties and the Vermont Land Trust, Inc., which holds a Buffer Easement and

Grant of Development Rights and Conservation Restrictions on the Property, and/or its agents. The board and benches shall be no greater than 12 feet in width, 16 feet in length, and 12 feet high, and shall not include sanitary or other facilities including, without limitation, picnic and cooking facilities. Said information board shall be used exclusively to provide information to trail users regarding the Mad River Path Association, the Mad River Greenway, and the Mad River, its environment and natural surroundings. The Vermont Land Trust, Inc., shall have the right to review and approve the proposed construction as to physical dimensions, color, building materials, location, general appearance, and effect on scenic beauty (the "Design Elements"), which approval shall not be unreasonably withheld provided that the proposed construction is: (1) consistent with the purposes of this Easement; (2) found by Vermont Land Trust, Inc., to have no greater negative impact on the conservation values underlying the purposes of the above-referenced Buffer Easement and Grant of Development Rights and Conservation Restrictions; and (3) otherwise consistent with the above-referenced Design Elements. Before commencing construction of the board and benches, any necessary state and local permits shall be obtained. Once constructed, the board and benches shall only be relocated, altered or enlarged if such changes are consistent with the above-described Design Elements and are mutually agreed upon by the above-stated parties. All necessary state and local approvals shall be obtained prior to any

relocation, alteration or enlargement.

By its recording of this easement deed Grantee agrees, for itself and its successors and assigns, that any premises of Grantor lying outside the scope of this easement and right-of-way disturbed or affected by Grantee's exercise of the rights granted hereunder, shall be promptly restored to their condition prior to such exercise, at Grantee's own cost and expense. Grantee, by the recording of this easement deed, acknowledges that this easement has been donated to the Town of Waitsfield, at no cost to the Town, with the intent that Grantors, their successors and assigns shall receive the full benefit and protection of 19 V.S.A. §2309.

Grantee shall have the right to limit or restrict public use of and access to the easement area at any time, as necessary and appropriate. Grantors, their heirs, successors and assigns, shall have the right to make use of the surface of so much of the easement area as is encumbered hereby, provided such use shall not be inconsistent with the purpose of this public access easement and right-of-way and, specifically, Grantors shall place no structures, landscaping or other improvements within said easement area which shall prevent or interfere with Grantee's ability to use said easement and right-of-way. Grantors may use the easement area for agricultural purposes, except for those that require the ground to be tilled or otherwise disturbed, and in no event shall Grantors disturb the 7-foot wide trail portion of the easement area. Grantors shall not cut any timber or trees

within the easement area without the prior written consent of Grantee, except dead, diseased or dying trees and other vegetation. Buffer management activities as specified in the Buffer Management Plan shall be permitted within the easement area, as set forth in a grant of Buffer Easement from Grantors to the Vermont Land Trust, Inc., of record in Volume \_\_\_ at Page \_\_\_ of the Town of Waitsfield Land Records. There shall be no disturbance of the surface of the land, including but not limited to filling, excavation, removal of top soil, sand, gravel, rocks or minerals, nor any change in the topography of the easement area, except as necessary for Grantee to repair and maintain the trail located therein. In no case shall mining of subsurface oil, gas or other minerals be permitted, except that Grantor shall have the right to extract gravel from the Mad River and cross the easement area with necessary excavation machinery, as specified in a Grant of Development Rights, Conservation Restrictions and ~~Right of First Refusal~~, dated June 11, 1979 and  recorded in Volume \_\_\_ at Page \_\_\_ of the Town of Waitsfield Land Records. No use shall be made of the easement area, and no activity thereon shall be permitted which, in the reasonable opinion of Grantee, has the potential to interfere with public access to the easement area and trail for non-commercial recreational activities.

Grantee shall consult with Grantors from time to time about public use of the easement area, and shall take reasonable steps to correct any erosion problems caused by such public use, and to

minimize any adverse impacts to Grantors' use and enjoyment of their unburdened land. Additionally, the parties hereto shall annually inspect the easement area to ensure compliance with the terms and conditions of this public access easement.

In the event that a violation of the terms and conditions of this easement is identified, the party so identifying the violation shall provide the other with written notice of the violation, together with a request for specific corrective action. Upon receipt of such notice, the party alleged to be in violation, shall, within a fifteen (15) day period, either take corrective action or submit a mutually acceptable plan therefor.

If no action is taken in accordance with the preceding sentence within the 15-day period, either party may submit to the other a specific request for arbitration of the dispute. The arbitration mechanism may also be employed if the parties hereto are unable to agree on the precise location of the trail, as discussed above. Any necessary arbitrator shall be selected by mutual consent of the parties, or by the American Arbitration Association (if the parties can not agree on an arbitrator). The selection of an arbitrator shall be made within thirty (30) days of the submission of an issue for arbitration. Every reasonable effort shall be made to complete the arbitration process within 30 days of the selection of an arbitrator. The cost of arbitration shall be shared equally between the parties unless the arbitrator determines that one party has acted unreasonably or in bad faith. Any decision of the arbitrator shall be binding

on the parties.

Notwithstanding the above, Grantors and Grantee reserve the right to bring an action in a Court or competent jurisdiction to:

1. Secure a temporary restraining order or preliminary injunction pending the arbitration of its dispute;
2. Enforce a directive issued by an arbitrator pending disposition of the arbitration proceeding; or
3. Enforce a final order issued by an arbitrator.

The prevailing party in an arbitration action or court proceeding shall be reimbursed its reasonable costs for enforcement, including staff time, court costs and reasonable attorneys fees, in addition to any other ordered relief. All remedies described herein are in addition to, and do not limit, any other remedies available under the law of the State of Vermont, which shall govern any proceeding in connection herewith.

This easement shall not be amended or altered without the prior written consent of the Vermont Land Trust, Inc. Public access permitted by this easement shall not be suspended except in cases of emergency or to undertake necessary maintenance. In such instance, Grantee shall provide written notice of such suspension to the Vermont Land Trust, Inc.

In the event the Grantee decides to permanently terminate its operation and management of the above-described easement, it shall offer all of its right, title and interest under this Easement Deed to the Vermont Land Trust, Inc., in the first

instance. If the Vermont Land Trust, Inc., declines said offer, Grantee may transfer or assign the interest conveyed herein only to a State Agency, Municipality or other qualified organization, as defined in 10 V.S.A. §6301, in accordance with the laws of the State of Vermont and the regulations established by the Internal Revenue Service governing such transactions. Any conveyance shall comply with the requirements of 24 V.S.A. §1061.

In any deed conveying an interest in all or a portion of the land burdened by the easement area and trail, Grantor shall make reference to said easement and the restrictions described herein, and shall indicate that said easement and restrictions are binding, in perpetuity, upon all successors in interest of Grantors. Additionally, in the event of such conveyance, Grantors shall promptly notify Grantee of the names and addresses of Grantors' successors in interest. In the event that the public access easement described herein and conveyed to Grantee is extinguished by eminent domain or other legal proceedings, Grantee shall be entitled to any proceeds which pertain to the extinguishment of its rights and interest. Grantee agrees that there shall be no publicity about this public access easement until Grantee or its designee has developed a method of restricting public access to and/or interference with Grantors' agricultural lands, which are currently used as corn fields. Public access shall be through designated access points at the northerly and southerly terminus of the public access easement granted herein.

The invalidation of any portion of this access easement and right-of-way shall not affect the validity of any other provision of this grant.

**TO HAVE AND TO HOLD** the above granted rights and privileges in, upon and over said premises unto Grantee, its successors and assigns forever; and Grantors do for themselves, their heirs, successors and assigns, covenant with Grantee and its successors and assigns, that Grantors are lawfully seized in fee simple of the aforesaid premises, that they are free from all encumbrances, except for utility easements of record, and that Grantors have good right and title to sell and convey the rights as aforesaid, and the Grantors, their heirs, successors and assigns, shall warrant and defend the same to Grantee, its successors and assigns, forever against the lawful claims and demands of all persons.

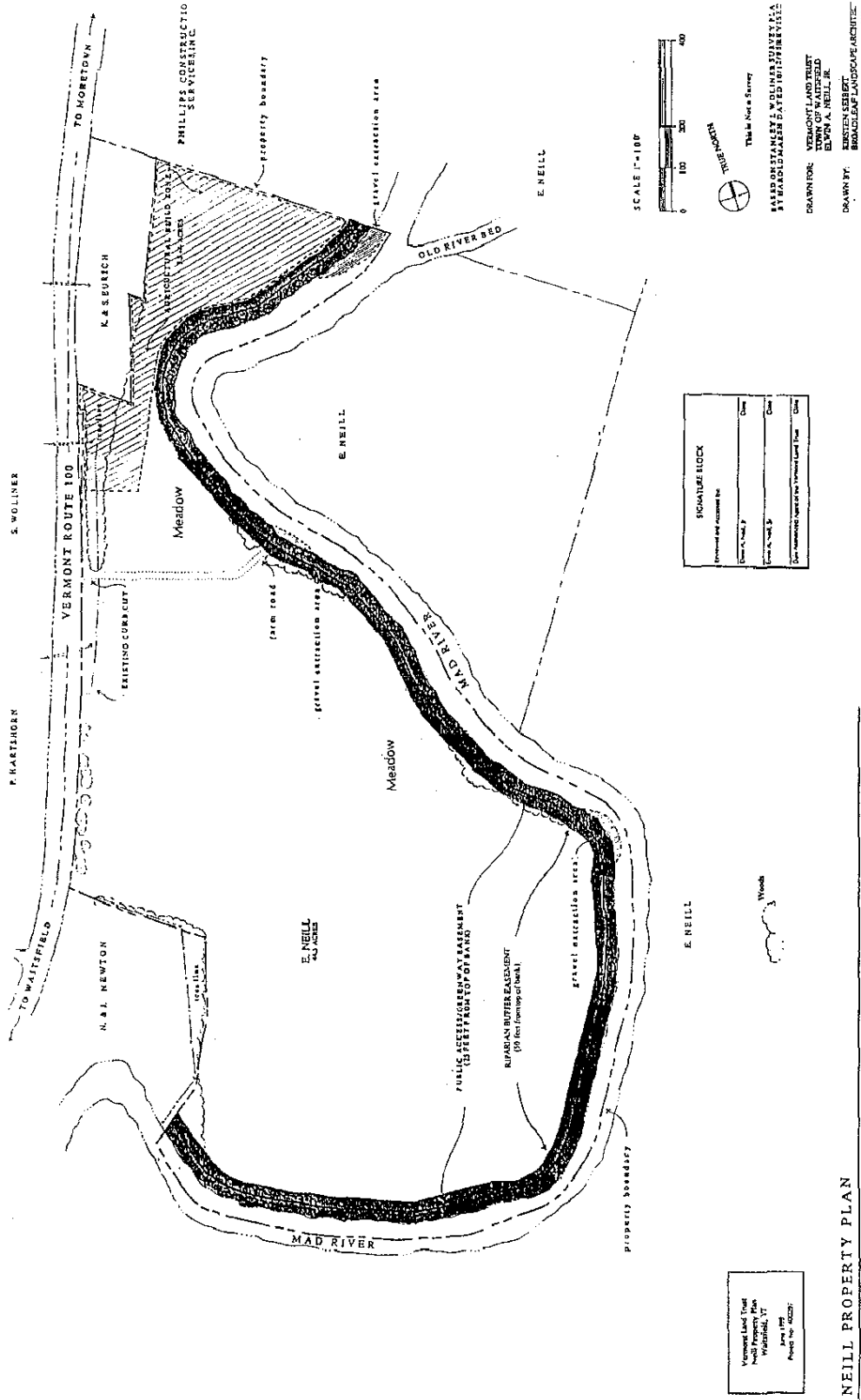
SCHEDULE A

Being a portion of the same lands and premises conveyed to Stanley I. Woliner by warranty deed of Paul H. Hartshorn and Marie A. Hartshorn dated August 25, 1989 and recorded in Book 57, Page 541 of the Waitsfield Land Records and by quitclaim deed of Elwin A. Neill, Sr. and Elwin A. Neill, Jr. dated May 29, 1996 and recorded in Book 75, Page 513 of the Waitsfield Land Records, excepting and excluding the lands and premises described in the quitclaim deed from Stanley I. Woliner to Elwin A. Neill, Sr. dated January 10, 1996 and recorded in Book 75, Page 508 of the Waitsfield Land Records and depicted as parcels #2 and #4 on a survey prepared by Harold N. Marsh entitled "A Portion of the Lands of Stanley I. Woliner, Waitsfield, Washington County, Vermont" and recorded as Map #175A of the Waitsfield Land Records.

Further being a portion of the lands conveyed to Grantors by warranty deed of Stanley I. Woliner, dated and recorded herewith. The conveyance by Stanley I. Woliner back to Grantors results in a merger of title, thereby effectively eliminating any previous subdivision requirements imposed at the time of the quitclaim conveyances between Grantors and Stanley I. Woliner as recorded in Book 75 at Pages 508 and 513.

Meaning and intending to include in this description of the burdened Property all of the land depicted on the Neill Property Plan and generally described as containing 44.5 acres, more or less, lying on east side of Route 100 and on the west side of the Mad River in the Town of Waitsfield, Vermont.

References hereby made to the above-mentioned plan and deed and the records thereof and the references therein made all in further aid of this description.



Vermont Land Trust  
Local Property Plan  
Waterfield, VT  
June 1999  
Plan No. 00227

**NEILL PROPERTY PLAN**  
ROUTE 100, WATERFIELD, VERMONT  
32179

**SCHEDULE B**

IN WITNESS WHEREOF, I hereunto set my hand and seal this  
11 day of June, 1999.

IN THE PRESENCE OF:

[Signature]

[Signature]  
Elwin A. Neffl, Sr.

STATE OF VERMONT  
COUNTY OF CHITTENDEN, SS.

At Waitsfield this 11<sup>th</sup> day of June, 1999  
Elwin A. Neffl, Sr. personally appeared and he acknowledged this  
instrument by him sealed and subscribed to be his free act and  
deed.

Before me,

[Signature]  
Notary Public

11<sup>th</sup> IN WITNESS WHEREOF, I hereunto set my hand and seal this  
day of June, 1999.

IN THE PRESENCE OF:

[Signature]

[Signature]  
Elwin A. Neffl, Jr.

STATE OF VERMONT  
COUNTY OF CHITTENDEN, SS.

At Waitsfield this 11<sup>th</sup> day of June, 1999  
Elwin A. Neffl, Jr. personally appeared and he acknowledged this  
instrument by him sealed and subscribed to be his free act and  
deed.

Before me,

[Signature]  
Notary Public

Wad002.caa  
WAITSFIELD TOWN CLERKS OFFICE  
RECEIVED FOR RECORD  
DATE 6-17-99 TIME 10:50 AM  
RECORDED IN BOOK 85 PAGE 121-133  
ATTEST [Signature] TOWN CLERK