

GRANT OF EASEMENT

The date of this Grant of Easement (this "Grant") is _____, 2019. It is made by

Smugglers' Notch Management Company, Ltd.
4323 Vermont Route 108 South
Smugglers' Notch, Vermont 05464-9537

a Vermont corporation ("Smugglers").

Recitals

A. Smugglers' operates the Smugglers' Notch Resort (the "Resort") in Cambridge, Vermont, a self-contained community located at the base of or nearby to Morse Mountain. Morse Mountain, together with Madonna Mountain and Sterling Mountain, make up the lands of the Resort; portions of the ski terrain are leased from the State of Vermont.

B. The Resort consists of 674 privately owned single family lots, condominium apartments, townhouses, and apartments; various facilities owned by Smugglers' or its affiliates including alpine and Nordic slopes and trails, heated swimming pools, tennis courts, a multi-functional conference and meeting center, a country store, a sports shop and an equipment rental shop, a children's nursery and childcare center, the Fun Zone 2.0, a health spa, a post office, restaurants, and lounges; a public water system and sewer system; and approximately 16,500 feet of private roads owned by Smugglers'.

C. 286 of the condominium apartments and townhouses are in "whole" ownership; that is, their owners own the entire interest in their respective dwellings (condominiums or townhouses) in fee simple ownership. These apartments and townhouses are commonly categorized as follows:

Property	Ownership	Number
Commons	Whole	11
Countryside	Whole	04
Creekside	Whole	06
Hakone House	Whole	24
Liftside	Whole	60
Mountainview	Whole	44
Nordland Villa	Whole	25
Poolside	Whole	12
Riverside	Whole	24
Slopeside	Whole	18
Sterling	Whole	10
Telemark	Whole	08
Trailside Executives	Whole	28
Villmarksauna	Whole	10

D. From time to time in the past, some owners of “whole” ownership condominium apartments and townhouses have claimed entitlement to access to and to make use of certain facilities at the Resort owned by Smugglers’. Smugglers’ has claimed that there is no entitlement. However, in order to resolve this disagreement, Smugglers’ has offered to provide the easement rights as set forth in this Grant in compromise of the claims.

Terms and Provisions

Section 1. Definitions.

As used in this Grant, the following capitalized terms shall have the meanings set forth below:

“Accompanied Guest” - an individual (who is not a member of the Homeowner’s Immediate Family) residing in a Whole Ownership Unit without consideration at a time when the Homeowner or a member of the Homeowner’s Immediate Family is occupying the Whole Ownership Unit

“Benefitted Homeowner” - a Homeowner (a) who is a member of the Class as described in the Class Action Final Order and (b) whose Whole Ownership Unit has the benefit of this Grant and his, her or its heirs, successors and assigns; if the Benefitted Homeowner is not a natural person, the individual (21 years of age or older) designated in writing to Smugglers’ by the Benefitted Homeowner

“Class Action Final Order” - the Final Order, dated ____, 2019, in *Smugglers’ Notch Management Company, Ltd. v. Timothy M. White and Richard J. White* (Vermont Superior Court, Lamoille District Docket No. 115-5-13 Lecv)

“Easement Facilities” - Lands located as depicted on the Plan with improvements thereon, being on the date hereof (a) the Courtside pool area in its present form (including its slide, changing rooms and bathrooms); (b) the miniature golf course located at the rear of the so-called Fun Zone 2.0; and (c) the existing six tennis courts (which do not include the former tennis courts on which the so-called Fun Zone 2.0 or adjacent parking lot are located); and six tennis courts identified as “Two Tennis Courts” and “Four Tennis Courts”

“Easement Facilities Fee” - as set forth in **Schedule 1**

“Homeowner’s Immediate Family” - the spouse, children, current spouses of children, father, mother and grandchildren of a Benefitted Homeowner as identified to Smugglers’

“Other Recreational Facilities” – recreational facilities located at the Resort and owned by Smugglers’, commonly known as Mountainside pool area, the skate park/berm, Fun Zone, Village Operation Center, basketball and volleyball courts, Notchville Park, the Highlands day lodge, and the front entrance pond

“Plan” - a plat entitled

Property of
Smugglers’ Notch Management Company, Ltd.
Smuggs Central
in
Cambridge, Vermont

dated June __, 2019, prepared by Grenier Engineering, P.C., recorded in Map Slide ____ of the Land Records of the Town of Cambridge

“Resort” - as set forth in Recital A

“Rule” - a policy, guideline, restriction, procedure or regulation which governs conduct of a person or use of an Easement Facility

“Smugglers” - as set forth above, and its successors and assigns

“SNHA” - the Smugglers’ Notch Homeowners Association, Inc., currently a voluntary association, and its successors and assigns, which represents a majority of the owners of Whole Ownership Units, acting through its Board of Directors; or such other association which represents a majority of the owners of Whole Ownership Units

“Whole Ownership Unit” - a dwelling owned by a Benefitted Homeowner, being one of the condominium apartments or townhouses at the Resort committed to “whole” ownership, whether described as an apartment, townhouse, unit or otherwise

Section 2. Easement for Easement Facilities.

(a) **Grant of Easement:** Smugglers’, its successors and assigns, (“Grantor”) in consideration of the foregoing, the release language provided herein by the Benefitted Homeowners and other good and valuable consideration, the receipt of which are hereby acknowledged, intending to be legally bound, by these presents does hereby **REMISE, RELEASE, AND FOREVER QUITCLAIM** unto each Benefitted Homeowner listed on **Exhibit A** and their heirs, successors and assigns, a non-exclusive perpetual easement, in common with others, for access to and use of the Easement Facilities, it being the specific intent of the Grantor to grant this easement as a property right for the benefit of the Whole Ownership Units listed on **Exhibit A**. Each Benefitted Homeowner shall be subject to such Rules and the requirement to pay a fee for use of the Easement Facilities as Smugglers’ may impose pursuant to **Schedule 1** at any time and from time to time, and the appurtenant right to extend that easement to each member of the Homeowner’s Immediate Family and each Accompanied Guest at all times. Smugglers’ shall supplement and amend **Exhibit A** from time to time upon receipt of a notice from a successor owner as provided in Section 2(c).

(b) The easement described in subsection (a)

- (i) is and shall be appurtenant to the Whole Ownership Unit of the Benefitted Homeowner and may not be severed therefrom; shall run with the land; and is subject to the other rights created or reserved by Smugglers' in this Grant.
- (ii) requires the Benefitted Homeowner to pay an annual fee (the "Easement Facilities Fee") as described in **Schedule 1** and comply with terms of Section 4.
- (iii) is subject to the following rights:
 - (A) Smugglers' may replace the recreational use of an Easement Facility with an enhanced or equivalent recreational use within the boundaries of the lands depicted on the Plan; or
 - (B) Smugglers' may replace the recreational use with an enhanced or equivalent use outside the boundaries of the lands depicted on the Plan; or
 - (C) Smugglers' may make a non-recreational use of lands comprising an Easement Facility depicted on the Plan and replace the recreational use with an enhanced or equivalent recreational use within or outside the boundaries of the lands depicted on the Plan.

At least one year prior to removing an improvement to an Easement Facility to be replaced outside the boundaries of the lands depicted on the Plan, Smugglers' shall present to the Benefitted Homeowners conceptual plans for the proposed replacement recreational facility and data and market comparisons to other resorts similar to the Resort to justify the alternative as an enhancement of the guest experience. The Benefitted Owners shall not unreasonably withhold, delay or condition approval of the alternative. The rights under this Grant which had applied to the replaced Easement Facility shall apply to the replacement recreational facility, and Smugglers' shall grant a revised Easement Deed to reflect any relocation of the easement outside the boundaries of the lands depicted on the Plan.

- (iv) access to and use of the Easement Facilities is subject to suspension for failure to pay when due all sums due Smugglers' on account of fees and costs.

(c) A successor owner of a Whole Ownership Unit that is not a successor to a Benefitted Owner may, within 60 days from acquisition of the Whole Ownership Unit, elect to have the benefit and burdens of this Grant on notice to Smugglers'.

Section 3. Release.

For good and sufficient consideration, the receipt of which is hereby acknowledged, each Benefitted Owner shall be deemed to have, and by operation of the Class Action Final Order shall have, fully, finally and forever released, relinquished and discharged Smugglers' from each and every claim or cause of action whatsoever that the Benefitted Owner has or had in an express or implied easement or other property right to use the Easement Facilities or Other Recreational Facilities, including any right arising from plats, plans or drawings recorded in the Land Records of the Town of Cambridge, including (but not limited to) those recorded in Map Book 1 and Map Slides 1, 7, 13, 14, 49 and 50. Notwithstanding the foregoing, and for avoidance of doubt, nothing contained in this Release shall (a) affect any Benefitted Owner's right to access, use, or cross those open lands historically identified as the "Common Lands" on the portion of the Resort identified on Map Slide 49 or (b) release any rights of Smugglers' to develop its property. This Release is not intended to release any future claims by the Benefitted Homeowners to enforce the terms of this Grant of Easement.

Section 4. Rules; Violations; Enforcement.

(a) By acceptance of this Grant as evidenced by its recording in the Land Records of the Town of Cambridge, each Homeowner having the benefit of this Grant shall be bound by, and each covenants and agrees to abide by, reasonable Rules imposed by Smugglers' relating to the safe and healthful use and operation of the Easement Facilities, provided that

- (i) the Homeowners having the benefit of this Grant receive written notice of a Rule prior to the adoption and an opportunity to be heard as to the substance of the proposed Rule;
- (ii) a Rule relating to hours of operation, conduct and the like shall be prominently posted at the location of the Easement Facility and available for review.
- (iii) a Rule shall apply equally to all users;
- (iv) the Courtside pool shall be available for use on a first come, first served basis, subject to posted maximum capacity restrictions. The tennis courts included in the Easement Facilities shall be available for use on a first come, first served basis, consistent with such reasonable reservation arrangements as Smugglers' may from time to time implement, provided that the reservation arrangements shall not give priority to classes of users such as, by way of example, Accompanied Guests, Smugglers' customers, Homeowners and Homeowner's Immediate Family;
- (v) No representation or warranty is made or authorized by Smugglers' that an Easement Facility is of a size or capacity to accommodate all persons who may be authorized and desire to use them at any one time. Smugglers' shall make reasonable efforts under the circumstances to provide other suitable

structures or programs if the Courtside Pool is unavailable, but Smugglers' shall have no duty to so do and no responsibility for any cost incurred by the excluded person in securing alternates or substitutes if capacity is exceeded;

(vi) if the SNHA objects to a proposed Rule, the proposed Rule shall be subject to good faith negotiations between Smugglers' and the SNHA.

(b) Smugglers' shall have the authority to reasonably enforce a Rule adopted pursuant to subsection (a).

(c) No Homeowner shall have the right to vote on or approve any matter relating to the management or operation of an Easement Facility.

Section 5. Preferences.

Except as otherwise provided in this Grant of Easement, no preference, favoritism or special treatment shall be given and no exclusion shall be applied, to any user of an Easement Facility or alternative program or service on account of the user's status as a Benefitted Homeowner, Smugglers' customer, Accompanied Guest or Homeowner's Immediate Family.

Section 6. Incorporation by Reference, etc.

(a) Reference is hereby made to the above-mentioned instruments, the records thereof, the references therein made, and their respective records and references, in further aid of this description.

(b) The Recitals are incorporated herein.

(c) The captions of the Articles, Sections, subsections and paragraphs in this Grant are for convenience only and shall not be considered to expand, modify or aid in the interpretation, construction or meaning of this Grant. As used herein the singular shall include the plural and the masculine shall include the feminine and neuter.

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Schedule 1

The Easement Facilities Fee

1. The Easement Facility Fee for 2019 shall be \$500.00 (prorated for the portion of 2019 during which this Grant is in effect); if this Grant shall not be in effect on January 1, 2019, the Easement Facilities Fee shall be due and payable within 30 days after this Grant shall be in effect. Smugglers' shall bill the Easement Facilities Fee in the Homeowner statement rendered next following the date of this Grant.

2. The Easement Facility Fee for 2020 and each year thereafter shall be paid in advance commencing on January 1, 2020 and prior to January 1 in each subsequent calendar year during the term of this Grant. Smugglers' shall bill the Easement Facilities Fee in the Homeowner statement for the fourth quarter of each year.

(a) If funds are held by Smugglers' for a Benefitted Homeowner, Smugglers' shall pay the Easement Facilities Fee from those funds;

(b) if no funds are available or sufficient in amount, the Benefitted Homeowner shall pay the Easement Facilities Fee to Smugglers' at the following address or such other address as it may designate from time to time:

Smugglers' Notch Management Company, Ltd.
4323 Vermont Route 108 South
Cambridge, VT 05464

The Easement Facilities Fee shall be indexed to the annual change in the Consumer Price Index for All Urban Consumers ("CPI-U") or an amount mutually agreed upon through good faith negotiation.

3. The Easement Facilities Fee shall be prorated on transfer of a Whole Ownership Unit.

4. If the Easement Facilities Fee is not paid by a Benefitted Homeowner within 90 days after this Grant becomes in effect in 2019 or prior to May 31 in 2020 or any year thereafter, the use of the easement described in subsection 2(a) shall be suspended for the Benefitted Owner, the Homeowner's Immediate Family and any Accompanied Guest.

5. A Benefitted Homeowner may temporarily withdraw from the benefit of the easement described in subsection 2(a) by giving notice, in writing, to Smugglers' at the address provided in Schedule 1 2(b) no less than 30 days prior to January 1 of the year in which the benefit is withdrawn. Upon receipt of the notice, Smugglers' shall remove the Easement Facilities Fee from the Homeowner statement for the fourth quarter of the year prior to the year in which the benefit is withdrawn. A Benefitted Homeowner may subsequently resume the benefit of the easement provided notice is given in writing and the Easement Facilities Fee is paid in full for the entire year simultaneous to the written notice. The Easement Facilities Fee shall not be prorated except in the case of a transfer of a Whole Ownership Unit.