

MEMORANDUM OF AGREEMENT

Town of Charlotte, Preservation Trust of Vermont and Vermont Land Trust

This Agreement is entered into on the dates noted below, by and between the TOWN OF CHARLOTTE ("Town"), a Vermont municipality situated in Chittenden County, the PRESERVATION TRUST OF VERMONT ("PTV"), a non-profit preservation organization with principal offices in Burlington, Vermont, and the VERMONT LAND TRUST ("VLT"), a non-profit conservation organization with principal offices in Montpelier, Vermont. (PTV and VLT are hereinafter referred to as "TRUSTS.")

WHEREAS, the Town has secured, and will exercise an Option to Purchase the 123.68 acre, more or less, so-called Burns Property situated on both sides of Greenbush Road in Charlotte, Vermont, which property is depicted as Parcels 1 through 5, inclusive on the plan attached hereto as "Exhibit A" and incorporated herein ("the Plan"); and

WHEREAS, the Trusts have secured, from the Freeman Foundation, and will award to the Town a grant to support the Town's acquisition and public use of Parcels 3, 4 and 5 (the "East Property"), and to assure the protection of public recreation and conservation values on Parcels 1 and 2 (the "West Property"); and

WHEREAS, the Town and the Trusts wish to formalize their respective commitments with regard to the use of said grant funds.

NOW, THEREFORE,

The Town, PTV and VLT covenant and agree as follows:

1. PTV and VLT will provide the Town with a One Hundred Twenty Thousand Dollar (\$120,000.00) grant to be used exclusively for the purchase of the Burns Property. Said grant is conditioned upon the Town's compliance with the requirements of this Agreement.
2. Unless it first secures the written consent of the Trusts, the Town shall not mortgage, convey, lease, transfer, encumber, construct any improvements on or otherwise develop, in whole or in part, the East Property until the Town has completed the Village Planning Process described in paragraph (3), below, and until PTV and VLT issue a written certification that said process has been completed and the Town has otherwise fulfilled the requirements of this Agreement.
3. With respect to the West Property, the Town shall assure that:

VERMONT LAND TRUST, INC. BRATTLEY A

Post-It™ brand fax transmittal memo 7671		# of pages ▶	6
To	Charles Russell	From	TIM EVSTACE
Co.		Co.	
Dept.		Phone #	660-2555
Fax #	475-1741	Fax #	

Burns Property Agreement

Page 2

- a) Barber Hill as depicted on the Plan is or will be conveyed to the Town, or another responsible public or non-profit entity with assurance that public access for recreational, educational and research purposes is permitted.
 - b) The Town, or another responsible public or non-profit entity secures a legal right-of-way for a non-motorized pedestrian recreational path from Greenbush Road (south of the Old Lantern) to Ferry Road, in a location that affords reasonable, feasible foot and bicycle use.
 - c) Through legal covenants, no more than two (2) single-family residences are constructed on the West Property, provided that one (1) additional residence may be constructed appurtenant to the operation of the Old Lantern but shall not be subdivided or otherwise conveyed in separate ownership from the Old Lantern.
4. The Town shall design and implement a Village Planning Process ("the Process") to include both the East Property and other lands surrounding the Ferry Road and Greenbush Road intersection, within Charlotte Village. The Process shall be fully collaborative, professionally facilitated, and shall engage all segments of the Charlotte Community. The Process shall address at least the following objectives in a meaningful way:
- (1) Some component of open, undeveloped land focused on the conserved Mack Farm, public views from Greenbush Road and the Route 7 corridor.
 - (2) Future residential growth -- including affordable housing.
 - (3) Community recreational needs -- including trail system design.
 - (4) Development of the Senior Center and affordable elderly housing on the LeBocuf property.
 - (5) Economic growth needs of the village such as retail food, food service, banking, office space, etc.
 - (6) School relocation and expansion, and other municipal needs including infrastructure.

While the Trusts may assist in the design of this process and help secure funding to support feasibility and planning work, they will not play an active role in substantive decision-making, and will defer to community-based collaboration, provided that the requirements of this paragraph are fulfilled.

Burns Property Agreement

Page 3

5. The Town's obligations under this agreement shall constitute a lien encumbering the East Property. The Trusts may, in the Trusts's sole discretion, record a copy of this instrument or a notice of the existence of this instrument in the Charlotte Land Records. The Trusts shall release said lien upon issuance of the certification referenced in paragraph (2), which release and certification may, in the discretion of the Trusts, be conditioned upon the Towns conveyance of conservation and/or preservation easements, and/or other enforceable covenants reasonably necessary to assure implementation of the Plan described in paragraph (3) above as that Plan pertains to the East Property. Further, the Town shall convey to the Trusts an enforceable covenant prohibiting the transfer of the East Property to or its development by other than a non-profit or public entity without the Trusts' prior written consent.
6. The Town and the Trusts shall work in good faith to implement the requirements of this Agreement. In the event a dispute or disagreement arises with respect to the interpretation or implementation of this agreement, the parties will use reasonable efforts to reach voluntary resolution. In the event the Trusts become aware of an event or circumstance of non-compliance with the terms and conditions herein set forth, the Trusts shall give notice to the Town of such event or circumstance of non-compliance via certified mail, return receipt requested, and demand corrective action by the Town sufficient to abate such event or circumstance of non-compliance.

The following matters shall be submitted for binding arbitration:

- a) Any disagreement between the Town and the Trusts about whether or not the requirements of this agreement have been met, including whether the Village Planning Process has been conducted and completed in accordance with this agreement, and whether the plan which is a product of that process has or will be implemented by the Town.
- b) Any failure by the Town to cause discontinuance, abatement, or such other corrective action as may be demanded by the Grantee within a reasonable time after receipt of notice and reasonable opportunity to take corrective action.
- c) Any disagreement between Town and Trusts concerning the meaning or application of the terms, conditions or limitations of this Agreement.

The arbitrator's authority shall include the right to interpret the terms of this Agreement, the right to determine whether a violation of the

Burns Property Agreement

Page 4

instrument by the Town has or continues to occur, and what corrective action is appropriate. The arbitrator's authority shall also include the right to maintain the status quo by directing Town or Trusts to terminate or suspend any act or use pending disposition of the arbitration proceeding.

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, Town and Trusts reserve the right to bring an action in a court of competent jurisdiction to:

- a) Secure a temporary restraining order or preliminary injunction to maintain the status quo pending the arbitration of a dispute;
- b) Enforce a directive issued by an arbitrator to maintain the status quo pending disposition of the arbitration proceeding; or
- c) Enforce a final order issued by the arbitrator.

We understand that 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 this agreement, unless it involves a question of constitutional or civil rights. Instead, we agree to submit any such dispute to an impartial arbitrator.

In The Presence Of:

TOWN OF CHARLOTTE

David Russell
Witness

By [Signature]
Its Duly Authorized Agent

Burns Property Agreement
Page 5

STATE OF VERMONT
CHITTENDEN COUNTY, ss.

At Charlotte, Vermont, this 31st day of August, 2000, Robert Mack personally appeared and he acknowledged this instrument, by him sealed and subscribed, to be his free act and deed and the free act and deed of the Town of Charlotte.

Before me, W. J. P. K.
Notary Public
My commission expires: 2/10/03

In The Presence Of:

PRESERVATION TRUST
OF VERMONT

[Signature]
Witness

By: [Signature]
Its Duly Authorized Agent

STATE OF VERMONT
CHITTENDEN COUNTY, ss.

At Burlington, Vermont, this 6th day of September, 2000, Paul Bruhn personally appeared and he acknowledged this instrument, by him sealed and subscribed, to be his free act and deed and the free act and deed of the Preservation Trust of Vermont.

Before me, Deborah K. Ramsdale
Notary Public
My commission expires:
January 2001

In The Presence Of:

VERMONT LAND TRUST, INC.

[Signature]
Witness

By: W. J. P. K.
Its Duly Authorized Agent

Burns Property Agreement
Page 6

STATE OF VERMONT
WASHINGTON COUNTY, ss.

At Montpelier, Vermont, this 31st day of August, 2000, W. G. Livingston personally appeared and he acknowledged this instrument, by him sealed and subscribed, to be his free act and deed and the free act and deed and the free act and deed of the Vermont Land Trust, Inc.

Before me, *Perry Henigan*
Notary Public
My commission expires: 2/10/03