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Of Counsel: PETER L.
POTTS

August 2, 2016

Christine Brock, Clerk
Superior Court Chittenden Unit
PO Box 187
Burlington, Vermont 05401

Re: *Brianne E. Chase, Trustee of the Revocable Living Trust of Barbara S. Eastman*
Docket No. **333-4-15 Cncv**

Dear Christine:

I am enclosing Plaintiff's Motion for Summary/Default Judgment, with attached Affidavit, and our Certificate of Service.

Thank you for your assistance. Please give me a call if you have any questions or concerns regarding this matter.

Sincerely,



Elizabeth M. Demas, Esq.
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(802) 652-1400
edemas@cdbesq.com

cc: Hans Huessy, Esq. ✓
Liam Murphy, Esq.
PO Box 4485
Burlington, Vermont 05406-4485

encs

STATE OF VERMONT

SUPERIOR COURT
Chittenden Unit

CIVIL DIVISION
Docket No.333-4-15Cncv

Brianne E. Chase, Trustee of the Revocable Living
Trust of Barbara S. Eastman
Plaintiff

v.

Town of Underhill, David Arnold,
Stanley and Sue Senger, and Carl and
Carol Menard,
Defendants

**PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AGAINST DEFENDANTS,
STANLEY SENGER, SUSAN SENGER AND CARL MENARD AND CAROL MENARD,
MOTION FOR DEFAULT JUDGMENT AGAINST DEFENDANT DAVID ARNOLD,
AND RENEWED MOTION FOR SUMMARY JUDGMENT AGAINST DEFENDANT
TOWN OF UNDERHILL ON COUNT II.**

NOW COMES Plaintiff Brianne E. Chase, Trustee of the Revocable Living Trust of Barbara S. Eastman ("Plaintiff"), by and through her attorneys, Clarke Demas & Baker, PLLC, and, pursuant to V.R.C.P. 56, hereby moves the Court for an order granting Plaintiff summary judgment under Count II of its complaint, against Defendants Stanley Senger and Sue Senger and Carl Menard and Carol Menard, and default judgment against defendant David Arnold, confirming Plaintiff's right to use 238 feet of Repa Trail for necessary access to its abutting property for all reasonable purposes.

This motion is made on the grounds that there is no remaining genuine issue of material fact in dispute and that Plaintiff are entitled to a judgment as a matter of law.

In support of this motion, Plaintiff submits herewith the following

NATURE OF CASE AND FACTUAL BACKGROUND

Plaintiff filed an action seeking declaratory judgment stating that the Trust is entitled to a right-of-

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way on that portion of Repa Road in Underhill, that is now designated a trail. Plaintiff also sought a declaration that the Town of Underhill has violated the Trust's constitutional right to equal protection by denying its request for a right of way because it is not a resident of Underhill.

The Trust moved for summary judgment, and Underhill moved for summary judgment on the equal protection claim, and moved for joinder of necessary parties.

The Court denied both motions for summary judgment, but granted the Town's motion for joinder. The Court found in its Ruling that "Underhill does not contest that the Trust has a right-of-way over the Repa Trail to the Eastman Parcel; it simply disputes the scope of the right-of-way"¹. The Court found that the Trust's evidence did not sufficiently support the scope of its request to use the trail for access by motor vehicles to serve a residence. The court has found no dispute exists as to the uses for vehicular and logging access.

Plaintiff served an Amended Complaint on Defendants David Arnold, Stanley and Sue Senger, and Carl and Carol Menard. Defendants Menard and Senger filed an answer. No answer or notice of appearance was filed by Defendant Arnold.

Plaintiff is seeking a license from the Town of Underhill, pursuant to 19 V.S.A. 1111, for vehicular and logging access, and for service to a single residential dwelling.

As the attached affidavit of Robert Nolan affirms, the house on the Eastman property was built in 1945, to replace a house that had burnt down on the same site. It was located 300-400 feet from the Westford/Underhill town line, on land now owned by Eastman. Historically, the only vehicular access to this home was over Repa Road in Underhill, and that road was maintained by the Town.²

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¹ Ruling on Motions for Summary Judgment and Motion to Require Joinder, March 25, 2016, P. 4

² Affidavit of Robert Nolan, Exhibit A hereto.

MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Summary Judgment is proper where there is no showing of a genuine issue as to any material fact and movant has presented a valid legal position that entitles movant to judgment as a matter of law. *Gore v. Green Mountain Lakes, Inc.*, 140 Vt. 262, 264, 438 A.2d 373, 374 (1981).

V.R.C.P. 56(c) provides, in pertinent part, that “[j]udgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law.” Accordingly, summary judgment must be entered in favor of the movant if the evidence and submissions in support of the motion are sufficient to demonstrate the absence of questions of material fact and the moving party is entitled to judgment as a matter of law. *Miller v. The Merchants Bank*, 138 Vt. 235, 415 A. 2d 196 (1980).

FINAL CONCLUSION

There are no genuine issues of material fact in this matter with respect to Plaintiff’s Complaint, as the last evidentiary matter is addressed by the attached affidavit.

Wherefore, Plaintiff moves the Court to grant default judgment in favor of Plaintiff against Defendant David Arnold, and summary judgment in favor of Plaintiff against Defendants Town of Underhill, and Stanley and Sue Senger, and Carl and Carol Menard, under Count II of its Complaint, requiring the Defendant Town of Underhill to issue a license pursuant to 19 V.S.A. to Plaintiff, its heirs and assigns, granting it use Repa Trail for agricultural purposes including logging, and to serve a single family residence; which License shall run with the land and be recorded in the Underhill land records.

DATED at Burlington, Vermont this 2nd day August, 2016.

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By:



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Attorney for Plaintiff

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Plaintiff

v.

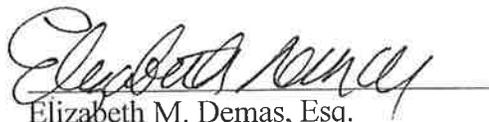
Town of Underhill, David Arnold,
Stanley and Sue Senger, and Carl and
Carol Menard,
Defendants

CERTIFICATE OF SERVICE

I, Elizabeth M. Demas, attorney for Plaintiff in the above-entitled matter, hereby certify that I served a copy of Plaintiff's Motion for Default Judgment against Defendant David Arnold, and for Summary Judgment against Defendants Stanley Senger, Susan Senger and Carl Menard and Carol Menard, and Renewed Motion for Summary Judgment Against Defendant Town of Underhill on Count II of Plaintiff's Complaint, with attached Affidavit, by first class mail to Hans G. Huessy, Esq. at P.O. Box 4485, Burlington, VT 05406-4485, as Attorneys for Defendant Town of Underhill, and to Defendants Carl Menard and Carol Menard at 100 Repa Road, Underhill Vermont, 05489, Defendants Stan Senger and Susan Senger at 99 Repa Road, Underhill, Vermont, 05489 and Defendant David Arnold, 166 Dorset Street, South Burlington, Vermont 05403.

Dated at Burlington, Vermont, this 2nd day of August, 2016.

By:


Elizabeth M. Demas, Esq.
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Defendant

AFFIDAVIT OF ROBERT NOLAN

NOW COMES ROBERT NOLAN, and being duly sworn, deposes and says:

1. I grew up in a home in Westford, located about 300-400 feet from the Westford/Underhill line, on what is now the Eastman land. I lived there from when I was born in 1945, until we moved out in 1961, when I was 16 years old.
2. The house was built by my father, to replace the house that had burnt down on the same location. The new house was built over an existing stone cellar. There was also an old barn on the land, and my father built a new barn.
3. The only vehicular access to our home was over Repa Road in Underhill. In springtime it was muddy, but the Town of Underhill did work on the road, and kept it plowed in the winter.
4. I attended elementary school in Underhill, at the "Crick School", for 2-3 years. I would walk along Repa Road to Route 15 in order to get to school.
5. My mother worked at the hospital with Dr. Eastman. She sold him the land when we moved from this house near Repa Road in Westford to Route 15 in Underhill.

Dated at Georgia, Vermont this 23 day of May, 2016.


Robert Nolan

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STATE OF VERMONT
CHITTENDEN COUNTY, SS.

At Franklin in said County this 23 day of May, 2016, personally appeared Robert Nolan and made oath to the truth of the foregoing.

Before me,

 exp. 2-10-19
Notary Public