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Planning

**GRANT OF
RECREATION AND/OR CONSERVATION EASEMENT
FOR THE TRI-TOWN-TRAIL**

This **GRANT OF RECREATION / CONSERVATION EASEMENT** made this ____ day of November 7, 2017, by and between Marlene Ross of Ledyard, Connecticut, who with its successors in title to all or any portion of the subject property, are hereinafter collectively called the “Grantor”, and the Town of Ledyard, and its successors and assigns, hereinafter called Grantee.

Recitals

WHEREAS, the Grantor is the owner in fee simple of certain real property, hereinafter called the “Protected Area”, consisting of a trail corridor, located within the property known as the “224 Avery Hill Road” more particularly bounded and described on Schedule A attached hereto.

WHEREAS The Tri-Town-Trail crossing said property (hereinafter, “the Trail”), runs generally southerly, crosses the property of the grantor onto property, as shown on the map attached as Exhibit A. The Protected Area is as depicted on a plan, “COMPILATION PLAN Depicting The Proposed Easement Area To Be Granted To The TOWN OF LEDYARD Across The Property of Marlene Ross, 224 Avery Hill Road, Ledyard, CT” dated 7 June 2017, Stadia Engineering Associates, Inc.

WHEREAS, THE TOWN OF LEDYARD CONNECTICUT having an office at 741 Colonel Ledyard Highway, *Ledyard*, CT 06339-1511, is a recognized municipal entity within the state of Connecticut and is qualified under section 170(h) of the Internal Revenue Code of 1986, as amended, to receive qualified conservation contributions, whose purpose is to preserve natural areas for scientific, charitable, educational and aesthetic purposes; and

WHEREAS, The Town conducts a conservation program which includes conservation of natural resources and promotion of outdoor activities beneficial to the people of the State of Connecticut and the dissemination of information regarding forests and their services in the production timber, perpetuation of wildlife, and for recreational purposes; and

WHEREAS, the parties intend that this constitute a grant of a conservation restriction, as defined in Sections 47-42a through 47-43c of the Connecticut General Statutes, (“C.G.S.”) and a charitable use under C.G.S. Section 47-2;

WHEREAS, this Recreation / Conservation Easement provides land areas for the outdoor recreation, scenic enjoyment, and education of the general public; specifically, The Town strives to create, an open to the public network of pedestrian footpaths, and this grant will preserve one of the trails of that system, and enhance its conservation value by preserving the natural and scenic character of the corridor through which it runs; and

WHEREAS, preservation of the Protected Area is pursuant to federal, state and local governmental conservation policy and will yield a significant public benefit, specifically,

- (1) In 1963 the Connecticut General Assembly declared “that it is in the public interest to encourage the preservation of farmland, forest land and open space land in order to maintain a readily available source of food and farm products close to the metropolitan areas of the state, to conserve the state’s natural resources and to provide for the welfare and happiness of the inhabitants of the state...” (P.A. 490, 1; C.G. S Section 12-107a),

and

- (2) This grant will preserve a portion of the Tri-Town-Trail System, the portions of which that run through Town property has been designated by the Town Council as a town wide trail; and

NOW, THEREFORE, the Grantor, for and in consideration of the facts above recited and of the mutual covenants, terms, conditions, restrictions and easements herein contained and as an absolute and unconditional grant, does hereby give, grant, bargain and convey unto Grantee a recreation / conservation easement (the "Trail Easement") in perpetuity over the Protected Area of the nature and character and to the extent hereinafter set forth. Grantor herein declares that the Protected Area shall be held, transferred, sold, conveyed, used and occupied subject to the terms, covenants, conditions and restrictions hereinafter set forth, which covenants, conditions and restrictions shall be deemed to run with and burden the Protected Area and shall bind in perpetuity the Grantor, Grantee, and their respective successors, and assigns.

1. **Purpose:**

The Purpose of this Trail Easement is to establish an area in which a public trail (the "Trail") may be constructed, used, managed, relocated and maintained, to assure that the Protected Area will be used for Trail purposes, to ensure that the Protected Area will be forever maintained and managed in a predominantly natural or open condition, and to prevent any use which will interfere or impair the Conservation Values described above or with the use and enjoyment by the public of the Trail, or is otherwise not consistent with the Purpose set forth herein. Grantor herein declares that the Protected Area shall be forever held, transferred, sold, conveyed, used and occupied subject to the terms, covenants, conditions and restrictions hereinafter set forth, which covenants, conditions and restrictions shall be deemed to run with and burden the Protected Area in perpetuity as a charitable use as meant by C.G.S. Section 47-2.

2. **Use by the Public:**

Use of the Trail by the public shall be limited to walking, running, hiking, cross-country skiing, snow-shoeing, and similar non-motorized, recreational uses, including bicycling and/or equestrian use, on the Protected Area pursuant to Town's trail use policy, or successor plan, in its sole discretion, and is subject to the rules, regulations and/or limitations established by Grantee to regulate Trail activities and uses. The Grantee shall take reasonable steps to prevent the general public from using the Trail in a manner inconsistent with its intended purpose.

Prohibited uses by the public include, but are not limited to:

- (a) The operation of any motorized vehicle except in the case of emergency or in connection with the construction, maintenance, or patrol of the Protected Area or by persons who need to use motor driven wheelchairs;
- (b) Camping and/or campfires, picnicking, [hunting, fishing, collection of firewood]
- (c) The erection of any structures, fences, utility lines, or signs;
- (d) Disposal of toxic, hazardous, or non-compostable refuse, soils, or substances; and
- (e) Any other activities which may be detrimental to the draining, flood control, water or soil conservation, and erosion control.

3. **General Prohibitions**

Grantor and Grantee agree that, unless pursuant to Grantor's construction, maintenance or use of driveways and crossing permitted or other retained rights under Paragraph 5, the exercise of Grantee's rights under 4, or approved prior to such activity by the Grantor in its reasonable discretion, 1) there shall be no constructing or placing of any building, tennis or other recreational court, swimming pool, landing strip, mobile home, fence or sign (other than those required by Grantee for appropriate management), parking area, asphalt or concrete pavement, billboard or other advertising display, antenna, satellite dish, tower, electrical light, septic system or any other temporary or permanent structure or facility on, under, or above the Protected Area; 2) there shall be no change in the topography of the land in any manner; 3) there shall be no removal, destruction, or

cutting of trees, shrubs, or plants, or disturbance or change in the natural habitat. and 4) outside of permitted driveways and crossings, there shall be no operation of dune buggies, motorcycles, all-terrain vehicles, or any other types of land-based motorized recreational vehicles.

4. **Rights of Grantee.** To accomplish the Purpose of this Trail Easement, the following rights are conveyed to Grantee:

- (a) Preserve and protect the Conservation Values of the Protected Area
- (b) Right of Entry. The right to enter the Protected Property at all reasonable times on reasonable notice for the purposes of: (a) inspecting the Protected Property; (b) enforcing the terms of this Trail Easement; (c) taking any and all actions with respect to the Protected Area as may be necessary or appropriate, with or without order of court, to remedy or abate violations hereof, including the right to remove any barrier to the Trail and do such other things as are reasonably necessary to protect and preserve the rights of Grantee under his Trail Easement; and (e) monitoring and management as described below.
- (c) Grantee shall have the right, at its sole cost and expense, to:
 - 1. Maintain, improve and keep the Trail in good repair, in a manner consistent with the provisions set forth herein.
 - 2. Relocate the Trail within the Protected Area as it deems necessary to benefit passage by the general public.
 - 3. Use, establish, or relocate the Protected Area to remain contiguous with trails on abutting properties now or hereafter established for the safe and orderly passage and re-passage of the public; Any such relocation shall be subject to the approval of the Grantor

4. Restore the Protected Area as nearly as practicable to the condition that it was in when said Trail was constructed, if same becomes damaged;
 5. Mark and designate the Protected Area and Trail with such symbols, blazes or signs as it deems necessary to regulate the safe and orderly usage of the Trail and Easement Area.
 6. Improve the Trail and/or Protected Area with, by way of example and not limitation, timber steps, boardwalks, railings, culverts and bridges, barriers to discourage use by motor vehicles, cairns, surfacing with permeable materials and alterations necessary to prevent erosion, and to selectively cut and prune vegetation, and remove leaners and blowdowns, to preserve safety and provide scenic views.
 7. Use motor vehicles, but not motorcycles, in connection with activities permitted under this section 3(c).
- (d) Enforcement:
1. Access. Grantee may enter upon the Protected Area at reasonable times and in a reasonable manner in order to monitor compliance with and enforce the terms of this Easement.
 2. Actions by Third Parties. Grantee shall have the right to prevent any activity on or use of the Protected Area by Grantor or third persons (whether or not claiming by, through, or under Grantor) that is inconsistent with the purpose of this Trail Easement and to require of Grantor or third persons the restoration of such areas or features of the Protected Area that may be damaged by any inconsistent activity or use.

3. Injunctive Relief. Grantor shall have the right to seek injunctive relief to specifically enforce the terms of this Easement, to restrain present or future violations and to compel restoration of the Protected Area to its pre-violation condition (it being agreed that Grantee has no adequate remedy at law). The Grantor agrees that no showing of irreparable harm or the insufficiency of monetary damages need be proven in order to obtain injunctive relieve to enforce the terms hereof and that no bond need be posted.

4. Grantee's Remedies. In the event that the Town becomes aware of a violation of the terms of this Trail Easement by the Grantor, the Town shall give notice to the Grantor of such violation and request corrective action sufficient to abate such violation and restore the Protected Property to its previous condition at the time of this grant. Failure by the Grantor to cause discontinuance, abatement or such other corrective action as may be requested by Grantee within a reasonable time period specified in such notice shall entitle Grantee to bring an action at law or equity in a court of competent jurisdiction to enforce the terms of this Conservation Restriction; to require the restoration of the property to its previous condition; to enjoin such non-compliance by ex-parte temporary or permanent injunction in a court of competent jurisdiction; and/or to recover any damages arising from such non-compliance including, if such court determines that the Grantors have failed to comply with this Trail Easement, costs of restoration, court costs and reasonable attorneys' fees, in addition to any other payments ordered by such court.

5. Rights of Grantor:

Grantor reserves to itself and to its successors and assigns, all rights accruing from ownership of the Protected Area, including the right to engage in, or permit or invite

others to engage in all uses of the Protected Area that are not prohibited herein and are not inconsistent with the Purpose of the Recreation / Conservation Easement.

Grantor specifically reserves unto itself the right to pass and repass over and through the Protected Area at any point or points, including the creation of driveway crossings and all other purposes which will not obstruct the intended use of the trail and Protected Area.

Grantor reserves the right to selectively cut or clear vegetation for habitat protection, unpaved trail maintenance, the preservation and enhancement of vistas, or otherwise to preserve and enhance the present condition of the Protected Area including the routine mowing, seeding, haying, baling or otherwise maintaining of any existing open fields and open areas.

Grantor shall pay all real estate taxes and assessments on all of the Protected Area.

6. Liability:

The Grantee shall take reasonable steps to ensure that the Trail is used only in such a manner that the responsibility of the Grantor for any injury to person or property shall be limited to the maximum extent possible in accordance with Sections 52-557i through 52-557j of the Connecticut General Statutes as amended. The Town shall make the Trail available to the general public consistent with the provisions of the Recreation / Conservation Easement without charge, rent, fee, or other commercial service.

Grantee shall indemnify and hold Grantor harmless, its employees, officers, members, and directors harmless for all liabilities, costs, damages, expenses, claims, demands or judgments, including without limitation, reasonable attorneys' fees, incurred by Grantor in defense of any claim or action brought against Grantor in connection with any negligent act or omission of Grantee in the operation and management of the Trail.

7 **Perpetual Restriction:**

The covenants, terms, conditions, and restrictions of this Trail Easement shall continue as a servitude which shall “run” with the land and shall be binding upon and inure to the benefit of the Grantor, Grantee, and their respective heirs, executors, administrators, successors, and assigns.

8. **Notices and Communication.**

Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally, by first class mail, postage, prepaid, or by receipted delivery service, addressed as follows:

To Grantor:

TOWN OF LEDYARD

741 Colonel Ledyard Highway

Ledyard, CT 06339-1511

To Grantee:

Marlene Ross

224 Avery Hill Road

Ledyard, CT 06339

Or to such other address as either party shall occasionally designate by written notice to the other.

9. **Amendment.**

Any amendment of this Trail Easement shall be in writing, signed by the current Grantor and Grantee, and may not violate the Purpose of this Trail Easement.

10. **Dissolution and Assignment.**

The parties hereto recognize and agree that the benefits of this Easement are in gross and assignable, and The Town hereby covenants and agrees that in the event it transfers or assigns the Easement, the organization receiving the interest will be a qualified

organization as that term is defined in Section 170(h)(3) of the Code (or any successor section), The Town also covenants and agrees that the terms of the transfer or assignment will be such that the transferee or assignee will be required to continue to carry out in perpetuity the conservation Purpose which the contribution was originally intended to advance.

11. Liberal Construction.

Any general rule of construction to the contrary notwithstanding, this Recreation / Conservation Easement shall be liberally construed in favor of the grant to effect the Purpose of this Trail Easement and the policy and purpose of Sections 47-42a through 47-42c of the Connecticut General Statutes. If any provision of this Trail Easement is found to be ambiguous, an interpretation consistent with the Purpose of this Trail Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

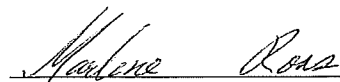
In Witness Whereof, I have hereunto affixed my hand and seal on the ⁷~~8~~ day of November 7, 2017

WITNESS:

GRANTOR:



Charles Russo



Marlene Ross

UtB Hubbard
Mary-Beth Hubbard

Schedule A

Property Description

Beginning at the southwesterly corner of the herein described conservation easement at the point of common intersection of the lands now or formerly of Marlene Ross, John E. & Priscilla J. Bauman, and Elaine M. & Oliver F. Jones said point also being more particularly depicted on the hereafter referenced survey plan;

Thence running N 69°13'00" W over and across the lands now or formerly of Marlene Ross on the westerly line of the herein described conservation easement for a distance of 198.10 feet to a point;

Thence running N 17°05'59" W over and across the lands of said Ross on the westerly line of the herein described conservation easement for a distance of 1,115.85 feet a point on the northerly line of the lands of said Ross and the southerly line of lands now or formerly of John D. & Deborah H. Vessels, said point being the northwesterly corner of the herein described conservation easement;

Thence running N 67°16'36" E along the northerly line of the land now or formerly of Marlene Ross and the southerly line of the lands now or formerly of John D. & Deborah H. Vessels for a distance of 214 feet, be it the same more or less to a point on the centerline of Joe Clark Brook, said point being further depicted on the hereafter referenced survey plan;

Thence running generally southerly by and along the meandering centerline of said Joe Clark Brook for a distance of 1,380 feet, be it the same more or less to a point on said centerline of Joe Clark Brook at its intersection with the northerly line of lands now or formerly of John E. & Priscilla J. Bauman;

Thence running S 70°40'59" W along the northerly line of the land now or formerly of John E. & Priscilla J. Bauman and the southerly line of the lands now or formerly of Marlene Ross for a distance of 190 feet, be it the same more or less, to the point and place of beginning.

The herein described conservation easement contains 381,203 square feet (8.751 acres) of land, be it the same more or less, and is depicted as the Conservation Easement Area on a survey plan prepared by James V. Roszman, P.L.S., of Stadia Engineering Associates, Inc. entitled:

"Compilation Plan - Depicting the Proposed Easement Area to be Granted to the Town of Ledyard Across the Property of Marlene Ross - 224 Avery Hill Road - Ledyard, Connecticut",
Scale: 1 Inch = 60 Feet, Dated: 27 February 2017, Last Revised: 7 June 2017.

The 20-foot wide trail corridor for the Tri-Town Trail referenced above is to be centered on the physical trail as constructed within the above-described Conservation Easement Area. The general alignment and trail improvement locations of the Tri-Town Trail is further depicted in a set of municipally approved plans entitled:

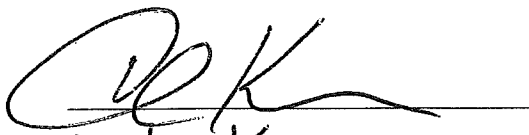
"Proposed Site Improvements for Tri-Town Trail Northern Section - Town of Ledyard - Ledyard, Connecticut", Sheets: 1-20 of 20, Dated: 20 December 2016, As Prepared By: Kent + Frost Landscape Architects - Mystic, Connecticut.

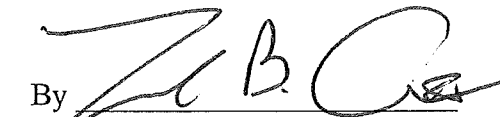


GRANTEE:

WITNESS:

TOWN OF LEDYARD CONNECTICUT


Charles Kasuo

By 
Fred B. Allyn III, Mayor
Duly Authorized

STATE OF CONNECTICUT)

) ss. at Nov. 7th, 2017

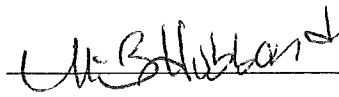
COUNTY OF)

On this the 17th day of Nov., 2017, before me personally appeared Marlene Ross, to me personally known, who, being by me duly sworn, did say that she is the First Selectman of Fred Allyn III, the corporation named in the foregoing instrument; that the seal affixed to said instrument is the corporation seal of said corporation; and acknowledged said instrument to be the free act and deed of said corporation.

In Witness Whereof, I hereunto set my hand and official seal.

MARY-BETH HUBBARD
NOTARY PUBLIC
State of Connecticut
My Commission Expires
August 31, 2021

MARY-BETH HUBBARD
NOTARY PUBLIC
State of Connecticut
My Commission Expires
August 31, 2021


Commissioner of Superior Court/

Notary Public

(STATE OF CONNECTICUT)

) ss. at Nov. 17, 2017

STATE OF CONNECTICUT)

) ss. at Nov. 7th, 2017

COUNTY OF)

The foregoing instrument was acknowledged before me this 7th day of November A.D. 2017,
Marlene Ross.

M B Hubbard Commissioner of Superior Court/ Notary Public

(STATE OF CONNECTICUT)

) ss. at Nov. 7th, 2017

COUNTY OF)

The foregoing instrument was acknowledged before me this 7th day of November A.D. 2017,
Fred Allyn, III, Mayor, Town of Ledyard.

In Witness Whereof, I hereunto set my hand and official seal.

M B Hubbard Commissioner of Superior Court/ Notary Public

MARY-BETH HUBBARD
NOTARY PUBLIC
State of Connecticut
My Commission Expires
August 31, 2021