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Heller, Heller & McCoy  
736 Norwich-New London Turnpike  
Uncasville, CT 06382

**DECLARATION OF JOINT DRIVEWAY EASEMENT AND MAINTENANCE  
AGREEMENT**

**LOTS 1 AND 3 BLACK ASH ESTATES RESUBDIVISION**

This Declaration, made this \_\_\_\_ day of \_\_\_\_\_, 2024 by **PACHAUG CAPITAL LLC**, a Connecticut limited liability company, with an office and place of business at 7 Kelci Circle, in the Town of Griswold, County of New London and State of Connecticut (hereinafter the “Declarant”).

**WITNESSETH**

**WHEREAS**, Declarant is the owner of two (2) certain tracts or parcels of land, which tracts or parcels of land are more particularly designated as Lots 1 and 3 on a certain map or plan entitled “Title: Record Resubdivision Map Land Now Or Formerly Of Pachaug Capital LLC Black Ash Road & Old Colchester Road Montville, Connecticut Date: August 22, 2023 Scale: 1” = 100’ Sheet: 3 of 10 Dwg. No.: 3 Bennett & Smilas Associates, Inc. 415 Killingworth Road, P.O. Box 241 Higganum, Connecticut 06441 Phone (860) 345-4553 Fax (860) 345-3858” (hereinafter referred to as the “Plan”); and

**WHEREAS**, said Lots 1 and 3 (hereinafter referred to as the “Lots”) are situated on the northerly side of Black Ash Road in the Town of Montville, County of New London and State of Connecticut; and

**WHEREAS**, the resubdivision of the Black Ash Estates Resubdivision contemplates that the Lots will obtain access and utilities from Black Ash Road by virtue of an easement over and across portions of the Lots as shown on the Plan; and

**WHEREAS**, the Declarant desires to establish a joint driveway for access to the Lots and for the provision for the extension of utilities from Black Ash Road for the benefit of the Lots over a portions of Lots 1 and 3 as shown on the Plan; and

**WHEREAS**, the Declarant desires to allocate the responsibility by and between the Owners of the Lots for the improvement and maintenance of the joint driveway and utilities installed within the limits of the joint driveway;

**NOW, THEREFORE**, in consideration of the recitals hereinbefore set forth, and the mutual covenants contained herein, the said Declarant does hereby declare as follows:

1. A non-exclusive right of way for all purposes is hereby granted, bargained, sold and conveyed to the owner of Lot 3, as delineated on the Plan, their heirs and assigns, over and across a portion of Lot 1 as shown on the Plan, which right of way is more particularly bounded and described as follows:

Beginning at an iron pin to be set in the northerly line of Black Ash Road at the southwesterly corner of Lot 1 as delineated on the Plan and on the division line between Lot 1 and Lot 2 as delineated on the Plan; thence running North 07°43'43" East for a distance of 267.09 feet bounded northwesterly by Lot 2 as shown on the Plan to an iron pin to be set; thence continuing North 07°43'43" East for a distance of 75.39 feet to a point; thence running South 82°16'17" East for a distance of 25.00 feet to a point on the division line between Lots 1 and 3 as shown on the Plan; thence running South 07°43'43" West for a distance of 342.28 feet along the division line between Lots 1 and 3 as delineated on the Plan to an iron pin to be set in the northerly line of Black Ash Road; thence running North 82°16'17" West for a distance of 25.00 feet bounded southerly by Black Ash Road to the iron pin to be set at the point and place of beginning of said easement area.

**TO HAVE AND TO HOLD** the same to the owner of Lot 3 as shown on the Plan, their heirs and assigns forever.

2. A non-exclusive right of way for all purposes is hereby granted, bargained, sold and conveyed to the owner of Lot 1, as delineated on the Plan, their heirs and assigns, over and across a portion of Lot 3 as shown on the Plan, which right of way is more particularly bounded and described as follows:

Beginning at an iron pin to be set in the northerly line of Black Ash Road at the southeasterly corner of Lot 3 as shown on the Plan and on the division line between Lots 3 and 4 as delineated on the Plan; thence running North 82°16'17" West for a distance of 25.00 feet bounded southerly by Black Ash Road to an iron pin to be set; thence running North 07°43'43" East for a distance of 342.48 feet along the division line between Lots 1 and 3 as shown on the Plan to a point; thence running South 82°16'17" East for a distance of 25.00 feet to a point; thence running South 07°43'43" West for a distance of 75.39 feet to an iron pin to be set at the northwesterly corner of Lot 4 as shown on the Plan; thence continuing South 07°43'43" West for a distance of 267.09 feet bounded easterly by Lot 4 as shown on the Plan to the iron pin to be set at the point and place of beginning of said easement area.

**TO HAVE AND TO HOLD** the same to the owner of Lot 1 as shown on the Plan, their heirs and assigns forever.

3. The Declarant shall be responsible for the cost of construction of the joint driveway from the northerly streetline of Black Ash Road to the northerly terminus of the joint driveway as delineated on the Plan. The common driveway shall be constructed to a minimum width of fifteen (15') feet and shall be constructed in accordance with the "15' Common Driveway Detail" as depicted on a plan entitled "Notes & Details Black Ash Estates Resubdivision Prepared For Pachaug Capital, LLC Black Ash Road & Old Colchester Road Montville, Connecticut Date: 8-22-23 Scale: None Sheet 10 of 10 Map No. 23-024-1N Wentworth Civil Engineers LLC 177 West Town St. Lebanon, CT 06249 Tel. (860) 642-7255 Fax (860) 642-4794 Web: wentworthcivil.com" (hereinafter the "Detail Plan") and shall further construct the proposed infiltration trench in accordance with the with a detail entitled "Infiltration Trench Detail" depicted on a plan entitled "Notes & Details Black Ash Estates Resubdivision Prepared For Pachaug Capital, LLC Black Ash Road & Old Colchester Road Montville, Connecticut Date: 8-22-23 Scale: None Sheet 9 of 10 Map No. 23-024-1N Wentworth Civil Engineers LLC 177 West Town St. Lebanon, CT 06249 Tel. (860) 642-7255 Fax (860) 642-4794 Web: wentworthcivil.com".

4. The deed of conveyance of each of the Lots shall be made together with and subject to the rights of way herein set forth by reference to this Declaration, and such reference shall be deemed to incorporate the rights and obligations set forth herein into each such deed of conveyance.
5. All grants of right of way in favor of the Lots shall be deemed to include the non-exclusive right and privilege to pass and re-pass, by foot or by vehicle, and for any lawful purpose, over, upon and across the right of way areas herein described; and the right to install and connect to utility lines located under or within the joint driveway; and the right to install a private driveway serving a Lot connecting to the joint driveway.
6. Each owner of the Lots shall cooperate fully in granting any easements required by public utility companies and/or the Town of Montville Water Pollution Control Authority to effect the installation of telephone, electric, cable television, water and/or sewer service lines to provide utility service to the Lots. The obligations contained in this paragraph shall include, but shall not be limited to, the obligation to execute an "Electric Distribution Easement" in standard Connecticut Light and Power Company d/b/a Eversource Energy form in favor of The Connecticut Light and Power Company d/b/a Eversource Energy in order to effect the installation of such utilities.
7. Each owner of the Lots shall be responsible for the maintenance and upkeep of the joint driveway, including the utilities installed within the same, in accordance with his "Pro Rata Share" as hereinafter set forth. Upkeep and maintenance shall include, but is not limited to, snow removal, removal of all trees or other obstructions, pothole repair and resurfacing. Decisions as to the necessity of maintenance and upkeep, and the cost to be incurred with respect thereto, shall be made in accordance with Paragraph 9 of this Declaration.
8. Any damage to the joint driveway caused by construction on any of the Lots, including damage caused by construction of a private driveway serving a Lot from the joint driveway, or by reason of the installation of, or connection to utility lines, shall be repaired by and the sole expense of the owner of the Lot causing such damage.
9. "Pro Rata Share", as defined herein, shall mean:
  - (a) With respect to Lot 1 – 50%
  - (b) With respect to Lot 3 – 50%
10. In the event that there is a deadlock between the owners of the Lots as to the necessity for maintenance and repair and/or the cost to be incurred in conjunction therewith, such deadlock shall be settled by arbitration in the City of New London, Connecticut, in accordance with the rules then prevailing of the American Arbitration Association, and judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The arbitrator shall have the power to allocate the cost of the arbitration against the non-prevailing party.
11. Notwithstanding anything herein contained to the contrary, no lot owner shall have an obligation to contribute to the cost of maintenance and upkeep of the common driveway until such time as said lot owner constructs a single family dwelling house on such lot.

12. This Declaration creates real, but private, covenants which are intended to run with the title to the Lots. The resubdivision of Black Ash Estates was approved by the Town of Montville Planning and Zoning Commission with the intent and understanding that all rights in and to the common driveway shall remain private at all times; and that the Town of Montville shall not be required to plow, maintain, assume ownership of, or provide school bus service or other services, other than emergency services, along the common driveway.
13. This Declaration may be modified or changed by an agreement in writing between the owners of the Lots, duly executed and recorded in the Montville Land Records; provided, however, that no such amendment shall be filed to modify or amend the covenants and agreements of the Declarant memorialized in Paragraph 12 of this Declaration.

**IN WITNESS WHEREOF**, Pachaug Capital LLC, acting herein by Zachary Wood, its Member, has hereunto set its hand and seal effective as of the day and year first above written.

Signed, Sealed and Delivered  
in the Presence of:

**PACHAUG CAPITAL LLC**, a Connecticut  
limited liability company

\_\_\_\_\_ By: \_\_\_\_\_ (L.S.)  
Zachary Wood, its Member, duly authorized

\_\_\_\_\_

STATE OF CONNECTICUT            )  
  ) ss. Montville  
COUNTY OF NEW LONDON        )

On this, the \_\_\_\_ day of \_\_\_\_\_, 2024, before me, the undersigned officer, personally appeared Zachary Wood, who acknowledged himself to be the Member of Pachaug Capital LLC, a limited liability company, hereunto duly authorized, signer and sealer of the foregoing instrument and acknowledged the execution of the same to be his free act and deed as Member aforesaid, and the free act and deed of Pachaug Capital LLC.

**IN WITNESS WHEREOF**, I hereunto set my hand and official seal.

\_\_\_\_\_  
Harry B. Heller  
Commissioner of the Superior Court