

2017-53

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**RESOLUTION OF THE MAYOR AND BOROUGH COUNCIL OF THE BOROUGH OF
MOUNT ARLINGTON, IN THE COUNTY OF MORRIS, STATE OF NEW JERSEY,
AUTHORIZING THE EXECUTION AND RECORDATION OF THE PERMANENT
CONSERVATION EASEMENT LOCATED OVER A PORTION OF LOT 1, BLOCK 82.01**

WHEREAS, Trailwood Woodmont JV, LLC, a limited liability corporation of the State of New Jersey, having its principal place of business at 101 Old Short Hills Road, Suite PH-1, West Orange, New Jersey 07052, desires to convey a Permanent Conservation Easement on certain land described as "Easement Area" over a portion of Lot 1, Block 82.01 in the Borough of Mt. Arlington, Morris County, New Jersey as shown on the Metes and Bounds description entitled "Description of an Conservation Easement Situated in the Borough of Mount Arlington, Morris County, New Jersey" dated November 30, 2016, prepared by David B. Dixon, PLS for the firm of Omland Engineering Associates, Inc., described and attached as "**Schedule A**"; and the final plat plan entitled "Shadow Woods Final Plat Block 72, Lots 1 and 3, Block 82, Lot 1, Block 83, Lots 9, 12 & 15" dated February 28, 2008, prepared by Stanley T. Omland, PE and David B. Dixon, PLS for the firm of Omland Engineering Associates, Inc., described and attached as "**Schedule B**", each attached hereto and made a part hereof (the "Easement Area") a copy of each are incorporated herein at length by reference; and hereby warrant that they have the exclusive right and authority under the law to make the grant of easement herein upon the land described herein which is a portion of the land warranted to be owned by them; and

WHEREAS, the Borough of Mount Arlington Borough Engineer and the Borough Attorney reviewed the above-referenced conveyance documents, a copy of which is incorporated herein at length by reference; and

WHEREAS, in order to effectuate the acceptance of the property, the proposed conveyance documents and Metes and Bounds Descriptions are required to be recorded in the Morris County Clerk's Office; and

WHEREAS, the Mayor and Borough Council of the Borough of Mount Arlington reviewed the above-referenced conveyance documents and recommends the documents be recorded by the Borough Attorney in the office of the Morris County Clerk.

NOW, THEREFORE BE IT RESOLVED BY THE GOVERNING BODY OF THE BOROUGH OF MOUNT ARLINGTON, THAT the Permanent Conservation Easement is approved and that the recordation of the conveyance documents shall be conducted at a date and time selected by the Borough Administrator upon approval of all documents by the Borough Attorney and the title company. The Borough Administrator and the Borough Attorney shall be authorized and empowered to sign any and all documents required to effectuate the conveyance of this parcel.

This is to certify that the above is a true and correct copy of a resolution adopted by the Borough of Mount Arlington at a meeting held on March 7, 2017.



Linda DeSantis, R.M.C.
Borough Clerk

November 30, 2016
OEA Proj. 030502

DESCRIPTION OF A CONSERVATION EASEMENT SITUATED IN THE BOROUGH OF MOUNT ARLINGTON, MORRIS COUNTY, NEW JERSEY.

Being a portion of Lot 1, Block 82.01 as shown on a map entitled "Shadow Woods, Final Plat, Block 72, Lots 1 and 3, Block 82, Lot 1, Block 83, Lots 9, 12 and 15, Borough of Mt. Arlington, Morris County, New Jersey" dated February 28, 2008, filed in the Morris County Clerk's Office April 2, 2008 in Book 7, Page 50, more particularly described as follows:

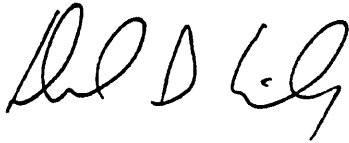
BEGINNING at a point in the proposed southeasterly sideline of Elizabeth Way, 50 feet wide, where the same is intersected by a curve leading into the proposed southwesterly sideline of Maple Path, 16 feet wide, all as shown on said map, and running; Thence

- 1) Along said curve, along a curve to the right having a radius of 25.00 feet, an arc length of 9.19 feet, the chord of which bears North 36° 43' 46" East, 9.14 feet to a point in same; Thence
- 2) By a new line through said Lot 1, South 66° 19' 20" East, 276.05 feet to a point in the proposed northwesterly sideline of Dawes Way, 50 feet wide; Thence
- 3) Along said sideline, along a curve to the right having a radius of 25.00 feet, an arc length of 11.39 feet, the chord of which bears South 13° 09' 05" West, 11.29 feet to a point of tangency in the said northwesterly sideline of Dawes Way; Thence
- 4) Along said sideline, South 26° 12' 31" West, 90.49 feet to a point in same; Thence
- 5) By a new line through said Lot 1, Block 82.01, North 66° 18' 59" West, 50.05 feet to an angle point in same; Thence
- 6) Still by a new line, North 26° 12' 31" East, 91.59 feet to an angle point in same; Thence
- 7) Still by a new line, North 66° 18' 59" West, 230.22 feet to a point in the aforesaid southeasterly sideline of Elizabeth Way; Thence
- 8) Along said sideline, North 26° 12' 31" East, 1.10 feet to the aforesaid point of curve leading into the proposed southwesterly sideline of Maple Path and the place of BEGINNING.

Containing 7,368 Square Feet or 0.1691 acres more or less. Subject to easements and restrictions of record. All in accordance with a map entitled "Shadow Woods, Final Plat, Block 72, Lots 1 and 3, Block 82, Lot 1, Block 83, Lots 9, 12 and 15, Borough of Mt. Arlington, Morris

County, New Jersey" dated February 28, 2008, prepared by Omland Engineering Associates, Inc., and about to be filed in the Morris County Clerk's Office

This description prepared by:

A handwritten signature in black ink, appearing to read 'D B Dixon', written in a cursive style.

David B. Dixon, PLS Lic. 27282
Omland Engineering Associates, Inc.

RECORD AND RETURN TO:
Matthew J. O'Donnell, Esq.
O'Donnell McCord, PC
15 Mt. Kemble Avenue
Morristown, New Jersey 07960

PERMANENT CONSERVATION EASEMENT

This Permanent Conservation Easement (the "Easement") granted this _____ day _____ of _____ 2017.

FROM

Trailwood Woodmont JV, LLC, a limited liability corporation of the State of New Jersey, having its principal place of business at 100 Passaic Ave, STE 240 Fairfield, New Jersey 07004,
Grantor,

TO

THE BOROUGH OF MOUNT ARLINGTON, a Municipal Corporation of the State of New Jersey, whose principal place of business at 419 Howard Boulevard, Mount Arlington, New Jersey 07856-1129,

Grantee.

RECITALS:

WHEREAS, Grantor is the owner of certain property shown and designated as a portion of Lot 1, Block 82.01 as shown on the tax map of the Borough of Mount Arlington, Morris County, New Jersey (the "Grantor Property"), commonly referred to as Maple Path;

WHEREAS, Grantor desires to grant to Grantee a Permanent Conservation Easement over a portion of Grantor Property within the easement limits described herein, the Easement Area (as hereinafter defined). The intent of the Conservation Easement is to preserve the area in its natural and existing state in perpetuity except as specifically noted herein.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants herein contained and for good and valuable consideration, the receipt whereof is hereby acknowledged, the parties hereto agree as follows:

1. **GRANT OF AND PURPOSE FOR THE EASEMENT.** The Grantor grants and conveys to the Grantee and its successors and assigns a Permanent Conservation Easement as shown on the final plat plan entitled "Shadow Woods Final Plat Block 72, Lots 1 and 3, Block 82, Lot 1,

Block 83, Lots 9, 12 & 15" dated February 28, 2008, prepared by Stanley T. Omland, PE and David B. Dixon, PLS for the firm of Omland Engineering Associates, Inc. filed in the Morris County Clerk's office at Map Book 7, Page 50 containing residential, infrastructure and improvements from the public right-of-way over a portion of Grantor's property within the easement limits described herein, the Easement Area (as hereinafter defined).

2. DESCRIPTION OF THE EASEMENT. The Easement shall be located as shown on the Metes and Bounds description entitled "Description of an Conservation Easement Situated in the Borough of Mount Arlington, Morris County, New Jersey" dated November 30, 2016, prepared by David B. Dixon, PLS for the firm of Omland Engineering Associates, Inc., described and attached as "**Schedule A**" attached hereto and made a part hereof (the "Easement Area"); and hereby warrant that they have the exclusive right and authority under the law to make the grant of easement herein upon the land described herein which is a portion of the land warranted to be owned by them.

3. TERMS AND CONDITIONS. Within the Conservation Easement Area, the following terms and conditions shall apply, it being the intention of the parties that the Conservation Easement Area shall be preserved in its natural and existing state in perpetuity except as specifically noted herein:

(A) Grantor may convey, mortgage, lease or otherwise transfer title or interest in the Grantor's Property subject to this Conservation Easement; provided however, that the covenants and conditions herein remain superior to such conveyance, mortgage, lease, or transfer, it being the intention of the parties that this Conservation Easement and its terms and conditions shall become a part of the chain of title and shall run with the land in perpetuity.

(B) This Conservation Easement and all provisions herein are subordinate to the right of Grantor, expressly reserved, to (i) construct, maintain, and repair on and within the Conservation Easement Area those existing and/or future improvements depicted on the Plans, if any; and (ii) clear, grade, excavate and fill in order to construct such existing and/or future improvements within the Conservation Easement Area as specifically shown on the Plans, if any.

(C) This Conservation Easement and all provisions herein are further subordinate to the Grantor's right to construct, maintain and repair utility connections or drainage facilities on, over and under the Conservation Easement Area and to clear, grade, excavate, and fill as necessary to

construct and maintain such utility connections or drainage facilities as are shown on the Plans, if any.

(D) Grantor shall not change any features of the natural landscape or general topography of the Conservation Easement Area nor remove any trees, shrubs, or other vegetation except as necessary for the construction, maintenance and repair of the existing and/or future improvements shown on the referenced Plans and utilities or drainage easements herein permitted without providing the Grantee with written notice and obtaining the prior written approval of the Grantee; provided, however, that Grantor may, without such written approval, remove dead or diseased foliage and plantings that may reasonably be expected to threaten the surrounding foliage and/or any existing and/or future improvements as depicted on the Plans in accordance with any Borough Ordinances.

(E) Grantor shall not make any changes within the Conservation Easement Area that will affect existing drainage, flood control, erosion control or soil conservation, except as necessary to construct, maintain and repair the existing and/or future improvements shown on the referenced Plans and utilities or drainage easements herein permitted without the prior written consent of the Grantee.

(F) No topsoil, sand, gravel, loam, rock, minerals or other materials shall be excavated within or removed from the Conservation Easement Area, nor shall any fill be deposited, except as necessary for construction, maintenance and repair of the existing and/or future improvements shown on the referenced Plans and utilities or drainage herein permitted, unless the prior written consent of the Grantee is secured.

(G) Grantor shall not deposit, or allow to be deposited, any trash, waste or any other materials within the Conservation Easement Area and shall not use the Conservation Easement Area for the storage of materials whatsoever.

(H) No advertising signs or structures shall be located within the Conservation Easement Area.

(I) No buildings or other structures, other than the existing and/or future improvements shown on the referenced Plans and utilities or drainage facilities and structures necessary therefor herein permitted, shall be erected in the Conservation Easement Area unless application therefore, with plans and specifications have been filed with and approved by the Grantee and the Borough of Mt. Arlington.

(J) It is understood and agreed that this Conservation Easement confers upon the Grantee no rights of title or use of the Conservation Easement Area, and nothing herein shall be construed to permit public access to or use of that area nor require the Grantee to maintain such area. Nothing herein shall be construed to limit the Grantor's right of access to and use of that area except as herein provided.

(K) Grantee, its employees and agents, are permitted to enter the Conservation Easement Area for the purpose of ascertaining compliance with the terms of this Conservation Easement.

(L) No roadways or other rights of way or parking of motor vehicles or equipment shall be allowed within the Conservation Easement Area unless shown on the Plans.

(M) This Conservation Easement shall be subject to, and read in conjunction with any other easements depicted on the Plat and entered into by the parties hereto simultaneously or in connection herewith.

(N) It is the intention of the parties hereto that the Conservation Easement Area will remain undisturbed and forever wild except as specifically provided herein.

(O) Despite anything contained in the preceding paragraphs (A) through (N), Grantor (and all who succeed in title to Grantor) shall have the right (a) to conduct prudent forest management activities subject to the approval of the Grantee and (b) to otherwise use the Conservation Easement Area provided that such use is not materially detrimental to the preservation of the Conservation Easement Area or contrary to the terms and conditions of this Conservation Easement.

4. PRONOUNS. Wherever in this Conservation Easement any party shall be designated or referred to by name or general reference, such designation is intended to and shall have the same effect as if the words "heirs, executors, administrators personal or legal representatives, successors and assigns" had been inserted after each and every such designation. All the terms, covenants and conditions herein contained shall be for and shall inure to the benefit of, and shall bind, the respective parties hereto, and their heirs executors, administrators, personal or legal representatives, successors and assigns, respectively. In all references herein to any party, the use of any particular gender or the plural or singular number is intended to include the appropriate gender or number as the text of the within Conservation Easement may require.

5. OBLIGATIONS OF PARTIES. This Conservation Easement shall in all respects to be governed by and construed in accordance with the laws of the State of New Jersey. The terms

and conditions of this Conservation Easement are not intended in any way to diminish the obligations of the parties or their successors and assigns to comply with any Federal or State statute, rule or resolution (including, but not limited to, the freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1, and the rules and regulations promulgated thereunder which may control and regulate the use of the Conservation Easement Area or any portion of the Conservation Easement Area. In the event that such obligations are stricter than the terms and conditions of this Conservation Easement, then such obligation shall be fully met and satisfied.

6. RIGHTS. In the event of any violation of the covenants and conditions contained in this Conservation Easement, the Borough of Mt. Arlington or its designee shall be entitled to recover, in any action to enforce the terms hereof, , including any and all costs and reasonable attorney's fees. If the Grantee determines that the Grantor is in violation of the terms of this easement or that a violation is threatened, the Grantee shall give written notice to the Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purposes of this Conservation Easement, to restore the portion of the Property so injured. If Grantor fails to cure the violation within thirty (30) days after receipt of the notice thereof from the Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, failure to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Conservation Easement or injury to any conservation values protected by this Conservation Easement, including damages for the loss of scenic, aesthetic or environmental values, and to require the restoration of the Property to the condition that existed prior to any such injury. Without limiting Grantor's liability therefor, the Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. If the Grantee, in its sole discretion, determines the circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, the Grantee may pursue its remedies under this paragraph without prior notice to the Grantor or without waiting for the period provided for cure to expire. Grantee's rights under this paragraph apply equally in the event of either actual or

threatened violations of the terms of this Conservation Easement, and the Grantor agrees that Grantee's remedies at law for any violation of the terms of this Conservation Easement are inadequate and that the Grantee shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of providing either actual damages or the inadequacy of otherwise available legal remedies. The Grantee's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

7. **ENFORCEMENT.** Enforcement of the terms of this Conservation Easement shall be at the discretion of the Grantee and any forbearance by Grantee to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or any subsequent breach of the same or any other term of this Conservation Easement or of any of the Grantee's rights under this Conservation Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy will be construed as a waiver.

8. **AMENDMENTS.** The provisions of this Agreement may not be amended, modified or terminated without the express written consent of the Borough of Mt. Arlington, and no such amendment, modification or termination shall be effective for any purpose unless set forth in writing and signed by the appropriate municipal officials.

9. **EASEMENT TO BE PERMANENT.** The terms, provisions, and covenants contained in this Easement shall run in perpetuity.

10. **TERMINATION OF RIGHTS.** The provisions of this Easement shall be obligatory upon the respective parties hereto, and upon their respective heirs and assigns.

11. **SIGNATURES.** The parties have signed this easement as of the date at the top of the first page by their authorized representatives.

WITNESS:

TRAILWOOD WOODMONT JV, LLC

ATTORNEY AT LAW STATE OF NJ

BY:

STATE OF NEW JERSEY)
) ss:
COUNTY OF MORRIS)

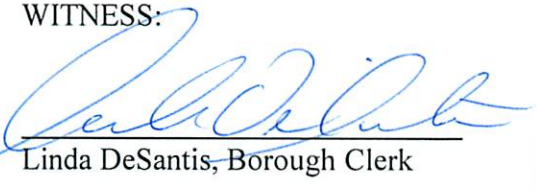
I CERTIFY that on March 8, 2017, Michael Stanzilis, personally came before me and acknowledged under oath, to my satisfaction, that this person:

- (a) is the Mayor of Trailwood Woodmont JV, LLC, the limited liability corporation named in this document, the Grantor named in this easement; and
- (b) this easement was signed on behalf of Trailwood Woodmont JV, LLC as the Mayor of the limited liability corporation named in this document, the Grantor named in this easement as this person's/its voluntary act, and was duly authorized to do so; and
- (c) that this person's signature is proof to attest to the truth of these facts.


ATTORNEY AT LAW STATE OF NJ

WITNESS:

BOROUGH OF MOUNT ARLINGTON



Linda DeSantis, Borough Clerk



Michael Stanzilis, Mayor

STATE OF NEW JERSEY)
) ss:
COUNTY OF MORRIS)

I CERTIFY that on March 8, 2017, Michael Stanzilis, Mayor, personally came before me and he acknowledged under oath, to my satisfaction, that he:

- (a) is the Mayor of the Borough of Mount Arlington, the municipal corporation named in this document, the Grantee named in this easement; and
- (b) this easement was signed by him as the Mayor of the Borough of Mount Arlington, the municipal corporation named in this document, the Grantee named in this easement as his/its voluntary act, and was duly authorized in accordance with a Resolution of the Borough of Mount Arlington; and
- (c) that he signed this proof to attest to the truth of these facts.



Linda DeSantis, Borough Clerk

