

## NON-EXCLUSIVE LEASE AGREEMENT

### McCulloch Family Open Space Horse Trails

This Lease Agreement ("Lease") is made and entered into as of this \_\_\_\_\_ day of July, 2022, by and between the Town of Old Lyme, a municipal corporation of the State of Connecticut ("Lessor") and 100 Whippoorwill, LLC, a Delaware Limited Liability Company (hereinafter "Lessee").

#### WITNESSETH:

That for the consideration hereinafter set forth the Lessor does hereby lease to the Lessee, for use as a horse riding trail system, trails within certain real property generally known as the McCulloch Family Open Space, consisting of existing unpaved trails and a narrow buffer on each side, as shown as the Green Trail and Red Trail on Exhibit A (hereinafter known as the "Premises"). Use of only these trails is permitted by this lease, and specifically excluded are Rooks Meadow and Jimmy's Pond. The parties agree that the Premises is adequately defined in the maps in Exhibit A.

NOW, THEREFORE, subject to the terms and conditions hereinafter contained, the parties hereto do hereby agree as follows:

#### 1. TERM AND RENT

This Lease of the Premises shall be for a term of twenty-five (25) years, commencing on the date set forth above, with two subsequent consecutive option periods of twenty-five (25) years. Provided that the Tenant is not, at the time of renewal, there us any uncured material default under any of the provisions of this Lease, this Lease shall automatically renew for each option period, by Lessee delivering notice to Lessor no fewer than six (6) months prior to the expiration of the original term of the first option term, whichever is applicable. A "material default" shall be any default which the Tenant has not cured within sixty (60) days after written notice of the same from the Landlord, or seven (7) defaults of the same provision of this Lease within any five-year period.

The initial rental payment shall be \$2,400.00 annually, and thereafter in accord with the rental schedule as shown on Exhibit B. Rent shall be due and payable in full, in advance, commencing on the effective date of this Lease and thereafter on each and every annual anniversary of said date.

In addition to the financial rental herein, Lessee shall at its sole cost and expense (a) make, construct, install and maintain signs related to equestrian use of the Premises, and to the use of the parking areas on the McCulloch Family Open Space, in the manner and time as required by the Lessor, and (b) remove all horse manure from all horse trails on the McCulloch Family Open Space, regardless of whether or not the manure is from Lessee's activities, within a commercially reasonable time.

#### 2. NON-EXCLUSIVE USE OF DEMISED PREMISES

The Lessee shall use the Premises on a non-exclusive basis for horseback riding and directly related activities, such as walking horses. All other uses, such as riding bicycles, are prohibited by this Lease. The use of motorized vehicles or equipment, except for maintenance, is prohibited. Notwithstanding, Lessee

may use the Premises as allowed by Lessor under such rules for general public use as the Lessor adopts in writing from time to time.

Lessee may not permit more than 12 horses to be on the Premises at any one time. Horses must remain on the Premises and are prohibited from all other areas of the McCulloch Family Open Space.

Lessee shall not use any parking areas on the McCulloch Family Open Space, and shall not use the driveway adjacent to the Premises that connects to Flat Rock Hill Road.

The demise of the Premises is non-exclusive, and is expressly subject to (a) the reservation of the Town to maintain and operate any use, public or otherwise, within the Premises, including for walking, handicap access, bicycling, public horseback riding, recreation and other uses allowed by Lessor or required by law, and (b) the authority of the Lessor to adopt such permissive or restrictive rules and regulations pertaining to the public use as may be adopted or implemented by the Lessor from time-to-time; and (c) to suspend or restrain all use for emergency or hazardous conditions. The Lessor shall have no responsibility to Lessee to provide Lessee with notice of such rules and regulations, and Lessee shall be solely responsible for obtaining knowledge of same and shall comply with the same.

Lessee acknowledges and agrees that the Lessee's use of the Premises shall be governed not only by this Lease and by the Lessor, but also by The Nature Conservancy, Inc. under a conservation easement ("Easement"), and that the Lessee's use of the Premises must comply with that Easement. Lessee has examined the Easement and represents and warrants that it will use the Premises in strict compliance with the covenants and restrictions in the said Easement, and not violate the same, and shall be solely responsible for its compliance therewith in its use of the Premises.

Should any event or condition occur or arise that will require a relocation of the trails, the parties shall work cooperatively to achieve agreement on such relocation and modify the lease accordingly. In no event shall the trail lengths be substantially enlarged.

Access and egress shall be exclusively from the Lessee's property.

### 3. IMPROVEMENTS

The Lessee shall not erect any structures of any kind within the Premises, and shall not conduct any improvement without the Lessor's prior written consent, which may be withheld unreasonably. Unless allowed by a maintenance plan approved by Lessor in accord with Paragraph 7 of this Lease, such prohibited improvements include the cutting or pruning of trees, pruning or removal of brush, and mowing.

### 4. TAXES AND ASSESSMENTS

It is understood between the parties that the Premises are currently exempt from real estate taxes. However, should all or any portion of said Premises become taxable during the term of this Lease for any reason, such as a result of Lessee having the use of said Premises, then Lessee shall be responsible for all real estate taxes applicable thereto.



## 5. NONDISCRIMINATION

Lessee shall not discriminate because of race, color, sex or national origin in any manner during Lessee's use of Premises.

## 6. NOTIFICATION OF CLAIMS, INDEMNITY AND INSURANCE

Lessee shall employ all appropriate safety measures, to avoid personal injury and property damage, in the use of the Premises.

Lessor and Lessee shall give prompt and timely notice to one another of any claim made or suit instituted which in any way directly or indirectly, contingently or otherwise affects or might affect Lessee or Lessee's right to use the Premises.

Lessee shall indemnify and hold Lessor harmless from any and all claims, actions, liabilities, losses, expenses and damages (including attorneys' fees of Lessor) arising from Lessee's (i) use and occupancy of the Premises, (ii) conduct of any other activity of Lessee in or about the Premises, (iii) breach or default in the performance of any obligation of Lessee under this Lease, (iv) negligence or willful misconduct of Lessee or that of any officer, director, employee or agent of Lessee, and (v) violation of any covenant or restriction in the Easement. In case any action or proceeding is brought against Lessor by reason of such claim, Lessee, upon notice from Lessor, immediately shall defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor. The provisions of this section shall survive the expiration or earlier termination of the Lease.

Without limiting the foregoing and without limiting other indemnification provisions herein contained, Lessee agrees, at Lessee's sole cost and expense, throughout the term of this Lease, but for the mutual benefit of Lessor and Lessee, to maintain general public liability insurance against claims for bodily injury or death, or injury to property, occurring upon or in the Premises, such insurance to afford protection to the limit of not less than \$1,000,000.00 in respect of bodily injury or death to any one person, to the limit of not less than \$2,000,000.00 in respect of any one accident, to the aggregate limit of \$5,000,000, and not less than \$250,000.00 in respect to property damage.

All insurance provided for in this Paragraph 6 shall name Lessor (as Owner) and Lessee as insured, as their respective interests may appear, and shall be effected under valid and enforceable policies issued by insurers licensed to do business in the State of Connecticut. Lessee may carry the insurance required under this Paragraph under a blanket/umbrella policy. Upon the commencement of the term of this Lease and thereafter not less than forty-five (45) days prior to the expiration dates of the expiring policies theretofore furnished pursuant to this Paragraph, originals of the policies or certificates thereof issued by the respective insurers shall be delivered by Lessee to Lessor. Lessee agrees to pay the cost of any such insurance and to furnish Lessor, if requested, with evidence satisfactory to Lessor of such payment. All such policies shall, to the extent obtainable, contain an agreement by the insurers that such policies shall not be cancelled without at least forty-five (45) days' prior written notice to Lessor.

Lessee agrees that if it shall at any time fail to take out, pay for, maintain or deliver any of the insurance policies as provided for in this Paragraph 6, or to make any other payment or perform any other act on the part of Lessee to be made or performed, then Lessor may, but shall not be obligated to do so, and on not

less than fifteen (15) days' notice to or demand upon Lessee (and unless Lessee shall comply within such 15-day period), and without waiving or releasing Lessee from any obligations of Lessee in this Lease contain, (i) take out, pay for, maintain or deliver any of the insurance policies provided for in this Paragraph, or (ii) make any other payment or perform any other act on Lessee's part to be made or performed in this Lease provided: All sums so paid by Lessor, together with interest thereon at the rate of 18 percent per annum from the date of the making of such expenditure by Lessor, at the option of Lessor shall be payable to Lessor on demand or shall be added to any rent then due or thereafter becoming due under this Lease, and Lessee agrees to pay any such sum or sums with interest as aforesaid.

All sums which may become payable to Lessor by Lessee, as in this Paragraph provided, and all sums payable by Lessee pursuant to any other provision of this Lease shall be deemed obligations of Lessee hereunder and Lessor shall have (in addition to any other right or remedy) the same rights and remedies in the event of nonpayment of any such sums by Lessee as in the case of default by Lessee in the payment of rent. The notice provided for herein shall not in any way affect the other notice provisions of this Lease.

If at any time during the term of this Lease Lessor shall determine that the coverage amount of liability insurance provided by Lessee, as required herein, is not consistent with then-current ordinary commercial standards, the Lessor may require, by written notice, the coverage to be increased on the ground that such coverage is commercially inadequate properly to protect the interest of Lessor. Lessee shall thereafter provide and maintain the amount of insurance determined by Lessor to be adequate, but in no event less than the liability insurance specified above.

## 7. MAINTENANCE

Lessee shall keep and maintain the Premises clear of obstacles and in a well-maintained condition and shall immediately repair any damage to the Premises caused by Lessee's use.

Notwithstanding any provision herein to the contrary, prior to any maintenance work, including clearing the Premises of brush, shrubs, tree limbs or trees, other than the removal of manure as provided herein, Lessee shall present to the Town (directly or, if required, acting by or through its Open Space Commission or any other agency, if existing), a maintenance and work plan for approval. Upon approval, the Lessee shall comply strictly with the approved plan. The Lessor may at any time modify or revoke the said plan.

## 8. ASSIGNMENT AND SUBLETTING AND PROHIBITION AGAINST MORTGAGING

Lessee shall not assign or transfer this Lease, or any interest herein, nor transfer Lessee's membership interests to effectuate a transfer of ownership (either, by way of sale, assignment, entity conversion or restructure) without the prior written consent of Lessor, which may be unreasonably withheld, delayed or conditioned.

Notwithstanding the foregoing, Lessee, the following assignments are exempt from the prohibition:

Any transfer between or among the Lessee and its members' spouses, siblings, offspring (natural or adopted), heirs or descendants, or trust for their benefit, by deed, will, or any form of descent or for distribution, or to or among any corporation, limited partnership, limited liability company,

partnership or other legally recognized entity the controlling interest in which is held by the Lessee's members, their spouses, offspring, heirs or descendants (in the event of such transfer, Lessee shall give reasonable notice thereof to the Lessor).

Lessee shall not, under any circumstance or reason whatsoever, grant any mortgage, hypothecation, or security interest in this Lease, nor use this Lease as collateral or security for any loan or obligation. This prohibition shall be included in any memorandum of lease recorded upon the land records.

## 9. NOTICE

Unless otherwise directed, notice required to be given by either party shall be in writing, sent by certified mail addressed to Lessor/Lessee as follows:

- a. If to the Lessor:

Town of Old Lyme  
Memorial Town Hall  
52 Lyme Street  
Old Lyme, CT

- b. If to Lessee:

Michael and Amanda Tevis  
100 Whippoorwill, LLC  
3. S. Main Street  
Essex, Ct 06426

## 10. DEFAULT

It shall be a default and breach of this Lease by either party if it fails to perform or observe any term, condition, covenant or obligation required to be performed or observed by it under the Lease for a period of sixty days after written notice given by the party claiming default, provided, however, that if the term, condition, covenant or obligation to be performed is of such a nature that the same cannot reasonably be performed within such sixty (60) day period, then it shall not be a default or breach of this Lease, so long as the party receiving the notice of default commences efforts to perform or observe the term, condition, covenant or obligation in question, and thereafter diligently undertakes to complete performance or observation as reasonably soon as possible.

## 11. TERMINATION

This Lease may be terminated by either the Lessor or the Lessee upon a default as described in item 10 hereof, effective the 180<sup>th</sup> day after written notice of termination has been given by the terminating party to the other party at the address set forth in item 9 above, provided that no notice of termination may be given before a default has occurred.

## 12. GOVERNMENT REGULATIONS



Lessee at its sole cost and expense, shall comply with all applicable laws, and regulations of the United States, State of Connecticut, and ordinances of general application of the Town of Old Lyme with respect to the use, occupancy, construction, or maintenance of the Premises by Lessee. Lessee shall conduct all use of the Premises in a safe condition, and not cause any harm or injury to property or to persons entering upon or using the McCulloch Family Open Space trails or other areas.

13. ENTIRE LEASE AGREEMENT

This Lease constitutes the entire agreement by and between the parties in connection with lease of said Premises and no change, modification or waiver of such agreement shall be binding upon either party unless it is in writing and executed by the parties hereto.

14. MEMORANDUM OF LEASE

Lessor and Lessee shall, concurrent with the execution of this Lease, execute a memorandum of Lease and Lessee shall cause the same to be recorded in the land records maintained by the Town Clerk of the Town of Old Lyme..

15. POSSESSION

Lessee shall receive possession of the Premises on the effective date of this Lease, subject to all contingencies set forth in Paragraph 16 hereof.

16. CONTINGENCIES

The Lessor's obligations under this Lease are expressly contingent upon the following: (a) all appropriate administrative and legislative approvals of Lessor, including town meeting approval, (b) consent and approval of this Lease by The Nature Conservancy, Inc., and (c) consent and approval by the State of Connecticut, if required by law.

IN WITNESS WHEREOF, the Lessor and Lessee have caused this Lease Agreement to be signed in duplicate on the day and year above written.

LESSOR  
Town of Old Lyme

LESSEE  
100 Whippoorwill, LLC

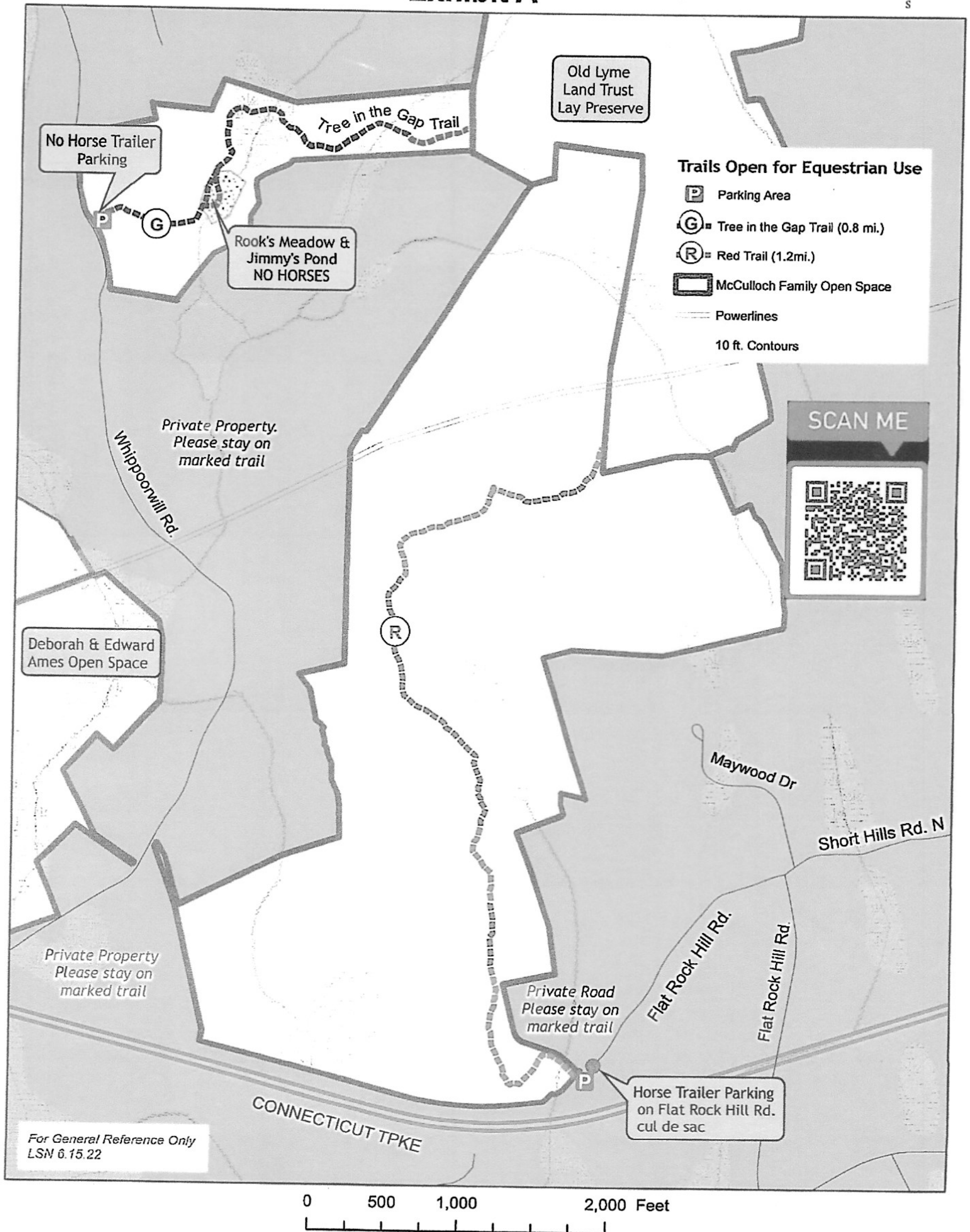
BY \_\_\_\_\_  
Timothy Griswold  
Its First Selectman

BY \_\_\_\_\_  
Its \_\_\_\_\_, duly authorized



Town of Old Lyme Open Space  
McCulloch Family Open Space (312 ac)  
Whippoorwill Road

Exhibit A



# Exhibit B

	Year	To Year	Annual	2%/yr.	Total 5 yr
<b>Primary Term</b>	1	5	\$ 2,400.00		\$ 12,000.00
	6	10	\$ 2,640.00	110%	\$ 13,200.00
	11	15	\$ 2,904.00	110%	\$ 14,520.00
	16	20	\$ 3,194.40	110%	\$ 15,972.00
	21	25	\$ 3,513.84	110%	\$ 17,569.20
<b>1st Option</b>	26	30	\$ 3,865.22	110%	\$ 19,326.12
	31	35	\$ 4,251.75	110%	\$ 21,258.73
	36	40	\$ 4,676.92	110%	\$ 23,384.61
	41	45	\$ 5,144.61	110%	\$ 25,723.07
	46	50	\$ 5,659.07	110%	\$ 28,295.37
<b>2nd Option</b>	51	55	\$ 6,224.98	110%	\$ 31,124.91
	56	60	\$ 6,847.48	110%	\$ 34,237.40
	61	65	\$ 7,532.23	110%	\$ 37,661.14
	66	70	\$ 8,285.45	110%	\$ 41,427.25
	71	75	\$ 9,114.00	110%	\$ 45,569.98
<b>Total Lease Consideration</b>					<b>\$ 381,269.78</b>