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Selectman's Office
Town of East Haddam
1 Plains Road
P.O. Box 385
Moodus, CT 06469

# CORRECTIVE PERMANENT ACCESS & CONSTRUCTION EASEMENT AGREEMENT

This **CORRECTIVE PERMANENT ACCESS AND CONSTRUCTION EASEMENT AGREEMENT** ("**Agreement**") is made by and between **ARTHUR J. WASLEY JR. & TONI S. WASLEY**, inclusive of their heirs, assigns, and successors in interest (hereinafter "**Wasleys**"), acting in their individual capacities as the property owners of certain real property located at 58 AP Gates Road, East Haddam, Connecticut, 06423, and the **TOWN OF EAST HADDAM** (hereinafter "**Town**"), a municipality having its territorial limits in the County of Middlesex, State of Connecticut, and principal place of business at 1 Plains Road, Moodus, Connecticut, 06469, acting herein by Todd H. Gelston, its First Selectman. Town and Wasleys are collectively referred hereinafter as the "**Parties**."

## RECITALS

1. By virtue of a deed dated December 16, 1981, and recorded December 17, 1981 in Volume 0162 and Pages 0290 and 0291 of the Town of East Haddam Land Records, Wasleys are the owners of a certain parcel of land, said land with the address 58 AP Gates Road, East Haddam, Connecticut, 06423 (the "**Wasleys' Parcel**");

2. Town desires to fully replace and/or repair a bridge and deteriorating culvert carrying over an unnamed brook in East Haddam that feeds into Roaring Brook Number 2 (the "**Construction Project**"), which requires a permanent easement on the Wasleys' Parcel;

3. Wasleys desire to support Town in said efforts, each while minimizing Town's interference with Wasleys' use of the Wasleys' Parcel;

4. The Parties agree that the grant of a permanent easement to provide Town with sufficient area to ensure said effort is necessary and desirable;

5. By virtue of that certain Permanent Access and Construction Easement Agreement between the Parties, the Parties granted and accepted the Permanent Easement described herein, which instrument was recorded in Volume 01227 at Page 92 of the Town of East Haddam Land Records on May 14, 2026 (the "**Original Easement**");

6. After the Original Easement was recorded, the Parties discovered that the Schedule A legal description recorded with the Original Easement was incorrect and did not conform to the Permanent Easement Area that the Parties mutually intended to grant and accept;

7. The Parties desire to correct that mutual error by this Agreement, which corrects, supersedes and replaces the erroneous Schedule A legal description recorded with the Original Easement with the corrected Schedule A legal description and map referenced therein, and to ratify and confirm the Permanent Easement as so corrected;

**NOW THEREFORE**, subject to the covenants and agreements below, the sufficiency and adequacy of which are hereby acknowledged, the Parties, intending to be legally bound, hereby covenant and agree as follows:

1. **Grant of Permanent Easement.** Subject to the conditions and terms herein and for the purposes described below, Wasleys hereby grant, correct, and confirm to Town a permanent non-exclusive easement (the "**Permanent Easement**") over, on, upon, under, and across the real property located within the area depicted as "Permanent Easement to be Granted to the Town of East Haddam by Arthur J. Wasley Jr. & Toni S. Wasley ±3183 Square Feet" (the "**Permanent Easement Area**") as shown on the plan entitled "Map Showing Easements to Be Granted in Favor of Town of East Haddam at Land of Jennifer L. Pinard, Arther J. Wasley Jr. & Toni S. Wasley, and Andrew N. Priest & Joann M. Priest, Scale 1" = 20'," Date: March 2026, Prepared by Land Survey & Technical Services, Inc., which plan is or shall be recorded on the Town of East Haddam Land Records and which Permanent Easement Area is more particularly described in the **Schedule A** attached hereto and incorporated herein by this reference. Within such Permanent Easement Area, Town shall have the right to use said area for the purposes of staging, preparing the site, installing temporary water handling systems, removing an existing culvert, and installing a concrete box culvert with wingwalls, stone riprap, and such other ancillary activities necessary and attendant to the Construction Project as so determined by the Town.

2. **Maintenance of the Permanent Easement Area.**

    a. Town shall make every effort to minimize the disturbance of land on the Wasleys' Parcel beyond what is necessary for access to and replacement and maintenance of the Construction Project.

b. Town shall restore the Permanent Easement Area to substantially the same or better condition, if possible, as existed prior to Town's permitted activities hereunder within a reasonable time after completion of the installation activities referenced above, to the extent that such activities require Town to disturb said Permanent Easement Area and to the extent that said restoration is not in conflict with the purposes for which this Agreement is granted. In the event that weather conditions or Construction Project operational factors make such restoration impracticable, Town may defer said restoration for a reasonable amount of time.

c. Upon completion of the replacement of said Construction Project, Town shall: refill any holes or trenches; repair, replace, remove and restore sod, landscaping, plantings, barriers and fencing, signage, pavement; or provide other surface improvements which are required to be removed or disturbed in connection with such installation, maintenance, or removal.

**3. Wasleys' Restrictions and Reservations of Rights.**

a. Wasleys reserve the right to use the Wasleys' Parcel in any manner and for any purpose that does not interfere with the Town's rights under this Agreement and its use of the Permanent Easement.

b. Wasleys shall not erect or maintain any building or other improvements that may interfere with the Town's rights and use of the Permanent Easement, restrict or block the Permanent Easement Area or grant any additional easement rights in the Permanent Easement Area to one or more third parties.

**4. Termination of Permanent Easement.**

a. The Permanent Easement shall commence on the Effective Date and shall only terminate when the Parties mutually agree to terminate this Agreement and the Permanent Easement in writing ("**Termination**").

b. Within sixty (60) days after Termination of the Permanent Easement, the Town shall, at its own cost, remove all construction equipment, materials, debris, and temporary improvements from the Permanent Easement Area and restore the Permanent Easement Area to its original condition as prescribed in Section 2(c) of this Agreement.

c. Upon request of either party following Termination, the Parties shall execute and record a memorandum or notice of the Termination on the Town of East Haddam Land Records in recordable form reasonably acceptable to both Parties, confirming that the Permanent Easement has terminated as of the date stated therein.

d. Termination shall not relieve the Parties of obligations that by their terms survive the Termination, or of liability for antecedent breaches.

**5. Notices.** No notice, request, instruction, or other documents to be given hereunder to any party shall be effective for any purpose unless personally delivered to the person and at the appropriate address set forth below (in which event, such notice shall be deemed effective only upon such delivery) or when delivered by express mail with the U.S. Postal Service or with a nationally recognized overnight courier service, fees prepaid, addressed as follows:

If to Wasleys: Arthur J. Wasley Jr. & Toni S. Wasley
58 AP Gates Road
East Haddam, CT 06423

If to Town: Town of East Haddam
Selectman's Office
1 Plains Road
P.O. Box 385
Moodus, CT 06469

The names and addresses for the purpose of this Section may be changed by giving notice of such change(s) in the manner provided in this Agreement for giving notice. Unless and until such written notice is received, the last address and addressee, as stated by written notice, or provided herein if no written notice of change has been sent or received, shall be deemed to continue in effect for all purposes hereunder.

**6. Cost and Expenses.** Wasleys, their successors and assigns, shall incur no expense as a result of this Agreement and Town, their successors and assigns, shall bear all direct and indirect costs of installing, operating, constructing, maintaining, repairing, or replacing such aspects of the Construction Project and for any activities within the Permanent

Easement Area pursuant to this Agreement. Town assumes all responsibility for damage stemming from the construction, installation, maintenance, repair, or replacement of such Construction Project, or movement thereof and any activities within the Permanent Easement Area and will promptly remedy the same at Town's sole cost and expense.

7. **Non-Assignment.** Town shall not assign its rights or obligations under this Agreement to a third party without the express written consent of Wasleys, which consent shall not be unreasonably withheld, delayed, or conditioned.

8. **Insurance.**

   a. Town shall, or shall cause its contractors to, at its sole cost and expense, maintain certificates of insurance for the following:

      i. COMMERCIAL GENERAL LIABILITY INSURANCE including Contractual Liability Insurance, Independent Contractors, Premises and Operations, Products and Completed Operations and Broad Form Property Damage coverages with a total limit of liability of not less than One Million Dollars ($1,000,000) for all damages arising out of bodily injuries to, or death of, all persons and/or damage to any property in any one accident or occurrence, and, subject to that limit per accident, a total (or aggregate) limit of Two Million Dollars ($2,000,000) for all damages arising out of bodily injuries to, or death of, all persons in all accidents or occurrences and out of injury to or destruction of property during the policy period;

      ii. AUTOMOBILE LIABILITY INSURANCE which covers all motor vehicles, including those owned, hired or non-owned, which are used in connection with this Agreement with a combined single limit of One Million Dollars ($1,000,000) per accident for bodily injury, or death of, all persons and/or damage to any property in any one accident or occurrence. If Town does not own an automobile, but one is used in the execution of the Agreement, then only hired and non-owned coverage is required. If a vehicle is not used in the execution of the Agreement, then automobile coverage is not required.

      iii. WORKER'S COMPENSATION & EMPLOYER'S LIABILITY INSURANCE in accordance with the requirements of the laws of the State of Connecticut, and of the laws of the United States, respectively, which covers all of

Town's employees at or working in the Permanent Easement Area, which coverage shall include Employer's Liability Insurance with minimum limits of:

1. $100,000 Each Accident (bodily injury by accident);
2. $500,000 Disease – Policy limit (bodily injury by disease); and
3. $100,000 Disease – Each Employee (bodily injury by disease).

iv. PROFESSIONAL LIABILITY INSURANCE (ERRORS AND OMISSIONS) in the event Town and/or any of its contractors provide any architecture, engineering, design, accounting, legal, or other professional services under or in conjunction with this Agreement and/or at or with regard to the Permanent Easement Area, each person and entity providing such services shall be duly licensed and maintain Professional Liability coverage, at such party's sole cost and expense, in an amount not less than Two Million Dollars ($2,000,000) per occurrence. In the case of any engineer, architect or other design professional, each such policy must remain in effect for a period of seven (7) years after substantial completion of the Construction Project on or for which any such services are rendered; otherwise, the professional involved shall maintain such coverage for a period of at least three (3) years following completion of the work hereunder. If coverage is procured by any professional on a claim-made basis, the retroactive date must be the date prior to the professional's commencement of any work under or pursuant to this Agreement or the Construction Project to which it relates, whichever is earlier.

b. All products and completed operations coverage required to be maintained by Town and its contractors shall continue to be maintained for at least three (3) years following the Termination of the Permanent Easement.

c. Notwithstanding any other provision of this Section to the contrary, any party required to maintain insurance hereunder shall be deemed to be in compliance with this Section even if such party's insurance policy(ies) are not written for amounts specified within (other than worker's compensation insurance) provided said party carries Umbrella Liability insurance for any differences in the amounts specified therefor and the policy(ies) for such Umbrella Liability insurance follow(s) the form of said party's primary coverages.

d. Except as otherwise provided to the contrary in this Section, any insurance required by this Agreement may be obtained by means of any combination of primary and umbrella coverages and by endorsement and/or rider to a separate or blanket policy and/or under a blanket policy in lieu of a separate policy or policies, provided that the coverages, and the protection afforded to Wasleys, thereunder are at least equal to the coverages and protection which would be provided under a separate policy or policies procured solely for the Permanent Easement Area and/or the work, if any, to be performed by Town or its contractors.

e. Wasleys shall be named as additional insureds under any and all coverage maintained pursuant to this Section, as well as any umbrella or excess liability insurance which provides coverage over and above such insurance.

f. The provisions of this Section shall survive the Termination of this Agreement.

**9. Indemnification.**

a. Town shall indemnify, defend and hold harmless Wasleys, their heirs, assigns, and successors from and against any and all (1) claims arising, directly or indirectly, in connection with the Agreement and (2) liabilities, damages, losses, costs and expenses in connection with such claims or this Agreement. Town shall use counsel in carrying out its obligations under this Section.

b. Town shall not be responsible for indemnifying or holding Wasleys harmless from any liability arising from or due to the negligence of Wasleys or any third party acting under the control or supervision of Wasleys.

c. This Section shall survive the Termination of the Agreement.

**10. No Change or Modification.** No change or modification of any of the covenants, terms, or sections hereof will be valid unless it is in writing and signed by the Parties.

**11. Multiple Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original agreement and both of which shall constitute one and the same agreement. The counterparts of this Agreement may be executed and delivered by PDF, facsimile or other electronic signature by email transmission by the Parties.

Receiving Parties may rely on the receipt of such documents so executed and delivered electronically or by facsimile as if the original has been received. No party shall contest the admissibility or enforceability of the electronically signed copy of the Agreement in any proceeding arising out of the terms and conditions of this Agreement. Notwithstanding the foregoing, the Parties agree to execute and deliver original signature pages sufficient to provide for recording of this instrument.

**12. Non-Waiver.**

a. Failure of either party to enforce any restriction, covenant, condition, obligation, reservation, right, power, or charge herein shall not be deemed a waiver of the right to thereafter enforce any such restriction, covenant, condition, obligation, reservation, right, power, or charge by such party.

b. Nothing in this Agreement shall be construed as a modification, compromise, or waiver by the Parties of any rights or defenses provided by Federal law or the laws of the State of Connecticut to the Parties, which they may have had, now have, or will have with respect to all matters arising out of the Agreement. To the extent this Section conflicts with any other section(s) of this Agreement, this Section shall govern.

c. The Permanent Easement shall not be presumed abandoned by non-use unless Town states its intention to abandon the Permanent Easement in writing.

**13. Forum and Choice of Law.** The Parties deem this Agreement to have been made in the Town of East Haddam, County of Middlesex, State of Connecticut. The Parties agree that it is fair and reasonable for the validity and construction of this Agreement to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. For the purpose of venue and forum, any claims arising out of this Agreement shall be made returnable to the Middlesex Judicial District at Middletown only and shall not be transferred to any other court.

**14. Severability.** If any clause, sentence, paragraph, section, provision or part of this Agreement shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, section, provision or part thereof directly involved in the controversy in which such judgment shall have been rendered.

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15. **Authority**. Each party represents and warrants that: (a) it has the authority to execute this Agreement; (b) each individual signing on behalf of such party is the duly authorized representative of the signing party; and (c) the individual's signature on this Agreement has been duly authorized by, and creates the binding and enforceable obligation of, the party on whose behalf the representative is signing.

16. **Effective Date.** The Effective Date of this Agreement shall be the date when the Parties signed and executed this Agreement and recorded the same on the Town of East Haddam Land Records. As between the Parties, and except as to the corrected Schedule A legal description and map, this Agreement corrects and confirms the Original Easement effective as of the effective date of the Original Easement; provided, however, that this Agreement shall not impair or affect the rights of any third party arising or recorded after the recording of the Original Easement and before the recording of this Agreement.

17. **Correction and Confirmation of Original Easement.** This Agreement is executed and recorded for the purpose of correcting the Schedule A legal description and the map that were referenced in the Original Easement. The corrected Schedule A legal description attached to this Agreement supersedes and replaces in its entirety the erroneous Schedule A legal description recorded with the Original Easement. In all other respects, the Parties hereby ratify and confirm the Original Easement, which remains in full force and effect as corrected by this Agreement. This Agreement constitutes a written correction and confirmation of the Original Easement signed by the Parties in satisfaction of Section 10 of the Original Easement.

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**TO HAVE AND TO HOLD** the above granted rights, privileges, and authority unto the said Town, its successors and assigns, to its own proper use and behoof.

**IN WITNESS WHEREOF**, the Parties hereto have hereunto set their hands.

Signed and Sealed
In the Presence of:

**ARTHUR J. WASLEY**

_____ By: _____
Witness:

**TONI S. WASLEY**

By: _____

_____
Witness:

STATE OF CONNECTICUT )
) SS: _____
COUNTY OF _____ )

The foregoing instrument was acknowledged before me on this _____ day of _____, 2026 by Toni S. Wasley and Arthur J. Wasley.

_____
Notary Public - Commissioner of the Superior Court
My Commission Expires:

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The terms and conditions of the foregoing Instrument are hereby accepted by the Town.

Signed in the Presence of: **TOWN OF EAST HADDAM**

_____ By:_____

Witness: Todd H. Gelston, First Selectman
Duly authorized.

_____

Witness:

STATE OF CONNECTICUT )
) SS: EAST HADDAM
COUNTY OF MIDDLESEX )

The foregoing instrument was acknowledged before me this _____ day of _____, 2026, by Todd H. Gelston, First Selectman, on behalf of the Town of East Haddam.

_____

Notary Public - Commissioner of the Superior Court
My Commission Expires:

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## SCHEDULE A

DESCRIPTION OF THE PERMANENT EASEMENT AREA

Beginning at an iron rod to be set on the easterly street line of AP Gates Road, said iron rod having coordinates on the Connecticut State Plane Coordinate System (NAD83) of North 729,713.15, East 1,104,324.16; thence the following courses over land of Arthur J. Wasley Jr. & Toni S. Wasley: North 87° 20' 12" East 50.00 feet to a point; South 02° 48' 22" East 48.00 feet to an iron rod to be set; South 55° 29' 20" West 59.00 feet to an iron rod to be set on the easterly street line of AP Gates Road; thence northerly along the easterly street line of AP Gates Road North 02° 39' 48" West a distance of 79.13 feet to the point of beginning. The above described easement encloses ±3183 square feet.

The above described easement is more particularly depicted on a certain map entitled "MAP SHOWING EASEMENTS TO BE GRANTED IN FAVOR OF TOWN OF EAST HADDAM AT LAND OF JENNIFER L. PINARD, ARTHER J. WASLEY JR. & TONI S. WASLEY, AND ANDREW N. PRIEST & JOANN M. PRIEST, AP GATES ROAD, EAST HADDAM, CONNECTICUT, SCALE 1" = 20', DATE MAR 2026", by Land Survey & Technical Service, Inc., Chester, Connecticut, which map is to be filed in the land records of the Town of East Haddam.