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PZC  
0064



**DECLARATION OF MUTUAL DRIVEWAY EASEMENT, UTILITY EASEMENT AND MAINTENANCE AGREEMENT**

KNOW ALL PERSONS BY THESE PRESENTS THAT for good and valuable mutual consideration **ST. CLEMENTS FOUNDATION, INC.**, a Connecticut corporation with a principal place of business located in Portland, Connecticut and **THE RONCALLI INSTITUTE INC**, Connecticut corporation with a principal place of business located in Portland, Connecticut hereby enter into, contract, grant, create and establish a mutual driveway easement and maintenance agreement in accordance with the provisions of this Declaration of Mutual Driveway Easement, Utility Easement and Maintenance Agreement (hereinafter referred to as the "Declaration") over that piece or parcel of land described in Schedule A attached hereto and made a part hereof and as shown as "DRIVEWAY EASEMENT IN FAVOR OF #49 OAKUM DOCK RD. 61,061 FT<sup>2</sup> – 1.402 ACRES" on a map entitled "DRIVEWAY EASEMENT SURVEY PREPARED FOR RONCALLI INSTITUTE, INC. 1931 PORTLAND-COBALT ROAD – PORTLAND, CONNECTICUT SCALE 1" = 60' – AUGUST 12, 2019 DUTCH & ASSOCIATES LAND SURVEYORS 392 SOUTH MAIN STREET, COLCHESTER, CONN. PHONE: (860) 537-3465" to be filed on the Portland and East Hampton Land Records (hereinafter referred to as the "common driveway easement area").

The common driveway easement area from the point from that it intersects with that certain road in Portland, Connecticut, commonly known as Portland-Cobalt Road, and continues southeasterly to the 40.00' line (hereinafter, "main common driveway easement area"), shall be used for the purposes of ingress and egress by vehicular and pedestrian traffic for all purposes to and from that certain road in Portland, Connecticut, commonly known as Portland-Cobalt Road, for the use and benefit of the Land N/F St. Clements Foundation (hereinafter, "St. Clements Property") and the Land N/F The Roncalli Institute Inc. (hereinafter, "Roncalli Property") and the owners thereof and their respective lessees and any agents, representatives, employees, contractors, subcontractors, customers, tenants, guests and invitees of the foregoing. The common driveway easement shall also be used for the placement and maintenance of utilities for the benefit of both properties.

The common driveway easement area from the point where the common driveway forks off of the main common driveway easement area in an easterly direction and to the point where it terminates at the Roncalli Property (hereinafter, "secondary common driveway easement area"), shall be used for the purposes of ingress and egress by vehicular and pedestrian traffic for all purposes to and from that certain road in Portland, Connecticut, commonly known as Portland-Cobalt Road, for the use and benefit of the Roncalli Property and the owners thereof and their respective lessees and any agents, representatives, employees, contractors, subcontractors, customers, tenants, guests and invitees of the foregoing. The secondary common driveway easement may also be used for purposes of ingress and egress by vehicular and pedestrian traffic for the use and benefit of the St. Clements Property and the owners thereof and their respective

lessees and any agents, representatives, employees, contractors, subcontractors, customers, tenants, guests and invitees of the foregoing to utilize the marina located on the Roncalli Property. The secondary common driveway easement shall also be used for the placement and maintenance of utilities for the benefit of one or both properties.

The easement created by this Declaration shall be a permanent easement and a covenant running with the land. This Declaration shall regulate the use and maintenance of the common driveway easement area, which is to be utilized in common by both adjacent properties.

The common driveway easement area is subject to the following agreements and understandings:

1. When utilizing the common driveway easement area, the same shall be accomplished as expeditiously as possible and in such manner as will cause the least possible disturbance and interference with common use.
2. A gate may be maintained at the entrance of the St. Clements Property by St. Clements Foundation, Inc., as shown on the above referenced map, so long as that The Roncalli Institute, Inc. shall be provided a key and/or code for ingress and egress. Said key and/or code may be provided to and/or shared with The Roncalli Institute, Inc.'s respective lessees and any agents, representatives, employees, contractors, subcontractors, customers, tenants, guests and invitees of the foregoing to access the Roncalli Property.
3. Except as set forth in Paragraph Two, there shall be no placement or erection of any structure, saw-horse, chain, barrier, gate, barway or obstacle in the common driveway easement area, nor shall there be any signs erected or maintained thereon other than traffic control signage as may be prudent and/or necessary.
4. Except as necessary for placement and maintenance of utilities, the common driveway easement area shall not be used for the parking of vehicles or in any way which would obstruct the free passage over and usage of same by any of the Parties. There shall be no temporary or permanent storage of any personal property on the common driveway easement area.
4. The respective holders of title to the common driveway easement area shall have the responsibility to insure, to the extent possible and practical, that their respective lessees and any agents, representatives, employees, contractors, subcontractors, customers, tenants, guests and invitees making use of the common driveway easement area do not block or otherwise obstruct the common driveway easement area or frustrate its use for ingress and egress.
5. As to the main common driveway easement area, St. Clements Foundation, Inc. shall pay any and all expenses necessary and required to: a) maintain the driveway on the common driveway easement area in its present surface condition or in the condition to which it is improved from time to time, free and clear of obstruction; b) repair and/or replace the same as necessary; and c) keep the same reasonable free and clear of ice and snow.

6. As to the secondary common driveway easement area, The Roncalli Institute Inc. shall pay any and all expenses necessary and required to: a) maintain the driveway on the common driveway easement area in its present surface condition or in the condition to which it is improved from time to time, free and clear of obstruction; b) repair and/or replace the same as necessary; and c) keep the same reasonable free and clear of ice and snow.
6. The respective holders of title to the common driveway easement area and its agents shall have the right to enter upon the common driveway easement area for the purpose of construction, installation, maintenance, repair and replacement of the driveway surface provided there shall be a good faith effort to keep so much of the common driveway easement area open and accessible during such activity as is reasonably possible and in conjunction with the above shall perform said work in accordance with sound engineering principals and practice and in a professional manner using sound construction techniques and procedures and materials of good quality and of a suitable nature and using workmen insured both for liability and worker compensation coverage.
7. Notwithstanding the provisions of the above paragraphs, any holder of title to either adjacent properties who shall, through negligence or willful action, cause or allow to occur any damage which must be repaired hereunder, shall be responsible for the cost incurred to provide the repairs, maintenance and replacement necessitated by said negligence or willful action, provided, however, that each hereby mutually waive their respective rights of recovery against each other for any loss insured by fire, extended coverage and other property insurance policies existing for the benefit of the respective parties.
8. There shall be a mutual obligation of any holders of title to both parcels to save and hold harmless and indemnify the other from any and all liability, costs or damage or expense, including any reasonable attorney fees incurred, with regard to any action, lawsuit, claim or demand made upon the other by reason of the use of the common driveway easement area by the other, or the other's lessees, agents, representatives, employees, contractors, subcontractors, customers, tenants, guests and invitees or any third party using the common driveway easement area with the permission of the holder of title thereto.
9. The covenant, agreements and restrictions set forth herein shall be effective as of the date hereof and shall continue in full force and effect until a fully executed written agreement sufficient for recording on the land records of the Town of Portland and Town of East Hampton and signed by all of the holders of title to the common driveway easement area and all parties holding mortgages secured by any land comprising the common driveway easement area shall either modify or terminate this Declaration, which modification and/or termination shall be effective when recorded in the Town of Portland and Town of East Hampton and, if required, upon approval of the Town of Portland and/or Town of East Hampton Planning and Zoning Commission and such agencies and department of the State of Connecticut as shall be applicable to said action.

10. The covenants, agreements and restrictions contained in this Declaration shall be permanent covenants running with and for the benefit and burden upon both adjacent properties and shall be binding upon and inure to the benefit thereof, and their respective heirs, successors and assigns. The rights granted herein shall be contractual easements enforceable in and subject to the jurisdiction of the state courts of the State of Connecticut and the holders of title to the common driveway easement area consent, for all purposes, to the jurisdiction of the state courts of the State of Connecticut for both the interpretation of the Declaration in accordance with the law of the State of Connecticut and the enforcement of the Declaration under the jurisdiction of the state courts of the State of Connecticut.
11. Invalidation of any portion of the Declaration, by judgment or court order, shall in no way affect any of the other provisions, which shall remain in full force and effect.
12. In the event either party hereto shall be required to institute any legal proceedings in connection with this easement, the prevailing party therein shall be entitled to all costs and expenses incurred, including reasonable attorney's fees.

IN WITNESS WHEREOF, the undersigned have hereunto cause to be set their respective hands and seals this \_\_\_\_ day of \_\_\_\_\_, 2019.

Signed, Sealed and Delivered  
in the Presence of:

WITNESS:

ST. CLEMENTS FOUNDATION, INC.

\_\_\_\_\_

\_\_\_\_\_  
By: Peter Callan  
Its Secretary, Duly Authorized

\_\_\_\_\_

RONCALLI INSTITUTE INC.

\_\_\_\_\_

\_\_\_\_\_  
By: Peter Callan  
Its President, Duly Authorized

\_\_\_\_\_

*[Acknowledgements Follow:]*

STATE OF CONNECTICUT:

COUNTY OF \_\_\_\_\_ : ss. \_\_\_\_\_

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me, \_\_\_\_\_ the undersigned official, personally appeared **Peter Callan**, who acknowledged himself to be the duly authorized principal of **ST. CLEMENTS FOUNDATION** a Connecticut corporation, and that he as such principal, being authorized so to do executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as principal.

In witness whereof, I hereunto set my hand.

\_\_\_\_\_  
Commissioner of the Superior Court  
Notary Public, My Commission Expires:

STATE OF CONNECTICUT:

COUNTY OF \_\_\_\_\_ : ss. \_\_\_\_\_

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me, \_\_\_\_\_ the undersigned official, personally appeared **Peter Callan**, who acknowledged himself to be the duly authorized principal of **THE RONCALLI INSTUTE INC.** a Connecticut corporation, and that he as such principal, being authorized so to do executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as principal.

In witness whereof, I hereunto set my hand.

\_\_\_\_\_  
Commissioner of the Superior Court  
Notary Public, My Commission Expires:



SCHEDULE A

A CERTAIN PIECE OR PARCEL OF LAND SITUATED IN THE TOWN OF PORTLAND, COUNTY OF MIDDLESEX AND STATE OF CONNECTICUT – BEING KNOWN AS “DRIVEWAY EASEMENT IN FAVOR OF #49 OAKUM DOCK RD.” AND IS MORE PARTICULARLY DESCRIBED ON A CERTAIN MAP TITLED – “DRIVEWAY EASEMENT SURVEY PREPARED FOR RONCALLI INSTITUTE, INC. – 1931 PORTLAND-COBALT ROAD – PORTLAND, CONNECTICUT – SCALE: 1” = 60’ – AUGUST 12, 2019 – BY DUTCH & ASSOCIATES” AND IS BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT A CONNECTICUT HIGHWAY DEPARTMENT MONUMENT ON THE SOUTHERLY STREETLINE OF PORTLAND-COBALT ROAD S 56° 35' 14" W A DISTANCE OF 392.45 FEET TO A POINT ON THE SOUTHERLY STREETLINE OF PORTLAND-COBALT ROAD BEING THE POINT OF BEGINNING AND THE NORTHEASTERLY CORNER OF THE HEREIN DESCRIBED PARCEL;

THENCE RUNNING ALONG THE SOUTHERLY STREETLINE OF PORTLAND-COBALT ROAD, S 56° 35' 14" W A DISTANCE OF 54.85 FEET TO A CHD MONUMENT;

THENCE RUNNING ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 1687.10 FEET, AN ARC LENGTH OF 8.35 FEET, WITH A CHORD BEARING OF S 56° 43' 45" W AND A CHORD DISTANCE OF 8.35 FEET TO A POINT;

THENCE RUNNING S 19° 29' 18" E A DISTANCE OF 142.34 FEET TO A POINT;

THENCE RUNNING S 22° 04' 28" E A DISTANCE OF 148.21 FEET TO A POINT;

THENCE RUNNING S 27° 19' 22" E A DISTANCE OF 61.58 FEET TO A POINT;

THENCE RUNNING N 62° 35' 48" E A DISTANCE OF 40.00 FEET TO A POINT;

THENCE RUNNING N 11° 36' 37" E A DISTANCE OF 51.70 FEET TO A POINT;

THENCE RUNNING N 62° 06' 42" E A DISTANCE OF 20.00 FEET TO A POINT;

THENCE RUNNING ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 130.00 FEET, AN ARC LENGTH OF 289.97 FEET, WITH A CHORD BEARING OF S 53° 59' 15" E AND A CHORD DISTANCE OF 233.49 FEET TO A POINT;

THENCE RUNNING S 9° 54' 49" W A DISTANCE OF 331.26 FEET TO A POINT;

THENCE RUNNING ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 170.00 FEET, AN ARC LENGTH OF 175.04 FEET, WITH A CHORD BEARING OF S 19° 35' 01" E AND A CHORD DISTANCE OF 167.41 FEET TO A POINT;

THENCE RUNNING S 49° 04' 50" E A DISTANCE OF 239.52 FEET TO A POINT ON THE CLOSURE LINE ALONG THE WESTERLY LINE OF #49 OAKUM DOCK RD.;

THENCE RUNNING N 24° 42' 30" E A DISTANCE OF 41.66 FEET ALONG THE CLOSURE LINE ALONG THE WESTERLY LINE OF #49 OAKUM DOCK RD. TO A POINT;

THENCE RUNNING N 49° 04' 50" W A DISTANCE OF 227.89 FEET TO A POINT;

THENCE RUNNING ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 130.00 FEET, AN ARC LENGTH OF 133.85 FEET, WITH A CHORD BEARING OF N 19° 35' 01" W AND A CHORD DISTANCE OF 128.02 FEET TO A POINT;

THENCE RUNNING N 9° 54' 49" E A DISTANCE OF 331.26 FEET TO A POINT;

THENCE RUNNING ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 170.00 FEET, AN ARC LENGTH OF 379.20 FEET, WITH A CHORD BEARING OF N 53° 59' 15" W AND A CHORD DISTANCE OF 305.33 FEET TO A POINT;

THENCE RUNNING S 62° 06' 42" W A DISTANCE OF 20.00 FEET TO A POINT;

THENCE RUNNING N 73° 37' 07" W A DISTANCE OF 38.41 FEET TO A POINT;

THENCE RUNNING N 22° 04' 28" W A DISTANCE OF 99.12 FEET TO A POINT;

THENCE RUNNING N 11° 40' 02" W A DISTANCE OF 157.18 FEET TO THE POINT AND PLACE OF BEGINNING.

SAID EASEMENT CONTAINS 61,061 FT.<sup>2</sup> (1.402 ACRES)