

## **OPEN SPACE AGREEMENT**

**THIS AGREEMENT** made this \_\_\_\_ day of June, 2021, between Macamic, LLC, of St. George, Vermont (hereinafter referred to as "Grantor") and the Town of St. George, a municipal corporation situated in Chittenden County, Vermont (hereinafter referred to as "Municipality").

### **WITNESSETH:**

**WHEREAS**, the Grantor is the owner of certain lands and premises shown and depicted in a plat of survey entitled **SURVEY TITLE** drawn by **SURVEYOR NAME**, LS dated **DATE** and of record in Map Slide **NUMBER** of the St. George land records (the Phase 2 Survey); and

**WHEREAS**, the Grantor is developing the Acadia Woods Community residential planned unit development subdivision (hereinafter referred to as "Acadia Woods") in two or more phases into not more than twenty-five (25) lots and Acadia Woods is shown and depicted on the Phase 2 Survey; and

**WHEREAS**, the Grantor has received final subdivision approval from the Municipality's Development Review Board for Phase 2 of Acadia Woods by written decision dated June \_\_\_\_, 2021; and

**WHEREAS**, the Grantor in presenting its proposal to the Development Review Board agreed that certain lands would remain in their open state in consideration for the final subdivision and planned residential approval of Phase 2 of Acadia Woods; and

**WHEREAS**, the Grantor and the Municipality recognize the value of retaining the rural character of said lands and preserving them in their natural, scenic and open condition and in so doing furthering their aesthetic, agricultural and ecological value; and

**WHEREAS**, Title 10, Chapter 155, Vermont Statutes Annotated, permits Vermont municipalities to acquire interest in land in the nature of conservation and open space easements; and

**WHEREAS**, the Municipality desires to acquire a conservation and open space easement regarding certain lands of the Grantor in furtherance of the purposes enumerated in 10 V.S.A. § 6301.

**NOW THEREFORE**, the Grantor for and in consideration of the Development Review Board's approval of Phase 2 of Acadia Woods, the facts above recited, and of the mutual covenants, terms, conditions and restrictions herein contained and as an absolute and unconditional transfer does hereby freely give, grant and convey unto the Municipality, its successors and assigns forever, a conservation and open space easement or restriction over the portions of Lot 7 and Lot 10 depicted on the Phase 2

Survey as Open Space (hereafter referred to as "Open Space Area"). The conservation and open space easement shall consist of the following rights:

1. The right of public view of the Open Space Area in its natural, scenic and open condition;
2. The right of public view of the Open Space Area does not include the right of public access which is reserved to the Grantor, its successors and assigns as more fully set forth in this Agreement.
3. The right of the official representatives of the Municipality, in a reasonable manner and at reasonable times, upon reasonable notice, to enter and inspect the property;
4. The right of the Municipality and the Municipality alone, to enforce by injunction or proceedings at law or in equity, the covenants hereinafter set forth; and in furtherance of the foregoing affirmative rights, the Grantor, for itself, its successors and assigns, makes the following covenants, which shall run with and bind the property in perpetuity:

(a) There shall be no construction or placing of any buildings or structures of any kind, temporary or permanent on the property once the project is finally completed, except the Grantor, its successors and assigns, shall have the right, subject to the written approval of the Development Review Board, to construct permanent recreational facilities, including a pond, or other similar improvements.

(b) There shall be no filling, excavating, dredging, mining or drilling, removal of topsoil, sand, gravel, rock, minerals or other materials, nor any building of roads or change in the topography of the land in any manner other than as necessary to construct the improvements specifically depicted on the Phase 2 Survey (including detail drawings filed with and approved by the Development Review Board, but not recorded) or recreational facilities specifically permitted in sub-section (a) of this agreement

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(c) The Grantor, its successors and assigns, shall have the right to maintain the Open Space Area in an orderly and presentable manner including the right to plant shrubbery from time to time and to keep the grass trimmed and to take any other normal maintenance action in maintaining the pleasant appearance of the

Open Space Area. No silviculture, logging, timber harvesting or forestry activities shall occur within the Open Space Area, except as needed to remove dead or diseased trees, or trees that present an imminent threat to the public health, safety and welfare as determined by the Municipality in its sole discretion.

(d) There shall be no dumping of ashes, trash, garbage or other unsightly or offensive material, and no changing of the topography through the placing of soil or other substance of materials such as landfill except as required during construction and completion of the project as approved.

(e) There shall be no operation of motorized vehicles or equipment, including, but not limited to, dune buggies, motorcycles, snowmobiles, all-terrain vehicles, or any other type of motorized vehicles in or on the Open Space Area, except as may be needed to manage the Open Space Area as allowed in this Agreement.

(f) There shall be no activities or uses on the property that shall be significantly detrimental to drainage, flood control, water conservation, fish and wildlife or habitat preservation.

5. Members of the Acadia Woods Homeowners Association have a legal right of access to and use of the Open Space Area on Lot 7, subject to the terms and conditions of the Third Amended Declaration, the Bylaws and the Acadia Woods Homeowners Association Rules and Regulations, all as may be amended from time to time, and subject to the terms and conditions of this Agreement. In the event of any ambiguity between the terms and conditions of this Agreement or the terms and conditions of the Declaration, the Bylaws and/or the Rules and Regulations, the terms and conditions of the Agreement shall prevail. In the event the Open Space Area on Lot 10 becomes a part of the Common Area, members of the Acadia Woods Homeowners Association will then have a legal right of access to and use of the Open Space Area on Lot 10, subject to the terms and conditions of the Third Amended Declaration, the Bylaws and the Acadia Woods Homeowners Association Rules and Regulations, all as may be amended from time to time, and subject to the terms and conditions of this Agreement. The Grantor, in Grantor's sole discretion, may grant non-motorized access to and use of the Open Space Area to the public.

6. The size, dimensions and boundaries of the Open Space Area may be altered by subsequent open space agreements required by the Development Review Board in connection with development of subsequent phases of Acadia Woods, or by action of the St. George Selectboard. In addition, the Grantor, in its sole discretion, may add land to the Open Space Area governed by this Agreement without approval by the Municipality.

7. The Grantor, for itself, its successors and assigns, agrees to pay any real estate taxes or other assessments levied by competent authorities on the Open Space Area and to relieve the Municipality from responsibility for maintaining the Open Space Area.

8. The Grantors agree that the terms, conditions, restrictions, and purposes of this Agreement will be inserted by reference in any subsequent deed, or other legal instrument, by which the Grantor divests itself of either fee simple title or a possessory interest in the Open Space Area or in any of the property forming a part of Acadia Woods.

**TO HAVE AND TO HOLD** the said conservation easement and restriction unto the Municipality and its successors and assigns forever.

It is the intention of the parties hereto that the grant of easements and covenants herein is pursuant to the authority set forth in Title 10, Chapter 155, Vermont Statutes Annotated, as presently enacted and from time to time hereinafter amended, and that all of the provisions of said Chapter shall be binding upon the Grantor, its successors and assigns, and upon the Open Space Area, and shall inure to the benefit of the Municipality, its successors and assigns.

If any part of this Agreement shall be decreed to be invalid by any court of competent jurisdiction, such decree shall not be interpreted so as to invalidate the remainder of this Agreement.

Although this conservation restriction and easement will benefit the public as provided above, nothing herein shall be construed to convey a right to the public of access or use of the property, and the Grantor, for itself, its successors and assigns, shall retain exclusive right to use the property for all purposes not inconsistent with this conservation restriction and easement.

**IN WITNESS WHEREOF**, the Grantor hereunto sets its hand and seal this \_\_\_\_ day of June, 2021.

MACAMIC, LLP

By: \_\_\_\_\_  
Philip Beliveau, Its Manager

STATE OF VERMONT  
CHITTENDEN COUNTY, SS

At Hinesburg, Vermont, this \_\_\_\_ day of June, 2021, Philip Beliveau, Manager of Macamic, LLP, personally appeared, and he acknowledged this instrument, by him

signed and sealed to be his free act and deed, and the free act and deed of Macamic, LLP.

Before Me, \_\_\_\_\_  
Notary Public  
My Commission Expires: 1/31/23

**IN WITNESS WHEREOF**, the Municipality hereunto sets its hand and seal this \_\_\_\_ day of June, 2021.

TOWN OF ST. GEORGE

By: \_\_\_\_\_  
Duly Authorized Agent

STATE OF VERMONT  
CHITTENDEN COUNTY, SS

At St. George, Vermont, this \_\_\_\_ day of June, 2021, \_\_\_\_\_,  
Duly Authorized Agent of the Town of St. George, personally appeared, and he/she  
acknowledged this instrument, by him/her signed and sealed to be his/her free act and  
deed, and the free act and deed of the Town of St. George.

Before Me, \_\_\_\_\_  
Notary Public  
My Commission Expires: 1/31/23