

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) made and entered into as of the \_\_\_\_ day of \_\_\_\_\_ 2019, by and between THE TOWN OF RUSH, a New York municipal corporation with offices at 5977 East Henrietta Road, Rush, New York 14543 (the “Town”) and RUSH RECREATION AND PARK ASSOCIATION, INC., a not-for-profit corporation organized under the laws of the State of New York with an address of 117 Lyons Road, Rush, New York 14543 (the “RRPA”) (collectively the “Parties”).

The Parties intend this MOU to constitute an outline of the major terms, conditions and understandings of the Parties; however, this MOU shall not and is not intended to be a binding and enforceable agreement of the Parties. The Parties intend to actively participate, and to work together collaboratively and in good faith, to carry out those actions, approvals, undertakings, and/or agreements lawful and necessary to accomplish the development, use and maintenance of the Property (hereinafter defined) for park and recreational purposes. This MOU is not an interest in real estate and is at the pleasure and discretion of the Town and RRPA.

### RECITALS

WHEREAS, by deed dated January 12, 2010 and filed in the Monroe County Clerk’s Office at Liber 10869 page 606 (the “Deed”), New York State conveyed certain real property to the Town of Rush located in the Town of Rush, County of Monroe and State of New York, containing approximately 100.548 acres of land (the “Property”); and

WHEREAS, the Town accepted title to the Property “upon the condition that said premises shall be improved and maintained for park and recreational purposes”; and

WHEREAS, the RRPA is an all-volunteer, not-for-profit, non-partisan organization with the mission to “preserve and protect park, recreational and natural land assets in the Town of Rush for the benefit of the public”; and

WHEREAS, the Town and the RRPA desire to work collaboratively on a concept involving the development, donation, management, operation, maintenance and use of the Property for outdoor activities, trails, and other park or recreational purposes as more fully described in Exhibit A attached hereto (collectively, the “Activities”); and

WHEREAS, RRPA would like to volunteer its services for the benefit of the Town to design, finance, and develop the Activities on a portion of the Property using funds raised through private resources, grants and donations; and

WHEREAS, the Town, through staff oversight, intends to assist the RRPA in the planning, design and implementation of the Activities; and

WHEREAS, the Parties desire to execute this MOU to establish the rights, obligations and roles anticipated by RRPA for the planning and development of the Activities.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

1. Term. The term of this MOU shall be from the date first written above until September 30, 2029. This MOU may be terminated by either party prior to the expiration date by giving sixty (60) days written notice to the other party of its intent to terminate this MOU.

2. Identification and Development of the Property. In consideration of the investment of the RRPA contemplated by this MOU, the Town hereby agrees to assist the RRPA in carrying out the Activities. The Town shall give reasonable access to the Property to the RRPA, its agents and contractors, for the purpose of completing a survey and any other customary, non-invasive due diligence in connection with developing the Activities. In consideration of the public investment of the Town contemplated by this MOU, the RRPA hereby agrees that the Activities will be consistent with the Park Implementation Plan and Concept Plan set forth in Exhibit A attached hereto, and will promote and encourage the Town's investment in the community.

3. Responsibilities of the RRPA. The RRPA agrees to the following:

a. The design and construction of the Activities must comply with the Deed, as well as all local, state and federal laws, including American with Disabilities Act, the Clean Water Act, and any other such applicable legislation and standard within the Town;

b. All actions, uses and design concepts that may be undertaken at any time will be based on park and recreation guidelines and consistent with the Park Implementation Plan and Concept Plan set forth in Exhibit A attached hereto, carried out in consultation with government, non-profit, and private experts, and subject to review and approval of the Town prior to their installation at the Property, which shall be in the Town's sole and absolute discretion.

c. At all times, the RRPA and its partners shall adhere to best practices and be guided by scientific research and recommendations. All actions taken with respect to implementation of the Activities or the Property will be done to maintain riparian buffers, enhance the natural ecology of the land, protect habitats for wildlife, and perpetuate park and recreation purposes. These actions may include activities that complement the natural resources of the Property; access and enjoyment by the public; access to the Property for forest safety measures; tree planting activities; removal of invasive species; trail development and maintenance; and other activities that facilitate public enjoyment of the Property.

d. All construction plans, specifications and associated engineering reports shall be prepared by, or under the direct supervision of, a professional engineer duly registered and licensed to practice engineering in the State of New York and shall bear the seal of such engineer. The RRPA must obtain approval from the Town of any submitted construction plans, specifications or reports, which shall be in the Town's sole and absolute discretion; provided further, however, that such approval

shall not be deemed as an indication that any assumption, calculation, or conclusion contained therein shall have been verified by the Town.

- e. Structures of any kind must be approved by the Town prior to being constructed or placed on the Property, which approval shall be the Town's sole and absolute discretion.

4. Funding of the Activities. The RRPA shall be solely responsible for securing all funding necessary for the completion, management and continued operation of the Activities. The RRPA may utilize any and all reasonable funding sources, whether public or private, that the RRPA deems necessary to carry out the Activities in accordance with the standards set forth herein. The RRPA agrees to pledge \$4,830 a year, in the form of monies raised or grant funds obtained, payable starting May 1, 2020 and continuing every year thereafter, to be used only for the purposes of carrying out the Activities under this MOU, and only for the Property. The Town agrees to support the RRPA in connection with its efforts to prepare and apply for grant funding. Any revenues derived from the Activities shall be reserved for the use and benefit of the Property.

5. Donation of Improvements to the Town. Upon the completion of the construction of any improvements as part of the Activities or upon written notification to the RRPA from the Town, the RRPA shall donate the constructed improvements and all associated documentation related thereto, including but not limited to any architectural drawings, plans, engineering reports and/or surveys, to the Town for charitable and public purposes. The RRPA acknowledges that it is not entitled to any just compensation for the donation of the improvements to the Town and that this donation is a material inducement for the Town to permit the development of the Activities upon Town-owned real property.

6. Dispute Resolution. The Parties will attempt in good faith to resolve any dispute arising out of or relating to this MOU promptly by face-to-face negotiations between representatives of each Party who have authority to settle the dispute.

7. Indemnification. To the fullest extent permitted by applicable law, each Party assumes full responsibility and liability for and shall indemnify and save harmless the other Party, its agents, employees, representatives, officers or assigns, from all liability and expense on account of any and all damages, claims or actions, costs and fees, reasonable attorneys' fees, including injury to and death of persons, arising from any act or omission occurring on the Property or performance of this MOU unless the act or omission was the result of the willful misconduct or gross negligence of the indemnified Party, its agents, employees, representatives, officers or assigns. This paragraph shall survive the termination or expiration of this MOU.

- 8. Insurance. [TO BE ADDED]

9. Notice. All notices and communications required under this Agreement shall be effective upon receipt by the Parties at the addresses set forth above.

10. Entire Agreement. This MOU constitutes the entire agreement and understanding of the Parties with respect to the subject matter of this MOU and supersedes all prior understandings and agreements, whether written or oral, among the Parties with respect to such subject matter.

11. Amendment. This MOU may not be modified, amended or terminated nor may any of its provisions be waived, except by an agreement in writing signed by the party against whom enforcement of any modification, amendment, termination or waiver is sought.

12. Governing Law. This MOU shall be governed by and construed and enforced in accordance with the laws of the State of New York, without giving effect to the principles of conflict of laws.

13. Counterparts. This MOU may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original, and all of which shall constitute one and the same instrument.

14. Severability. If any provision of this MOU is deemed to be invalid or unenforceable in any respect for any reason, the validity and enforceability of such provision in any other respect and of the remaining provisions of this MOU will not be impaired in any way.

IN WITNESS WHEREOF, the parties have duly executed this MOU as of the date first written above.

TOWN OF RUSH

By: \_\_\_\_\_  
Name:  
Title: Supervisor

RUSH RECREATION PARK  
ASSOCIATION, INC.

By: \_\_\_\_\_  
Name:  
Title: