

APPENDIX 3. MODEL SHARED DRIVEWAY AGREEMENT

DECLARATION OF EASEMENT FOR DRIVEWAY AND UTILITIES

DECLARATION (this "Declaration," made this ^ day of ^, 20^, by ^ (hereinafter referred to as "Declarant").

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain premises (the "Easement Area" shown on a map or plan entitled ^ which map is on file as "^" or to be filed with the Town Clerk of the Town of New Hartford to which reference may be had and which Easement Area comprises parts of Lots ^ as shown on the aforementioned map (when specifically referred to, Lots ^ shall be referred to by their lot number and when referred to collectively all of said lots shall hereinafter be referred to as the "Burdened Lots"); and

WHEREAS, Declarant does not desire to have Lots ^ as shown on the aforementioned map (the "Easement Properties") serviced by separate driveways, but rather to establish a mutual easement arrangement which will service the Easement Properties and which will provide ingress and egress to and from ^ [street] and provide a location for the installation of utilities to service the Easement Properties or any of the aforementioned lots individually; and

WHEREAS, Declarant desires to establish this Declaration of Easement to create an easement on, over, under and through the Easement Area for the benefit of the Easement Properties; and

WHEREAS, Declarant further desires to impose certain covenants and restrictions upon the use, operation and maintenance of the Easement Area;

WHEREAS, the Burdened Lots are specifically made part of this Agreement, and the owners of the Burdened Lots shall receive the benefits and be subject to the burdens contained herein; and

WHEREAS, the Easement Properties have been approved by the New Hartford Planning and Zoning Commission as part of a subdivision, pursuant to the New Hartford Subdivision Regulations.

NOW, THEREFORE, Declarant hereby submits the Easement Area to the terms, covenants, restrictions and easements set forth herein for the benefit of the Easement Properties as follows:

I. GRANT OF EASEMENT.

Declarant hereby grants and declares, to the extent described herein, for the benefit of the Easement Properties, an easement and right of way over and upon the Easement Area, which easement shall be appurtenant to and for the benefit of the Easement Properties and may be used by the owners of the Easement Properties, their heirs, successors, assigns, licensees and guests.

II. USE OF EASEMENT AREA.

The Easement Area shall be used for the purposes of ingress and egress to and from ^ [street] by vehicular and pedestrian traffic and for the installation, maintenance, repair, and replacement of utility lines (including lines for storm water discharge, electric, cable, telephone, sewer, water and other

residential utilities) together with any appurtenances related thereto (hereinafter referred to as "Utilities") in order to furnish utility services to the Easement Properties.

The owners of the Easement Properties (hereinafter collectively referred to as "Owners" and individually referred to as "Owner") shall have the right in common with the other Owners to enter on, over, under and through the Easement Area for the purpose of construction, installation, maintenance, repair and replacement of the driveway and of Utilities, provided however, that any Owner/Owners who shall do any work or have any work done affecting the Easement Area upon completion of the work shall repair that portion of the Easement Area to the condition that existed prior to such Owner's entry (except for any work done pursuant to the rights created herein) and shall at all times keep so much of the Easement Area open so that vehicular and pedestrian traffic shall have access from ^[street] to the Easement Properties.

III. ACT EXPEDITIOUSLY.

When utilizing the Easement Area the Owners shall do so as expeditiously as possible and in such manner as will cause the least possible disturbance to the other Owners.

IV. OWNERS OF BURDENED LOTS MAY CONTINUE TO USE EASEMENT AREA BUT MAY NOT INTERFERE.

The Owners of the Burdened Lots may continue to use the Easement Area in any way that will not prevent the use of the Easement Area by any owner for the purposes described herein. The Owners of the Burdened Lots shall not erect or allow any structures to be erected on the Easement Area, nor shall they plant or allow to be planted or grown any large trees or any other obstructions which would prevent the use of the Easement Area by the owners. Nothing contained in this paragraph shall diminish the rights and obligations of the owners of the Burdened Lots which are established in this Declaration.

V. MAINTENANCE AND REPAIR OF EASEMENT AREA.

The Owners shall maintain the Easement Area in its present condition or in the condition to which it is improved from time to time, free and clear of obstruction, shall repair the same as necessary, shall keep the same reasonably free and clear of ice and snow, and shall keep the Easement Area insured with respect to liability. The cost of all necessary repairs, maintenance, snow and ice removal, clearing of the driveway, and insurance thereon shall be paid equally by the Owners. Each owner shall be responsible for a proportional share of such cost computed by dividing one by the number of lots served by the driveway over the Easement Area (a "Required Share"). Notwithstanding the foregoing, no owner shall be responsible for any expenses hereunder until a Building Permit has been obtained from the Town of New Hartford to construct a building upon his lot. Therefore, when computing an Owner's Required Share hereunder, the lots for which no Building Permit has been issued shall not be included in the number of lots served by the driveway over the Easement Area.

The cost of maintenance, repair and replacement of Utilities within the Easement Area shall be borne by the specific Owner/Owners whose individual lot/lots is/are benefitted by such Utilities and if more than one Owner is benefitted, then such cost shall be borne on an equal basis. Once Utilities are installed in the Easement Area, then any of the Owners shall have the right to "tie in" to the Utilities, provided that they shall do so in a good and proper manner without damage to the Utilities. (The cost of the original installation of Utilities shall be paid by the Owner desiring said installation.) The obligations created in this paragraph deal with maintenance, repair and replacement.

The construction material utilized in the driveway shall not be changed unless a majority of the Owners agree to install a different surface, provided no such change shall be permitted that would violate

any land use permit issued by the Town of New Hartford and any such change shall conform to the requirements of any governmental authority.

The rest of this paragraph notwithstanding, any Owner who shall, through negligence or willful action, cause any damage which must be repaired hereunder, shall be responsible for the cost incurred to provide the repairs, maintenance and replacement necessitated by the negligence or willful action of that Owner, provided, however, that the Declarant and all subsequent Owners 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.

The cost for repairing, replacing, maintaining or improving the Easement Area, pursuant to this Agreement, shall be shared as set forth above. Except as herein provided, no costs of any kind shall be charged to any Owner, unless that Owner has agreed in writing to pay said costs. In the event that the Owner of any lot shall decide that expenditures shall be incurred for repair and replacing, maintaining or improving the Easement Area, then said Owner shall send written notice to the other Owners which shall request that the other Owners agree to pay their Required Share of the cost of such repair, replacement, maintenance or improvement. In the event that the other Owners agree to pay their Required Shares in writing, then the cost shall be shared accordingly. In the event that one or more of the other Owners do not agree in writing to pay their Required Share, then the Owner proposing said activity and any Owners who agree to pay their Required Share may undertake said activity solely at their own cost and expense. In that event, after the work is completed, the Owner/Owners performing the work may institute legal action against the other Owners who did not contribute to the cost of such activity. In the event that a court should issue a final, non-appealable ruling that the work was necessary to maintain the Easement Area to the standard required hereunder, and if the work was done to the quality required, then the Owners who should have shared said cost shall be responsible for their Required Shares of the cost, and the Owner/Owners who performed the work shall be entitled to be reimbursed by the other Owners not only for their Required Share, but also for the expenses incurred in said collection including a reasonable attorney's fee, if a court action is instituted. All repairs, replacement, maintenance or improvements made to the Easement Area shall be made to a quality suitable to accomplish the purposes for which the Easement Area has been created.

VI. PERMANENT EASEMENT.

The easement created herein shall be a permanent easement, and shall bind the Declarant, all subsequent Owners, their heirs, successors and assigns.

VII. INTEREST DUE WITH REGARD TO UNPAID OBLIGATIONS.

In the event of a failure by any Owner to pay his Required Share of any costs or expenses incurred hereunder, such costs and expenses shall, commencing thirty (30) days after the date of billing therefor, bear interest at the rate of twelve (12%) percent per annum until paid.

VIII. GRANT AND RESERVATION.

Declarant hereby reserves the right to grant rights of access over the Easement Area to any utility company required by the Department of Public Utility Control of the State of Connecticut or to the Town of New Hartford for the purposes herein contained. The Owners will sign any documents required by the aforementioned utility companies or the Town of New Hartford to carry out the intent of this paragraph which is to provide utility service to the Easement Properties.

IX. WAIVER OF TOWN OBLIGATION TO MAINTAIN

Pursuant to the requirements of the New Hartford Subdivision Regulations, the Owners of the lots comprising the Easement Properties acknowledge and agree that the Town of New Hartford shall never be required to plow, maintain, assume ownership or provide school bus service or any other service upon or along the driveway within the Easement Area. The Easement Area is a private improvement, and owners of the Easement Properties agree that they will take no action which seeks to impose any duty or obligation upon the Town of New Hartford, or any agency, employee, contractor, or agent thereof, with respect to the Easement Area.

X COVENANTS, AGREEMENTS AND RESTRICTIONS.

The covenants, agreements and restrictions set forth herein shall be effective as of the date hereof and shall continue in full force and effect until written agreement of all of the Owners of the lots comprising the Easement Properties and all parties holding mortgages secured by any lots comprising the Easement Properties shall modify this Declaration of Easement, which modification shall be effective when recorded in the New Hartford Land Records and upon approval of the New Hartford Planning and Zoning Commission as an amendment to any Subdivision issued pursuant to the New Hartford Subdivision Regulations for any or all of the Easement Properties. The covenants, agreements and restrictions herein may not be terminated nor may any limit be imposed on the annual expenses to be paid by any owner.

XI. SUBSEQUENT MODIFICATIONS.

All modifications to this Agreement shall be in writing and signed by the Owners of all properties benefitted or burdened by the easement rights created herein. However, in the event that Declarant shall request that minor modifications be made to this Agreement, or to the rights created hereunder, which shall not substantially interfere with any of the rights or obligations created hereunder, then the Owners of said properties will sign a modification prepared by Declarant in order to accomplish said minor modifications.

XII. MISCELLANEOUS.

A. The covenants, agreements and restrictions contained herein shall be covenants running with and for the benefit of and burden upon the Easement Properties and shall be binding upon and inure to the benefit of the Owners thereof, and their respective heirs, successors and assigns. The rights granted herein shall be considered to create permanent easements.

B. In the event that the Owners desire to jointly make any decisions hereunder, they shall be made by majority vote of the Owners of the lots comprising the Easement Properties.

C. Each of the lots comprising the Easement Properties shall be treated as if it has one Owner. If any of said lots are owned by more than one person, then all of said persons must unanimously agree on any decision to which they are entitled to vote hereunder. Therefore, if all of said persons cannot unanimously agree, then the Owner of said lot shall have no vote.

D. All communications sent pursuant to this Declaration shall be sent in writing and sent by certified mail to the last known address of the recipient.

XIII. MERGER.

The easement rights created herein shall not merge with the fee ownership interest of any lot.

XIV. RESTORATION.

At any time that any Owner shall exercise any rights hereunder, then, when said activity is completed, the Easement Area shall be restored to the condition it was in immediately prior to said activity, except to the extent permitted hereunder.

IN WITNESS WHEREOF, the designated Declarant has hereunto caused its hand and seal to be set as of the day and year first above written.

Signed, Sealed and Delivered
in the Presence of:

^[Name of Declarant]

By:

STATE OF CONNECTICUT)

COUNTY OF ^)

) ss. ^

, 20____

Personally appeared ^, signer and sealer of the foregoing instrument and acknowledged the same to be his free act and deed as such President and the free act and deed of said corporation, before me.

Commissioner of the Superior Court
Notary Public
My Commission Expires:

