

Common Driveway Declaration

THIS INDENTURE, made this ____ day of _____, _____, by _____, residing at _____, hereinafter referred to as the “Declarant,”

WITNESSETH

WHEREAS, Declarant is the owner of lands in the Town of East Hampton situate at _____, said lands being bounded and described as follows:

**[EXHIBIT “A”]
[Describe individual parcels of land by metes and bounds
or by reference to file map lot number.
Describe only the parcels affected by the common driveway.]**

WHEREAS, Declarant is required, pursuant to subdivision approval granted by the Planning Board of the Town of East Hampton in a resolution adopted [insert date] , to create mutual easements for the purpose of ingress and egress to the above described lots or parcels of land and for the installation of utilities and all other lawful purposes in favor of these parcels, so that there will be only one (1) common access to serve all of these lots; and

WHEREAS, Declarant desires to provide for such shared driveway access to and from _____ [street name] _____;

NOW, THEREFORE, be it declared as follows:

1. These lots described above shall have as common driveway access to and from _____ [street name] _____ the following described parcel of land:

**[EXHIBIT “B”]
[Describe common driveway easement.]**

2. The use of the premises described in Exhibit “B” shall be subject to the following restrictions:

[Warning-the language in this paragraph may need to be adjusted to suit the particular circumstances, e.g., the number of lots to which it applies or the particular preference of the Declarant regarding sharing or maintenance costs.]

(a) The lot owners shall have the joint, equal, and mutual right to use the private roadway described in Exhibit “B” for the purpose of ingress and egress and placement of utilities.

(b) The terms “lot owner” or “lot owners,” as used in this Declaration, shall be deemed to include any heirs, distributees, successors, or assigns of the particular lot owner or lot owners.

(c) Each lot owner affected by this Declaration, by accepting a deed to or taking title to any part of the lands described in Exhibit “A” above, does hereby authorize and accept, for the lot owner and his/her heirs, distributees, successors, and assigns, all of the conditions, obligations, restrictions, and provisions of this Declaration.

(d) The word “maintenance,” as used in this Declaration, shall be deemed to mean all costs and expenses in connection with said private roadway, including the costs of sweeping, surfacing and resurfacing, regravelling, filling in of holes, and all those items necessary to make it convenient and safe for the owners of the aforesaid lots to use the private roadway described in Exhibit “B”.

(e) The owners of the respective lots, or any portion thereof, shall determine what maintenance shall be done on the road and the amount of money to be expended

therefore. Each lot owner shall be responsible for the proportion of expenses that his/her vote has to the entire number of votes eligible to be cast.

(f) All decisions for improvements and/or maintenance of the private roadway shall be made by majority vote of the lot owners. Proxy votes shall not be acceptable. There shall be one (1) vote per lot. Any lot owner may initiate a vote on any maintenance or improvement matter by sending a notice by certified mail, return receipt requested, to all other lot owners. Said notice shall contain all information necessary to an informed decision on the matter. Any lot owner not voting affirmatively or negatively within two (2) weeks of the mailing of that notice shall be bound by the decision of those who do vote. A tie vote shall be considered approval of the proposition.

(g) All lot owners agree that the roadway shall always be maintained so as to be passable by ordinary passenger vehicles and this shall include prompt repair of any “potholes” or similar defects in the road which cause the roadway to become substandard.

(h) In the event any lot owners fail to pay their proportionate share of maintenance expense within seven (7) days of notification of charges, such unpaid monies may be collected proportionately from each of the other lot owners. In this event all lot owners having duly paid both their proportionate share of expenses and that of the defaulting lot owner shall be deemed the contractors as defined in the New York Lien Law. The lot owner who has not paid his/her proportionate share shall subject his/her real property to the liens of those lot owners who have paid their share of maintenance expense. The lot owners who have paid their proportionate share of expenses may also commence an action against the defaulting lot owner, in a court of appropriate jurisdiction, in order to recover the unpaid monies. In any action commenced against a

defaulting lot owner, there shall be a presumption that the maintenance work for which monies are owing was validly authorized by the majority of the lot owners and was competently performed by the contractor who did the work. A defaulting lot owner shall be liable for all costs and expenses, including but not limited to attorney's fees which are incurred by the other lot owners in recovering the defaulting lot owner's unpaid share of expenses.

(i) Notwithstanding anything to the contrary herein, each and every lot owner shall repair at his/her sole cost and expense any damage done to the roadway by construction traffic, machinery, or other implements used in construction of improvements on the particular lot owner's land. Any failure to make or pay for such repair may be treated by the other lot owners as a default in the payment of maintenance expense, in accordance with subparagraph (h) above.

3. This declaration is binding upon all grantees, heirs, distributees, successors, or assigns of any portion of the lands described in Exhibit "A" above.

4. This Common Driveway Declaration may not be revoked, rescinded, extinguished, modified or amended without the express written permission of a majority plus one (1) of the East Hampton Town Planning Board or its legal successor, except that the provisions hereof which relate solely to the making of repair or improvement decisions or the allocation of expenses among lot owners may be revoked or modified without such Board's approval.

IN WITNESS WHEREOF, the Declarant has hereunto set his/her hand and seal
as of the day and year first above written.

ACKNOWLEDGEMENT*

STATE OF NEW YORK)

ss.:

COUNTY OF _____)

On the ____ day of _____ in the year _____, before me, the undersigned, personally appeared _____, known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she /they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public