

**DECLARATION OF DRIVEWAY EASEMENT, ACCESS AND
MAINTENANCE AGREEMENT, AND DRAINAGE EASEMENT**

THIS DECLARATION, dated the _____ day of November, 2004, is made by Tower Hill 2014 LLC (“Declarant”), with an address at 365-381 Tower Hill Road, Amenia, New York, 12501, and pertains to the real property and improvements thereon located at 365-381 Tower Hill Road, Amenia, New York (Dutchess County tax grid no. 132000-7065-00-266271-0000) (the “Property”).

WHEREAS, on June 14, 2023, the Town of Amenia Planning Board conferred minor subdivision approval for the creation of three (3) lots on the Property, composed of 44.79+/- acres (known as Lot 1), 88.29 +/- acres (known as Lot 2), and 32.36+/- acres (known as Lot 3); and

WHEREAS, the final subdivision map of the Property creating said Lots has been filed in the Office of the Dutchess County Clerk on _____, as filed map number _____ (the “Map”); and

WHEREAS, the said three Lots are to served by a common driveway and access areas for ingress and egress for each Lot (the “Driveway”), and Declarant wishes to make provisions for the ability of all Lot owners to be able the access the areas that are common to all Lot owners.

WHEREAS, a drainage system and related components exists on the Property, beginning on Lot 1 and running through lots 2 and 3, and Declarant wishes to make provisions for the ability of all Lot owners to use and access the drainage system, to be able to ensure proper drainage through and beyond the said Lots.

NOW THEREFORE, in consideration of One Dollar (\$1.00) and the mutual promises and stipulations hereinafter set forth, Declarant establishes as follows:

1. Definitions.

For purposes of this declaration, the following words are defined as follows:

A. "Maintenance" means those regularly recurring tasks of repair, restoration and care required to keep the Driveway useable and open for safe vehicular passage. Such tasks shall include, but not be limited to, the filling in of depressions in said Driveway and snow plowing or removal.

B. "Improvement" means the resurfacing, reconstruction, and care required to sustain and extend the useful life of the Driveway for safe vehicular passage, and any action relating to the Driveway which may be required by any law, regulation, ordinance or governmental authority. This definition is intended to encompass any work not considered Maintenance.

C. "Owner" means the record owner of any of the three (3) said Lots.

D. "Driveway" means the existing gravel drive reflected on the Map, as "Overall Common Drive Area, Access Easement No. 1 and Access Easement No. 2", as well as any future modifications or improvements made to the Driveway within the easements established hereby.

E. "Drainage System" means the various drainage system components located on Lot 1 and running to and through Lots 2 and 3, and ending on the easterly line of Lot 3, as shown on the Map.

2. Declaration of Easements.

A. Declarant hereby declares that the Lots shall be subject to, and all shall benefit from, an easement for pedestrian and vehicular access, for ingress and egress over the Driveway. The location of the easement and Driveway hereby declared are set forth on the Map. In addition, the Owner of Lot 3 is conferred an easement to connect to the Driveway, in order to construct its own driveway to reach said Lot, as shown on the Map.

B. Declarant hereby declares that the Lots shall be subject to, and all shall benefit from, an easement for the Drainage System, allowing any Lot Owner to use and access the Drainage System, as shown on the Map, in order to be able to keep it clear and maintained, for the free passage of water. This shall not include the right to enlarge the Drainage System, but only to be sure it is maintained.

3. Allocation of Financial Responsibility Among Lot Owners.

The Owner of Lot 1 shall be liable for one-third (1/3) of the cost of the Maintenance and Improvement of the Driveway.

The Owner of Lot 2 shall be liable for one-third (1/3) of the cost of the Maintenance and Improvement of the Driveway.

The Owner of Lot 3 shall be liable for one-third (1/3) of the cost of the Maintenance and Improvement of the Driveway.

4. Use and Condition of Driveway.

No Owner shall use the Driveway in any manner that may result in damage thereto other than normal wear and tear. Any damage caused to the Driveway by an Owner, his guests, agents or employees (including damage to the Driveway while an Owner is constructing improvements upon its Lot) shall be repaired by that Owner at its sole cost and expense.

The Driveway will at all times be of sufficient width, grade and cover so as to provide access to vehicles, including emergency vehicles, under all weather conditions. The Owners are also obligated to undertake the Maintenance and Improvements that may be required to keep the Driveway in a condition that is consistent with the specifications and requirements set forth in the subdivision map pertaining to the Lots, if any, or the specifications set forth by any law or municipal regulation applicable to the Lots enacted after final subdivision approval.

5. Determination of Repairs.

The Owner of Lot 1 shall determine on an annual basis the scope and nature of the contemplated Maintenance and Improvements to the Driveway. The costs of Maintenance and Improvements shall be paid for by the Owners within thirty (30) days of being billed therefor. The Owners may agree to establish a reasonable reserve therefor.

Notwithstanding anything to the contrary in this agreement, nothing shall preclude an Owner from voluntarily undertaking Maintenance and Improvements to the Driveway at their sole cost and expense without contribution from any other Owner; provided however, that any such Maintenance or Improvement shall not interfere with any other Owner's use of the Driveway, or be inconsistent with the traditional appearance of the Driveway or any term of this agreement.

6. Binding Effect.

This agreement shall run with the Lots and be binding upon each Owner, his or her heirs, successors and assigns.

7. Amendment.

This agreement shall not be amended without the written consent of all Owners.

8. Governing Law and Enforcement of Agreement.

The captions in this agreement are for convenience only and shall not be considered in construing this agreement. This agreement shall be governed by and construed under the law of the State of New York.

Failure of any Owner to fully pay for their share of the cost of the Maintenance and Improvement of the Driveway as set forth herein, or failure of any Owner to perform any other obligations set forth in this agreement, shall give rise to a cause of action for money damages and/or equitable relief to any other Owner, with associated interest at a rate of ten percent (10%) and associated costs, including, but not limited to, reasonable attorney's fees.

For any action commenced hereunder, jurisdiction and venue shall lie in the Dutchess County Supreme Court. To be entitled to commence any such action, the Owner seeking enforcement of this agreement shall notify the defaulting Owner of its intention to commence said action on thirty (30) days written notice.

IN WITNESS WHEREOF, this declaration has been duly executed this agreement on the date first written above.

Tower Hill 2014 LLC

By: _____
Philip Mactaggart, Manager

STATE OF NEW YORK)
) ss.:
COUNTY OF DUTCHESS)

On the day of November, 2024, before me, the undersigned, a notary public in and for said state, personally appeared Philip Mactaggart, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual executed the instrument.

Notary Public

Record and Return:

Allan B. Rappleyea, Esq.
P.O. Box 679
Millbrook, New York 12545

