

**DECLARATION OF
COMMON DRIVEWAY EASEMENT, UTILITY EASEMENT AND MAINTENANCE
AGREEMENT**

THIS DECLARATION made May , 2020, is intended to refer to a Subdivision of Lands in the Town of Marlborough, County of Ulster and State of New York of lands owned by Marlboro Flats LLC (“Declarant”) having an address of 20 Cricchio Lane, Marlboro, New York 12542, whose property consists of lots designated as “Lot 1”, “Lot 2” and “Lot 3” on a subdivision map entitled “Subdivision of Lands of Marlboro Flats LLC”, bearing last revision date of May , 2020, and which was the subject of a resolution of final approval issued by the Town of Marlboro Planning Board on _____ 2020; and

WHEREAS, located on said premises as shown on the aforesaid map is a COMMON DRIVEWAY to be utilized for purposes of residential ingress and egress for Lot 1 and Lot 3; and

WHEREAS, the COMMON DRIVEWAY is more particularly described within Exhibit “A” annexed hereto; and

WHEREAS, located on said premises as shown on the aforesaid map is a UTILITY EASEMENT to be utilized for purposes of the installation, improvement, maintenance and repair of water, sewer and other customary underground utilities to service Lot 2 and/or Lot 3 (the “UTILITIES”); and

WHEREAS, the UTILITY EASEMENT is more particularly described within Exhibit “B” annexed hereto; and

WHEREAS, it is in the best interest of all parties who do or will own the aforesaid properties (“Owners”) to have an agreement that sets forth the responsibilities for the expenses of the installation, improvement, maintenance or repair of the COMMON DRIVEWAY and UTILITIES; and

WHEREAS, it is the intention of Declarant to file this declaration as a condition of approval of the aforesaid map, and that all the provisions of this declaration run with the lands covered hereby.

NOW, THEREFORE, in furtherance of the foregoing and in consideration of the mutual covenants contained herein, Declarant hereby grants and declares the following:

COMMON DRIVEWAY EASEMENT AND MAINTENANCE AGREEMENT

1. The Declarant hereby grants to the Owner of Lot 1 and the Owner of Lot 3 a mutual and non-exclusive right to use the COMMON DRIVEWAY for all purposes of ingress and egress.

2. Declarant, and the subsequent Owners of Lot 1 and Lot 3, their successors, heirs and assigns, shall expressly refer to this Declaration in any deeds conveying title to their lots and shall transfer such title subject to the terms and conditions of this Declaration.

3. The Owners shall keep and maintain the COMMON DRIVEWAY free from obstruction, and in an open and passable condition at all times and under all conditions, so it can be utilized by ordinary passenger vehicles, as well as emergency medical and fire vehicles.

4. All decisions for any installation, improvement, maintenance and/or repair of the COMMON DRIVEWAY, and for the election of a Manager as hereinafter provided, shall be made only upon the majority vote of the Owners of Lot 1 and Lot 3. Each lot shall have one vote irrespective of the number of owners of that lot. "Maintenance" shall include, but shall not be limited to, surfacing, paving, re-graveling, filling potholes, grading, sweeping, drainage improvements, snow and ice removal, and tree trimming.

5. Any and all expenses for the improvement, maintenance and/or repair of the COMMON DRIVEWAY shall be borne by the Owners of Lot 1 and Lot 3, in the following proportionate shares:

- a. Lot 1: Fifty percent (50%) thereof; and
- b. Lot 3: Fifty percent (50%) thereof.

6. The Owners of Lot 1 and Lot 3 shall meet at least annually to discuss the condition of and the need for improvement, maintenance and/or repair of the COMMON DRIVEWAY. The Owners of Lot 1 and Lot 3 may elect a Manager, in the event a majority thereof shall deem it necessary, who will advise them of the condition, and any need for and the expenses of the improvement, maintenance and/or repair of the COMMON DRIVEWAY. The Manager shall serve for a term of one (1) year or such other term(s) as the Owners by majority vote shall determine. The Manager may also be an Owner. If any improvement, maintenance and/or repair of the COMMON DRIVEWAY is performed, the Manager shall immediately notify the Owners of Lot 1 and Lot 3 of the total amount of any invoice(s) and their

proportionate share thereof, and the Owners shall immediately deliver payment of the same to the Manager who in turn shall immediately pay the contractor or entity retained to perform such improvement, maintenance and/or repair.

7. Unless otherwise agreed by a majority of the Owners of Lot 1 and Lot 3, in the event accumulation of snow exceeds three (3) inches in depth (as an average depth), the Manager is authorized to engage a contractor to remove the snow from the COMMON DRIVEWAY without further consultation with or authorization from the Owners.

8. If an Owner of Lot 1 or Lot 3 does not comply with a decision made by the majority of the Owners of Lot 1 and Lot 3, and does not contribute his/her proportionate share of the expenses for the improvement, maintenance and/or repair of the COMMON DRIVEWAY within ten (10) days of the due date for the same, then such non-compliant Owner shall be liable to the other Owner and shall be obliged to pay interest at a rate of twelve percent (12%) per annum on the unpaid charges, together with all expenses, including reasonable attorney's fees incurred to collect the same whether or not any legal proceeding is commenced. Such non-compliant Owner shall also be liable to the other Owner and subject to an action or actions brought by the other Owner for damages or equity. Nonpayment shall be grounds for filing a lien against the property of offending party.

9. In the event of deadlock between the Owner of Lot 1 and Lot 3 in reaching a decision on maintenance improvement, maintenance and/or repair issues of the COMMON DRIVEWAY, then either Owner of Lot 1 or Lot 3 shall be entitled to demand binding arbitration as a remedy. In the event the Owners of Lot 1 and Lot 3 cannot agree upon an impartial arbitrator, then either may pursue arbitration pursuant to the prevailing and applicable rules of the American Arbitration Administration. The non-prevailing party shall suffer the costs of arbitration, including the reasonable and necessary attorney's fees incurred by the prevailing party.

10. The Owners of Lot 1 and Lot 3 agree to indemnify and hold harmless the other lot Owner from any and all liability for injury or damage when such injury or damage shall result from, arises out of, or be attributable to any installation, improvement, maintenance or repair of the COMMON DRIVEWAY pursuant to this Declaration.

UTILITY EASEMENT

11. Declarant hereby grants to the Owner of Lot 2 and the Owner of Lot 3 a permanent easement for the installation, improvement, maintenance and repair of the UTILITIES over, under and upon the UTILITY EASEMENT.

12. Declarant, and the subsequent Owners of Lot 1 and Lot 3, their successors, heirs and assigns, shall expressly refer to this Declaration in any deeds conveying title to their lots and shall transfer such title subject to the terms and conditions of this Declaration.

13. Unless otherwise agreed to by both Owners of Lot 2 and Lot 3, any and all expenses for the installation, improvement, maintenance and/or repair of the UTILITIES shall be borne 100% by the Owner of the lot for which such installation, improvement, maintenance and/or repair is necessary. In the event the installation, improvement, maintenance and/or repair is necessary for UTILITIES that service both Lot 2 and Lot 3, any and all expenses for such improvement, maintenance and/or repair shall be borne by the Owners of Lot 2 and Lot 3, in the following proportionate shares:

- a. Lot 2: Fifty percent (50%) thereof; and
- b. Lot 3: Fifty percent (50%) thereof.

14. The Owners of Lot 2 and Lot 3 shall meet at least annually to discuss the condition of and the need for improvement, maintenance and/or repair of the UTILITIES. The Owners may elect a Manager, in the event a majority thereof shall deem it necessary, who will advise them of the condition, and any need for and the expenses of the improvement, maintenance and/or repair of the UTILITIES. The Manager shall serve for a term of one (1) year or such other term(s) as the Owners by majority vote shall determine. The Manager may also be an Owner. If any improvement, maintenance and/or repair of the UTILITIES is performed, the Manager shall immediately notify the Owners of the total amount of any invoice(s) and their proportionate share thereof, and the Owners shall immediately deliver payment of the same to the Manager who in turn shall immediately pay the contractor or entity retained to perform such improvement, maintenance and/or repair.

15. The Owners of Lot 2 and Lot 3 agree to indemnify and hold the other lot Owner harmless from any and all liability for injury or damage when such injury or damage shall

result from, arises out of, or be attributable to any installation, improvement, maintenance or repair of the UTILITIES pursuant to this Declaration.

16. If any Owner does not comply with a decision made by the majority of the Owners and does not contribute his/her proportionate share of the expenses for the improvement, maintenance and/or repair of the UTILITIES within ten (10) days of the due date for the same, then such non-compliant Owner shall be liable to the other Owners and shall be obliged to pay interest at a rate of twelve percent (12%) per annum on the unpaid charges, together with all expenses, including reasonable attorney's fees incurred to collect the same whether or not any legal proceeding is commenced. Such non-compliant Owner shall also be liable to the other Owner and subject to an action or actions brought by the other Owner for damages or equity. Nonpayment shall be grounds for filing a lien against the property of offending party.

17. In the event of deadlock between the Owner of Lot 2 and Lot 3 in reaching a decision on the installation, improvement, maintenance and/or repair issues of the UTILITIES, the owner of either respective Lot shall be entitled to demand binding arbitration as a remedy. In the event the Owners cannot agree upon an impartial arbitrator, then either may pursue arbitration pursuant to the prevailing and applicable rules of the American Arbitration Administration. The non-prevailing party shall suffer the costs of arbitration, including the reasonable and necessary attorney's fees incurred by the prevailing party.

18. This Declaration shall be recorded and shall be deemed a covenant running with the lands affected hereby and shall inure to the benefit of and be binding upon the Declarants, all Owners, and their successors, heirs and assigns forever.

19. This declaration will not be effective until and unless the aforesaid subdivision map is filed with the Clerk of Ulster County.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the date first set forth above.

Marlboro Flats LLC

By: Frank Cricchio, Member

By: Tina Cricchio, Member

