

**DECLARATION AND AGREEMENT
OF SHARED DRIVEWAY EASEMENT
AND MAINTENANCE AGREEMENT**

THIS DECLARATION AND AGREEMENT, dated this ____ day of _____, 2023, is made by Riley Trust of May 2013 (hereinafter referred to as the “Declarant” and/or “Tax Map 19 Lot 17-1C Owner”) and Adrienne E. Heath & Cody Austin Heath (hereinafter referred to as the “Tax Map 19 Lot 17-1 Owner”).

WITNESSETH

WHEREAS, Declarant owns that certain parcel of real estate located in Strafford, Strafford County, New Hampshire, known as 845 Second Crown Point Road, Strafford, NH, as shown on Tax Map 19, Lot 17-1C is hereby referred to as “Declarant” and or “Tax Map 19 Lot 17-1C Owner”. Reference is made to Strafford County Registry of Deeds book 4169 page 419 signed September 30, 2013.

WHEREAS, Adrienne E. Heath & Cody Austin Heath will purchase a certain parcel of real estate located in Strafford, Strafford County, New Hampshire, known as ____ Second Crown Point Road, Strafford, NH, as shown on Tax Map 19, Lot 17-1 is hereby referred to as “Tax Map 19 Lot 17-1 Owner”. Reference is made to Strafford County Registry of Deeds to be recorded.

WHEREAS, the Shared Driveway & Proposed 40 foot Right of Way as shown on plan entitled “Riley Conservation Subdivision located at 845 2nd Crown Point Road, Strafford, Strafford County, New Hampshire for Riley Trust of May 2013” prepared by Stonewall Surveying dated _____, __, 2013 to be recorded at the Strafford County Registry of Deeds and hereafter referred to as the Plan.

WHEREAS, it is hereby acknowledged that the real property identified as “Proposed 40 foot Right of Way” (hereinafter the "Shared Driveway") is privately owned property and not a town owned or maintained roadway within the statutory meaning of the word “Drive” or “Road”. It is until further action by the municipality and the Declarant be considered a private driveway and not a roadway.

WHEREAS, the Declarant intends a shared driveway for vehicular and pedestrian ingress, egress to and from with utilities the Properties located on and off said shared driveway to said Second Crown Point Road as depicted on the Plan (hereinafter the "Shared Driveway"); and

WHEREAS, the Shared Driveway shall include all associated improvements, such as bridges, guide rails, culverts, and drainage structures,

WHEREAS, the Shared Driveway will be maintained as provided herein by the owners of the Properties, their successors and assigns.

NOW, THEREFORE, in consideration of one dollar (\$1.00) and other consideration, the Declarant and Owner of Tax Map 19 Lot 17-1C shall for themselves and their successors and assigns do hereby declare as follows:

**GRANT AND PURPOSE OF
EASEMENT:**

- The recitations above set forth are incorporated in this Declaration as if fully set forth and adopted herein.

- The Declarant does hereby declare a permanent non-exclusive access easement over the “Shared Driveway” for ingress and egress to/from Second Crown Point Road over and upon the Shared Driveway as shown on the Plan to be utilized by the owners of the Properties. All access to/from the Properties shall be over the Shared Driveway.

- The above-described Shared Driveway may be used by the owners of the aforesaid lots off said “Shared Driveway” for the following purposes and no others:

- for the purpose of constructing, maintaining, operating, using, improving, and repairing the Shared Driveway, with or without vehicles from the public highway to the Properties;

- for purposes of constructing, replacing, repairing, operating, protecting, improving and maintaining common utility lines, poles, cables, crossarms, wires, guys, braces, underground conduits and all other appurtenances and fixtures as customary, ordinary, convenient or necessary to provide electric, telephone, cable television and/or other utility services to the Properties; and

- no one shall obstruct or allow to be obstructed any portion of the Shared Driveway or interfere with its use, or prevent ingress and egress of persons and motor vehicles over the same. The parking of motor vehicles upon the Shared Driveway shall be prohibited.

**MAINTENANCE OF SHARED
DRIVEWAY**

- The owners of the Properties shall be responsible to maintain the Shared Driveway in a good and safe condition and to perform all necessary, prudent and ordinary repairs and maintenance to the Shared Driveway. The cost of such maintenance, repairs and replacement (if necessary) shall be shared equally by the owners of the Properties, with each lot owner responsible for an equal share of the of such expense.

- The annual charges for owner of each of the Properties shall be determined by the owners of the Properties.

- The owners of the Properties shall meet annually, on or about April 1st of each year, or at such other times as the owners of the Properties may mutually agree, to review the maintenance and expense issues that affect the Shared Driveway and to establish the annual estimated costs for the coming twelve (12) months. The owner of **Tax Map 19 Lot 17-1C** shall be responsible for arranging for all maintenance, repair and replacement work deemed necessary by the owners of the Properties. The owners of the Properties may, as they decide to either (a) establish an escrow for such annual expenses from which such annual expenses will be paid by the owner of **Tax Map 19 Lot 17-1C** from such escrow funded by the owners of the Properties equally; or (b) agree that upon an invoice for any such expense, each owner shall pay their share thereof. In the absence of agreement otherwise, the owner of all Lots off the Shared Driveway shall pay each such expense in the first instance and the owner of said Lots shall reimburse the owner of **Tax Map 19 Lot 17-1C** for its share of the Shared Driveway expenses within fifteen (15) days following receipt of an invoice therefore. In the event the owner of the Lots off the Shared Driveway fail to take responsibility for the maintenance, repair and replacement of the Shared Driveway as provided herein, the owner of **Tax Map 19 Lot 17-1C** shall be entitled to undertake such maintenance, repair or replacement and seek reimbursement from the owners off the Shared Drive only after the expiration of a thirty (30) day written notice to the said owners.

- If any such owner fails to pay of his or her share of such Shared Driveway expenses within thirty (30) days after it is due, the other owner shall have the right to interest at the rate of ten percent (10%) per annum on the unpaid amount and said amount shall become a lien upon the non-paying owner's property. In the event that any litigation arises between the owners of the Properties under this Declaration, the prevailing party shall be entitled to recover its costs, including but limited to reasonable attorney's fees, in addition to such other and further relief as may be granted by a court of competent jurisdiction.

- Maintenance and Repairs Defined – The repairs and maintenance to be undertaken and performed with respect to the Shared Driveway shall include, but are not limited to the following:

- General maintenance, including snow plowing, clearing of vegetation and repair work necessary to keep the Shared Driveway in good order and repair and in safe, passable condition for motor vehicles, including emergency vehicles, under all traffic and weather conditions; and

- Any additional repairs or maintenance or replacement deemed necessary or advisable, but not included within the maintenance and repair specified above, will not be undertaken except with the express written consent of each of the owners of the Properties and an assumption by each in writing of their proportionate share of financial liability for the cost of such additional repairs or maintenance.

MISCELLANEOUS

- The owners of the Properties shall each obtain liability or other insurances to protect against risk of loss or claims; or if desired by the owners of the Properties, and if such insurance is available, the insurance cost can be shared with each lot served by the Shared Driveway contributing its share.

- This Declaration shall burden and inure to the benefit of the owners of the Properties and all subsequent owners of the Properties and the covenants herein shall run with the land and shall be binding on the parties hereto and their respective successors and assigns.

- Declarant represents and declares that the Properties shall be held, transferred, conveyed, and occupied subject to the easement set forth herein.

- Each grantee accepting a deed, lease or other instrument conveying any interest in the Properties, whether or not the same incorporates or refers to this Declaration, covenants for himself, his heirs, personal representatives, successors and assigns to observe, perform and be bound by this Declaration.

- This Declaration may only be amended or modified by a written agreement signed and acknowledged by the Declarant or Declarant's successors or assigns who are the owners of the Properties at the time subject to this Declaration and contributing a share of the upkeep and maintenance costs. Any such amendment or modification shall take effect upon its recording in the Rockingham County Registry of Deeds bearing the acknowledged signatures of all the owners of the Properties stating that such approval has been duly obtained. Any such amendment or modification shall not terminate the continuing easement in common, except upon unanimous consent of the owners of the Properties. Any termination, alteration or modification of this Declaration, in whole or in part, shall require consent of the Town of Strafford Planning Board.

- Should any covenant, easement or restriction, or any article, section, subsection, sentence, clause, phrase or term in this Declaration herein contained be declared to be void, invalid, illegal or unenforceable for any reason by the adjudication of any court or other tribunal having jurisdiction, such judgment shall in no way affect the other provisions hereof which are hereby declared to be several and which shall remain in full force and effect.

Executed this ____ day of _____ 2023.

Witness
Trustee
By:
Riley Trust of May 2013 – Dal Ray Riley,
(Declarant)

Witness
Trustee
By:
Riley Trust of May 2013 – Joanne D. Riley,
(Declarant)

State of New Hampshire
County of _____

Then personally appeared before me on this _____ day of _____ 2023,

Notary Public/Justice of the
Peace Commission expiration:

Executed this _____ day of _____ 2023.

Witness
Lot 17-1)
By: _____
Adrienne E. Heath (Tax Map 19

Witness
Lot 17-1)
By: _____
Cody Austin Heath (Tax Map 19

State of New Hampshire
County of _____

Then personally appeared before me on this _____ day of _____ 2023,

Notary Public/Justice of the
Peace Commission expiration: