

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

**THIS DECLARATION**, dated this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ by Jerome Murray and Linda Murray with an address at 205 Falls Road, PO West Fall, NY 14170 (hereinafter referred to as “Declarant”).

**WITNESSETH**

**WHEREAS**, the Declarant is the owner in fee of the property known as 211 Falls Road , SBL# 199.00-4-14, in the Town of Aurora, Erie County, New York, which is more fully described in Exhibit A (hereinafter the “Property”); and

**WHEREAS**, Declarant has made an application to the Town of Aurora Town Board to for a dwelling group and Open Development Area on the property as shown on the Survey titled Exhibit B.

**WHEREAS**, the Declarant proposes a shared driveway for Dwelling 1 and Dwelling 2 located on the Property for access to and from Falls Road (hereinafter the "Shared Driveway"); and

**WHEREAS**, the Declarant is responsible for constructing the Shared Driveway to be utilized by the owners of Dwellings 1 and 2 and the Shared Driveway will be constructed to the specification as required by Town Code; and

**WHEREAS**, the owners of Dwelling 1 and Dwelling 2 will provide for all further improvements, maintenance upkeep and snow removal as specified below.

**NOW, THEREFORE**, in consideration of one dollar (\$1.00) and other consideration, the Declarant for itself, its heirs, successors and assigns does hereby declare as follows:

**GRANT AND PURPOSE OF EASEMENT:**

- 1) The recitations above set forth are incorporated in this Declaration as if fully set forth and adopted herein.
- 2) The Declarant does hereby declare a permanent 50 foot wide non-exclusive access easement for ingress and egress over and upon the Shared Driveway, as shown on Exhibit B, to be utilized by the owners of Dwelling 1 and Dwelling 2.
- 3) The above described Shared Driveway may be used by the owners of the aforesaid Dwellings benefited thereby for the following purposes and no others:
  - a) for the purpose of constructing, maintaining, operating, using, improving, and repairing a driveway for access, with or without vehicles from the public highway to the Dwellings benefited thereby.
  - b) for purposes of constructing, replacing, repairing, operating, protecting, improving and maintaining common utility lines, poles, cables, 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 benefited Dwellings.
- 4) No party shall obstruct any portion of the Shared Driveway or interfere with its use, or prevent ingress and egress of persons and motor vehicles over the same.

**MAINTENANCE OF SHARED DRIVEWAY:**

- 5) The Declarant agrees to construct and maintain the Shared Driveway and to perform all necessary and prudent and ordinary repairs and maintenance to the Shared Driveway easement area at Declarant's sole cost and expense.

6) At such time either Dwelling and a portion of the original lot is conveyed to another party, the cost of such maintenance shall be shared equally by the owners of Dwellings/Lots 1 and 2, with each dwelling/lot owner responsible for one-half of such expense.

6) The owners of the dwelling/lots shall meet annually, on or about April 1<sup>st</sup> of each year, or at such other times as the owners may mutually agree, to review the maintenance and expense issues that affect the Shared Driveway easement area. If one of the owners fails to make the expenditure of its appropriate fair share within thirty (30) days after it is due the other lot owner shall have the right to make the expenditure and bill it to the other together with interest at the legal rate and said amount shall become a lien upon the non-paying owner's lot. In the event that any litigation arises out of the relationship between the owners created by this Declaration, the successful 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 the court of competent jurisdiction.

7) Maintenance and Repairs Defined – The repairs and maintenance to be undertaken and performed with respect to the Shared Driveway easement area will include the following:

a) General maintenance, including snow plowing, clearing of vegetation and repair work necessary to keep the Shared Driveway easement area in good order and repair and in safe, passable condition for motor vehicles, including emergency vehicles.

b) Any additional repairs or maintenance 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 parties and an assumption by each

in writing of their proportionate share of financial liability for the cost of such additional repairs or maintenance.

**IMPROVEMENT OF THE SHARED DRIVEWAY:**

8) The Shared Driveway shall be built in accordance with any specifications or conditions provided for in the Aurora Town Code.

10) The Shared Driveway and all associated improvements, such as bridges, guide rails, culverts, and drainage structures, shall be maintained in a good and passable condition under all traffic and weather conditions and kept open for fire-fighting equipment and other emergency vehicles.

11) The Town of Aurora shall have no liability or responsibility for the design, care and maintenance of the Shared Driveway.

**MISCELLANEOUS:**

12) To the extent legally permissible, each dwelling/lot owner on behalf of him, her or itself and to the extent applicable, their families, guests, agents, employees and invitees agree that the Declarant and the Town of Aurora and their respective agents, officers and employees and the other lot owners, their heirs, successors, representatives and assigns shall not be held liable for any claim for property damage or personal injury arising out of the design or condition of the shared driveway or any act or omission relating thereto including but not limited to its construction, maintenance, upkeep, repair, snow removal and sanding. Any such liability to third parties shall be equally divided between the owners of Dwelling/Lot 1 and Lot 2. However, this shall not release any dwelling/lot owner or other party from liability arising out of his, her, their

or its own negligence or willful acts. The owners Lot 1 and Lot 2 shall each obtain liability or other insurances to protect against risk of loss or claims; or if desired by the lot owners, and if such insurance is available, the insurance cost can be shared with each lot served by the common shared driveway contributing an equal 50% share.

13) This Declaration shall burden and inure to the benefit of the parties hereto and all subsequent owners of the said Lots 1 and 2 and the covenants herein shall run with the land and shall be binding on the parties hereto and their respective successors, heirs and assigns.

14) Declarant represents and declares that the Property shall be held, transferred, conveyed, and occupied subject to the easements set forth herein.

15) Each grantee accepting a deed, lease or other instrument conveying any interest in any of the Lots 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.

16) 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 Lot 1 and Lot 2 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 Office of the Erie County Clerk bearing the acknowledged signatures of all the owners of Lot 1 and Lot 2 and/or successor association 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 lot owners including any lots owned by Declarant. Any termination, alteration, or modification, in whole or in part, also requires consent of the Town of Aurora Town Board.

17) 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.

18) The owner of each lot agrees to defend and indemnify the other lot owners from and against any and all claims, losses and damages, including reasonable attorney's fees incurred by reason of any claim for personal injuries or property damage arising from the use of the Shared Driveway by a lot owner or any third party.

By: \_\_\_\_\_  
Name:

By: \_\_\_\_\_  
Name:

STATE OF NEW YORK

ss:

COUNTY OF ERIE

On \_\_\_\_\_, 20\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_ 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, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

**EXHIBIT A**

**[insert Property Description (Deed)]**

- - Box 207

THIS INDENTURE, made the 15<sup>th</sup> day of December, 2009,

BETWEEN

DOUGLAS R. HAGER And CYNTHIA A. HAGER, husband and wife, residing at 211 Falls Road, West Falls, New York 14170, party of the first part, and

JEROME W. MURRAY, JR. and LINDA L. MURRAY, husband and wife, residing at 205 Falls Road, West Falls, New York, 14170, party of the second part

WITNESSETH, that the party of the first part, in consideration of One & More (\$1.00) Dollars lawful money of the United States, paid by the party of the second part, does hereby grant and release unto the party of the second part, his heirs, successors and assigns forever,

**ALL THAT TRACT OR PARCEL OF LAND** situate in the Town of Aurora, County of Erie and State of New York, being part of Lot Number fifty-seven (57), Township nine (9), Range six (6) of the Holland Land Company's Survey, bounded and described as follows:

**BEGINNING** at a point in the center of Falls Road at its intersection with the northerly line of premises conveyed to Marie L. Smith by deed recorded in the Erie County Clerk's Office in Liber 1582 of Deeds at Page 298, said northerly line also being the southerly line of premises now or heretofore owned by R. Seller; running thence southeasterly along the center of Falls Road forty-three and six tenths (43.6) feet; thence southwesterly at an angle of 117 degrees 15 minutes and along the foot of the bank a distance of three hundred sixty-nine (369) feet, more or less; thence southeasterly at an angle with the last mentioned line of 138 degrees 7 minutes and long an irregular line at the top of the bank a distance of four hundred ninety-in (499) feet; thence westerly in a straight line to a point on the east bank of Cazenovia Creek distant six hundred twenty-six (626) feet southerly (measured along the line of said creek) from the northwest corner of lands conveyed to the said Marie L. Smith by the deed aforesaid; thence northerly along the easterly bank of said creek six hundred twenty-six (626) feet to the northerly line of premises conveyed to said Marie L. Smith by deed aforesaid and thence easterly along said northerly line of said premises conveyed to the said Marie L. Smith by the deed aforesaid two hundred fourteen and five tenths (214.50) feet to the place of beginning, more or less.

**EXCEPTING THEREFROM** lands lying within the bounds of Falls Boulevard.

R 820956  
JWM 251775  
AUR- 117000  
DIB-2



## APPENDIX D

# FIRE APPARATUS ACCESS ROADS

*The provisions contained in this appendix are not mandatory unless specifically referenced in Section 503.*

### SECTION D101 GENERAL

**D101.1 Scope.** Fire apparatus access roads shall be in accordance with this appendix and all other applicable requirements of the *Fire Code of New York State*.

### SECTION D102 REQUIRED ACCESS

**D102.1 Access and loading.** Facilities, buildings or portions of buildings hereafter constructed shall be accessible to fire department apparatus by way of an approved fire apparatus access road with an asphalt, concrete or other approved driving surface capable of supporting the imposed load of fire apparatus weighing at least 75,000 pounds (34 050 kg).

### SECTION D103 MINIMUM SPECIFICATIONS

**D103.1 Access road width with a hydrant.** Where a fire hydrant is located on a fire apparatus access road, the minimum road width shall be 26 feet (7925 mm). See Figure D103.1.

**D103.2 Grade.** Fire apparatus access roads shall not exceed 10 percent in grade.

**Exception:** Grades steeper than 10 percent as approved by the fire chief.

**D103.3 Turning radius.** The minimum turning radius shall be determined by the code enforcement official.

**D103.4 Dead ends.** Dead-end fire apparatus access roads in excess of 150 feet (45 720 mm) shall be provided with width and turnaround provisions in accordance with Table D103.4.

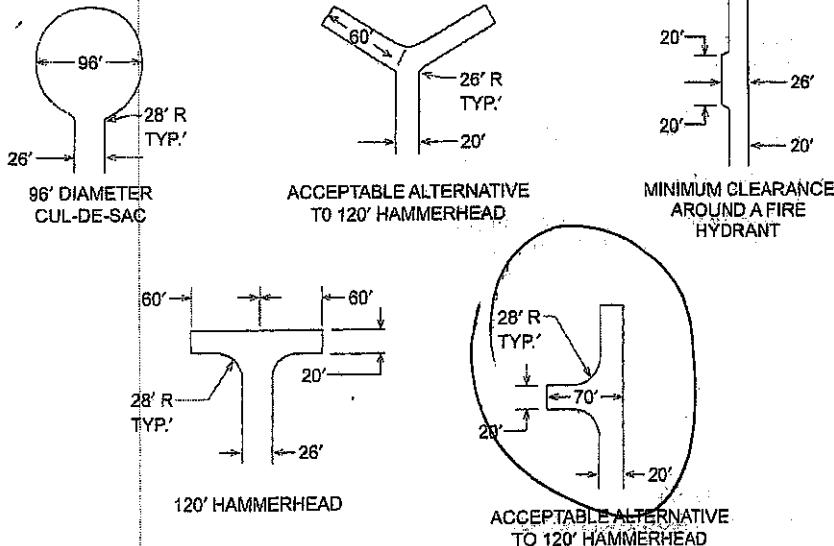
**TABLE D103.4  
REQUIREMENTS FOR DEAD-END FIRE  
APPARATUS ACCESS ROADS**

LENGTH (feet)	WIDTH (feet)	TURNAROUNDS REQUIRED
0-150	20	None required
151-500	20	120-foot Hammerhead, 60-foot "Y" or 96-foot-diameter cul-de-sac in accordance with Figure D103.1
501-750	26	120-foot Hammerhead, 60-foot "Y" or 96-foot-diameter cul-de-sac in accordance with Figure D103.1
Over 750	As approved	

For SI: 1 foot = 304.8 mm.

**D103.5 Fire apparatus access road gates.** Gates securing the fire apparatus access roads shall comply with all of the following criteria:

1. The minimum gate width shall be 20 feet (6096 mm).
2. Gates shall be of the swinging or sliding type.



For SI: 1 foot = 304.8 mm.

**FIGURE D103.1  
DEAD-END FIRE APPARATUS ACCESS ROAD TURNAROUND**

**EXHIBIT B**

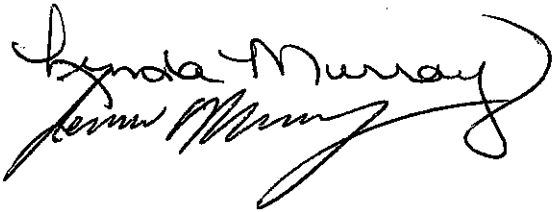
**[insert Shared Driveway Description]**

July 22, 2015

Narrative description of proposed driveway

The proposed driveway would measure 320 feet in length from the road and measure 20 feet in width. We also plan a turnaround area measuring 20 feet in width and 70 feet in length between the two structures.

Ownership, maintenance and snow removal will be shared among dwellings.



Lynda Murray  
Peru Murray