

**DECLARATION OF EASEMENT
AND
EASEMENT AGREEMENT**

This Declaration of Easement and Easement Agreement is made this 17th day of February 2005, by and among SUNNYSIDE RANCH ESTATES, LLC, a Massachusetts limited liability company with a usual place of business at 65 Sunnyside Ranch Road, Southwick, Massachusetts, hereinafter referred to as "Sunnyside", and SUNNYSIDE RANCH ESTATES PROPERTY OWNERS ASSOCIATION, INC., a Massachusetts corporation with a usual place of business at 65 Sunnyside Ranch Road, Southwick, Massachusetts, hereinafter referred to as the "Owners Association".

Preliminary Statement

A. Sunnyside is the owner of seven (7) parcels of land located along Sunnyside Ranch Road in Southwick, Massachusetts and more particularly designated as lot numbers 1, 2, 3, 4, 5, 6 and 7 on a plan (the "Plan") entitled, "Definitive Plan, Sunnyside Ranch Estates prepared for Olde Farm Golf Club, LLC", by Engitek, Inc., dated August 29, 1999, last revised on March 6, 2002 and recorded in the Hampden County Registry of Deeds at Plan Book 324, Pages 119-124, as further amended by a Plan dated January 17, 2005, entitled "Easement Plan for Sunnyside Ranch Estates, LLC" and recorded in the Hampden County Registry of Deeds at Plan Book 330, Page 29. Such parcels are collectively referred to herein as "Lots 1-7".

B. Sunnyside desires to (i) lay out and construct for the benefit of Lots 1 – 7 a private driveway (the "Driveway") to be used exclusively by the owners of Lots 1 – 7 and as the exclusive access way to Lots 1 – 7 from Sunnyside Ranch Road and (ii) install the utilities necessary or appropriate for a fully functional driveway for the limited purpose of accessing Lots 1-7 (the "Utilities"). For purposes of this Declaration of Easement and Easement Agreement, the Driveway shall include a gate to be installed across the driveway and associated landscaping. The Driveway shall be constructed and located in the location shown on the Plan amendment described above and recorded at Plan Book 330, Page 29.

C. In furtherance of its corporate purposes, the Owners Association desires to assume all maintenance, repair and replacement obligations with respect to the Driveway and the Utilities following the completion of the construction of the Driveway and installation of all

Utilities. The Owners Association requires an easement to ensure the access necessary to perform such obligations.

D. In order to ensure that each of the owners of Lots 1 – 7 shall have permanent rights to use the Driveway, Sunnyside desires to establish an easement for the benefit of the owners of each of Lots 1 – 7, in accordance with the terms hereinafter set forth.

In furtherance of the foregoing and in consideration of the mutual promises contained herein, the parties hereto agree as follows:

1. Grant of Easement to Owners Association.

Sunnyside hereby grants and conveys to the Owners Association, its successors and assigns, agents and contractors for the purpose of completing the obligations of the Owners Association set forth below, the permanent, non-exclusive right and easement, in common with all others entitled thereto, onto, under and over the Driveway together with an area consisting of five (5) feet on either side of the Driveway, (the “Owners Association Easement Area”). Following the completion of the initial construction of the Driveway, the Owners Association Easement Area shall not be relocated or amended in any way without the prior written consent of the owners of all of the property comprising Lots 1-7. The easement onto, under and over the Easement Area being granted hereby includes the right to access the Owners Association Easement Area with service trucks and equipment necessary for the satisfaction of the maintenance and repair obligations of the Owners Association described below.

2. Obligation to Maintain Driveway and Utilities.

The Owners Association shall maintain, repair and replace when necessary the Driveway and the Utilities following the completion of the construction of the Driveway and installation of the Utilities (collectively, the “Work”). The Owners Association shall be responsible for one hundred percent (100%) of the costs (collectively, the “Costs”) required to be incurred with respect to the Work. The Owners Association specifically agrees that its repair and maintenance obligation with respect to the Driveway and the Utilities shall include without limitation snow plowing and the performance of all maintenance and repairs required with

respect to the drainage system related to the Driveway. The Work required with respect to the Driveway and the Utilities shall be performed by the Owners Association or its contractors.

3. Declaration of Driveway Easement.

Sunnyside hereby declares and establishes for the benefit of the owners of each of Lots 1 – 7, their successors and assigns with respect to such lots, and their contractors and invitees with respect to such lots the permanent, non-exclusive easement, in common with the other owners of any of Lots 1 – 7, onto, over, above and below the Driveway for the limited purposes of accessing their respective lots from Sunnyside Ranch Road and installing, repairing and replacing utilities serving the homes on Lots 1-7 provided, however, that the owners of Lots 1-7 shall use their respective best efforts not to interfere with the easement rights of the owners of the other lots and shall repair and replace the Driveway to the extent that they disturb the Driveway in connection with the exercise of their easement rights.

4. Effect of Agreement; Mortgages.

(a) Any mortgage or deed affecting any portion of the Easement Area shall at all times be subject and subordinate to this Agreement and the easement rights of the Owners Association and the owners of Lots 1 – 7.

(b) Run with the Land. This Agreement and all of the rights and obligations set forth herein shall (i) be binding upon and be for the benefit of the Owners Association and its successors and assigns and (ii) shall be for the benefit of the owners of Lots 1 – 7 and their successors and assigns with respect to Lots 1 – 7. This Agreement and all of the rights and obligations set forth herein shall be binding upon and be for the benefit of Sunnyside and its successors and assigns with respect to Lots 1-7. The grant of easements, rights, privileges, obligations and agreements set forth herein shall continue in perpetuity, unless terminated:

- (i) in accordance with the terms of this Agreement
- (ii) by operation of law
- (iii) by order of a court of competent jurisdiction with respect to which all rights of appeal have expired or
- (iv) by a properly recorded written agreement among all of the parties hereto or their successors or assigns.

(c) No Public Dedication. Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of the burdened property to the general public or for any public use or purpose whatsoever. It is the specific intention of the parties hereto and their successors and assigns that nothing in this Agreement, expressed or implied, shall confer upon any person, other than the parties hereto and their successors and assigns, including mortgagees, any rights or remedies under or by reason of this Agreement.

5. Notices.

All notices, statements, demands, requests, consents, communications, and certificates from either party hereto to the other shall be made in writing unless specified to the contrary herein and sent by certified or registered mail, return receipt requested, hand-delivered or by a nationally recognized overnight delivery service for which a receipt is made to the parties at the addresses first set forth above or such other addresses as either party hereto may from time to time direct by service of notice by the other party as provided above. Any such notices, statements, demands, requests, consents, communications or certificates shall be deemed given one (1) business day following the date the same are sent in accordance with this paragraph four.

6. Compliance with Laws

The Owners Association agrees that in connection with any exercise of any of the easement rights it shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations at its sole cost and expense.

7. Miscellaneous

(a) Waivers, Consents, Remedies. No waiver of any default by any party to this Agreement shall be applied to any omission by any other party hereto or any action taken by any party with respect to any such default if it continues or is repeated. One or more waivers of any default in the performance of any term, provision or covenant contained in this Agreement shall not be deemed to be a waiver of any subsequent default in the performance of the same term, provision or covenant or any other term, provision or covenant contained in this

Agreement. The consent or approval by any party hereto to or of any act or request by any other party requiring consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or for any subsequent similar acts or requests. The rights and remedies given to each party pursuant to this Agreement shall be deemed to be cumulative and no one of such rights or remedies shall be exclusive any of the others, or any other right or remedy at law or in equity which any party hereto might otherwise have by virtue of default under this Agreement. The exercise of one such right or remedy by any party hereto shall not impair such party standing to exercise any other right-or remedy.

(b) Severability. Any provision of this Agreement that shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision of this Agreement, and the remaining provisions shall nevertheless remain in full force and effect.

(c) Captions. The captions of the various sections of this Agreement are for convenience only and shall not be considered or referred to in resolving questions and interpretations of their construction.

(d) Binding Effect. This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and assigns.

(e) Forum Selection. The parties hereto agree that any litigation relating in any manner whatsoever to this Agreement shall only be commenced and prosecuted in the United States District Court for the Western District of Massachusetts, Hampden County Superior Court or Westfield District Court.

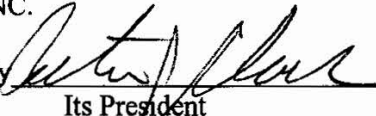
(f) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

IN WITNESS WHEREOF, the parties hereto have signed this agreement as a sealed instrument as of the date first written above.

SUNNYSIDE RANCH ESTATES, LLC.

By 
Its Manager

SUNNYSIDE RANCH ESTATES
PROPERTY OWNERS ASSOCIATION,
INC.

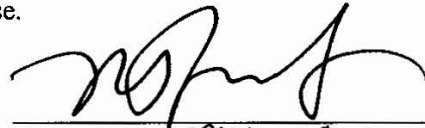
By 
Its President

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

February 17, 2005

On this 17th day of February, 2005, before me, the undersigned notary public, personally appeared Peter J. Clark, Manager of Sunnyside Ranch Estates, LLC, proved to me through satisfactory evidence of identification, which is Personal Knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

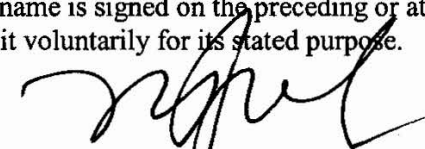

Notary Public Michael D. Sweet
My Commission Expires: 8/11/11

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

February 17, 2005

On this 17th day of February, 2005, before me, the undersigned notary public, personally appeared Peter J. Clark, President of Sunnyside Ranch Estates Property Owners Association, Inc., proved to me through satisfactory evidence of identification, which is Personal Knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.


Notary Public Michael D. Sweet
My Commission Expires: 8/11/11