

# Drafting Property Restrictions: Declarations and Deeds of Easement

By

Caroline A. Edwards, Esq.

## Introduction.

Restrictions on real property that run with the land are accomplished by recording a document of some sort with the Recorder of Deeds' office in the county in which the property is located. The key to effective property restrictions lies within the four corners of the document.

## Types of Property Restrictions.

There are several ways to impose restrictions on real property, including recording a Declaration; recording a Deed of Easement; recording a restriction or easement within a deed; and recording a plan depicting and/or noting property restrictions or easements. These materials focus on the first two methods of imposing restrictions.

Declaration. A "Declaration" is a document in which a property owner "declares" the property to be subject to one or more restrictions. Declarations do not transfer any interest in real estate to another party, so there is no conveyance language, and no "receiving" party (e.g. grantee). The restrictions can be in the form of easements, covenants and/or other restrictions. Declarations can be for a particular purpose, for example a Declaration of Covenants for a shared private roadway. Declarations are also used to subject properties to condominium or planned community schemes of ownership - in those cases, the Declarations must conform to specific statutory requirements.

Deed of Easement. A Deed of Easement is a document in which one property owner grants and conveys an easement or easements in the property to another. The property over which the easement is granted is known as the "servient tenement", while a property that is benefited by the easement is known as the "dominant tenement." A Deed of Easement is generally more limited in scope than a Declaration. The Deed of Easement must contain conveyance language, and will identify a grantor and a grantee.

For ease of reference in these materials, when I am referring to both Declarations and Deeds of Easement I will use the collective term "Restriction."

### **The Building Blocks of a Property Restriction.**

Both Declarations and Deeds of Easement have similar structures. Please see the sample Declaration at Appendix 1 identifying the parts of a Restriction discussed below:

1. Identification - The first paragraph of the Restriction will answer "What," "When" and "Who." It usually identifies the document type (Deed of Easement or Declaration), the date of signing, and the party or parties. It is important that the identity of the party/ies in the Restriction match the identity of the legal owner of the respective properties, and match the signature block at the end.

2. Recital or Background Clauses - While not required, I often use a Background section to:

- a. Identify the properties affected by the document. Even if a legal description is attached to the Restriction as an exhibit, you may elect to include basic location information (municipality and county) and a tax parcel number, if the tax parcel number is not already elsewhere in the document. If somehow the legal description is lost, is incomplete, etc., there is still sufficient information within the Restriction to indicate the property intended to be subject to the property restrictions.
- b. Explain the purpose of the document and the intention of the parties - this explanation can be useful when it comes to interpreting the document at some point in the future, after the original parties are no longer involved.

The Background section is generally found below a heading entitled "Background" or "Witnesseth", and the paragraph sections of the Background section often begin with the word "Whereas," although this is not required.

3. Submission - This is the part of the Restriction in which the legal owner formally states that the property is impressed with and made subject to the easements, covenants and/or restrictions that are subsequently set forth. The Submission paragraph often begins with the words "Now, Therefore."

4. Conveyance Language – In a Deed of Easement, the Deed must contain conveyance language in order to transfer the easement rights to the grantee.

5. Body – The body of the Restriction contains the substance of the restrictions being imposed upon the property. The body of the Restriction requires careful drafting to ensure that the intentions of the parties are met, that the restrictions will effectively fulfill their purpose, and that they will be clear to future owners of the property.

- a. Run with the Land – An important clause to be included in the body of the Restriction is a statement that the rights and obligations shall run with the land and shall extend to the owners of the property, their heirs, successors and assigns. This clause evidences the intent that the Restriction will bind future owners.

6. Testimonium or Concluding Clause – This is the “In Witness Whereof” clause, in which the parties state that they are executing the Restriction on the stated date. Most testimonium clauses contain some variation of the language “set my hand and seal.” Be aware that pursuant to 21 P.S. §10 (Deeds effective without seal), there is no requirement to affix a seal in order for a Restriction to be effective.

7. Signature Blocks – The party or parties to the Restriction will sign below the concluding clause. The signature block should be consistent with the person or entity identified in the initial Identification clause, and should identify the role of the entity by reference to the name assigned to it in the Restriction. For example, if XYZ, Inc. is identified as the “Declarant” in the Restriction, then the signature block should use that term as well.

It is not the purpose of these materials to focus on the nitty-gritty of signing the Restrictions. However, it should be pointed out that original signatures are no longer required to be submitted to Recorder of Deeds’ offices in those Pennsylvania counties that accept electronic recording, in accordance with the Uniform Property Electronic Recording Act, 21 P.S. §483.1 et seq. However, original signatures may need to be maintained by the submitter, to be produced if requested. Please check with the Recorder of Deeds for the county in which you will be recording to determine whether electronic recording is accepted, and the applicable requirements.

8. Acknowledgement – Since the document is being recorded, the Restriction must contain a completed notarial acknowledgement. The rules for acknowledgements

and forms of acknowledgements are found in the Uniform Acknowledgement Act, 21 P.S. §291.1 et seq.

9. Other Minutiae

- a. Under 21 P.S. §10.1, when a county has adopted a uniform parcel identifier system, the uniform parcel identifier (often called a “tax parcel number”) can be used to identify the property in conveyances and other instruments affecting real estate.
- b. Check with the Recorder of Deeds for county in which you will be recording to determine specialized document requirements for that county. For example, many Pennsylvania counties require a two inch top margin on the first page of all documents being recorded, containing the contact information for the document preparer, return information, and the uniform parcel identifier for the affected property/ies.

**Drafting Generally.**

If you are the drafter of Restrictions, it is your responsibility to craft the language of the Restriction so its terms are clear and unambiguous. It helps to take a step back occasionally to think about whether the language used could be interpreted in a different way, and to consider how the language might impact property owners far into the future. When a property owner has a certain idea about the type of restriction the owner wants on the property, it is easy for the owner to read the owner’s own intentions into the language of the Restriction – “everyone knows what this means.” It is the drafter’s job to stand in the shoes of those in the future whose only knowledge about the Restriction comes from the document itself.

Key Legal Principles of Interpretation applicable to Drafting Property Restrictions.

1. Restrictive covenants are not favored by the law, although they are enforceable. See, for example, *Gey v. Beck*, 568 A.2d 672, 390 Pa. Super. 317, Pa. Super., 1990.
2. The intent of the parties governs the interpretation of the Restriction. See, for example, *Mishkin v. Temple Beth El of Lancaster*, 239 A.2d 800, 429 Pa. 73 (Pa., 1968).

3. Restrictive covenants are strictly construed against the party seeking enforcement. See, for example, *Gey v. Beck*, 568 A.2d 672, 390 Pa. Super. 317, Pa. Super., 1990.

4. Restrictive covenants are strictly construed and will not be expanded by implication. See, for example *Buck Hill Falls Company v. Press*, 791 A.2d 392, Pa. Super. Ct. 2002).

### Things to consider in Drafting

1. “Shall” and “must” denote mandatory action, while “may” denotes action that is permissive. Always keep in mind which of the rights and obligations you want to be non-discretionary, and make sure the language carries out that intent.

2. Knowledge is everything. As the drafter, you should learn everything possible about the properties, the parties, the transaction and the circumstances of the Restriction. When possible, I visit the property so I have first-hand knowledge of its condition and surroundings – your client may not think to tell you about something that turns out to be very important. A thorough investigation before you start to draft will help you to prepare a clearer and more complete Restriction.

3. Language – Except when there is a legal dispute about the meaning of a restriction, property restrictions are read, interpreted and implemented primarily by non-lawyers. Strive to use clear language that can be understood by non-lawyers.

4. Detail – When courts interpret property restrictions, they look to the original intent of the parties. Use detail in the Restrictions to explain the intent of the restrictions. You can include examples of what is, and is not, meant by the restriction to accomplish this, or explain the intent. For example: “If there is any ambiguity about whether an improvement is part of a Unit, or part of the Common Elements, the presumption shall be that the improvement is part of the Unit and the responsibility of the Unit Owner.”

### **Drafting Deeds of Easement**

1. Defining the Parties to the Easement.

a. The parties to a Deed of Easement are:

i. Grantor – The owner of the property being subjected to the easement (the servient tenement). The identity of the Grantor should be the same as the grantee’s name on the Deed to the property.

ii. Grantee – The Grantee can be the legal owner of property being benefitted by the easement OR an entity being granted rights in the servient tenement. Since easements are intended to run with the land, the person entitled to exercise the rights under an easement is generally defined as the owner of a particular property. However, when an easement is granted to an individual, or a governmental body, utility company, municipal authority, or similar type of entity, there is no property identified as the dominant tenement. Whatever the case, be sure that the Grantee is identified by the correct legal name.

## 2. Defining the Affected Properties.

a. It is important to confirm and properly identify the properties affected by the Deed of Easement.

i. Use the assigned uniform parcel identifier / tax parcel number to specifically identify the properties involved.

ii. Consider including the street address and municipality information in the body of the Deed of Easement – while the property owner may not know the uniform parcel identifier, the owner may recognize if an address is incorrect while reviewing the Deed of Easement.

iii. Cross check the accuracy of the property information by reviewing the Board of Assessment records for the property, which will show the legal owner, the property address and the uniform parcel identifier.

## 3. Defining the Easement Area.

a. Defined Easement - Most easements are granted only to a limited area of a property, which is defined in the Deed of Easement.

i. The area of the easement should be unambiguously defined in the Deed of Easement by a legal description of the easement included in the body of the Deed or attached as an exhibit. Ideally, the legal description will be supported by a plan exhibit to the Deed showing the easement area.

b. Blanket easement – A blanket easement is an easement granted over a large area (often an entire parcel) for a particular purpose. A blanket easement is used when a defined easement is not practical; however, because it restricts the entire property, blanket easements should be used sparingly. When a blanket easement has been granted, the easement holder has the right to exercise the easement rights at any location on the property.

4. Defining the Easement Purpose.

a. Common categories of easements

i. Utility Easements – granted to a utility, water company, sanitary sewer company, etc. Depending on the type of utility, the easement may be above ground or underground, and will usually contain broad rights. Utility easements typically contain the right to enter the property, to excavate, to construct, install, maintain, repair, remove, and replace any portion of the utility facilities now existing or constructed in the future.

ii. Access Easements – Easements that allow a property owner to cross another’s property to gain access to something – a public road, a water source, etc. and to install improvements associated with that use.

iii. Use Easements – An easement that permits a particular use on another’s property. Examples would be a drainage easement, or a right to park vehicles on a portion of another’s property to meet zoning requirements.

b. Drafting the easement purpose language

i. What side are you sitting on? If you represent the owner of the servient tenement, you will want the easement purpose to be as narrowly drawn as possible, to limit the impact on your client’s property. If you represent the easement holder, then you will want to draft the purpose as broadly as possible, so that your client can make the greatest use possible of the other property.

ii. Before you start drafting, take some time to really think about the purpose of the easement. This will help you to clarify the description of the rights and obligations under the Deed of Easement, and may reveal questions that need to be answered by your client. For example, if you are preparing an access easement you might consider the following:

1. Who is permitted to use the access easement? This is usually the property owner, but you probably also want to include the owners' guests and invitees. Is the owner of the servient tenement permitted to use the access easement area?

2. Is the easement only for vehicular and pedestrian traffic, or do you want to include language that would allow utilities to run through the easement in the future?

3. Who will maintain the easement, and who will pay the maintenance costs? Who will make the decisions about the maintenance? Should you include certain maintenance standards?

4. Do you want to address what happens if the dominant tenement is subdivided in the future into multiple lots?

iii. If you represent the easement holder, can you envision actions that might be taken by the owner of the servient tenement that would adversely affect the exercise of the easement rights? Consider including provisions which prohibit the owner of the servient tenement from taking those specific actions, in addition to including a "catch-all" provisions which prohibits interference with the easement rights in any way.

5. Other Details to Include.

a. Term of existence. In the absence of a stated term of existence, the easement will be presumed to continue in perpetuity, barring a change of circumstance. It is best, however, to expressly state that an easement is perpetual, to remove any ambiguity. If the easement is not intended to last forever, the Deed of Easement should identify an end date to the easement, either by a specific date or period of time, or the occurrence of a triggering event. If a triggering event is used, it should be one that can be independently verified, such as the issuance of a building permit. Otherwise, the servient tenement will be considered to be subject to the easement unless and until the easement holder is willing to sign and record a termination of the easement.

b. Exclusive use. If the easement area is for the exclusive use of the dominant tenement, then that should be expressly stated. In the absence of such a term, the easement will be interpreted to allow the servient tenement all use of the property that does not interfere with the easement rights.

c. Conditions. Any conditions on the exercise of the easement should be expressly stated.

## **Drafting Declarations**

### 1. Defining the Parties to the Declaration.

a. A Declaration is not a document of conveyance, so it does not have a grantor and grantee. A Declaration is made by the legal owner or owners of the property that is to be made subject to the restrictions contained in the Declaration. The person(s) or entity/ies signing the Declaration are usually known as the “Declarant.”

b. In order to be effective, all of the owners of the affected property must join in the Declaration. The identity of the Declarant should be identical to the name(s) on the Deed for the property.

### 2. Defining the Affected Properties.

a. As with a Deed of Easement, it is important to confirm and properly identify the properties affected by the Declaration.

i. Use the assigned uniform parcel identifier / tax parcel number to specifically identify the properties involved.

ii. Consider including the street address and municipality information in the body of the Declaration.

iii. Attach a legal description of the property to the Declaration that matches the Deed description, to be sure the entire property is being made subject to the Declaration.

iv. Cross check the accuracy of the property information by reviewing the Board of Assessment records for the property, which will show the legal owner, the property address and the uniform parcel identifier.

### 3. Declaration Terms.

a. Declarations typically contain three types of property restrictions:

i. Restrictions – restrictions are Declaration provisions that limit or define the use of the property beyond that which would otherwise be allowed.



For example, a Declaration might provide that the property cannot be used for any commercial purpose, although the zoning might permit a commercial use.

ii. Covenants – covenants are promises and agreements within the Declaration.

iii. Easements – Declarations can include the grant of easements.

b. Restrictions. The case law is clear that restrictions on real property are strictly construed. As a result, careful drafting (and review, and revision) is necessary to ensure that the Declaration clearly defines the restrictions being placed on the property in the way they are intended.

i. An example of the importance of carefully selecting the wording of a restriction is found in *Gey v. Beck*, 568 A.2d 672 390 Pa. Super. 317 (Pa. Super. 1990). In this case, a developer recorded protective covenants in a project which stated that the lots “shall be known and designated as single family lots.” The developer later sought to amend the development plan in a way which resulted in a road running through one of the lots. The plan was challenged by existing lot owners. The Court analyzed the words “known and designated as” and determined that “we read them to mean that the lots ... are recognized and understood to be set apart as single family residential lots.” On that basis, the Court concluded that the developer had breached the restriction by constructing a road over one of the lots.

c. Covenants. While property restrictions limit the uses of the property, covenants require certain actions to be taken by property owners. Common covenants contained in Declarations include obligations to maintain improvements and pay assessments.

d. Easements. Declarations commonly include easements that are related to the covenants and restrictions in the Declaration. For example, the party having the right to enforce covenants and restrictions may be granted an easement for the purpose of exercising those rights.

e. When drafting a Declaration, you want to be certain that you consider the operation of the Declaration terms from all angles. The goal is to have the Declaration help, not hinder, the marketability of the property; perform the purpose for which it is intended; and function properly into the future as the original parties convey

their interests and new parties are faced with complying with, and possibly enforcing, the Declaration terms.

f. Other Provisions to be included. Depending on the nature of the Declaration, the following provisions should be considered:

i. **Definitions.** A Definitions section in a Declaration allows a detailed explanation of the meaning of the particular terms used in the document, which leads to greater clarity. I often use the Definitions section to explain the meaning in ways that are not really possible if you are including the definition in the body of the Declaration as a “hereinafter referred to as” term.

ii. **Term of Existence.** Most Declarations do not have a specified end date. However, if your client wants the Declaration to only be effective for a specified term of years, or until a triggering event occurs, then language to this effect should be clearly stated. As noted above in the discussion about Deeds of Easement, any event triggering termination of the Declaration should be independently verifiable, so that a title company will recognize that the Declaration no longer applies to the property.

iii. **Amendment Procedures.** If the parties want to be able to amend the Declaration upon approval by some percentage less than 100% of the affected properties, the Declaration must define the required percentage.

iv. **Termination Procedures.** As an alternative to stating that the Declaration will terminate if a triggering event occurs, the Declaration can contain procedures for terminating the Declaration if the affected parties agree (note, however, that the downside of this approach is that it requires cooperation among the then-owners). If termination of the Declaration will result in no one to carry out specified responsibilities, the Declaration should address these issues.

## **Issues Specific to Declarations of Planned Community and Declarations of Condominium**

1. Unlike Deeds of Easement and general Declarations, Declarations of Planned Community (PC Declaration) and Declarations of Condominium (Condo Declaration) are wholly creatures of statute.

a. **Planned Communities – Uniform Planned Community Act, 68 P.S. §§5101 – 5414 (“UPCA”).** A planned community is defined in the UPCA as:

“Real estate with respect to which a person, by virtue of ownership of an interest in any portion of the real estate, is or may become obligated by covenant, easement or agreement imposed on the owner’s interest to pay any amount for real property taxes, insurance, maintenance, repair, improvement, management, administration or regulation of any part of the real estate other than the portion or interest owned solely by the person.” (§5103)

b. Condominiums - Uniform Condominium Act, 68 P.S. §§3101 – 3414 (“UCA”). A condominium is defined in the UCA as:

“Real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners.” (§3103)

c. Property which falls within either of these two definitions must comply with the requirements of the applicable statute.

d. The UPCA mandates what must be included in Declarations of Planned Community at §5205 (for all planned communities) and §5206 (additional requirements applicable to flexible planned communities where rights are reserved by the Declarant to add units, add property, and/or withdraw property after the Declaration is recorded). The UPCA also identifies the requirements for the Declaration plats and plans at §5210. Finally, be aware that the UPCA provides for more limited Declaration and other requirements for planned communities with twelve units or fewer meeting certain requirements, and of any size meeting specified criteria. (UPCA §5102(a)).

e. The UCA mandates what must be included in Declarations of Condominium at §3205 (for all condominiums) and §3206 (additional requirements applicable to flexible condominiums where rights are reserved by the Declarant to add units, add property, and/or withdraw property after the Declaration is recorded). The UCA also identifies the requirements for the Declaration plats and plans at §3210.

f. In addition:

i. Elective Provisions. Numerous sections of the UPCA and UCA specify terms that a Declarant may elect to include in the PC or Condo

Declaration, along with specific limitations if that election is made. For example, both the UPCA and the UCA allow the Declarant to provide for a period during which the Declarant controls the Board of the Association. In the event of such an election, the Declaration must provide that the Declarant must relinquish that control to the owners at specified times and in the manner mandated by the statute. If you are drafting a PC or Condo Declaration, you should be aware of the provisions that a Declarant is permitted to include in the Declaration under the respective Acts, and the limitations that must also be contained in the Declaration in connection with such an election.

ii. Declarant Choice Provisions. The UPCA and UCA also provide for areas in which the PC or Condominium Declaration terms can take precedence over the applicable Act. For example, the UPCA at §5213 contains requirements that apply to the alteration of units “subject to the provisions of the declaration and other provisions of law, “ so a Declarant could choose to apply different standards to unit alterations. In drafting a PC or Condo Declaration, pay attention to which provisions must meet the requirements of the Act, and the areas in which the Declaration is permitted to impose restrictions that differ from those in the Act.

iii. Reservation of Declarant Rights. The UPCA and UCA allow a Declarant to reserve many types of rights by including the reservation in the PC or Condo Declaration. If there is any possibility that a Declarant may need to exercise a particular right in the future (and even if there is no present intention to exercise those rights), a prudent drafter will reserve all rights permitted to be reserved, and include the information required by the UPCA and UCA in connection with those reserved rights.

g. I find it helpful to use the statutory requirements as a checklist when preparing a PC Declaration or Condo Declaration, so that I can confirm that the document (including the exhibits) meets the applicable legal requirements.

2. In addition to the provisions mandated by the UCPA and the UCA, the following types of provisions are typically found in PC and Condo Declarations:

- a. Detailed use restrictions, often including items such as limited choice in the color of curtains and blinds, restricting the use of holiday decorations, and limiting the types of vehicles permitted outside a garage.
- b. Obligations and standards of maintenance.
- c. Rights and restrictions in the use of common areas.

d. Obligations to obtain approvals before making any changes to an individual unit.

These types of restrictions have a direct impact on an owner's right to use and improve his or her property, and give rise to many conflicts between owners and the Association overseeing compliance with the restrictions. As a drafter, you want to balance the desire to control the standards of the community into the future with the desire of future owners to use their property in the way that they want. The level of restrictions typically is greater for communities with a higher density, since people will be closer together and more significantly impacted by their neighbor's actions.

3. When drafting Declarations for condominiums and planned communities, keep in mind that these documents are frequently challenged by owners who have been charged with violating the restrictions. Great care should be taken to draft the Declaration to clearly and unambiguously define the restrictions, covenants and easements. You don't want the Declarant or the Association to be faced with having to explain to a judge what was intended – you want this intent to be readily ascertainable from the four corners of the document.

a. Areas that are frequently challenged (and therefore benefit from particular care in drafting for clarity):

i. Defining who (owner or Association) is responsible for carrying out specific responsibilities. One approach to this is to create an exhibit to the PC or Condo Declaration containing an item by item allocation of responsibilities.

ii. Use restrictions.

iii. Maintenance standards.

iv. Enforcement rights and procedures.

## **Conclusion.**

### Six Key things to Remember when Drafting Property Restrictions:

1. Make sure your document contains the “building blocks” – the required elements to create a property restriction.

2. Gather information before you start drafting.



3. Use applicable statutory requirements as a checklist.
4. Little things do count in drafting!
5. Review, review, review and revise, revise, revise.
6. Before you record, re-check the details.



**APPENDIX 1**  
**BUILDING BLOCKS OF A RESTRICTION**



**Prepared by and Return to:**

Caroline A. Edwards, Esq.  
The Law Offices of Caroline Achey Edwards  
P.O. Box 1586  
Newtown PA 18940

CPN: XXX-XXX-XXX and YYY-YYY-YYY

Recorder of Deeds  
requirements  
Margin and  
Information (if  
applicable)

**DECLARATION OF COVENANTS, RESTRICTIONS AND  
EASEMENTS  
COMMON DRIVEWAY**

THIS DECLARATION made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by ABC Corporation<sup>1</sup>, a Pennsylvania corporation, hereinafter referred to as "Declarant".

Identification  
• What  
• When  
• Who

**WITNESSETH:**

WHEREAS, Declarant is the owner of certain real property identified as Lake County Tax Parcel Nos. XXX-XXX-XXX and YYY-YYY-YYY, being known as Lots 110 and 111 of Treestream Estates, located in Tree Township, Lake County, Pennsylvania, depicted upon a certain plan of subdivision for Treestream Estates recorded in the office of the Recorder of Deeds in and for Lake County, Pennsylvania, in Plan Book RST, page 001 et seq. (the "Plan"); and

Recitals or  
Background

WHEREAS, the Plan shows a common driveway to be used by Lots 110 and 111 (the "Lots") for ingress and egress to the respective lots from Public Road; and

WHEREAS, Declarant desires to provide for a joint easement running with the land on the Lots in the area shown on the Plans as the common driveway, to allow ingress and egress to the respective lots, and to further provide for covenants and restrictions relating

<sup>1</sup> All names, places and other details are fictional. Any resemblance to actual events, locales, entities, or persons living or dead is entirely coincidental.

to the maintenance of the common driveway by the owners of the Lots, their heirs, successors and assigns.

Recitals or  
Background

NOW, THEREFORE, Declarant declares that the Lots are hereby impressed with and subject to the following covenants, restrictions and easements:

Submission

1. The Lots are hereby impressed with a joint easement for purposes of ingress and egress to and from each of the Lots from Public Road (the "Driveway Easement"), for the owners of the Lots, and their guests and invitees, in that portion of the Lots shown on the easement plan attached hereto and incorporated herein as Exhibit "A", and as described in the legal description attached hereto and incorporated herein as Exhibit "B".

2. The owners of the Lots, their heirs, successors and assigns, shall be responsible for the maintenance, repair and replacement of the Driveway Easement and the paved driveway located therein, and shall keep the Driveway Easement and the paved driveway located therein in good repair and condition at all times, so as to provide for safe ingress and egress.

Body

3. All costs relating to the maintenance, repair and replacement of the Driveway Easement and the paved driveway shall be shared equally between the owners of the Lots, with each Lot owner being responsible for twenty-five percent (25%) of the total expense, and such maintenance shall include, but not be limited to, the following:

a. The paved driveway shall be resurfaced and/or sealed when a majority of the owners agree that it is necessary.

b. The paved driveway shall be plowed and cleared when any snowfall exceeds three (3") inches in depth.

c. Potholes and other damage shall be repaired on an as-needed basis upon the agreement of a majority of the owners of the Lots.

3. In the event any litigation is commenced against any owner by any other owner or owners to recover any portion of the amount due for that owner's share of the costs of maintenance, repair and/or replacement, or to otherwise enforce the terms and

