

RECORDING REQUESTED BY:

AND WHEN RECORDED, MAIL TO:

SPACE ABOVE FOR RECORDER'S USE ONLY

NOTE: THIS IS A SAMPLE PRIVATE ROAD MAINTENANCE AGREEMENT ONLY AND IS INTENDED TO ASSIST PRIVATE LANDOWNERS WHO DESIRE TO ENTER INTO A PRIVATE ROAD MAINTENANCE AGREEMENT. ANY PERSON OR PERSONS USING THIS AGREEMENT SHOULD REVIEW IT CAREFULLY WITH THEIR OWN LEGAL COUNSEL.

PRIVATE ROAD MAINTENANCE AGREEMENT

This Private Road Maintenance Agreement ("Agreement") is entered into this ____ day of _____, _____, by and amongst the undersigned parcel owners ("Participating Owners).

RECITALS:

A. *[Inset name of Road]* is a private road situated within the Town of Los Altos Hills, as more particularly shown on Exhibit A, attached hereto ("Roadway Property"). *[Exhibit A should include a legal description of the Roadway Property and drawing prepared by a licensed engineer showing the Roadway segment.]*

B. The undersigned Participating Owners are the owners or users of the Roadway Property.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. Road Commission Agent. A Road Commission Agent shall be elected by a majority of the Participating Owners. The Road Commission Agent will serve a term as agreed to by the Participating Owners and shall be subject to removal by a majority vote of the Participating Owners. The Road Commission Agent shall be responsible for monitoring the condition of the road surface and initiating maintenance activities as needed to maintain road surface standards.

2. Road Maintenance and Road Improvements. Road maintenance and road improvements will be undertaken and made whenever necessary to maintain the road in good operating condition at all times and to insure the provision of safe access, ingress, egress and passage by the Participating Owners and by emergency vehicles. A majority vote of the Participating Owners is required to approve any proposed road improvements and related contracts with a value in excess of \$_____. Before authorizing expenditures for future road improvements, Participating Owners will be notified by the Road Commission Agent, cost estimates will be provided, and a majority agreement will be required. If any Participating Owner performs improvements, maintenance, repairs, or replacements to the Roadway Property without prior approval of a majority of the Participating Owners, the Participating Owner performing such work shall be solely responsible for the costs incurred.

3. Cost Sharing. Road maintenance, road improvement and emergency funding costs shall be shared on a pro-rata basis amongst the Participating Owners sharing access to the Roadway Property. Each Participating Owner's share of costs incurred shall be determined as follows: [INSERT ALLOCATION FORMULA]. The Road Commission Agent shall provide the Participating Owners and the Town an updated copy of the cost allocations whenever the cost allocation is amended.

4. Prepayment. Prepayment of maintenance, improvement and emergency fund costs will be made to the Road Commission Agent by each Participating Owner. Annually, on or before a date as specified by the Road Commission Agent, each Participating Owner will contribute their pro-rata share of the estimated annual cost for road maintenance, road improvements and emergency repair funding. The Road Commission Agent shall send each Participating User a notice of the annual payment due not less than two weeks prior to the due date and each Participating Owner shall pay the invoice within two weeks of receipt of the notice.

5. Future Parcels. Any additional parcels gaining access to the Roadway Property by way of subdividing an existing parcel shall be bound by all terms and conditions of this Agreement, and will be required to pay that portion of the maintenance, improvement and emergency repair costs incurred after the split as determined using the formula contained in Section 3 above.

6. Bank Account, Budget and Annual Report. The Road Commission Agent shall establish and maintain a bank account to hold the funds paid by the Participating Owners and to pay maintenance, improvement and emergency repair costs. All checks or payments issued from the account shall require the approval/signature of the Road Commission Agent and one Participating Owner as designated by a majority of the Participating Owners. The Road Commission Agent shall also prepare and distribute to the Participating Owners an annual income and expense report and a year-end balance sheet, accounting for all funds received and disbursed. Not later than sixty (60) days prior to _____ of each year, the Road Commission Agent shall prepare a budget of the anticipated road maintenance, road improvement and emergency repair contingency funding for the next fiscal year (defined as _____ to _____ months). The Participating Owners shall consider, amend as desired and approve the final budget by a majority vote of all participating owners not later than thirty (30) days prior to the beginning of the next fiscal year.

7. Emergency Repairs. If the Road Commission Agent determines that an

emergency repair to the Roadway Property is necessary, the Road Commission Agent is authorized to make or arrange for the emergency repair provided the costs of the emergency repair do not exceed the amount of the then available emergency repair funds. The Road Commission Agent will thereafter notify the Participating Owners of the emergency repair and the amount due from the Participating Owners to replenish the emergency repair contingency fund.

8. Effective Term. This Agreement shall be perpetual, and shall encumber and run with the land as long as the Roadway Property remains private.

9. Binding Agreement. This Agreement shall be binding upon the parties hereto, their respective heirs, executors, administrators and assigns.

10. Amendment. This Agreement may be amended only by a two-thirds majority consent of all Participating Users.

11. Enforcement. This Agreement may be enforced by the Road Commission Agent, a majority of Participating Owners. or the Town of Los Altos Hills City Manager. If a court action or lawsuit is necessary to enforce this Agreement, the party commencing such action or lawsuit shall be entitled to reasonable attorney fees and costs, if the party prevails.

12. Disputes. If a dispute arises over any aspect of the improvements, maintenance, or repair, the parties [*shall or may*] engage in binding arbitration to resolve the dispute. The decision of the arbitrator shall be final and binding on all of the Participating Owners. In selecting a third party arbitrator, each Participating Owner shall be entitled to one vote, and the nominee receiving a majority of the votes shall be the arbitrator. All parties shall share in the cost of any arbitration.

13. Notices. Any notice required herein shall be sent to Participating Owners at the address or email address provided to the Road Commission Agent in writing by the

Participating Owner. If an address of a Participating Owner is not known, a certified notice will be mailed to the address to which the Participating Owner's property tax bills are sent.

14. Invalidity. Should any provision in this Agreement be deemed invalid or unenforceable, the remainder of the Agreement shall not be affected and each term and condition shall be valid and enforceable to the extent permitted by law.

15. Other Agreements. This Private Road Maintenance Agreement replaces all previous Private Road Maintenance Agreements regarding the described Private Road.

16. Participating Owners and their agents shall hold harmless and indemnify the Town, its officials, employees, consultants and agents for any failure by the Town to perform its obligations identified herein, and nothing in this Agreement shall be construed as imposing any obligation upon the Town to perform maintenance or improvements to the Roadway Property or to enforce this Agreement.

17. Recording This Document. Original and amended copies of this document , including added signatures, shall be recorded and provided to the City Clerk by the Road Commission Agent.

The parties hereto have executed this Agreement effective as of the date written above.

PARTICIPATING OWNERS: *[All Owners of Property must sign and all signatures must be notarized]*

[name of Participating Owner, address, and APN]

[name of Participating Owner, address, and APN]

[name of Participating Owner, address, and APN]

Exhibit A

[Insert legal description of Roadway Property.]