

## PRIVATE ROAD MAINTENANCE AGREEMENT

An Agreement made this original date of \_\_\_\_\_, 2015 applicable to the undersigned parcel owners and users,

### RECITALS

**WHEREAS**, \_\_\_\_\_ Road (hereafter the Road) is a private road situated off Newmarket Road (Route 108) in Durham, New Hampshire and

**WHEREAS**, the undersigned parcel owners are the owners of the Road situated off Newmarket Road (Route 108) in Durham, New Hampshire, and described as follows:

Beginning at a point which is set at the intersection of the right of way and the northwesterly corner of the lot herein conveyed, thence running on a curve with a radius of 150 feet, an arc length of 171.79 feet, a chord length of 152.55 feet, with a chord bearing of South 31 degrees, 10 minutes, 20 seconds East, a delta angle of 65 degrees, 37 minutes, 09 seconds and a tangent of 96.70 feet to a rebar to be set; thence turning and running South 63 degrees, 58 minutes, 54 seconds East a distance of 104.61 feet to a rebar to be set; thence turning and running on a curve with a radius of 195 feet, an arc length of 57.54 feet, a chord length of 57.33 feet with a chord bearing of South 55 degrees, 31 minutes, 44 seconds East, a delta angle of 16 degrees, 54 minutes, 20 seconds and a tangent of 28.98 feet to a rebar to be set; thence turning and running South 47 degrees, 04 minutes, 34 seconds East a distance of 39.61 feet to a rebar to be set; thence turning and running on a curve with a radius of 25 feet, an arc length of 29.87 feet, with a chord length of 28.13 feet and a chord bearing of South 81 degrees, 18 minutes, 36 seconds East, a delta angle of 68 degrees, 28 minutes, 03 seconds and a tangent of 17.01 feet to a rebar to be set at the northerly side of Route 108 (Newmarket Road); thence turning and turning South 64 degrees, 27 minutes, 22 seconds West along Route 108 a distance of 16.95 feet to a point; thence turning and running South 62 degrees, 13 minutes, 22 seconds West a distance of 56.49 feet to a point; thence turning and running on a curve with a radius of 25 feet, an arc length of 47.69 feet, a chord length of 40.78 feet with a chord bearing North 07 degrees 34 minutes 24 seconds East, a delta angle of 109 degrees 17 minutes 47 seconds and a tangent of 35.24 feet to a point; thence turning and running North 47 degrees 04 minutes 34 seconds West a distance of 14.38 feet to a point; thence turning and running on a curve with a radius of 175 feet, an arc length of 51.64 feet, a chord length of 51.45 feet, with a chord bearing North 55 degrees 31 minutes 44 seconds West, a delta angle of 16 degrees 54 minutes 20 seconds and a tangent of 26.01 feet to a point; thence turning and running North 63 degrees 58 minutes 54 seconds West a distance of 104.61 feet to a point; thence turning and running on a curve with a radius of 170 feet, an arc length of 194.70 feet, a chord length of 184.23 feet, with a chord bearing South 31 degrees 10 minutes 20 seconds East, a delta angle of 65 degrees 37 minutes 09 seconds and a tangent of 109.60 feet to a point; thence turning and running South 88 degrees, 21 minutes 45 seconds East a distance of 20 feet to the point of beginning.

**WHEREAS**, the parties desire to enter into an Agreement regarding the costs of maintenance and improvements to the Road; and

**WHEREAS**, it is agreed that future parcel owners or users be bound by this recorded document;

**WHEREAS**, parcel owners are defined as the current owner of the property described in a deed to the Seacoast Repertory Theater by deed dated February 13, 2012 and recorded at Book 3992, Page 997 of the Strafford County Registry of Deeds and described in a "Subdivision Plan Land of Seacoast Repertory Theater, (Mill Pond Center) (Tax Map 6, Lot 9-8) 50 Newmarket Road, Durham, New Hampshire" dated February 25, 2015 by Doucet Survey, Inc., and any subdivision or other parcels created from this larger parcel;

**NOW THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:**

- 1. Vehicle and Pedestrian Access Easement.** The Road shall be subject to a perpetual, appurtenant easement for ingress and egress granting access to all the parcel owners and their occupants, agents, employees, guests, services and emergency vehicles.
- 2. Utility Easement.** The Road shall be subject to a perpetual, public utility easement for the purpose of permitting above and below ground public utilities to be installed and maintained benefitting all parcel owners.
- 3. Road Maintenance.** Road maintenance and road improvements must 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 by emergency vehicles. A majority vote of parcel owners is required for any road improvements and to accept the bid for any road improvement contract. However, if a majority does not vote to approve expenses which are necessary to maintain the Road in good operating condition at all times and to insure the provision of safe access by emergency vehicles, or to comply with any other requirements in this Agreement (including, but not limited to, snowplowing), then a minority of the parcel owners may pay for the necessary work or work required by this agreement and require payment in accordance with this agreement from any other parcel owners. Before authorizing expenditures for future road improvements, parcel owners will be notified and cost estimates will be provided, and a majority agreement will be required. If any parcel owner performs improvements, maintenance, repairs or replacements without the approval of the other parcel owners prior to performing such work, the parcel owner performing such work shall become liable for the entire cost thereof, unless such work is deemed an emergency. However, where emergency repairs are necessary neither majority vote nor prior approval is necessary before making such improvements or undertaking such maintenance.

- 4. Parking.** For the safety of the residents, no machinery, trailers, vehicles or other property may be stored or parked upon the Road.
- 5. Cost sharing.** Road maintenance, snowplowing and road improvements costs shall be shared on a pro-rata basis between the parcel owners sharing access to the above mentioned road. Each parcel owner's share of costs incurred shall be determined as follows: Pro-rated cost share will be based upon the percentage of roadway extending from the start of the Road to the intersection of each driveway where a residence exists, or the midpoint of a property frontage that is adjacent to the roadway when a driveway to a residence does not exist.
- 6. Prepayment.** Prepayment of maintenance, snowplowing, and improvement costs will be made to the road maintenance account by each parcel owner. Annually, on or before a date as specified by the majority of parcel owners, each parcel owner will contribute their pro-rated share of the estimated annual cost for road maintenance, road improvements, and annual snow removal. A majority of the parcel owners shall send each parcel owner a two week notice of the annual payments due.
- 7. Snowplowing.** The Road shall be snowplowed so as to permit year road access. The cost shall be shared by the parcel owners as indicated in Paragraph No. 5 above. Individual driveway snow plowing, if desired, will be invoiced to the parcel owner directly by the snow plow contractor.
- 8. Checking Account.** A majority of the parcel owners shall establish and maintain a bank checking account with a local bank, and will prepare and distribute to the herein affected parcel owners an annual income and expense report and a year-end balance sheet, accounting for all funds received and disbursed.
- 9. Effective Term.** This Agreement shall be perpetual, and shall encumber and run with the land as long as the Road remains private.
- 10. Binding Agreement.** This Agreement shall be binding upon the parties hereto, their respective heirs, executors, administrators, and assigns.
- 11. Amendment.** This Agreement may be amended only by a two-thirds majority consent of all parcel owners.
- 12. Enforcement.** This Agreement may be enforced by any of the parcel owners. 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.

**13. Disputes.** If a dispute arises over any aspect of the improvements, maintenance, repair, or replacement, a third party arbitrator shall be appointed to resolve this dispute. The decision of the arbitrator shall be final and binding on all of the lot owners. Contact information for local arbitrators can be obtained through the American Arbitration Association. In selecting a third party arbitrator, each lot shall be entitled to one vote, and the nominee receiving a majority of the votes shall be the arbitrator. All parties shall share the cost of any arbitration.

**14. Notices.** Parcel owners under the Agreement shall be notified by mail or in person. If an address of a parcel owner is not known, a certified notice will be mailed to the address to which the parcel owner's property tax bills are sent.

**15. 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.

Date: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF NEW HAMPSHIRE

COUNTY OF \_\_\_\_\_

Personally appeared the above named \_\_\_\_\_ and swore under oath that he/she executed this Road Maintenance Agreement of his/her free and voluntary act and deed.

Date: \_\_\_\_\_

Notary Public/Justice of the Peace

