

PRIVATE DRIVEWAY MAINTENANCE AGREEMENT

This Maintenance Agreement ("Agreement") is made on the 26th day of March, 2020, by and between Thomas Poenitsch and Christy Mullins as the owners of Lot 1, Poenitsch Subdivision, Lot 2, Poenitsch Subdivision, and Lot 3, Poenitsch Subdivision. Lot 1, Lot 2 and Lot 3 may be collectively referred to herein as the "Lots." This Agreement has been identified on the Plat of the Poenitsch Subdivision and also shall be identified in all deeds pertaining to these three lots for as long as this Agreement is in effect.

WHEREAS, to minimize the cost to present and future Lot Owners of developing and maintaining a private driveway, the undersigned have deemed it desirable to jointly utilize and maintain the existing and planned private driveway located in the Poenitsch Subdivision to serve the above-described three residential Lots.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter contained, the undersigned do hereby agree as follows.

1. **Definitions.**

a. **Lot Owner:** Collectively, the record owner or owners in fee simple of any of the above-described Lots. Each Lot shall have one vote, regardless of number of property owners, joint ownership or common tenancy. The financial obligation of each Lot Owner will be determined as outlined in section 2, regardless of the number of owners of each Lot. If any Lot is later divided to form additional lots, the vote and financial obligation of the original Lot shall be divided equally among the lots formed by such division.

b. **Driveway Easement:** The easement created and shown on the final plat of the Poenitsch Subdivision as a 50' Joint Access and Egress Easement for the purposes of construction, reconstruction and maintenance of a joint use road or driveway or any relocation thereof. Said easement shall include the right of access thereto by each Lot Owner and their invitees, agents and assigns.

2. **Interest.** The deeds to the Lots shall vest an interest in said driveway as follows:

a. The Lot Owner of Lot 3 shall have an undivided one half ($\frac{1}{2}$) interest in the portion of the Driveway Easement located on Lot 2, and an undivided one third ($\frac{1}{3}$ rd) interest in the portion of the Driveway Easement located on Lot 1.

b. The Lot Owner of Lot 2 shall have an undivided one half ($\frac{1}{2}$) interest in the portion of the Driveway Easement located on Lot 2, and an undivided one third ($\frac{1}{3}$ rd) interest in the portion of the Driveway Easement located on Lot 1.

c. The Lot Owner of Lot 1 shall have an undivided one third ($\frac{1}{3}$ rd) interest in the portion of the Driveway Easement located on Lot 1.

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3. **Use:** The deed to each Lot will create an interest coupled to and transferred with the fee title to each Lot and shall not be severable therefrom except as provided therein. Such interest shall entitle Lot Owners to an equal right to use, specifically subject to the following:

- a. The driveway shall be used in such a way as to cause no material injury to the subdivision.
- b. The driveway within the Driveway Easement shall be maintained in compliance with good roadway management methods.
- c. The use of this driveway is limited to Lot Owners and their families, agents, guests and assigns.
- d. The total width of the driveway shall not exceed 24 feet.
- e. Each Lot Owner shall be responsible for any and all physical damage caused to the driveway by the Lot Owner's use above and beyond normal wear and tear. Should such physical damage occur, the Lot Owner responsible shall timely cause said damage to be repaired at their own expense. Where such damage is observed by the Driveway Commission Agent (defined below) said agent shall perform his/her duty in accordance with sections 3(g) and 3(h) and duly assess the cost of the repairs against the responsible Lot Owner.
- f. All other costs of installation, operation, maintenance, repair or necessary improvements shall be the responsibility of each Lot Owner in proportion to their interest in the Driveway Easement as defined by section 2.
- g. A Driveway Commission Agent shall be elected by a simple majority of the Lot Owners, will serve a term as agreed in writing to by the Lot Owners, and can be replaced or renewed at any time by a simple majority vote of the Lot Owners. The Driveway Commission Agent shall be responsible for monitoring the condition of the road surface and initiating minor maintenance activities as needed to maintain the minimum road surface standards. A minor maintenance activity is any maintenance activity that results in a cumulative assessment to any Lot Owner of less than five hundred dollars (\$500.00) in any one calendar year. In addition to initiating minor maintenance activities, the Driveway Commission Agent shall be responsible for contracting and disbursing funds for the completion of driveway installation, operation, maintenance, or repair when properly approved by the Lot Owners pursuant to section 3.h. below.
- h. Before authorizing expenditures for any driveway installation, operation maintenance, or repair which may result in a cumulative assessment to any Lot Owner of more than five hundred dollars (\$500.00) in any one calendar year, Lot Owners will be notified in writing by the Driveway Commission Agent, written cost estimates will be provided, and a simple majority vote of Lot Owners will be required to approve any such installation, operation, maintenance, or repair.
- i. If any Lot Owner performs installation, maintenance, or repairs without the approval of a simple majority of the Lot Owners prior to performing such work, the Lot

Owner performing such work shall be liable for the entire cost thereof. A Lot Owner has the right to perform repairs in an emergency; provided that after the emergency repairs are completed, a simple majority of the Lot Owners is required in order for all Lot Owners to be liable for their proportionate share of the repair costs.

j. All initial installation and construction costs necessary to create a lane or drive that extends or expands the existing driveway for the sole use or development of a Lot shall be the sole responsibility of that Lot's Owner.

k. The initial development and installation of the driveway will be completed by the Lot Owner of Lot 3. Each subsequent Lot Owner shall reimburse the owner of Lot 3 for their interest in the driveway prior to development of their Lot. Detailed written records, together with copies of all receipts pertinent thereto shall be kept by the Lot Owners and provided to each other upon reasonable request to establish the amount to be paid.

l. No Lot Owner shall be entitled to compensation from any other Lot Owner for administrative time or personal time expended in the management of the Driveway Easement; however, Lot Owners may be reimbursed for materials purchased for approved repairs of the driveway.

4. **Effective Term.** This Agreement shall be perpetual, and shall encumber and run with the land, such land being Lots 1, 2 and 3, Poenitsch Subdivision, as long as the driveway remains private. At such time as all affected Lots have a legal, sufficient, County-approved direct access to a public road, this agreement may be terminated by a majority vote of Lot Owners. If terminated, the ownership of the driveway automatically reverts to the owner upon whose lot the driveway is situated. •

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

6. **Enforcement.**

a. If any Lot Owner shall violate any of the covenants herein, it shall be lawful for any other Lot Owner to demand arbitration against the person or persons violating such covenants and either prevent him/her from doing so, and to recover appropriate costs and damages, including reasonable attorney fees.

b. Any controversy, dispute, or question arising out of, in connection with, or in relation to this agreement or its interpretation, performance, non-performance, or any breach thereof shall be determined by arbitration conducted in accordance with the existing rules of the Colorado Uniform Arbitration Act (CRS 13-22-201).

c. In the event any sums due from any Lot Owner are not paid when owed, then such sums shall be considered delinquent and together with interest, attorney fees and cost of collection, shall become a continuing lien on the delinquent Lot Owners' property. The lienor shall be the Lot Owner(s) who advance the sums unpaid by the delinquent party.

d. If the delinquent sums are not paid within thirty (30) days after the due date, they shall bear interest at the rate of twelve (12%) percent per annum and the lienor(s) may record a Statement of Lien against the Lot owned by the delinquent Owner and foreclose his/her lien against the property as provided under Colorado law.

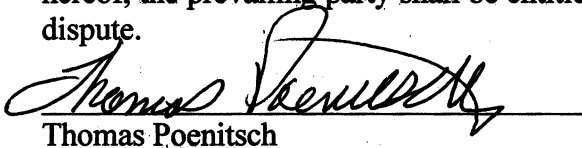
7. **Amendment.** This agreement may be modified or amended at any time by a recorded statement signed by all parties hereto, or their successors in interest.

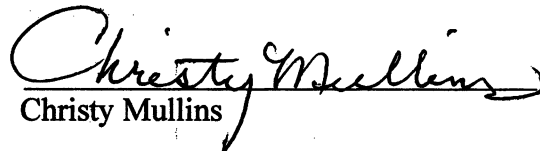
8. **Notice.** Any notice required to be sent to any Lot Owner under the provisions hereof shall be deemed to have been properly given when mailed, by first class mail, to the address of record of the last known address of the Lot Owner of record at the time of mailing.

9. **Severability.** Invalidation of any of the covenants, limitations or provisions of this agreement by judgement or court order shall in no way affect any of the remaining provisions hereof, and same shall continue in full force and effect.

10. **Applicable Law and Venue.** This agreement shall be construed in accordance with the laws of the State of Colorado. The parties agree the exclusive place of venue and jurisdiction shall be any court of competent jurisdiction located within El Paso County, Colorado.

11. **Attorney Fees and Costs.** In the event that it becomes necessary to enforce the terms hereof, the prevailing party shall be entitled to its attorney fees and costs in connection with such dispute.


Thomas Poenitsch


Christy Mullins

State of Colorado)
) ss.
County of El Paso)

The foregoing instrument was acknowledged before me this 26th day of March, 2020, by Thomas Poenitsch and Christy Mullins.

Witness my hand and official seal.


Notary Public

My commission expires: _____

