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PRIVATE DRIVEWAY MAINTENANCE AGREEMENT

This Private Driveway Maintenance Agreement (“Agreement”) is made and has been entered into this _____ day of _____ 20____, by and between Thomas Poenitsch and Christy Mullins, _____ and _____, their successors and assigns.

This Agreement applies to Lots 1, 2 and 3, Poenitsch Subdivision, comprised of 18.86 acres of land in the South half of the Southeast quarter of the Southeast quarter of Section 8, Township 12 South, Range 65 West of the 6th P.M., County of El Paso, State of Colorado. This Agreement has been identified on the Plat of the Poenitsch Subdivision and also shall be identified in all deeds pertaining to these three parcels for as long as this Agreement is in affect.

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 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. Owner: The record owner in fee simple of either property which has, by his/her, or any prior owners’ signature hereon, subscribed to this maintenance and joint use agreement. For the purpose of voting, there shall be one vote per property, regardless if there is joint ownership or common tenancy.
- B. Driveway Easement: The easement created and shown on the final plat of the Poenitsch Subdivision for the purposes of construction, reconstruction and maintenance of a joint use drive or any relocation thereof. Said easement shall include the right of access thereto by each user and their agents.
- C. Property: The properties effected by this agreement are the legally platted Lots 1, 2 and 3 Poenitsch Subdivision, in the South half of the Southeast quarter of the Southeast quarter of Section 8, Township 12 South, Range 65 West of the 6th P.M., County of El Paso, State of Colorado.

2. USE.

The owner of each property served by the driveway shall have an equitable interest in said driveway, which interest shall be coupled to and transferred with the fee title to each property and shall not be severable therefrom except as provided herein. Such interest

shall entitle owners of properties served by the driveway to equal use, specifically subject to the following:

- a. The driveway shall be used in such a way as to cause no material injury to subdivision.
 - b. The construction of this driveway shall be in compliance with El Paso County standards.
 - c. The use of driveway is limited to owners of the lots within the Poenitsch Subdivision.
 - d. The total width of the driveway shall not exceed 24 feet, which corresponds to the El Paso County standards.
 - e. Individual property owners shall be responsible for any and all physical damage to the driveway resulting from their use of the drive; however, this shall not include problems or inconvenience caused to the other user by the interruption of use of said drive to their property. Should any physical damage occur, the owner responsible shall immediately cause said damage to be repaired.
 - f. Each owner shall be obligated to share equally in the costs of permits, installation, operation, maintenance, repair (except as provided in 2.j.), and to protect and legally defend the driveway located within the Easement and rights if any.
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1. At such time as the first owner requires use from this driveway for a house, the installation/construction necessary to utilize the drive will be installed and the cost thereof borne by that owner. If and when the owner of the second property applies for a building permit, any additional construction / maintenance necessary to utilize the drive will be borne by that owner. At that time, each owner will reimburse the other for one half of the expenses incurred to utilize the drive for both properties. Detailed written records, together with copies of all receipts pertinent thereto shall be kept by the owners and provided to each other to establish the amount to be paid. The cost of installation, maintenance and repair of the driveway to each property shall be borne solely by the owner of said property.
 2. At such time as all property owners commence using the driveway, the cost of said use / maintenance shall be borne by all owners equitably. All owners utilizing the driveway shall be responsible for full payment of all maintenance charges on said drive. At such time as all property owners become responsible for payment of this, all reimbursable costs shall have been paid, each to the other. No interest is to accrue on these reimbursable costs except as provided for in 3. Enforcement, below.
 3. Except as listed above, relating to the initial costs of installation, and maintenance, no capitol improvements shall be made to the driveway which results in assessments to any owner of more than \$500.00 in any one year unless agreed to in writing by all property owners.
 4. No owner shall be entitled to compensation from any other owner for administrative time or personal time expended in the management of the driveway; however, owners may be reimbursed for material purchased for repair of the common drive.

3. ENFORCEMENT:

If any owner shall violate any of the covenants herein, it shall be lawful for any other owner or user to prosecute any proceedings at law or equity against the person or persons violating such covenants and either prevent him/her from doing so, or to recover costs or damages for such violation(s), or both.

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).

In the event any that sums due from any 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 owners' property. The lienor shall be the owner(s) who advances the sums unpaid by the delinquent party. Such lien shall cloud the title of the property of the owners his/her heirs, successors, devisees, personal representatives and assigns.

If the delinquent sums are not paid within thirty (30) days after the due date, they shall bear interest at the rate of eighteen (18%) percent per annum and the lienor may record a Statement of Lien and foreclose his lien against the property as provided in Colorado law.

In addition to the foregoing, the non-delinquent owner(s) shall have the right to disconnect or shut off the water supply to the property of the delinquent owner whose payment(s) are over thirty (30) days past due until he/she has paid all sums due hereunder.

4. TERMINATION:

Upon the recording of the plat for the Poenitsch Subdivision, this agreement shall be executed and recorded, and shall be binding upon the parties hereto, their heirs, successors, devisees, personal representatives or assigns, and shall run with the land unless terminated as provided herein.

If desired, all owners must agree in writing to terminate this agreement. If liveable houses exist on all properties, this agreement shall not be terminated unless all property has a viable and sufficient, County approved access. If terminated, the ownership of the driveway automatically reverts to the owner upon which property the drive is situated.

5. AMENDMENT:

This agreement may be modified or amended at any time by a recorded statement signed by all parties hereto.

6. NOTICE:

Any notice required to be sent to any 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 know address of the owner of record at the time of mailing.

7. 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.

8. 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.

9. 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.

AGREED TO:

Thomas Poenitsch

Christy Mullins

State of Colorado)) SS
County of El Paso)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by.

My commission expires: _____
Witness my hand and official seal.

Notary Public

The foregoing instrument was acknowledged before me this _____ day of
_____, 20____, by.

My commission expires: _____
Witness my hand and official seal.

Notary Public

The foregoing instrument was acknowledged before me this _____ day of
_____, 20____, by.

My commission expires: _____
Witness my hand and official seal.

Notary Public