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**Fields Way**  
**Private Roadway & Utilities**  
**Maintenance Agreement**

NOW, THEREFORE, \_\_\_\_\_, a Massachusetts limited liability company with a principal place of business at \_\_\_\_\_ (hereinafter referred to as "Owners") hereby declare that the following shall be binding on the Owners and that the rights, restrictions, conditions, limitations and easements imposed and recorded herein are intended to be effective with reference to the Lots described below and shall continue to run with the land and be binding upon the Owners successors and assigns:

1. Fields Way is a Private Right-of-Way intended to provide a means of continuous access and egress for Lots 1, 2, 3, & 4 and to provide an area for utility installations needed for the construction and continuous occupation of Lots 1 thru 4. The Private Right-of-Way is shown and described on a Plan of Land recorded at Essex South District Registry of Deeds Plan Book XXX, Plan XX.
2. A Private Roadway is to be constructed and maintained within the Private Right-of-Way as shown on the Definitive Subdivision Plans approved by the Town of Newbury Planning Board and recorded at Essex South District Registry of Deeds.
3. Utilities shall include, but not be limited to public or private drainage, water, electricity, telephone, cable television. Utilities may be placed above ground or below ground.
4. The Owners of Lots 1, 2, 3 and 4 shall share equally all costs and expenses to construct the roadway and utilities within the Private Roadway and Drainage Easement Area. The Drainage Easement Area is located on Lot 4 and has an area of 32,886 square feet.
5. Upon the conveyance of Lots 1, 2, 3 and 4 to any third party, the then Owners shall be equally responsible for their share of the maintenance

of the roadway and utilities within the Private Roadway, and Drainage Easement Area.

6. Associated with the Fields Way Subdivision project is a Stormwater Management System. Operations and maintenance of said Stormwater Management System shall be in accordance with applicable regulations and requirements set forth in the Drainage System Operation and Maintenance Plan developed for the project site. The Owners of Lots 1, 2, 3 and 4 shall share equally in the cost of operation and maintenance of said Stormwater Management System.
7. The Owners of Lots 1, 2, 3 and 4 hereby declare that they hold title to their respective real property subject to the following:
  - (a) any such installation, repair, maintenance, replacement and use of utilities to service any of the Lots shall be done at the sole expense of the owner or owners of the lot to be serviced by such utilities; provided, however, that the expense of any such installation, repair, maintenance or replacement of shared conduits, pipes, wire, cables, structures and appurtenances for the transmission of water, stormwater, electricity, or communications be shared equally by the owners of the Lots 1, 2, 3 and 4 (i.e., 1/4 apportionment to each lot);
  - (b) all roadway and utility installation, maintenance, repair and replacement shall be performed in a good and workmanlike manner;
  - (c) any digging or any such work performed on the Private Roadway shall be promptly covered over and the Private Roadway shall be promptly restored to its former condition;
  - (d) any such rights and easements shall not be used in a manner so as to over-burden the capacity of any utilities serving the Lots;
  - (e) the basic physical characteristics of the Private Roadway shall remain as shown on the Definitive Subdivision Plans unless otherwise authorized by the Newbury Planning Board. Such authorization may include the endorsement or acceptance by the Planning Board of an As-Built plan following the construction of the Private Roadway;
  - (f) the Stormwater Management System (including but not limited to catchbasins, piping system, stormwater treatment structures, infiltration trenches & drywells) must be inspected periodically, with reports proved to the Town of Newbury, by a competent professional and maintained as set forth in the Drainage System Operation and Maintenance Plan. The Owners of Lots 1, 2, 3 and 4 shall provide unhindered access to the Stormwater Management System

components on each Lot for inspection and maintenance at reasonable times.

(g) following the improvement of the Private Roadway, as specified in Paragraph 3 hereof, the owners of Lots 1, 2, 3 and 4 shall be responsible for and shall promptly contribute one-quarter (1/4) of the costs of repairing, re-grading, plowing, sanding and otherwise maintaining the Private Roadway and utilities (including stormwater management devices), unless such work is required as a result of actions of the owner of any of the Lots, in which case such owner or owners shall bear the total cost of such work; and

(h) individual Lot Owners are to exclusively maintain gutters and downspouts located on their individual properties.

8. Any controversy concerning the definition of work with respect to the Private Roadway, and Drainage Easement; the cost and expense of the same, or delegation of responsibilities pursuant to this Agreement or the manner, timing, or method of performance of the same shall be determined by referring the matter to an independent attorney or engineer. The cost of the services of the independent attorney or engineer shall be equally shared by the owners of Lots 1, 2, 3 and 4.
9. An assessment shall be deemed to have been made at such time as any actual maintenance or improvement is performed. Each lot owner shall pay the respective assessment attributable to such lot within ten (10) days of receipt of a statement therefor. The satisfaction of assessments shall be the personal obligation of the record owner(s) of the Lots at the time an assessment is made. If an assessment is not paid in full whenever it shall become due, the delinquent lot owner shall pay all costs and expenses of collection, including, if referred to an attorney for collection, a reasonable attorney's fee.
10. The Owners agree and acknowledge that the Town of Newbury shall not be responsible for plowing, maintaining or repairing the Roadway, nor shall the Town of Newbury be responsible for the removal of snow and ice therefrom.
11. This Agreement and any and all rights and easements granted hereunder shall run with the land and shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.
12. In addition to the Owners, the Town of Newbury may enforce the terms and conditions of this Roadway & Utility Maintenance Agreement.

13. Any controversy concerning the definition of maintenance, the cost and expense of the same, or delegation of responsibilities pursuant to this Agreement, or the manner, timing or method of performing the same shall require the approval of the owners of record of both of said Lots 1, 2, 3 and 4. In the event of a disagreement, then the matter shall be submitted to arbitration with each party naming one arbitrator and the two arbitrators so named naming a third arbitrator. The matter requiring arbitration shall be submitted to the arbitrators and their determination shall be final and binding on both parties.
14. Any notice given to any lot owner pursuant to this Agreement shall be deemed to have been properly given if mailed by Certified Mail, postage prepaid, to the record owners of said lot, at the mailing address of such owners according to the records of the Assessors of the Town of Newbury at the time of such mailing.

IN WITNESS WHEREOF, the said \_\_\_\_\_ has caused its corporate hand and seal to be hereto affixed this XX<sup>th</sup> day of XXXXXXXXXXXX, 20XX.

By: \_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this XX<sup>th</sup> day of XXXXXXXXXXXX, 20XX, before me, the undersigned Notary Public, personally appeared the above-named, \_\_\_\_\_, proved to me by satisfactory evidence of identification, being (check whichever applies): ☐ driver's license or other state or federal governmental document bearing a photographic image, ☐ oath or affirmation of a credible witness known to me who knows the above signatory, or ☐ my own personal knowledge of the identity of the signatory, to be the person whose name is signed above, and acknowledged the foregoing to be signed by him, as his free act and deed, voluntarily for its stated purpose and who swore or affirmed to me that the contents of this document are truthful and accurate to the best of his knowledge and belief as \_\_\_\_\_.

\_\_\_\_\_  
*[Affix Notarial Seal]*

\_\_\_\_\_  
Print Name of Notary Public:  
My Commission Expires:  
Qualified in the Commonwealth of  
Massachusetts