

Prepared by and return to:
Patricia D. Thomas, P. L. C.
Post Office Box 300
Middleburg, Virginia 20118

revised 7/26/02
10 a.m., latest version

File #02-925

PRIVATE ROAD MAINTENANCE AGREEMENT

THIS PRIVATE ROAD MAINTENANCE AGREEMENT made this ____ day of _____, 2002, by and between BEAVER CREEK FARM, L.L.C. (hereinafter referred to as "Declarant"),

WITNESSETH:

WHEREAS, Declarant is the owner of that certain real property known as Lots 1 and 2 of the Beaver Creek Subdivision, lying and being situate in the Blue Ridge Election District, Loudoun County, Virginia as shown on that certain Plat dated December 7, 2001, and revised through June 4, 2002, entitled "Low Density Waiver Plat LCTM 72-3 Land of Beaver Creek Farm, L.L.C." and prepared by Ken W. Erickson, Inc., of Leesburg, Virginia, certified land surveyors (the "Plat") which Plat was recorded June 27, 2002 among the land records of Loudoun County, Virginia; and

WHEREAS, Lots 1 and 2 are served by a private access easement for ingress and egress and for the construction and maintenance of utilities which easement is intended to be exclusive for the use of Lots 1 and 2 in the location as shown on the Plat, and designated thereon as "30 foot ingress-egress and utility easement hereby created"; and

WHEREAS, Lots 1 and 2 and the entrance thereto, as well as the retained land of Declarant are enhanced by a stone wall completed this date by Declarant, which wall fronts on Route No. 611 across the entire length of Lot 1; and

WHEREAS, it is the desire and intent of the Declarant hereto to provide for the maintenance of the aforesaid easement and stone wall.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the Declarant agrees as follows:

(a)(i) The responsibility and expense for the construction, repair and maintenance of the private access easement located on Lot 1 shall be shared equally by the owners of Lots 1 and 2, those being the parcels being served by the private access easement, except that any portion of the private access easement that serves only Lot 1 shall be the responsibility of the owner of Lot 1. The owner of Lot 2 shall maintain at its sole risk and expense that portion of the driveway which falls within the bounds of Lot 2.

(ii) The responsibility and expense for repair and maintenance of the stone wall shall be that of the owner of Lot 1. The wall shall be maintained in good and serviceable and useful condition, substantially in the condition as exists on the date of this Agreement. If the owner of Lot 1 fails to repair and maintain the stone wall, then after reasonable written notice to the owner of Lot 1 by the owner of Lot 2, the owner of Lot 2 shall have the right to enter Lot 1 and repair or maintain the wall to the standard defined herein. The owner of Lot 2 shall have a temporary limited right of access over, across, and upon Lot 1 for the purpose of performing repairs and maintenance of the wall. The reasonable and actual costs of the repairs for maintenance incurred by the owner of Lot 2 shall immediately become due and payable by the owner of Lot 1. The amount due by the owner of Lot 1 shall bear interest at the maximum legal rate allowed by law from date until paid and shall be the personal obligation of the owner of Lot 1 and shall also be a charge upon the land and a continuing lien upon his lot enforceable at law or in equity provided however that such lien shall be subordinate to any first lien on Lot 1.

(b)(i) The private access road within the said easement shall be constructed and maintained only as a gravel roadway sufficient for vehicular traffic, with maintenance to include, without limitation, grading scraping, ditching, placement of culverts, snow removal and spreading of new gravel, as necessary. The roadway shall be maintained in good repair and in safe, sound condition, slightly in appearance, and in conformity with all governmental laws, ordinances and regulations. With the mutual consent of both owners, the parties may provide for any additional maintenance or enhancement to the roadway, including fencing, landscaping, paving, or security.

(b)(ii) The location or relocation within the easement of any utility line or facility shall be at the cost and expense of the owner(s) requesting such location or relocation and shall not unreasonably interfere with the use of the easement for ingress and egress. The owners shall execute such documents, in recordable form, any site plans or plats as may be necessary to effectuate the provisions of this paragraph, including, but not limited to, deeds and plats of easement to utility companies and to public agencies and authorities.

(c) As required by Section 1245.05(3)(b) of the Loudoun County Land Subdivision and Development Ordinance, the parties hereto state and acknowledge that said access road or access easement is private and its maintenance, including snow removal, is NOT a public responsibility. It shall not be eligible or acceptance into the State secondary system for maintenance until such time as it is constructed and otherwise complies with all requirements of the Virginia Department of Transportation for the addition of subdivision roads current at the time of such request. Any costs required to cause this road to become eligible for addition to the State system shall be provided from funds other than those administered by the Virginia Department of Transportation and by Loudoun County.

(d) If any owner by his negligence causes damage to the private access easement, (or utilities therein) the expense of repairing such damage shall be borne exclusively by the responsible owner. During any construction of any improvements on either of the parcels, the owner of the parcel upon which construction is occurring shall be individually responsible for the cost of repairs made necessary by heavy equipment, etc., using the easement during construction.

(e) If any owner fails to maintain the roadway or to pay or reimburse the other owner for any construction cost contemplated by this agreement, including the cost of any repairs due to his negligence, the other owner, after five (5) days' written notice, may cause the repairs or maintenance to be undertaken, and thereafter, the reasonable and actual cost of the maintenance or repair shall immediately become due and payable by the owner so failing to make repairs or to maintain the easement. The amount due by that owner shall bear interest at the maximum legal rate allowed by law from date until paid and shall be the personal obligation of such non-paying owner and shall also be a charge upon the land and a continuing lien upon his lot enforceable at law or in equity, provided however that such lien shall be subordinate to any first lien on the respective lot.

(f) Each owner shall indemnify and hold harmless the other owner from and against all liabilities, losses, damages, costs, expenses, including reasonable attorney's fees and expenses, demands or judgments of any nature for any injury to or death of persons or loss of or damage to property occurring on or about the private access easement or arising out of any use thereof that results from the acts of such owner, members of such owner's household, or any of owners' guests, tenants, licensees, employees, authorized representatives, agents, or contractors.

This Private Road Maintenance Agreement, and any amendments hereto, shall be recorded among the land records of Loudoun County, Virginia, and shall constitute a covenant running with the land, and the terms hereof shall not be amended or modified, except by written agreement.

WITNESS the following signatures and seals:

DECLARANT:
BEAVER CREEK FARM, L.L.C.,
A Virginia limited liability company

By: _____ (SEAL)
Robin Koenig, Manager/Member

COMMONWEALTH OF VIRGINIA
COUNTY OF _____, TO-WIT:

I, the undersigned Notary Public in and for the Commonwealth and County aforesaid, do hereby certify that Robin Koenig, whose name is signed to the foregoing Road Maintenance Agreement, appeared before me personally and acknowledged the same in my jurisdiction aforesaid.

Given under my hand and seal this _____ day of _____, 2002.

Notary Public

My commission expires:

Mascatello/Road Maintenance Agreement