

ROAD MAINTENANCE AGREEMENT

This **AGREEMENT** dated this ____ day of September, 2020 is by and between land owners, Siegmar K. Eschholz, a/k/a Siegmar Eschholz, a/k/a Sigmar E. Eschholz (“Eschholz”), having a mailing address of Post Office Box 1432, Southwest Harbor, Maine 04679; Deborah L. DeWalt (“DeWalt”), having a mailing address of Post Office Box 445, Southwest Harbor, Maine 04679; MJL Properties, LLC (“MJL Properties”), having a mailing address of Post Office Box 445, Southwest Harbor, Maine 04679; and W. Brooke Roulette (“Roulette”), having a mailing address of 3017 River Road, New Hope, Pennsylvania 18938.

WHEREAS, Eschholz is the owner of a certain lot or parcel of land located in the Town of Southwest Harbor, County of Hancock and State of Maine, which may be further divided in the future (the “Eschholz land”), being the remaining portion of premises described in the following deeds: (i) deed dated May 11, 1999 from Jane W. Brown to Siegmar Eschholz and recorded at the Hancock County Registry of Deeds in Book 2831, Page 371; and (ii) deed dated May 29, 2001 from Indian Brook Corp. to Siegmar E. Eschholz and recorded at the said Registry of Deeds in Book 3081, Page 300 (collectively, the “Eschholz deed”);

WHEREAS, Deborah L. DeWalt is the owner of a certain lot or parcel of adjoining land located in the Town of Southwest Harbor (the “DeWalt land”), as more fully described in the deed dated October 17, 2003 from Siegmar Eschholz to Deborah L. DeWalt and recorded at the Hancock County Registry of Deeds in Book 3763, Page 161 (the "DeWalt deed");

WHEREAS, MJL Properties, LLC is the owner of a certain lot or parcel of adjoining land located in the Town of Southwest Harbor (the “MJL Properties land”), as more fully described in the deed dated October 31, 2019 from Siegmar Eschholz to MJL Properties, LLC and recorded at the Hancock County Registry of Deeds in Book 6987, Page 564 (the "MJL Properties deed");

WHEREAS, W. Brooke Roulette is the owner of a certain lot or parcel of adjoining land located in the Town of Southwest Harbor (the “Roulette land”), as more fully described in the deed dated September ____, 2020 from Siegmar Eschholz to W. Brooke Roulette and recorded at the Hancock County Registry of Deeds in Book ____, Page ____, (the "Roulette deed");

WHEREAS, the DeWalt land is benefitted by a twenty (20) foot wide right-of-way easement granted in the DeWalt deed, over land now owned by Roulette, providing access from Fernald Point Road to the DeWalt land;

WHEREAS, the Eschholz land and the MJL Properties land are each benefitted by a fifty (50) foot wide right-of-way easement, reserved by Eschholz in the Roulette deed and granted to

MJL Properties in the MJL Properties deed, over land now owned by Roulette, providing access from Fernald Point Road to the MJL Properties land;

WHEREAS, the Eschholz land is also benefitted by a twenty (20) foot wide right-of-way easement reserved by Eschholz in the Roulette deed, over land now owned by Roulette, providing access from the terminus of the aforementioned fifty (50) foot right-of-way, to the Eschholz land;

WHEREAS, the above described rights-of-way easements are depicted on a survey prepared by Sage Collings, Surveying, Inc., entitled, "Boundary Survey of a Portion of the Siegmars Eschholz property, 67 Fernald Point Road, Southwest Harbor, Hancock County, Maine" prepared on July 11, 2018, as revised on October 17, 2019 and September ____, 2020, to be recorded; and

WHEREAS, the parties wish to provide for ordinary and reasonable maintenance of the existing gravel road and any additional gravel road constructed upon those easements (collectively, "the Shared Private Road") on terms to run with the land and benefiting and burdening all parcels.

THEREFORE the undersigned for themselves, their heirs and assigns, hereby agree that the Shared Private Road shall be improved and maintained by and between the owners of the Eschholz land, the DeWalt land, the MJL Properties land, and the Roulette land as follows:

1. Acknowledgements. The term "Lot" refers to each the Roulette land, the MJL Properties land, the DeWalt land, and up to two (2) parcels of the Eschholz land benefitted by the right-of-way easements. The term "Participating Owner" means the owner of a Lot having a building or structure that requires a building permit built upon it, whether or not the owner resides on the property year round. This Agreement shall not alter the rights of access over the respective easements as created by deed, and is not intended to alter, expand, modify or replace such access rights as currently exist. It is intended only to address specific maintenance responsibilities, rights, and obligations related to the Shared Private Road.

2. General Maintenance. The Shared Private Road shall be maintained in a safe and passable condition by the owner of the Roulette Lot. Each Participating Owner shall share in the costs of any and all ordinary and customary road maintenance and upkeep, including snow fencing and deadfall and sideline clearing. Costs of snow plowing and winter sanding shall be shared by Participating Owners in proportion to the actual distance on the road plowed or sanded as necessary for their respective benefit. Road maintenance and upkeep shall be limited to that required to remove snow, to repair and prevent erosion and to repair ordinary wear to the surface of the road unless otherwise agreed by a majority of the Participating Owners. A Participating Owner shares responsibility only for that portion of the Shared Private Road that serves their Lot; each respective Lot owner is responsible for the driveway that leads from the Shared Private Road to their Lot.

3. Accounting and Payment. The owner of the Roulette Lot shall furnish to the Participating Owners written reports or other suitable evidence, such as invoices or receipts, of the costs and expenses incurred. Payment shall be due to the owner of the Roulette Lot within thirty days after request from the owner of the Roulette Lot. Any overdue payment shall be subject to an interest rate of one percent (1%) per month. If any party shall fail to make the required payment later than ninety days after request from the owner of the Roulette Lot and no notice of a disputed amount has been given within that period, the owner of the Roulette Lot shall be entitled to file a

lien in the Hancock County Registry of Deeds against the real property of the nonpaying Participating Owner. Upon payment by the nonpaying Participating Owner of the amounts due, or upon resolution of a disputed amount and payment, the owner of the Roulette Lot shall discharge such lien by recording a discharge in the Hancock County Registry of Deeds within thirty days of receipt of such payment or resolution, except that in the event of a force majeure event, including, but not limited to pandemic or other major interruption of normal business, the owner of the Roulette Lot shall instead make best reasonable efforts to record a discharge on said lien as soon as is reasonably practicable. The personal obligation of the Participating Owner to pay such amounts due shall remain the personal obligation of the person who was the Participating Owner when the assessment was first due and shall not pass to successors in title unless expressly assumed by such successors.

4. Repair of Damages. An owner of a Lot shall be solely responsible for the repair of damage to the road caused by them, or by a family member, tenant, guest, invitee, employee, contractor or their agents such as, but not limited to, by the use of construction or utility equipment entering the land for improvements to their property.

5. Improvements. The obligation of providing ordinary and reasonable maintenance shall be construed to repairing and re-gravelling the right-of-way as may be necessary. No Lot owner, or their successors, may perform improvements such as paving, absent the agreement of all of the other Lot owners, and if they do, they shall not be entitled to seek reimbursement for such services and costs.

6. Required Improvements or Expenses. In the event that improvements to the Shared Private Road are required by the Town of Southwest Harbor, e.g., as a condition of obtaining approval for fire protection for improvements on the property, the cost of the required road improvements shall be the sole responsibility of the Lot owner necessitating the improvements.

7. Resolution of Disputes. The Lot owners shall work together in good faith to resolve any disagreements between them in a fair and equitable manner. Any disputes that cannot be so resolved shall be submitted to arbitration in accordance with the Uniform Arbitration Act as enacted in the State of Maine, 14 M.R.S.A. § 5927 *et seq.* In the event a decision is obtained against a Lot owner, the settlement shall include interest on the amount owed to the prevailing party, together with all the attorney's fees and expenses and costs of the enforcement of this Agreement.

8. Attachment to land. The terms and conditions of this Agreement shall and do constitute covenants running with the land, and shall inure to the benefit of and be binding upon, as the case may be, the owners of the Lots and their respective successors and assigns, including, without limitation any and all subsequent grantees. However, no owner shall be personally liable for any damages resulting from the breach of any of the provisions of this Agreement, except with respect to any such breach occurring during the time that such owner is a record owner.

9. Severability. Invalidation of any one provision of this Agreement by competent authority shall in no way affect any other provision, which shall remain in full force and effect.

10. Entire Agreement; Amendment. This Agreement is the entire agreement between the parties and supersedes all negotiations and understandings between them. This Agreement may

be amended only by a written instrument executed in recordable form and signed by all owners of the properties benefitted by the easements, and recorded in the Hancock County Registry of Deeds.

(Signature pages follow.)