

**Private Roadway Maintenance Agreement**

DEED BOOK 264  
PAGE 528

This **PRIVATE ROADWAY MAINTENANCE AGREEMENT** made and entered into on this 30 day of September, 2011, by and between the following parties, all being owners of real property located and designated as being part of **THE CLEAR CREEK ESTATES SUBDIVISION, (individually, collectively, the "Owners")**:

**JEAN L. GUINN, a single person**, of 1130 Kidds Mill Road, Versailles, Kentucky 40383, owner of real property hereinafter designated as Tract 1 (5.731 acres);

**BRAD WOODWARD and CHRISTINA T. WOODWARD, husband and wife**, of 1140 Kidds Mill Road, Versailles, Kentucky 40383, owner of real property hereinafter designated as Tract 2 (30.101 acres);

**DEWITT C. GOFF, TRUSTEE, or his Successors In Trust under the D.C. Goff Revocable Trust, UTA Dated July 27, 2001**, of 77 South Birch Road, Unit 12C, Fort Lauderdale, Florida 33316, owner of real property hereinafter designated as Tract 4 (33.400 acres);

**BRUCE R. DeMAEYER and NANCY G. DeMAEYER, husband and wife**, of 1120 Kidds Mill Road, Versailles, Kentucky 40383, owner of real property hereinafter designated as Tract 5 (38.000 acres);

**BILL D. ATKINS, a single person**, a single person, of 4109 Delaney Ferry Road, Versailles, Kentucky 40383, owner of real property hereinafter designated as Tract 6 (74.955 acres).

**WITNESSETH**

**Whereas**, all of the parties hereto own real property located within the area commonly known as The Clear Creek Estate Subdivision located off of Kidds Mill Road, in Woodford County, Kentucky; and

**Whereas**, ingress and egress to each of the real properties designated herein as Tracts 1,2,4, & 5 from Kidds Mill Road is provided through a common private roadway which runs adjacent to their properties from Kidds Mill Road; and

**Whereas**, the party who is the owner of the real property designated herein as Tract 6 currently has access to her property through Delaney Ferry Road in Woodford County, Kentucky and is not currently utilizing the private roadway from Kidds Mill in order to provide ingress and egress; said party intends to participate in this Roadway Maintenance Agreement under the terms more specifically set forth herein; and

**Whereas**, the properties designated as Tract 1, 2, 4, 5 and 6 are currently subject to no executed or recorded Covenants and Restrictions for the Clear Creek Estate Subdivision; and

**Whereas**, all parties hereto desire to enter into this Private Roadway Maintenance Agreement in order to memorialize and confirm their understandings and agreements in order to provide for ongoing maintenance of the private roadway; and

**Now therefore**, for and in consideration of the parties' mutual desire that such private roadway be maintained through mutual expenditure, financing and effort, all as is more specifically set forth herein, the parties do now hereby covenant and agree as follows:

### **1. OWNER'S EASEMENT**

Each Owner shall have a right and easement of nonexclusive, reciprocal enjoyment including without limitation, the right of vehicular and pedestrian ingress and egress, in, on and to the Road which shall be appurtenant to and shall pass with the title to each Owner's Tract. This right and easement shall also be deemed granted to the Owner's families, guest, invitees, servants, employees, tenants, developers, and contract purchasers. The use by any Owner, their successors or assigns, of any portion of another Owner's tract shall be permissive in nature and shall carry no rights of adverse possession.

### **2. PRIVATE ROADWAY LOCATION**

The parties acknowledge and agree that the Developer has constructed a private roadway which, as existing, shall be designated as the location of the improved private roadway as paved.

The parties further acknowledge that this existing roadway is located within the area of certain easements created along the respective property owner's access/frontage strips to Kidds Mill Road, which access/frontage of land are twenty five feet (25') in width, but does not encompass all of the existing twenty five foot (25') strips utilized by all five tracts in question (Tracts 1, 2, 4, 5 and 6).

### **3. PRIVATE ROADWAY IMPROVEMENT LENGTH and WIDTH**

A. The parties acknowledge and understand that the existing private roadway, which roadway is currently of gravel construction, shall be initially improved by paving same with asphalt paving, which paving shall commence from the point of access common to, and intersecting with, Kidds Mill Road, and shall end at the point designated as the DeMaeyer gate (located on Tract 5), a total length of 2,257 feet.



B. Party Atkins (Tract 6) acknowledges that at such time, if any, as she shall desire to extend the private roadway from its' terminus above to connect to her property, Party Atkins shall extend such roadway from the DeMaeyer gate (on Tract 5) to her property at her sole cost and expense, which cost and expense is understood to include, without limitation, building the road bed, preparing the road bed for pavement, and paving of the said road bed and providing for the cost of ongoing maintenance.

**Further, at such time, as any, as Party Atkins shall extend such roadway from its' terminus to connect to her property, Party Atkins shall become subject to the further provisions of this agreement as to the ongoing maintenance and repairs.**

C. Parties agree that the road as paved shall generally be eleven (11') feet wide, however, that sections of the road near the installed culverts shall be paved at a width of from fourteen (14') feet to sixteen (16') feet in order to handle the unique problems in those areas caused by, and associated with, water runoff as it drains into nearby creek.

#### **4. PRO RATA SHARE OF PRIVATE ROADWAY MAINTENANCE AND/OR COST; PARTICIPATION OF TRACT 6**

A. The parties agree that the roadway maintenance shall be considered in two (2) parts as follows:

Section One (1) shall be considered that portion of the road beginning from the intersection with Kidds Mill Road to the driveway leading to Tract 2 property, a distance of 1104 feet;

Section Two (2) shall be considered that portion of the road from the Tract 2 driveway and extending along the existing road ending at the gates of the Tract 5 property, a distance of 1153 feet.

The parties further understand and agree that each Tract Owner shall have the duty and obligation for the maintenance and upkeep of the road in proportion to the percentage of said road leading to, and being adjacent to, that Owner's tract of land, which shall be measured from Kidds Mill entrance, and shall be proportionate to the total expense of said maintenance.

The parties further understand and agree that each property owner shall pay for maintenance of the roadway on a pro rata basis by section in the proportions set forth below, such financial responsibility to be as designated by Tract numbers as follows:

i) Tract 1, Tract 2, Tract 4 and Tract 5 shall each pay one--fourth ( $\frac{1}{4}$ ) of the total cost of maintaining the portion of the roadway designated as Section One (1) above. **Should Tract 6 later participate fully in this**

**Agreement as contemplated in Paragraph 3, B, above, this fractional share for the maintenance and repair of Section One (1) shall be reduced to 1/5 for each tract owner.**

ii) Tract 1, Tract 4 and Tract 5 shall each pay one-third (1/3) of the total cost of maintaining the portion of the roadway designated as Section Two (2) above. **Should Tract 6 later participate fully in this Agreement as contemplated in Paragraph 3, B, above, this fractional share for the maintenance and repair of Section Two (2) shall be reduced to 1/4 for each tract owner.**

B. The parties agree that ongoing maintenance and/or repair of the entire roadway, including repaving of the entire roadway, shall be shared by section according to the pro rata shares set forth in Paragraph 4,A,i and 4,A,ii above.

C. The parties further agree that should sections of the roadway need repair and/or repaving from time to time, the parties shall share in the repair and/or repaving of each section in accord with their responsibility for same, if any, under the pro rata shares set forth in Paragraph 4,A,i and 4,A,ii above.

## **5. ROADWAY MAINTENANCE COMMITTEE**

A. Owners of the five (5) participating tracts of real property shall create a committee of the whole to serve in order to secure estimates and or bids for maintenance and repairs of the private roadway. Each property (Tracts 1, 2, 3, 4, 5, and 6) shall be entitled to one (1) vote in such election regardless of the number of owners of such tract; thus, each tract shall designate one (1) owner, if more than one (1), to serve on such committee and to vote on all matters before the committee.

B. Once estimates or bids have been obtained, the estimate or bid to be awarded a contract shall be selected by unanimous vote of the property owners (Tracts 1, 2, 4, 5, and 6).

C. Once an estimate has been selected by unanimous vote and the contractor approved by the property owners, all parties to this Agreement acknowledge that they shall sign and execute any contracts or estimates necessary in order to secure the contractor and to commence work on the private roadway. Failure to sign such contract shall be considered a material breach of this Agreement.

D. Payment by each property owner shall be made as invoices are submitted for work preformed in accordance with the pro rata share set forth above. Failure to pay in full within thirty (30) days after an invoice or bill is submitted shall be considered a default in this Agreement.



E. Notwithstanding the above, so long as Tract 6 is not using the roadway and has not connected to it pursuant to paragraph 3,B, her responsibility under this agreement shall be limited to granting and receiving of easement rights in Paragraph 1. Correspondingly, Tract 6 shall have no vote and shall not serve on the Road Maintenance Committee until such time as Tract 6 has connected to the roadway.

#### **6. FUTURE CONSTRUCTION/ABUSE OF ROADWAY**

Each property owner shall be solely responsible for leaving the roadway in the same or better condition as it was prior to any major construction such owner may elect to perform on their respective properties. Any damage caused to any portion of the roadway due to the use of heavy vehicles in such construction shall be deemed to be included in the owner's responsibility.

#### **7. DEFAULT**

Should any property owner default in the payment of their respective share of any amount due and owing for work performed on the private roadway, the remaining property owners shall have the right to place a lien upon the real property of that owner located within The Clear Creek Estate Subdivision which for this purpose is identified as Tracts 1, 2, 4, 5, & 6 as described above, to secure the repayment of such amount. Such liens, if filed, shall entitle the remaining property owners to the amount claimed and also any costs or attorney's fees incurred in the filing or enforcement of such lien.

At such time as a lien is filed against any property owner, the amount secured or claimed under such lien shall commence to accrue interest until paid at the rate of six percent (6%) per annum for the first year after lien filing; at an interest rate of ten percent (10%) per annum for the second year; and thereafter at an interest rate of twelve percent (12%) per annum until paid in full.

#### **8. AGREEMENT TO RUN WITH THE LAND**

All parties agree that this Agreement is intended to run with the land and shall survive any transfer of their respective real property included herein, such agreement to be binding upon the parties respective heirs, successors and assigns. All parties hereto agree this Agreement shall be recorded in the Office of the Clerk of the Woodford County Court.

#### **9. CONSTRUCTION OF AGREEMENT**

The terms of this agreement shall be considered the entire agreement made and entered into by and between the parties. Any additional amendments to this agreement shall be in a form of writing identical in form and substance to this agreement. This agreement shall be construed in accordance with the laws of the Commonwealth of Kentucky and appropriate jurisdiction for construction

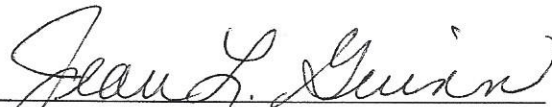
and interpretation of same shall be deemed to be the Woodford Circuit Court,  
Woodford County, Kentucky.

#### 10. AMENDMENT OF AGREEMENT


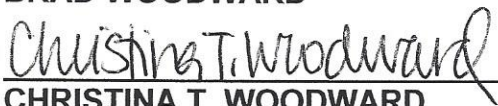
This agreement shall not be changed or amended save and except by writing similar in  
form to this Agreement executed by all parties hereto or their respective heirs, successors  
and assigns.

**In Testimony Whereof**, witness the hands of the parties hereto to this document  
consisting of 9 typewritten pages on this date and year hereinabove noted.

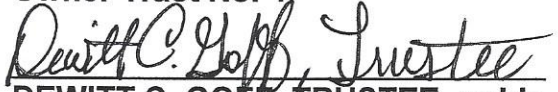
**Owner, Tract No. 1**

  
\_\_\_\_\_  
Jean L. Guinn, a single person

**Owner, Tract No. 2**

  
\_\_\_\_\_  
BRAD WOODWARD  
  
\_\_\_\_\_  
CHRISTINA T. WOODWARD

**Owner Tract No. 4**

  
\_\_\_\_\_  
DEWITT C. GOFF, TRUSTEE, or his  
Successors In Trust under the D.C.  
Goff Revocable Trust, UTA Dated  
July 27, 2001,

Owner Tract No. 5

Bruce R. DeMaeyer  
BRUCE R. DeMAEYER

Nancy G. DeMaeyer  
NANCY G. DeMAEYER

Owner Tract No. 6

Bill Dyer Atkins  
BILL DYER ATKINS

STATE OF KENTUCKY

COUNTY OF WOODFORD

Signed, sworn to, and acknowledged to before me by Jean L. Guinn, a  
single person, on this the 28 day of September 2011.

Chyllin S. Martin  
NOTARY PUBLIC

MY COMMISSION EXPIRES:

July 3, 2015  
STATE OF KENTUCKY

COUNTY OF WOODFORD

Signed, sworn to, and acknowledged to before me by Brad Woodward and  
Christina T. Woodward, husband and wife, on this the 30 day of  
September, 2011.

Chyllin S. Martin  
NOTARY PUBLIC

MY COMMISSION EXPIRES:

July 3, 2015



STATE OF ARKANSAS

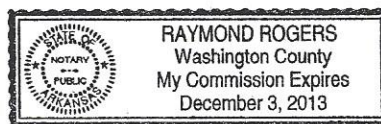
COUNTY OF WASHINGTON

Signed, sworn to and acknowledged to before me by Dewitt C. Goff,  
TRUSTEE, or his Successors In Trust under the D.C. Goff  
Revocable Trust, UTA Dated July 27, 2001, by and for such trust,  
on this the 29 day of SEPTEMBER 2011.

Raymond Rogers  
NOTARY PUBLIC

MY COMMISSION EXPIRES:

12/03/2013



STATE OF KENTUCKY

COUNTY OF WOODFORD

Signed, sworn to, and acknowledged to before me by Bruce R. DeMaeyer  
and Nancy G. DeMaeyer, husband and wife, on this the 28 day  
of September, 2011.

Gayle S. Mattingly  
NOTARY PUBLIC

MY COMMISSION EXPIRES:

July 3, 2015

STATE OF KENTUCKY

COUNTY OF WOODFORD

Signed, sworn to, and acknowledged to before me by Bill Dyer Atkins, a  
single person, on this the 28 day of September, 2011.


Gayle S. Mattingly  
NOTARY PUBLIC

MY COMMISSION EXPIRES:

July 3, 2015



PREPARED BY:



PHYLLIS LEE SHARP MATTINGLY

McCAULEY & MATTINGLY

137 North Main Street

Versailles, KY 40383

Woodford County Clerk's Office  
Branch: WOODFORD COUNTY  
JUDIE WOOLUNS  
DateTime: 10/3/2011 3:23:01 PM  
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