

COMMON DRIVEWAY AGREEMENT
LOTS 8 AND 9 AUTUMN LANE, HAMILTON, MA

ARTICLE I - PURPOSE

The purpose of the Common Driveway Agreement is to own and maintain a Driveway servicing lots 8 and 9 on Autumn Lane in Hamilton, Massachusetts.

ARTICLE II - DEFINITIONS

The following words when used in this Agreement or any supplemental Agreement shall have the following meanings:

1. "Plan" shall mean and refer to the plan entitled: "Definitive Plan Clarkville Woods Hamilton, Mass.", Scale 1"=40', dated March 16, 1988, revised June 20, 1988, by Hayes Engineering, Inc., recorded with the Essex South District Registry of Deeds in Plan Book 246, Page 50.
2. "Easement Plan" shall mean and refer to the easement plan entitled "Plan of Land in Hamilton, Mass.," dated September 16, 1991 by Hayes Engineering, Inc. Civil Engineers and Land Surveyors, 603 Salem Street, Wakefield, Mass. 01880 and recorded herewith.
3. "Common Driveway" shall mean and refer to the driveway as constructed or to be constructed within the area shown as "Proposed Driveway Easement" on the Easement Plan, which provides access to Lot 8 and Lot 9 on the Plan.
4. "Common Land" shall mean and refer to all the land including any structures thereon, within the area shown as Proposed Driveway Easement on the Easement Plan.
5. "Drainage Structures" shall mean and refer to the swales, culverts, catch basins, and drainage structures, if any, as constructed within the Common Land, culverts beneath driveway entrances, and any additional drainage structures or water courses necessary to the proper working of the drainage system for the driveway constructed within the Common Land.
6. "Common Utilities" shall mean and refer to electric lines, telephone lines, and gas lines within the Common Land, installed either above or below the surface of the land, and which serve or are intended to serve Lot 8 and Lot 9.

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7. "Lot" or "Lots" shall mean and refer to the two building lots shown as Lot 8 and Lot 9 on the Plan, individually or together.
8. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple to each Lot, notwithstanding any applicable theory of law with respect to mortgages, and shall not refer to any mortgagee unless such mortgagee has acquired full title pursuant to foreclosure or any other manner.
9. "Common Expenses" shall mean and refer to the costs and expenses necessary to maintain, repair, replace, or operate the Common Driveway, Common Land, and associated Drainage Structures and drainage ways and Common Utilities, and to perform the terms and provisions of this Agreement.

ARTICLE III - VEHICULAR AND UTILITY EASEMENTS

There is hereby granted to each of the Lots the perpetual right and easement in common with each other to use those portions of the "Proposed Driveway Easement" to serve as access for each Lot. Included in such rights and easements is the right to construct a driveway for all the purposes for which private driveways are customarily used, including the right to pass and repass, construct, reconstruct, operate, maintain, replace, and remove driveways, lines of telephone, electricity and cable television, conduits, pipes, manholes, drains, culverts, fixtures, and other appurtenances in, along, under, and across said areas.

ARTICLE IV - MAINTENANCE OF COMMON DRIVE

1. In order to provide a means for the continual year-round maintenance of the Common Driveway so as to provide continuous year-round access for motorized vehicular traffic for the convenience of the Owners, and to provide for access for all emergency, fire, rescue, police, moving, construction, and maintenance vehicles, the Owners shall arrange for the maintenance, repair, and reconstruction of the Common Drive. It is the responsibility of each Owner that:
 - a. The Common Land, including the Common Drive therein, shall be maintained, and Drainage Structures shall be installed and maintained, in such manner as to insure continuous year-round access. All Drainage Structures now or hereafter installed shall be kept clear and open.
 - b. Brush and foliage which might obstruct vision and passage shall be removed and cleared regularly;

- c. Snow shall be removed in such manner as to ensure continuous year-round access;
 - d. Any work performed by or at the request of either Owner shall be completed in a workmanlike manner and the premises will be reasonably restored to the condition prior to performing such work. The Owner performing the work shall indemnify and hold the other Owner harmless from any loss, claim, or damage caused by the work and the Owners shall keep the Lots free from liens arising from the work.
 - e. To provide for the maintenance of Common Utilities.
 - f. To enforce the terms and conditions contained in this Agreement.
2. The Owners shall bear responsibility, jointly and severally, for the cost of maintenance, repairs, reconstruction, and replacement of the Common Driveway and Drainage Structures, as it shall be constructed in accordance with the Plans, in equal shares, unless otherwise agreed to. The Owners must agree to any improvements or alterations to the Common Driveway which differ from the plans and profiles of the Common Driveway as designed or as to be constructed. If one of the Owners makes improvements or alterations to the Common Driveway and Drainage Structures without the consent or approval of the other Owner, the Owner making the improvements or alterations shall have sole responsibility for the costs associated with making those improvements or alterations, unless the other Owner agrees to contribute to the cost.
 3. Upon receipt of any bill or invoice for labor, materials, or services performed or installed on or in the Common Land, the receiving Owner shall provide copies of all such bills to the other Owner and a request to pay his share of the costs of all such maintenance, repair, reconstruction, and replacement of the Common Driveway and Drainage Structures, in accordance with the preceding paragraph.

Each share of the cost shall be paid within ten (10) days of the receipt of a request therefor. If any Owner fails to pay an amount duly requested, the non-paying Owner shall be liable for interest (not to exceed the greater of any interest charged to the paying Owner or 18.00%) on the amount unpaid and for all reasonable costs of enforcement and collection of such amount, including reasonable attorney's fees. If such request not paid in full within sixty (60) days after it is delivered, the other Owner may execute a Notice of Lien and record the same with Essex South Registry of Deeds. Said Lien shall constitute security for any sums recovered by the paying Owner in a suit at law or in equity for the amount of the assessment, together with costs of collection including reasonable attorney's fees. Upon payment of the amount of such lien, the Owner who filed the Notice of Lien shall issue a statement in recordable form that all such charges have been paid.

ARTICLE V - ENFORCEMENT

Each Owner shall have the right to enforce the obligation of the other Owner to repair and maintain said Common Land and any other restriction duty contained herein, as well as to enforce any rules and regulations adopted by the Owners of said Lots hereunder, by any legal or equitable means. Such legal and equitable means shall include, without limitation, the provisions of M.G.L. Chapter 84, Sections 12, 13, and 14, as they may be amended from time to time. Neither Owner shall be liable hereunder except for his acts or defaults while Owner of a Lot or any interest therein. Neither Owner shall exempt himself from liability for the payment of Common Expenses under this Agreement either by waiver or abandonment of the use and enjoyment of the Common Land or Common Driveway during their ownership of the Lot.

ARTICLE VI - RESERVATION OF RIGHTS

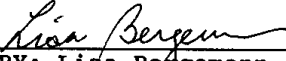
Builders Collaborative, Inc. reserves the right to itself and its authorized agents, as long as it owns either of the Lots, to enter upon the Lots to construct, reconstruct, operate, maintain, remove, and replace the Common Driveway, lines of telephone and electricity, conduits, pipes, manholes, drains, culverts, fixtures, and other appurtenances, in, along, under, within, and across the Common Land.

ARTICLE VIII - INTERPRETATION

It is specifically the intent of this Agreement to assure the fair and harmonious operation of the Common Land for the benefit of each and every Owner of Lots subject to the Agreement. Therefore, this Agreement is to be liberally construed to effectuate its purpose.

EXECUTED THIS 20TH DAY OF March, 1992

OWNER LOT 8 & 9
BUILDERS COLLABORATIVE, INC.


BY: Lisa Bergemann
Vice President

COMMONWEALTH OF MASSACHUSETTS

Middlesex ss.

March 20, 1992

Then personally appeared the above-named Lisa Bergemann, Vice President and acknowledged the foregoing instrument to be the free act and deed of Builders Collaborative, Inc. before me


Notary Public
My commission expires: 10/2/92