

Exeter Rose Farm
Draft Road Maintenance Agreement

OAK STREET EXTENSION
ROAD MAINTENANCE AGREEMENT

THIS ROAD MAINTENANCE AGREEMENT (the "Agreement") is made as of the ____ day of _____, 2018 by and between the TOWN OF EXETER, a New Hampshire municipality (hereinafter, the "Town"), and EXETER ROSE FARM, LLC, a New Hampshire limited liability company (hereinafter "ERF").

WITNESSETH THAT

WHEREAS, ERF proposes to develop a forty-one (41) lot subdivision known as Exeter Rose Farm Subdivision (the "Subdivision").

WHEREAS, secondary emergency access to the Subdivision will be made via Oak Street Extension, an existing right of way extending to the Subdivision from Forest Street.

WHEREAS, questions have arisen as to the status of Oak Street Extension as a publicly maintained right of way;

WHEREAS, as a condition of approval of the Subdivision, the Town desires that ERF and/or the Exeter Rose Farm Subdivision Association of Homeowners (the "Association") maintain that portion of Oak Street Extension running from the northern most boundary line of Forest Street to the southern boundary of the Subdivision (the "Road Maintenance Area").

WHEREAS, it is recognized by the Town and ERF that it is desirable to determine and agree on the responsibilities of the parties with respect to Road Maintenance Area.

NOW THEREFORE, in consideration of the mutual covenants, agreements and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Town and ERF agree as follows:

AGREEMENT

1. Permitted Activities: To the extent that Oak Street Extension may be deemed a municipal right of way, the Town hereby grants a license to ERF during the term of this Agreement to enter onto Oak Street Extension and engage in such activities as consistent with those set forth in Section 3 of this Agreement.
2. Term: The term of this Agreement shall begin as of the recording of the subdivision plan by the Town Planning Board (the "Commencement Date") and continue until terminated (the Termination Date") pursuant to the earlier of the following:
 - a. The Town and ERF and/or the Association mutually agree to terminate this Agreement on a date certain, and on terms mutually agreeable; or
 - b. Oak Street Extension is formally accepted as a Town maintained road.

Upon termination of this Agreement for any reason, ERF shall thereafter have no obligations hereunder unless expressly stated otherwise in this Agreement.

3. Road Maintenance Obligations: ERF and/or the HOA shall be responsible for all routine maintenance within the Road Maintenance Area, including but not limited to the repair and

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replacement of any paved areas, snow plowing and removal of debris; provided, however, that neither ERF nor the Association shall be obligated to expand or improve the Road Maintenance Area beyond its current condition, subject to any improvements required as a condition of Planning Board approval.

4. Personal Liability: No trustee, director, officer, shareholder, member, manager, agent or employee of ERF or the Association shall have any personal liability hereunder.
5. Non-Exclusivity of License: The license granted in connection with this Agreement is not exclusive to ERF and the Association. The Town reserves the right to use the Road Maintenance Area for any purpose for which public ways are used in the Town of Exeter.
6. Assignment; Successors: This Agreement shall be binding upon and shall inure to the benefit of ERF, its successors and assigns. ERF intends, and the Town acknowledges, that the rights and obligations of this Agreement shall be assigned to the Association. Upon assignment to the Association, ERF shall give notice to the Town, which shall include an updated contact and mailing address for notice to the Association.
7. Notice: Any notice required to be given under this Agreement shall be in writing, sent by hand, by certified mail, return receipt requested, or by commercial overnight delivery, and addressed as follows:

If to the Town: Town of Exeter
10 Front Street
Exeter, NH 03833
Attn: Planning Department

If to ERF: Exeter Rose Farm, LLC
953 Islington Street, #23D
Portsmouth, NH, 03801
Attn:

with copy to: R. Timothy Phoenix
Hoefle, Phoenix, Gormley & Roberts, PA
127 Parrott Avenue
Portsmouth, NH 03801

8. Governing Law; Counterparts; Integration; Amendments: This Agreement shall be governed and construed in accordance with the laws of the State of New Hampshire, as amended from time to time, without regard to principles of conflicts of laws. This Agreement may be executed in counterparts, which together, shall constitute but one original. This Agreement contains the entire agreement between the parties relating to the subject matter hereof and supercedes all oral statements and prior writing with respect thereto and may not be terminated or amended except as provided herein. This Agreement may be amended only in a writing executed by the parties.
9. Signage. ERF and/or the Association shall be permitted to place signage within Oak Street Extension to acknowledge its maintenance of the Road Maintenance Area and to regulated public use as necessary to complete the road maintenance activities and to preserve public safety. Any signs shall be consistent with Town regulations and shall be subject to the Town's reasonable written objection.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

TOWN OF EXETER

Witness

By: _____

Its duly authorized _____

EXETER ROSE FARM, LLC

Witness

By: _____

Its duly authorized _____

DRAFT