

**TOWN OF MATTAPOISETT
AND HOMEOWNERS ASSOCIATION
TEMPORARY ROAD REPAIR AGREEMENT**

This TEMPORARY ROAD REPAIR AGREEMENT (“Agreement”) is executed this _____ day of _____, 20____ by and between the Town of Mattapoisett, acting by and through its Board of Selectmen (the “Town”) and _____ Trustees of the _____ Homeowners Association established under Declaration of Trust dated _____ (the “Trust”) and recorded with Plymouth County Registry of Deeds in Book _____, Page _____ (the “Association”).

WHEREAS, under the above referenced Trust, the Association has been given control over the repairs of roads and other common elements in the _____ (the “Subdivision”) included _____ Road, a private way in the Town (the “Road”);

WHEREAS, the Association has requested that certain repairs and regrading be done on the Road by the Town (the “Project”);

WHEREAS, the Town is authorized under Article 24 of the Town’s General Bylaws and G.L. c.40, §6N to make these repairs provided that the Association enters into an Agreement with the Town and pay the costs of any and all material to be used in the Project prior to commencement of the Project;

WHEREAS, the Town requires entry onto the Road for the purposes of the Project; and

WHEREAS, the Association is willing to grant the Town such entry.

NOW, THEREFORE, in consideration of the mutual promises and benefits acknowledged herein, the parties hereby agree as follows:

1. Consideration. The Association shall pay to the Town the total sum of \$_____ as stated on the Schedule attached to the Temporary Road Repair Estimated Cost of Material Statement (“Cost of Material”). Upon receipt of the total sum of \$_____, the Highway Department shall commence the Project. Upon Project completion and final Cost of Material tabulation, any surplus shall be returned to the Association or if cost is over the estimate then the additional sum must be paid to the Town by the Association. Any cost that exceeds the estimated cost by ten percent will be noted in writing by the Highway Surveyor immediately upon discovery and filed with the Town Clerk and the Highway Surveyor will provide a copy to the Association, and any such cost shall be paid to the Town forthwith by the Association.

2. Use, Purpose, Term. Entry onto and use of the Road and abutting parcels are specifically, but not exclusively, granted to the Town, its Highway Surveyor, contractors, agents, representatives, employees, invitees, permittees and licensees, for the purpose of inspecting the Road and associated drainage facilities and regrading the Road and repairing, if necessary, any drainage facilities. Such regrading shall be not more than

twice per year except in an emergency declared for Mattapoisett by an authorized public officer.

3. Access. The Road shall remain a private way but is now, and shall upon completion of the Project, be open for access by the general public.

4. Conduct. During the exercise of the rights hereby granted, the Town, its Highway Surveyor, contractors, agents, representatives, employees, invitees, permittees and licensees shall at all times conduct themselves so as not to unreasonably interfere with the operations of the Association, and observe and obey applicable laws, statutes, ordinances, regulations and permitting or licensing requirements.

5. Release. The Association agrees to hold the Town and its Highway Surveyor, contractors, subcontractors, agents, and employees harmless from and to remise, release and forever discharge the Town of from any and all claims, demands, liabilities, actions, causes of actions, costs and expenses, including attorneys' fees, of every name and nature, both in law and equity, against the Town or its Highway Surveyor, contractors, subcontractors, agents and employees and its or their successors and assigns which arise out of the rights granted under this Agreement, including those which may arise due to defects in the Road before or after the Project, intending hereby to release all claims which have been made or could have been made with regard to the Road or the Association's property by the Association. This release shall survive the termination of this Agreement.

6. Insurance. The Town acknowledges that the Town and/or its contractor(s) carries insurance in an amount sufficient to support the obligations of the Town under the terms of this Agreement; the Association acknowledges that the Association carries insurance in an amount sufficient to support the obligations of the Association under the terms of this Agreement.

7. Effective Date. This Agreement shall become effective when signed by the Board of Selectmen and the trustees of the Association.

8. Termination. In the event that the Town fails to commence the Project within one hundred twenty (120) days from the delivery of the full amount of the Cost of Material, this Agreement shall be revocable by either party upon written notice of revocation at least sixty (60) days prior to the termination date stated within said notice. Upon such termination, the Town shall refund the Cost of Material to the Association.

9. No Estate Created. This Agreement shall not be construed as creating or vesting in the Town any estate in the Road or any interest in real property.

10. Modifications, Extensions. This Agreement may not be modified and the periods set out herein may not be extended except in writing, duly executed by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as a sealed instrument and signed in duplicate by their duly authorized representatives, on the date first indicated above.

TOWN OF MATTAPOISETT
BOARD OF SELECTMEN

ASSOCIATION:
