

R E V I S E D T E X T - As amended through October, 2008

ROADWAY MAINTENANCE AGREEMENT

THIS AGREEMENT made and entered into this 23rd day of October, 1978 by and between Thomas C. Shaw & Patricia L. Shaw & Shiloh Valley, a partnership of the County of St. Louis, State of Missouri, hereinafter called First Party and Thomas C. Shaw, Charles W. DeWitt, Jr. and James V. Cornet, Trustees, all of the County of St. Louis, State of Missouri, Parties of the Second Part, hereinafter referred to as "Trustees" and Mark Twain Parkway Bank-Chesterfield office, hereinafter referred to a Third Party.

WITNESSETH THAT:

WHEREAS, the First Party is the owner of a certain tract of land approximately 236 acres in size and located in St. Louis County, Missouri, and more particularly described in Exhibit "A" attached hereto.

WHEREAS, Third Party is legal holder of the First Deed of Trust on that land described in Exhibit "A", excepting those portions released by Third Party and,

WHEREAS, it is the purpose and intention of this Agreement to provide for the maintenance of private roadway easements established by instruments recorded in Book 7106, page 1402, and recorded in Book 7106, page 1405, and future easements to be established by the First Party and subsequent property owners and agreed to by the Trustees.

WHEREAS, all reservations, limitations, conditions, and easements herein contained, are hereafter termed "covenants" and are jointly or severally for the benefit of all persons, who may purchase, hold or own from time to time any of the several tracts covered by this instrument.

WHEREAS, Third Party hereby expresses his position that it should be clear, beyond any question of doubt, that any of the covenants of this agreement do not effect the status of the First Deed of Trust now of record as a first lien upon the property; and, any encumbrance of any nature which might be established against the property as a result of this agreement shall be construed to be a second lien and shall be subject to the first lien established by First Deed of Trust owned by Third Party.

NOW THEREFORE, the parties hereto agree to and with each other, collectively and individually, for themselves, their heirs, successors, or assign, and for and upon behalf of all persons who may hereafter derive title to or otherwise hold through the heirs, successors or assigns of any owner of a lot or parcel of land in Exhibit "A" or any future tract which may be subject to this indenture as hereafter provided:

TO WIT:

DESIGNATION AND SELECTION OF TRUSTEES

There shall be three (3) Trustees and the initial Trustees shall be Thomas C. Shaw, Charles W. DeWitt, Jr. and James V.

Cornet designated herein as the Parties of the Second Part, or Trustees, who by their signatures to this document do hereby consent to serve in such capacity. Whenever any Trustee resigns, refuses to act, moves out of St. Louis County, no longer owns property covered by this Agreement, becomes disabled or dies, the remaining Trustees or Trustee shall have the power to appoint a successor or successors. If all of the Trustees whether named or hereafter appointed, resign, refuse to act, become disabled or die, so that there will be no eligible Trustee in office, then a meeting of the record owners of the fee simple title of all lots according to all of the then recorded plats of Exhibit "A" shall be called, upon notice signed by at least two (2) of such lot owners sent by mail to all of such record lot owners, or personally served upon them, at least ten (10) days before the date fixed for the meeting, for the purpose of electing new Trustees. The said notice shall specify the time and place of the meeting and the place of meeting shall be in St. Louis County, Missouri. At such meeting, or at any adjournment thereof, the record owners attending such meeting or meetings in person or by proxy, shall be entitled to one vote for each full lot owned by him. When any lot is owned by husband and wife as tenants by the entirety or by two or more persons as joint tenants, notice as herein required to either of any one of said parties shall suffice, and either or any of such parties shall be permitted to cast his or her vote as representing full ownership of said lot, but not more than one vote for each lot shall be permitted. The

result of such election shall be determined by a majority of record owners voting and shall be certified by the persons elected as chairman and secretary respectively at such meeting and their certification shall be acknowledged and recorded.

To the contrary, notwithstanding, when 50% of the tracts have been sold One-Third ($1/3$) of the Trustees shall be chosen by the purchasers of said lots; when Ninety-Five percent (95%) of the lots have sold $2/3$ of the Trustees shall be chosen by the owners of the sold lots; and when all of the tracts have been sold then the owners of all of the sold lots shall choose all of the Trustees. At this time, the Trustees shall serve for three years each and the terms shall be so staggered so a new Trustee is elected each year.

Where the provisions of such a trust indenture cannot be fulfilled by reason of unfilled vacancies among the Trustees, the County Council may upon the petition of any concerned resident or property owner of the tract, appoint one or more Trustees to fill vacancies until such time as Trustees are selected in accordance with the trust indenture. Any person so appointed who is not a resident or property owner within the tract shall be allowed a reasonable fee for his services by the order of appointment, which fee shall be levied as a special assessment against the property in the tract, and which shall be subject to any limitations on special assessments contained in the trust indenture or elsewhere.

TRUSTEES DUTIES AND POWERS

The Parties of the First Part hereby invest the Trustees and their successors with the right, powers and authorities described in this instrument and with the following rights, powers and authorities:

1) To exercise control over the roadway easement, above described and future easements to be established, and any other non-public items, if any, on the above described tract of ground (Exhibit "A") for the purpose of maintaining, repairing, and rebuilding and insuring the proper use of the roadway easement, subject to the rights of the public authority and the holders of the easements thereon.

2) To enforce the provisions of this Indenture and the rules and regulations promulgated by the Trustees for the purpose hereinbefore provided. This power in the Trustees is discretionary and not mandatory and does not restrict the rights of any lot owner to proceed on his own behalf.

3) The Trustees in exercising the rights, powers and authorities granted to them, and in discharging the duties imposed upon them by the provisions of this Indenture, may from time to time enter into contracts, employ agents, servants and labor as they deem necessary or advisable and to

defend suits brought against them individually or collectively in their capacities as Trustees.

4) To call an annual meeting of all lot owners subject to this Agreement, to be held at a time and place suitable to a majority of the lot owners. Notice of this meeting must be mailed to lot owners 30 days prior to the date of the meeting.

5. The Trustees in conducting any project for the purpose of repairing, rebuilding, or maintaining the roadway easement, which project is approved under the provisions of Paragraph 1(b) under "ASSESSMENTS", shall have the power and authority to enter into financing arrangements, borrow on behalf of said lot owners and pledge or assign the assessment or Trustees' rights to receive and collect future approved special assessments as collateral security therefore.

ASSESSMENTS

- 1) a) The Trustees and their successors are authorized to:
 - (i) make Uniform General Assessments, except as hereinafter provided, of an amount not to exceed a **maximum of two-hundred-fifty dollars (\$250) per lot** for 1990 and in each year thereafter against the

several lots or parcels of land in said plat for the purpose of carrying out any and all of the general duties and powers of the Trustees to defend and enforce these covenants to repair, rebuild and maintain the roadway easements, to maintain easements, and to perform and execute any powers or duties provided in the instrument or otherwise to protect the health, safety and general welfare of the property owners; and further to

(ii) **increase** the **maximum amount** of said Uniform General Assessment from time to time, provided that:

(a) the Trustees send, by first-class postage paid mail or personal delivery, prior written notice ("**Notice**") of any proposed new maximum amount of Uniform General Assessment per lot per year and the proposed effective date thereof to all current lot owners of record ("**Proposal**"),

(b) said Notice is dispatched at least thirty (30) days prior to a meeting of lot owners duly called and conducted in accordance with this Agreement at which said lot owners will vote to either approve or disapprove the Proposal, and

(c) the Proposal is approved at said meeting

by a majority of lot owners voting on the Proposal in person or by written proxy, pursuant to said Notice.

b) If at any time the Trustees shall consider it necessary to make an expenditure for the purpose of repairing, rebuilding or maintaining the aforesaid roadway easement which requires an assessment in addition to the assessment above provided, they shall submit in writing to the owners of lots for approval an outline of the plan for the project contemplated and the estimated amount required. If such project and assessment so stated be approved either at a meeting of the lot owners duly called and held in the manner provided in reference to the election of the Trustees, by a two-thirds (2/3) majority vote of those present in person or by proxy, or on written consent of the owners of one-half (1/2) or more of the lots, the Trustees shall notify all owners of lots in said tract of land of the additional assessment, the limit of One Hundred Fifty (\$150.00) Dollars per lot per year for general purposes shall not apply to an assessment made under the provisions of this paragraph, but no special assessment shall exceed the amount specified per lot per year for any project which is approved by the owners under the provisions of this paragraph.

2) All assessments, either general or special, made by the Trustees for the purposes herein enumerated shall be made in the manner and subject to the following procedures:

a) Notice of all assessments may be given by mail addressed to the last known or usual post office address of the record owner or owners of the lots and deposited in the United States mail with postage prepaid.

b) Every such assessment shall become due and payable within 30 days after notice is given as hereinabove provided. From and after the date when said payment is due, it shall bear interest at the rate of eight percent (8%) per annum or whatever interest rate is incurred by the Trustees in a financing arrangement on behalf of the lot owners and authorized under a future approved special assessment, until paid, and such assessments and interest thereon shall constitute a lien upon said lot and said lien shall continue in full force and effect until fully paid. Any time after an assessment and entry thereof in the minutes of proceedings or records of the Trustees, they may execute and acknowledge an instrument reciting the assessment with respect to any one or more lots and cause same to be recorded in the office of the Recorder of Deeds of St. Louis County, Missouri, and the Trustees may upon payment, cancel or release any one or more lots from the liens and

liability of such assessments, (as shown by recorded instruments), by executing, acknowledging and recording (at the expense of the lot owner affected) a release of such assessment.

3) The Trustees shall deposit the funds coming into their hands as Trustees in a bank, the accounts of which are insured by the Federal Deposit Insurance Corporation. The Trustees shall designate one of their number as Treasurer of the funds collected under the terms of this instrument and such funds shall be placed in the custody and control of such Treasurer. The Treasurer shall be bonded for the proper performance of his duties in an amount fixed by the majority of the Trustees. The Treasurer shall distribute an Annual Report to all lot property owners present at the annual meeting.

4) All rights, duties, powers, privileges and acts of every nature and description which said Trustees might execute or exercise under the terms of this Indenture may be executed or exercised by a majority of said Trustees unless otherwise provided in this Indenture.

5) The Trustees are authorized and empowered to procure such insurance including but not limited to public liability and property damage as they may deem necessary and proper.

6) The Trustees are authorized and empowered to use general and/or special assessments as necessary, to defend suits brought against them individually or collectively in their capacities as Trustees.

7) Uniform general assessments shall begin on the date the Trustees of this Agreement mail a letter to all lot owners, as stated in Section III, Part 2 a., notifying them that the assessments are to begin.

8) Uniform special assessments can begin any time after the first uniform general assessment has been collected.

TERM OF MAINTENANCE AGREEMENT

1) These covenants shall be filed in the office of the Recorder of Deeds for the County of St. Louis, Missouri, and shall run with the land and shall be binding upon the parties hereto and future owners of the property hereinabove described, or any part thereof, and upon all persons and corporations claiming under the parties hereto for a period of ninety-nine (99) years from the date these covenants are recorded.

GENERAL PROVISIONS

1) Any and all future tracts of land comprising a part of the aforesaid described property, platted as a part of "Exhibit A" shall be governed by the covenants contained in this Indenture. It being further agreed and understood that the Trustees herein shall have the right to accept additional tracts of land, to use roadways so established under this Indenture, and to grant such property owners the right to use easement created pursuant to this Agreement, if they agree to subject such additional properties to the provisions of this Indenture.

2) **Enforcement:** Enforcement of any of these covenants shall be by proceedings at law or in equity.

3) **Liability of Trustees: Trustees not Compensated:** The Trustees shall not be personally responsible for any act in which they are empowered to exercise their judgment and discretion and shall only be held accountable for their willful misconduct. They shall not be required to spend any money for maintenance and/or any improvement in excess of the assessments collected by them. The Trustees shall not be entitled to any compensation for services performed, except those Trustees appointed by the County Council as provided on Page 2, Paragraph 3 of this Agreement.

4) **Severability:** Invalidation of any one of these covenants by judgment or Court Order shall in no way affect any of the other provisions which shall remain in full force and effect.

5) **Amendment:** This Indenture and any part thereof may be altered, amended, extended, changed or discontinued by a written agreement signed by not less than 75% of the then recorded owners of the fee simple title to all lots in the tract; any such written and signed alterations, amendments, extensions, changes or discontinuance shall when duly certified and acknowledged by the Trustees and recorded in the office of the Recorder of Deeds for St. Louis County, Missouri, become a part of the provisions and covenants of this Indenture.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement this 23rd day of October, 1978.

FIRST PARTY:

/s/ Thomas C. Shaw

/s/ Patricia L. Shaw

Shiloh Valley, a partnership

By:

/s/ Charles W. DeWitt, Jr.
Managing Partner

PARTIES OF THE SECOND PART:

/s/ James V. Cornet

/s/ Charles W. DeWitt, Jr.

/s/ Thomas C. Shaw

**ADDENDUM TO ROADWAY
MAINTENANCE AGREEMENT**

RE: **Voluntary Exclusion - Shiloh Ridge Lot No. 11**

1. Upon compliance with the requirements of Paragraph 2 below and effective upon recordal of the Trustees' Certification hereof, as provided in Paragraph 5 of the GENERAL PROVISIONS of the Roadway Maintenance Agreement, dated October 23, 1978, as amended, (hereafter "R.M.A."), Lot No. 11 of Shiloh Ridge shall be excluded from said R.M.A., including not only payment of future General and Special Assessments, (which includes the "Special Assessment for Road Resurfacing Project", approved on August 3, 1986 and assessed September 1, 1986), but also all voting rights thereunder.
2. The owner(s) of said Lot No. 11 (hereinafter "Lot No.11 Owner") shall permanently remove access from said Lot No. 11 to Shiloh Ridge Road in a manner approved and accepted by the Trustees which will accomplish:
 - (a) Removal of their present driveway entrance onto Shiloh Ridge Road, and
 - (b) regrading of the present driveway adjacent the Roadway easement for Shiloh Ridge Road to restore the pre-existing natural contour and eliminate access to said Roadway easement.
3. Following recordal of the Trustees' Certificate pursuant to Paragraph 1 hereof Lot No. 11 Owner and the heirs, successors or assigns in title or interest to said Lot No. 11, shall refrain from entrance or egress onto Shiloh Ridge Road with any type of licensed vehicle or motorized equipment during the term, or any extension, of said R.M.A., or any lawful successor Agreement thereto, and
4. If said Lot No. 11 Owner, or any heir, successor or assign in title or interest thereto should violate Paragraph 3 hereof, the exclusion set forth in this Addendum shall become null and void ab initio, whereupon said Special Assessment for Roadway Resurfacing, approved August 3, 1986, shall become immediately due and payable in full. Thereafter, the Trustees shall be unencumbered in their discretionary execution of the full powers and authority under said R.M.A. to collect said Special Assessment, including but not limited to placing an appropriate lien against said Lot No. 11.

Upon full payment of said Special Assessment, the Owner's voting rights shall be restored.

IN WITNESS WHEREOF, the undersigned Shiloh Trustees execute this Certification, effective on the ____ day of November, 1989.

Date: _____ Nile Ramsbottom

Date: _____ Anthony M. Romano

Date: _____ Mark F. Wachter

Acknowledgement by Lot No. 11 Owner

The undersigned owners of Lot No. 11 Shiloh Ridge, James and Charlotte McDaniel, acknowledge and hereby agree to bind themselves and all heirs, successors and assignees to title and interest in Lot. No. 11 Shiloh Ridge to the terms and conditions of the foregoing Addendum to Roadway Maintenance Agreement of the R.M.A. and agree to recordal of this Trustees' Certification against their title and interest in said Lot No. 11.

Date: _____ James McDaniel

Date: _____ Charlotte McDaniel