

## **ROADWAY, UTILITY EASEMENT AND MAINTENANCE AGREEMENT**

KNOW ALL MEN BY THESE PRESENTS, that, **ROSE REALTY, LLC**, a New Hampshire limited liability company, with a mailing address of 334 Route 108, Madbury, New Hampshire 03833 (the “Grantor”) for consideration paid, does hereby grant to **ROBERT DiBERTO**, single, with a mailing address of 334 Route 108, Madbury, New Hampshire 03833 (the “Grantee”), with QUITCLAIM COVENANTS the following easements over, under and across property of the Grantor situated in the Town of Madbury, Strafford County, New Hampshire in accordance with the terms hereof.

### WITNESSETH:

WHEREAS, the Grantor is the owner of a certain tract or parcel of land located in the Town of Madbury, Strafford County, New Hampshire (Tax Map 8, Lot 1), as more particularly described on Exhibit A hereto (the “Servient Property”);

WHEREAS, the Grantee is the owner of a certain tract or parcel of land located in the Town of Madbury, Strafford County, New Hampshire (Tax Map 8, Lot 1G-1), as more particularly described on Exhibit B hereto (the “Benefited Property”); and

WHEREAS, the Grantor wishes to establish easements over, under and across the Servient Property for the benefit of the Benefited Property on and pursuant to the terms and provisions of this Roadway, Utility Easement and Maintenance Agreement (this “Instrument”).

NOW THEREFORE, for value received, the receipt and sufficiency of which are hereby acknowledged, the Grantor hereby grants and conveys with quitclaim covenants the following easements over, across and under the Servient Property for the benefit of the Benefited Property:

1. Grant of Road Access Easement. Grantor hereby grants to the Grantee, its successors and assigns, a perpetual, non-exclusive easement for all manner of access to and from the Benefited Property to and from N.H. Route 155/Knox Marsh Road, over the property depicted as a proposed 50’ wide private road to be known as Elliott Rose Drive (PVT) on the “Subdivision Plan, Land of Robert DiBerto, 326 Knox Marsh Road, Madbury, N.H., Tax Map 8, Lot 1G” prepared by Berry Surveying & Engineering dated July 12, 2021, Revision #1 8-4-21, Sheet 4 of 12, to be recorded at the Strafford County Registry of Deeds (the “Plan”), and being further described on said Plan and Exhibit C attached to this Instrument (the “Roadway”). The term Roadway, as used in this Instrument, shall include the area shown on the Plan and described on Exhibit C attached to this Instrument.

2. Maintenance. This access easement is granted subject to the following conditions, which are part of a common scheme for the benefit of, and enforceable by, each of the Benefited Lots as hereinafter defined (the following paragraphs (a) through (c), inclusive, the “Conditions”):

(a) Repairs and maintenance of the Roadway shall be performed from time to time by agreement of a majority by number of the Benefited Lots. "Benefited Lots" are those lots with rights to use the Roadway for access to or from said lot(s).

(b) There shall be no parking upon or obstruction of the traveled portion of the Roadway by any person entitled to use of the same.

(c) Notwithstanding the foregoing, absent unanimous agreement of the owners of the Benefited Lots, the costs of maintenance and repair shall not include the following: (i) alterations and capital improvements (e.g. paving) to the Roadway or (ii) costs and expenses associated with or incurred as a result of snow-plowing, clearing of ice, salting or other winter maintenance. In the absence of unanimous consent, this section(s) shall not prohibit those Benefited Lot owners who do consent from proceeding with the intended action at their sole cost and expense.

The Grantor reserves the right to convey non-exclusive easements to be used as rights of way over the Roadway to others. The Grantor reserves the right to convey easements on, over and under the Roadway for the installation of utilities and culverts such that the same do not unreasonably interfere with Grantee's access and other rights under this Instrument. This access easement is expressly made subject to all rights, easements and other matters of record whether or not created by the Grantor, if any.

3. Grant of Underground Utility Easement. Grantor hereby grants to the Grantee, its successors and assigns, a perpetual, non-exclusive three foot (3') wide easement for the construction, alteration, repair, replacement, maintenance and operation (at Grantee's sole cost and expense) of underground lines, wires, conduits, piping, cables, and similar equipment and facilities for the transmission and distribution of electricity, telephone, data and other utilities (the "Underground Utilities") running from the Benefited Property to N.H. Route 155/Knox Marsh Road within the northwesterly edge of the Roadway. Grantor shall have the option, at its sole election, to have Grantee construct any of the Underground Utilities which Grantee determines to install of a sufficient size to allow such Underground Utilities to service both Grantee's Benefited Land and the Servient Property. Grantee hereby grants to Grantor the right to hook into and use, at Grantor's cost and expense, any of the Underground Utilities installed by Grantee for the benefit of the Servient Property.

4. Grant of Utility Access Easement. Grantor hereby grants to the Grantee, its successors and assigns, a perpetual non-exclusive access easement, by vehicle, equipment, and on foot, over, upon and across the Servient Property to the extent reasonably necessary for the Grantee to install, inspect, alter, maintain, use, replace and/or repair the utilities referred to in paragraph 3 of this Instrument. Grantee shall be responsible for repairing any damage to the Roadway and/or adjacent area caused by the installation, inspection, alteration, maintenance, use, replacement and/or repair of the utilities referred to in paragraph 3 of this Instrument.

5. Covenants Running with Land. The easements conveyed and covenants made in this Instrument shall run with the land and inure to and be for the benefit of and burden of

Grantor and Grantee, as applicable, and each of their successors and assigns and the tenants, sub-tenants, licensees, concessionaires, mortgagees in possession, and invitees of such parties.

6. Severability. If any provision of this Instrument shall be found to be invalid, inoperative or unenforceable in law or in equity, such finding shall not affect the validity of any other provisions of this Instrument but shall be construed to effect the purposes of this Instrument to the fullest extent permitted by law.

7. Governing Law. This Instrument shall be governed by and construed in accordance with the laws of the State of New Hampshire, other than its choice of law rules.

8. Construction. The headings used in this Instrument are for convenience only and shall not be deemed to constitute a part hereof.

Dated this \_\_\_\_\_ day of August, 2021.

ROSE REALTY, LLC

By: \_\_\_\_\_  
Anthony DiBerto, Manager

STATE OF NEW HAMPSHIRE  
STRAFFORD, SS.

August \_\_\_\_, 2021

Personally appeared the above-named Anthony DiBerto, known to me, or satisfactorily proven, to be the same person whose name is subscribed above, and acknowledged that he has executed the same as Member on behalf of Rose Realty, LLC, for the purposes herein contained.

\_\_\_\_\_  
Notary Public

Print Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

## EXHIBIT A

### SERVIENT PROPERTY LEGAL DESCRIPTION

#### Town of Madbury, NH (Tax Map 8, Lot 1):

A certain tract or parcel of land, together with any buildings and improvements thereon, located on the southerly sideline of Route 155, in the Town of Madbury, County of Strafford, and the State of New Hampshire, being shown as Lot 1 on plan entitled "Subdivision Plan, Summit Land Development, LLC, Route 155, Madbury, New Hampshire", dated November 15, 2000, revised May 18, 2001, prepared by Trittech Engineering Corporation, recorded at the Strafford County Registry of Deeds as Plan #62-28; being more particularly bounded and described as follows:

Beginning at a rebar set on the southerly sideline of Route 155, said point being the northeasterly corner of Lot 1-3 and also being the northwesterly corner of the herein described lot; thence running along the southerly sideline of Route 155, South 79° 46' 42" East, a distance of 50.00 feet to a rebar set at Lot 1-4; thence turning and running along Lot 1-4, South 09° 52' 34" West, a distance of 312.01 feet to a rebar set; thence turning and running still along Lot 1-4 along a curve to the right having a radius of 175.00 feet, a distance of 227.04 feet to a rebar set; thence turning and running still along Lot 1-4, South 05° 47' 27" East, a distance of 304.92 feet to a rebar set; thence turning and running still along Lot 1-4, South 49° 28' 35" East, a distance of 68.51 feet to a rebar set at land of the B & M Railroad; thence turning and running along land of the B & M Railroad, South 39° 21' 25" West, a distance of 300.00 feet to a point; thence turning and running still along land of the B & M Railroad, South 51° 58' 35" East, a distance of 10.00 feet to a point; thence turning and running still along land of the B & M Railroad, along a curve to the left having a radius of 6,399.29 feet, a distance of 431.26 feet to a rebar set at Map 8, Lot 23; thence turning and running along Map 8, Lot 23, North 47° 31' 34" West, a distance of 490.62 feet to a rebar set; thence turning and running still along Map 8, Lot 23, South 71° 14' 47" West, a distance of 800.90 feet to a rebar set; thence turning and running still along Map 8, Lot 23, North 34° 44' 26" West, a distance of 482.91 feet to a rebar set; thence turning and running still along Map 8, Lot 23, South 55° 15' 34" West, a distance of 70.00 feet to a round concrete bound at Map 8, Lot 25; thence turning and running along Map 8, Lot 25, North 34° 47' 43" West, a distance of 310.61 feet to a rebar set at Map 8, Lot 27; thence turning and running along Map 8, Lot 27, North 73° 00' 48" East, a distance of 1,385.44 feet to a rebar set; thence turning and running still along Map 8, Lot 27, North 15° 54' 55" West, a distance of 288.10 feet to a rebar set on the southerly sideline of Route 155; thence turning and running along the southerly sideline of Route 155, North 74° 05' 05" East, a distance of 200.00 feet to a rebar set at Map 8, Lot 1-F; thence turning and running along Map 8, Lot 1-F, South 00° 00' 00" East, a distance of 317.79 feet to a rebar set; thence turning and running still along Map 8, Lot 1-F, South 17° 15' 42" East, a distance of 178.04 feet to a rebar set; thence turning and running still along Map 8, Lot 1-F, North 84° 12' 33" East, a distance of 155.47 feet to a rebar set at Lot 1-3; thence continuing along Lot 1-3, North 84° 12' 33" East a distance of 334.65 feet to a rebar set; thence turning and running still along Lot 1-3, along a curve to the left having a radius of 125.00 feet, a distance of 162.17 feet to a rebar set; thence turning and running still along Lot 1-3, North

09° 52' 34" East, a distance of 312.31 feet to a rebar set on the southerly sideline of Route 155, said rebar being the point of beginning.

The above described Lot 1 contains 1,410,313 square feet or 32.376 acres, more or less.

Meaning and intending to describe and convey the same premises conveyed in warranty deed of Summit Land Development, L.L.C. to Rose Realty, LLC dated August 2, 2001 and recorded in the Strafford County Registry of Deeds at Book 2357, Page 497.

Subject to Declaration of Restrictive Covenants dated April 5, 2001, and recorded at the Strafford County Registry of Deeds, Book 2292, Page 635.

TOGETHER WITH a right of way and utility easement over the property shown as Tax Map 8, Lot 1-4 on the Plan, for the benefit of the subject property; said right of way commencing at the northerly boundary of said Lot 1-4 on the southerly side of Route 155 and continuing in a southerly direction to a point on the easterly boundary of Lot 1-4 and thereafter continuing in a generally southwesterly and westerly direction to the easterly boundary of the subject property, all as shown as the heavily shaded area, the "Access and Utility Easement", on the Plan. This right of way and utility easement shall be provided unless or until the New Hampshire Department of Transportation ("DOT") modifies and/or reconstructs a certain portion of Route 155, on which the subject property sits and, together with said modification/reconstruction, constructs a fifty foot (50') driveway for access to the subject property, commencing on the most northerly side of the subject property, on said Route 155 and continuing in a generally southerly direction between Lot 1-3 and Lot 1-4 to the easterly sideline of the subject property (the "DOT Driveway"), all as shown as the lightly shaded area on said Plan. Completion of DOT's construction of said proposed DOT Driveway, if and when completed, shall immediately terminate the Access and Utility Easement otherwise granted herein above.

Grantor makes no warranties or representations regarding the proposed DOT Driveway, including without limitation, the commencement or completion of the DOT Driveway, it being the intent of the Grantor to provide the Access and Utility Easement until such time as the DOT Driveway is completed. Until the termination of the Access and Utility Easement, the parties agree to share in all costs of maintenance and repair of the Access and Utility Easement area, including plowing sanding, salting, paving, repaving and the like, according to their proportionate use of said Easement.

## EXHIBIT B

### BENEFITED PROPERTY LEGAL DESCRIPTION

#### Town of Madbury, NH (Tax Map 8, Lot 1G-1):

A certain parcel of land situated in the Town of Madbury, County of Strafford and State of New Hampshire located on the northerly side of a private road known as Elliott Rose Drive, so-called, being depicted as "Tax Map 8, Lot 1G-1" on "Subdivision Plan, Land of Robert DiBerto, 326 Knox Marsh Road, Madbury, N.H., Tax Map 8, Lot 1G" prepared by Berry Surveying & Engineering dated July 12, 2021, Revision #1 8-4-21, Sheet 4 of 12 to be recorded at the Strafford County Registry of Deeds (the "Plan"), and being more particularly bounded and described as follows:

Beginning at a granite bound on the northwesterly sideline of a 50' wide private roadway to be known as Elliott Rose Drive, said granite bound being the easterly corner of Tax Map 8, Lot 1G-1 and the southerly corner of Tax Map 8, Lot 1G as shown on the Plan; thence running N 63° 38' 19" W along the southerly sideline of Tax Map 8, Lot 1G a distance of 102.81 feet, more or less, to a point; thence continuing to run N 63° 38' 19" W a distance of 10.50 feet, more or less, along Tax Map 8, Lot 10 to a point; thence continuing to run N 63° 38' 19" W along Tax Map 8 Lot 10 a distance of 274.22 feet, more or less, to a ¾" rebar set at land now or formerly of Carolyn M. Pappas Revocable Trust; thence turning and running S 32° 19' 06" W along land now or formerly of Carolyn M. Pappas Revocable Trust a distance of 214.41 feet, more or less, to an iron bound; thence turning and running S 34° 05' 23" E a distance of 187.20 feet, more or less, to an iron bound set on the northwesterly sideline of the private road known as Elliott Rose Drive; thence turning and running N 67° 22' 52" E along the northwesterly sideline of Elliott Rose Drive a distance of 334.65 feet, more or less, to an iron bound; thence turning and running along the northwesterly sideline of said Elliott Rose Drive on a curve to the left with a radius of 125.00 feet, more or less, a distance of 60.28 feet, more or less, to a granite bound, said point being the point of beginning.

The above-described lot contains 1.84 acres, more or less.

Title Reference. See Quitclaim Deed of Wilmington Trust National Association, Successor Trustee to CitiBank, N.A., as Trustee for Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2006-HE5 to Robert DiBerto dated September 29, 2015 and recorded in the Strafford County Registry of Deeds at Book 4329, Page 0008.

## EXHIBIT C

### ROADWAY LEGAL DESCRIPTION

#### Town of Madbury, NH (Elliott Rose Drive):

A 50.00 foot, more or less, private road known as Elliott Rose Drive (PVT) as shown on "Subdivision Plan, Land of Robert DiBerto, 326 Knox Marsh Road, Madbury, N.H., Tax Map 8, Lot 1G" prepared by Berry Surveying & Engineering dated July 12, 2021, Revision #1 8-4-21, Sheet 4 of 12 to be recorded at the Strafford County Registry of Deeds (the "Plan"), and being more particularly bounded and described as follows:

Beginning at an iron bound located on the northeasterly corner of Tax Map 8, Lot 1G as shown on the Plan; thence turning and running S 06° 57' 07" E and running along Tax map 8, Lot 1G a distance of 312.31 feet, more or less, to an iron bound; thence turning and running on a curve to the right with a radius of 125.00 feet, more or less, along said Tax Map 8, Lot 1G a distance of 101.89 feet, more or less, to a granite bound set at the easterly corner of Tax Map 8, Lot 1G-1; thence continuing to run on a curve to the right with a radius of 125.00 feet, more or less, along Tax Map 8, Lot 1G-1 a distance of 60.28 feet, more or less, to an iron bound; thence turning and running S 67° 22' 52" W along Tax Map 8, Lot 1G-1 a distance of 334.65 feet, more or less, to an iron bound set at land now or formerly of Carolyn M. Pappas Revocable Trust; thence turning and running across the private road known as Elliott Rose Drive on a course S 22° 37' 07" E a distance of 50.00 feet, more or less, to an iron bound; thence turning at other land now or formerly of Rose Realty (Tax Map 8, Lot 1); thence turning and running N 67° 22' 52" E along other land now or formerly of Rose Realty a distance of 334.65 feet, more or less, to an iron bound; thence turning and running on a curve to the left with a radius of 125.00 feet, more or less, and 50.00 feet, more or less, southeasterly from the other side of the roadway along other land of Rose Realty to a point; thence turning and running N 06° 57' 07" W along other land of Rose Realty and land now or formerly of Benjamin Shaw and Holly Morris easterly of the westerly sideline of said roadway known as Elliott Rose Drive to a point 50.00 feet easterly from the point of beginning.

There is also included in this deed a 50.00 foot wide strip located between N.H. Route 155/Knox Marsh Road and the northerly terminus of the above-description of the 50.00 foot roadway.

Subject to any and all easements, restrictions, setbacks, etc. of record.

Meaning and intending to describe a portion of the premises conveyed by Summit Land Development, L.L.C. to Rose Realty, LLC dated August 2, 2001 and recorded at the Strafford County Registry of Deeds at Book 2357, Page 497.