

After recording return to:
Neal Bouma
PO Box 775
Choteau, MT 59422

PRIVATE ROAD MAINTENANCE AGREEMENT

(Upper Boon Road)

This **Private Road Maintenance Agreement** (“Agreement”) is entered into as of _____, 2022 (“Effective Date”) by and between Neal Bouma, 1550 W. Lakeshore Drive, Whitefish, MT 59937 (“**Neal**”), and the **Upper Boon Road Association**, a Montana non-profit corporation (together with its successors and assigns, the “**Association**”). Neal, the Association and the Upper Property Owner(s), defined below, may be collectively referred to hereafter as the “Parties” and individually as a “Party.”

Recitals:

A. Neal formed the Association for the purpose of maintaining and repairing the Upper Boon Roads (defined below). Neal is currently the sole member of the Association.

B. Neal owns real property located in Flathead County, Montana, more particularly described as follows (the “Neal Bouma Property”):

Parcel I: Tract 3 of Certificate of Survey No. 20649 in Section 28, Township 27 North, Range 21 West, P.M.,M., Flathead County, Montana.

Parcel II: The NW1/4, and the NW1/4 of the SW1/4 of Section 28, Township 27 North, Range 21 West, P.M.,M., Flathead County, Montana.

Parcel III: The N1/2 of the NE1/4, and the SE1/4 of the NE1/4 of Section 29, Township 27 North, Range 21 West, P.M.,M., Flathead County, Montana.

C. Multiple unimproved logging roads are located on the Neal Bouma Property (the “Upper Boon Roads”) as depicted in the attached **Exhibit A**. The Upper Boon Roads provide access from Boon Road to the Upper Properties (defined below). All references in this Agreement to the Upper Boon Road(s) shall include the existing Upper Boon Road(s) (singular for one road and plural for both) depicted on **Exhibit A** and all portions and extensions of the roads located on the Neal Bouma Property and such portions of the roads that traverse over the Upper Properties.

D. The Neal Bouma Property and any portion thereof or subdivided parcel therefrom are collectively hereinafter referred to as the “Upper Properties” and the owners of the Upper Properties are collectively hereinafter referred to as the “Upper Property Owners.” The Upper Property Owners will utilize certain portions of the Upper Boon Roads for ingress and egress to their respective properties.

E. All references in this Agreement to an “Improved Tract” shall mean any parcel of real property subject to this Agreement, including any portion thereof or subdivided parcel therefrom, (i) upon which the owner of such property has “broke ground” to construct a structure suitable for residential or recreational purposes, including but not limited to permanent structures, mobile homes and manufactured homes (for the avoidance of any doubt, any such parcel shall be considered an Improved Tract regardless of whether such structure serves as a permanent residence), or (ii) such parcel upon which any logging or recreational activity (hunting, snowmobiling, hiking, etc.) occurs; provided, however, that such parcel shall only be considered an Improved Tract during the calendar year in which such logging or recreational activity occurs. If one person holds an interest in more than one Improved Tract, then all Improved Tracts owned by the person shall be considered as only one Improved Tract; however, any Improved Tract used for residential purposes shall always be considered a separate Improved Tract for the purposes of this Agreement regardless of common ownership.

F. Neal, as the current owner of the Upper Properties, hereby grants the Association full and complete agency authority to manage the Upper Boon Roads, including handling the maintenance, repairs, and snow removal on the Upper Boon Roads, assessing all costs, and handling all collections associated with the same. A separate set of Bylaws for the Association shall incorporate the terms of this Agreement and shall further detail the governance of the Association’s affairs.

G. Each Upper Property Owner shall be granted easement rights over the Upper Boon Roads that it utilizes for ingress and egress and for the installation of utilities as needed by a separate recorded document. Failure to grant an easement to an existing or future title holder of an Upper Property shall not preclude the Upper Property Owner’s use of an Upper Boon Road should said use be necessary for that Upper Property Owner’s ingress and egress or for the installation of utilities.

H. This Agreement is made for the purpose of and shall establish and memorialize the Parties’ rights, responsibilities and understanding regarding maintenance of the Upper Boon Roads. The Upper Property Owners shall share responsibility for such maintenance and repair of the Upper Roads, in accordance with and subject to the terms and conditions of this Agreement. Those responsibilities shall be managed and enforced by the Association.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby incorporate the Recitals into their agreement, and agree as follows:

1. **Definitions.** The following definitions shall apply to this Agreement.

(a) **Maintenance:** The work normally necessary to preserve, improve and keep the Upper Boon Roads in good and passable condition by 2-wheel drive passenger and utility vehicles, and shall include the following:

- i. Tree or vegetation removal to the extent any trees or vegetation prohibit or impede access over the Upper Boon Roads.
- ii. Filling of chuckholes, grading of “washboards” on the road surface and putting in additional gravel on the road surface to keep the Upper Boon Roads in good and drivable condition.
- iii. Ditch construction and maintenance.

(b) **Repair.** Any work necessary to remove obstructions and/or restore the Upper Boon Roads’ foundation/base and/or shoulders to a good and usable condition by the above-described vehicles with a minimum 4” lift of gravel, in the event of damage to the integrity of any of the Upper Boon Roads.

(c) **Snow Plowing.** Any work necessary to remove snow from the Roadway surface to allow the above-described vehicles to safely travel over any of the Upper Boon Roads.

(d) **Maintenance Work,** as defined in subparagraphs a – c, above, shall be accomplished through the Association and paid for by fees assessed by the Association.

(e) **Extraordinary Maintenance** in excess of subparagraphs a – d, above, deemed necessary or advisable shall not be undertaken without the consent of the Association in accordance with its Bylaws. In the event the Upper Property Owners, through the Association cannot reach an agreement in favor of the proposed Upper Boon Road Extraordinary Maintenance, any Upper Property Owner may make such reasonable Extraordinary Maintenance, at the Upper Property Owner's sole cost and expense, and the work must not interfere with or otherwise impede the other Upper Property Owners' use and enjoyment of the Upper Boon Roads.

2. The Upper Boon Roads.

(a) Maintenance of Upper Boon Roads. The Upper Property Owners, through the Association, shall maintain the Upper Boon Roads, including snow removal, in a reasonable condition based upon similar roads located in Flathead County; provided, however, if there are further improvements to the Upper Boon Road, or portions thereof, such that reasonable ingress and egress by the Upper Property Owners is made available for residential purposes, then the Association shall maintain the Upper Boon Roads, or such improved portion thereof, in a condition suitable for said purpose (the "Road Maintenance"). Each of the Upper Property Owners agree to be responsible for their pro rata share of the Road Maintenance costs and expenses based upon the number of Improved Tracts located on the Upper Properties; provided, however, that the Upper Property Owners are only responsible for the Road Maintenance Costs of the particular Upper Road that is used to access their property, beginning at the Point of Beginning (Ex. A) to access point(s) on their property used for ingress and egress (the "Road Maintenance Costs"). Furthermore, the Upper Property Owners are not responsible for Road Maintenance Costs associated with any portion of the Upper Boon Road that extends beyond their property, away from the Point of Beginning.

(b) Improvements to the Upper Boon Road. The Association and/or the Upper Property Owners may undertake such additional repairs and improvements to the Upper Boon Road(s) as unanimously agreed to by the Upper Property Owners (the "Road Improvements"), including the sharing or allocating of the costs and expenses of the same. In the event the Upper Property Owners cannot unanimously agree upon the Road Improvements, any Upper Property Owner may make such reasonable Road Improvements, at such Upper Property Owner's sole cost and expense, that do not interfere with or otherwise impede the other Upper Property Owners' use and enjoyment of the Upper Boon Roads.

(c) Road Maintenance Work on Future Upper Boon Roads. The Upper Property Owners are not responsible for Road Maintenance costs associated with any future portions of the Upper Boon Roads that extend past their property boundary that provide ingress and egress to any other Upper Properties.

3. Association's Responsibility. The Association agrees to conduct the Road Maintenance, with the Road Maintenance Costs apportioned among the Upper Property Owners as set forth in the preceding section and in accordance with its Bylaws. The Road Maintenance Costs shall be paid to the Association by the Upper Property Owners within a reasonable time after incurrence of the same, and at all times, prior to such Road Maintenance Costs becoming delinquent. Repairs or maintenance of the Upper Boon Road shall be required when a decision is reached by a majority of the owners of the Improved Tracts located on the Upper Properties. Each Improved Tract located on the Upper Properties shall have one vote. An Upper Property Owner shall only be entitled to vote on Road Maintenance work for the portions of the Upper

Roads that it utilizes for ingress and egress

4. Obstructions. In the event of an emergency, any Party may, at such Party's sole cost and expense, remove obstructions or accumulated snow from the Upper Boon Roads without first securing the approval of the Association. That Party may request reimbursement from the Association, which shall be approved or denied in accordance with the Bylaws.

5. Insurance. Except in an emergency and except as otherwise addressed in the Bylaws, the Association and/or Parties shall require that the person performing the Road Maintenance work have insurance, and to require that the title holder(s)/owner(s) of the Upper Property(s) be listed as an additional insured(s). Road Maintenance work shall begin only after the contractor provides a Certificate of Insurance that names the Association and all property owners on which the Upper Boon Roads are located as additional insureds on such contractor's Comprehensive General Liability insurance and workers compensation policies.

6. Appurtenance. The benefits and burdens of this Agreement are appurtenant to the Upper Properties and the benefits and burdens of this Agreement will run with the title to those properties and any future subdivided and/or boundary line adjusted portion thereof, whether or not this Agreement is referred to in conveyances of those properties.

7. Underground Utility Repairs. In the event that changes or repairs are required by any underground utility systems (gas, water, electricity, sewer, cable, phone, etc.) that require breaking or disturbing the surface of the Upper Boon Roads, the Association shall arrange for the timing and methods of repair work. The costs of such repair work shall be borne by the Parties benefitting from the work.

8. Damage. In the event a Party (including such Party's guests, invitees, or employees) damages or disturbs the surface of the Upper Boon Roads (other than normal automobile and service ingress and egress), or damages or disturbs the surface of the Upper Boon Roads in connection with a construction project, then such Party shall be responsible for promptly restoring the road surface to the same the condition in which it existed prior to being disturbed. If a Party performs excavation to the Upper Boon Roads, when the excavation is complete that Party shall be responsible for promptly restoring the road surface to the same the condition in which it existed prior to the excavation.

9. No Liens or Encumbrances. The Association and/or the Upper Property Owners shall not permit or allow any construction liens, materialman's lien, or other liens (collectively, "Liens") arising from their acts or omissions to attach to Neal or the Neal Bouma Property, and the Association and/or the Upper Property Owners shall immediately discharge the same. Further, the Association and/or the Upper Property Owners agree to hold Neal forever harmless from any and all claims and liabilities of any kind and description which may arise out of or be connected in any way with said Liens.

10. Covenants & Remedies. Each Upper Property Owner covenants and agrees to be a member in the Association, and further agrees to pay any dues and obligated amounts of Road Maintenance work as set forth herein and as addressed in the Bylaws, and the Association is hereby granted a lien against any title holder property for any payment that the party fails to make as required by this Agreement. Such lien may be foreclosed in the manner as provided by the laws of the State of Montana. The Association or any other party to this Agreement may bring a civil action against any party personally obligated to pay amounts required by this Agreement in order to enforce payment of the delinquent amounts or to foreclose the lien against the property. Failure by any Party or the Association to enforce the terms hereof shall in no event be deemed a waiver of the right to do so thereafter. In the event any Party or the Association employs an attorney to enforce the terms and conditions of this Agreement, the prevailing Party shall be entitled to recover, on demand, all costs, charges, and expenses, including reasonable attorney fees, incurred by the enforcing Party or the Association.

11. Indemnification. The Parties agree to defend, protect, indemnify, and hold harmless

11. Indemnification. The Parties agree to defend, protect, indemnify and hold harmless Neal, his heirs, agents, successors and assigns and the Association, its agents, successors and assigns from and against any and all damages, losses, injuries to person or property (including death), liabilities, demands, costs and expenses (including reasonable attorney fees and costs), judgments and compensation obligations arising out of or relating to intentional or negligent acts or omissions in connection with or relating to: (a) the use of the Upper Boon Roads by the Parties, their invitees and guests, and (b) snow removal undertaken by, or on behalf of, a Party or Parties.

12. Binding Authority. It is the intent hereto that this instrument be recorded and shall be binding upon, and inure to the benefit of the Parties hereto and their respective successors, heirs, administrators, and assigns. Any Party who subsequently transfers, obtains, purchases, or otherwise acquires an interest in any of the property, subject hereto, or any part thereof by acceptance or delivery of deed and/or conveyance to or of said property shall be deemed to have consented to and become bound by the terms of this Agreement.

13. Entire Agreement: Amendments. This Agreement contains the entire agreement between the Parties, and no prior written or oral representations, inducements, agreements, promises or undertakings which alter, modify, add to or supplement the terms and conditions of this Agreement shall have any force or effect. No modification of or amendment to the terms of this Agreement shall be deemed effective unless the same shall be in writing and executed by 75% of the Improved Tracts. Any Party may apply to the Association for a variance to the terms of this Agreement according the Association's Bylaws for a term not exceeding one year. This Agreement shall be governed by and construed in accordance with the laws of the State of Montana.

14. Severance. In the event that one or more of the provisions hereof shall be held to be illegal, invalid, or unenforceable, such provisions shall be deemed severable and the remaining provisions hereof shall continue in full force and effect.

15. Counterparts. This Agreement may be executed in one or more counterparts, each of which counterpart shall be deemed an original instrument and all of which together shall constitute a single Agreement.

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IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first above written.

Neal Bouma

STATE OF MONTANA)
 : ss.
County of Flathead)

This instrument was acknowledged before me on the day of .

This instrument was acknowledged before me on the ____ day of _____, 2022, by **Neal Bouma**.

(NOTARY SEAL)



Notary Public

Upper Boon Road Association

By:
Neal Bouma, its: Presiding Officer

STATE OF MONTANA)
 : ss.
County of Flathead)

This instrument was acknowledged before me on the ____ day of _____, 2022, by Neal Bouma, Presiding Officer of the **Upper Boon Road Association**.

(NOTARY SEAL)





Notary Public