

**PROTECTIVE COVENANTS
and
INFRASTRUCTURE MAINTENANCE AGREEMENT**

PR&R Development, LLC
Eight-Lot Subdivision and Planned Unit Development
Observatory Road, Hinesburg, Vermont

PR&R Development, LLC, a Vermont limited liability company (“Declarant”), is the owner of those certain lands and premises described in the Warranty Deed from R.B. and R.H. Goodrich, LLC, a Vermont limited liability company, to Declarant dated July 9, 2021 and recorded in Book 277, Page 341 of the Town of Hinesburg Land Records, and also depicted on a subdivision plat entitled “Eight-Lot Subdivision and Planned Unit Development, PR&R Development, LLC, Observatory Road, Hinesburg, Vermont, Overall Subdivision Plan,” dated February 27, 2023, last revised _____, prepared by Barnard & Gervais, LLC, Project Number 21375, Drawing No. S-1 through S-5, recorded on _____ at Map Slide _____ of the Town of Hinesburg Land Records (the “Plat” and the “Property”). Declarant hereby submits the Property to the Protective Covenants and Infrastructure Maintenance Agreement set forth herein. The Property, and each of the eight (8) lots depicted on the Plat (the “Lots,” and together with the Property, the “Development”), shall be held, sold, transferred, conveyed, used, occupied, mortgaged, or otherwise encumbered subject to the reservations, covenants, conditions, restrictions, easements, agreements, assessments, and liens hereinafter set forth, which shall run with the title to the Property and each of the Lots, and which shall be binding on all parties having any right, title, or interest in or to the Property, the Lots, or any part thereof, and their respective heirs, legal representatives, successors, and assigns, and shall inure to the benefit of each and every owner of all or any portion of the Property.

1. Shared Roads/Rights-of-Way & Road Maintenance Covenants.

a. The Development is accessed via Observatory Road, which connects to North Road, a class 2 Town roadway. Observatory Road is owned by the Town of Hinesburg (the “Town”), but is not currently a Town road. As Town-owned property, Observatory Road is open to the public. Observatory Road is also used by Judy M. Cardinal, the current owner of 107 Observatory Road, Hinesburg, VT, to access her property.

b. The portion of Observatory Road that runs north-south between North Road and the VT Astronomical Society’s observatory is partially maintained and plowed by the Town. The Town Manager and the Selectboard have stated that continued maintenance of this portion of Observatory Road is not guaranteed in the future.

c. The remainder of Observatory Road running east-west from the observatory to Lot #1 of the Development as depicted on the Plat is not currently maintained or plowed by the Town.

d. Each Lot in the Development has the benefit of a shared 60’ right-of-way over Observatory Road as described in the Warranty Deed from Maurice J. Goodrich, Ralph B. Goodrich, and Robert H. Goodrich to the Town of Hinesburg dated October 4,

1991 and recorded in Book 79, Pages 32-35 of the Town of Hinesburg Land Records. The said right-of-way over Observatory Road is an express appurtenant easement which runs with land for the benefit of all current and future Lot owners in the Development. The costs of maintenance, repairs, improvements, and snowplowing of Observatory Road shall be shared equally by all 8 Lots in the Development as set forth herein.

e. Lots #2 and #3 of the Development will share a common access road to their Lots from the western portion of Observatory Road as depicted on the Plat. The 50' right-of-way benefitting Lots #2 and #3 extends from Observatory Road over and onto Lot #2 and extends to a "Y" before turning into the private driveways for Lots #2 and #3. The said 50' right-of-way as depicted on the Plat is hereby established and declared as a perpetual private right-of-way and easement over and upon Lot #2 in favor of and benefitting the present and future owners of Lots #2 and #3. The costs of maintenance, repairs, improvements, and snowplowing of the private access road serving Lots #2 and #3 shall be shared equally by Lots #2 and #3.

f. Lots #4 through #8 of the Development will share a common access road to their Lots from the northern portion of Observatory Road as depicted on the Plat. The 50' right-of-way benefitting Lots #4 through #8 extends from Observatory Road over and onto Lots #4 through #8 before turning into the private driveways for Lots #4 through #8. The said 50' right-of-way as depicted on the Plat is hereby established and declared as a perpetual private right-of-way and easement over and upon Lots #4 through #8 in favor of and benefitting the present and future owners of Lots #4 through #8. The costs of maintenance, repairs, improvements, and snowplowing of the private access road serving Lots #4 through #8 shall be shared equally by Lots #4 through #8.

g. Observatory Road and the two shared private access roads (sometimes referred to herein collectively as the "shared roadways") in the Development as depicted on the Plat may be used for ingress and egress to the Lots. The private access roads serving Lots #2 and #3 and Lots #4 through #8 may also be used for installation of electric, telephone, television and similar underground utilities and facilities to serve the Lots. For the safety of the residents, no machinery, trailers, vehicles or other property may be stored or parked upon the shared roadways, it being understood that they are for access and utility purposes only.

h. The shared roadways are not "common elements" or "limited common elements" owned by the Declarant or the Association (defined below). Rather, the portions of the shared roadways that are contained within or traverse onto/into individual Lots are included within and are a part of such Lots and owned by the owners of such Lots in fee simple, subject to the perpetual private rights-of-way and easements described herein and depicted on the Plat.

2. Stormwater Infrastructure Covenants.

a. Stormwater run-off from the Lots is managed through various culverts, grass and stone drainage swales, infiltration basins, emergency spillways, and drainage subcatchment areas (sometimes referred to herein collectively as the "stormwater infrastructure") as shown on the Stormwater Management Site Plan, Infiltration Basin

Site Plans, and EPSC/Stabilization Site Plan upon which the Stormwater General Permit for the Development is based.

b. The costs of maintaining, repairing, and replacing the 36” diameter HDPE culvert at the northerly end of Observatory Road where it meets North Road shall be shared equally by all 8 Lots in the Development.

c. Lots #2 and #3 shall share equally the costs of maintaining, repairing and replacing the 18” diameter HDPE culvert and stone dispersion pad at the entrance of their shared private road, as well as the grass and stone drainage swales located on their Lots and the infiltration basin serving their Lots and located on Lot #4.

d. Lots #4 through #8 shall share equally the cost of maintaining, repairing and replacing the 18” diameter HDPE culvert and stone dispersion pad at the entrance of their shared private road, as well as the two 15” diameter HDPE culverts and stone dispersion pads under the shared private road, and the grass and stone drainage swales located on their Lots and the infiltration basin serving their Lots and located on Lot 6.

e. The Lot owners shall comply with the Stormwater System Maintenance Plan approved as part of the Stormwater General Permit for the Development (attached hereto and incorporated herein as Exhibit 1), as well as all conditions and requirements included in the Town of Hinesburg Development Review Board Findings of Fact, Conclusions & Order dated _____, 2024 and recorded in Book ____, Page ____ of the Town of Hinesburg Land Records (the “Final Plat Approval”).

f. No Lot owner may change any grading on their Lot that forces stormwater discharge in a specific direction as specified on the Stormwater General Permit.

g. Each Lot owner shall have a perpetual easement to use and enjoy the stormwater infrastructure serving the Development, and to discharge stormwater run-off from the impervious surfaces on their Lots or from the shared roadways to the stormwater infrastructure. The Association, its agents and contractors, shall have a perpetual easement to enter upon the Lots and the shared roadways to maintain, repair and replace the stormwater infrastructure as set forth herein.

h. Only naturally occurring stormwater runoff is permitted into the stormwater infrastructure. Under no circumstances shall hazardous waste, toxins and/or other contaminants be allowed to enter the stormwater infrastructure.

i. The stormwater infrastructure is not a “common element” or “limited common element” that will be owned by the Association (defined below). Rather, the portions of the stormwater infrastructure that are contained within or traverse onto/into individual Lots are included within and are a part of such Lots and owned by the owners of such Lots in fee simple, subject to the perpetual easements described herein and depicted on the Plat.

3. Association for Maintenance of Shared Roadways and Stormwater

Infrastructure.

a. Declarant has established an association known as the Observatory Road Owners' Association, Inc., a Vermont non-profit mutual benefit corporation (the "Association." The Association and the Development are not subject to the Uniform Common Interest Ownership Act, 27A V.S.A. §§ 1-101 et seq., because the Development contains fewer than 12 Lots and is not subject to any development rights. See 27A V.S.A. §§ 1-201 and 1-203(a).

b. The Association will be responsible for the maintenance, repair, and replacement of the shared roadways and stormwater infrastructure as set forth herein. Without limiting the foregoing, the terms, "maintenance" and "repair" may include, but not be limited to, repairing the roadway surface, adding stone, clearing obstructions, grading or scraping the roadway as necessary, cleaning or recutting ditches as necessary, trimming brush along the roadside, snow plowing, snow storage and ice removal, unplugging or opening culverts or drainpipes, and performing any and all other necessary work required to maintain the shared roadways and stormwater infrastructure in a condition that allows for reasonable access on the shared roadways and good operating function of the stormwater infrastructure.

c. The Association will be governed by the Bylaws, which are attached hereto and incorporated herein as Exhibit 2.

d. The owner of each Lot will be assigned one (1) appurtenant and indivisible membership in the Association which may not be assigned, hypothecated, pledged or transferred in any manner except as an indivisible appurtenance to the Lot. Multiple or joint owners of a Lot will be treated for all purposes as jointly owning and holding the one membership appurtenant to that particular Lot.

e. A membership appurtenant to a Lot shall be initiated by either: (i) the recording of a deed in the Town of Hinesburg Land Records conveying a Lot to a purchaser; or (ii) the issuance of a certificate of occupancy by the Town of Hinesburg constructed on a Lot, if required, whichever sooner occurs. Once a membership is initiated, liability for expenses hereunder shall automatically commence. No membership rights or liability for expenses shall be allocated or attributed to a Lot until the Lot is either sold by Declarant to a third party or has been issued a certificate of occupancy.

f. Liability for expenses shall be assessed among the Lot owners as set forth in Sections 1 and 2 above. The Association shall have a lien on each Lot for expenses assessed hereunder.

g. Initially, there shall be two classes of membership in the Association, voting memberships and non-voting memberships. A voting membership shall be any membership owned and held by Declarant. A non-voting membership shall be any membership owned and held by any Lot owner other than Declarant. All memberships in the Association shall automatically become voting memberships once the Declarant has sold five (5) of the Lots, or upon Declarant amending the Bylaws to make all memberships voting memberships, whichever is the first to occur. Thereafter only one

class of voting membership shall exist. When a membership is a voting membership, each Lot owner, or one of the owners if record title in a Lot is held by more than one person, shall be entitled to vote in any meeting of the members of the Association.

h. The initial Board of Directors of the Association shall be three (3) in number and shall be appointed by the Declarant acting in its sole discretion and shall serve at the pleasure of the Declarant. Once all memberships in the Association have become voting memberships, the members shall elect a new three (3) member Board of Directors.

4. Municipal Landfill and Water Testing.

a. The Development is bordered on the south by a closed solid waste municipal landfill owned by the Town of Hinesburg. The landfill is located on a larger 38-acre parcel owned by the Town of Hinesburg, which is also the site of a Chittenden Solid Waste District transfer station, a sand and gravel pit located south of the landfill, and the Town Highway Garage located southeast of the landfill. The landfill operated from 1972 until 1988 and the landfill was closed with a permanent cap by 1992. The landfill cap was improved in November 2022 and solar arrays were installed on the landfill in September 2023.

b. A closure plan was prepared for the landfill in 1990, however the historic environmental monitoring requirements included in the closure plan were never implemented except for drinking water supply sampling at three locations for 20 years. During this monitoring, methylene chloride was detected below the Vermont Groundwater Enforcement Standard (“VGES”) and iron and manganese above the secondary drinking water standard. In July 2021, the State of Vermont collected five water supply well samples and found exceedances of VGES for methylene chloride at 152 Forest Edge Road and polyfluoroalkyl substances (“PFAS”) in the Hinesburg Highway Garage water supply. In June 2021, vinyl chloride and manganese exceeded the VGES in a bedrock monitoring well downgradient of the landfill.

c. In 2021, the Town retained Stone Environmental (“Stone”) to prepare a post-closure plan for the landfill, and to conduct water monitoring and testing and make recommendations regarding ongoing monitoring and testing. A Site Investigation conducted by Stone in 2021 included the installation of additional monitoring wells, as well as point-of-entry treatment (“POET”) systems at 152 Forest Edge and the Hinesburg Highway Garage. Based on Site Investigation results, Stone provided a recommendation for semi-annual groundwater monitoring.

d. Groundwater, drinking water, and surface water monitoring fieldwork was completed by Stone in October 2023, and an additional drinking water sampling event was performed in November 2023. Six monitoring wells were sampled and analyzed for PFAS, volatile organic compounds (“VOCs”), total metals, sodium, chloride, and chemical oxygen demand. Drinking water samples were collected from 182 Forest Edge Road, 413 North Road, 490 North Road, 794 Beecher Hill Road, 206 Forest Edge Road, 455 North Road, and 714 Beecher Hill Road. POET systems were sampled at 152 Forest Edge Road, 685 Beecher Hill Road/56 Forest Edge Road, and 907 Beecher Hill Road

(Hinesburg Highway Garage). Drinking water was analyzed for VOCs and PFAS. Surface water was monitored for physiochemical parameters upstream and downstream of the landfill.

e. The fall 2023 testing and monitoring revealed that total regulated PFAS, arsenic and manganese exceeded VGES in the groundwater in certain of the monitoring wells. The drinking water supply well at 907 Beecher Hill Road (Hinesburg Highway Garage) had perfluorooctanoic acid (“PFOA”) and total regulated PFAS concentrations above the Drinking Water Health Advisory (“DWHA”) and VGES. Methylene chloride was detected above the VGES in 152 Forest Edge Road drinking water supply, but the source of methylene chloride has not been determined.

f. Based on the above data, Stone has recommended:

- i. continued semi-annual monitoring of seven monitoring wells for PFAS, VOCs, total metals including arsenic, cadmium, chromium, copper, iron, lead, manganese, mercury, nickel, and zinc, chloride, sodium and chemical oxygen demand “COD”);
- ii. continued semi-annual monitoring of two surface water locations (upgradient and downgradient of the landfill) in Beecher Brook for physical and chemical field parameters including pH, specific conductance, temperature, dissolved oxygen (DO), oxidation reduction potential (ORP), and turbidity;
- iii. continued semi-annual monitoring of 455 North Road;
- iv. continued semi-annual monitoring of POET systems including 152 Forest Edge Road, 56 Forest Edge Road, 685 Beecher Hill Road, and 907 Beecher Hill Road (Hinesburg Highway Garage) for PFAS and VOCs; and
- v. continued operations and maintenance of the POET systems.

g. On December 15, 2023, at the request of the Town of Hinesburg Development Review Board, Stone provided a professional opinion regarding the likeliness that safe potable water, not contaminated by the adjacent Town landfill, could be provided to the proposed Lots in the Development, as well as the likeliness that the proposed Development would have an adverse impact on the adjacent landfill and nearby existing wells. A copy of Stone’s professional opinion is attached hereto and incorporated herein as Exhibit 3, and provides as follows:

- i. It is Stone’s professional opinion that it is highly likely bedrock wells could be drilled as shown on the Proposed Overall Subdivision Plan that will produce safe potable water not contaminated by the adjacent Town landfill.
- ii. It is Stone’s professional opinion that the bedrock wells proposed for the development as shown on the PR&R Development, LLC Overall Subdivision Plan will not have an adverse impact on the adjacent landfill and nearby existing bedrock wells.

h. Nonetheless, all Lot owners shall test their new wells for arsenic, escherichia, coli (E. coli), fluoride, lead, manganese, nitrate as N, nitrite as N, total coliform bacteria, uranium, adjusted gross alpha particle activity, chloride, sodium, iron, odor and pH, PFAS and VOCs, including Methylene chloride, prior to occupancy. The water supply serving each Lot must be deemed safe prior to the issuance of a building permit that requires water use.

5. Building Envelopes and Clearing Limits; No Trailers.

a. Lot owners may only clear trees in and for the approved building envelopes, shared roadways, curb cuts, driveways, well and septic system areas, stormwater infrastructure, and utilities as set forth on the Plat.

b. All structures, including structures under 100 square feet in area, must be placed within the building envelopes in order to retain the forested areas in the Development.

c. Clearing in the greenspace, wildlife migratory corridor, upland refuge habitat, vernal pools and wetland areas as depicted on the Plat is strictly prohibited.

d. The owners of Lots #7 and #8 shall, at their expense and in compliance with the Plat and Final Plat Approval, plant screening vegetation along the north edge of their building envelopes to minimize the effects of human activity within the wildlife migratory corridor. The planting shall occur during the first spring after the first owners of Lots #7 and #8 begin occupying the Lots.

e. No trailers or mobile homes are permitted in the Development.

f. Each Lot and all structures erected thereon shall be maintained in good repair and in a neat and orderly manner, including, but not limited to, exterior painting and on-site maintenance.

6. Lighting.

a. Outdoor lighting on each Lot shall be limited to the minimum necessary for safety, security, and nighttime use of property. This provision is intended to minimize impact on the visibility of the night sky, minimize light trespass and glare on nearby properties and roads, and reduce energy use.

b. Given the proximity of the VT Astronomical Society's observatory to the Development, all outdoor lighting in the Development will use fixtures that are down-casting and shielded to help avoid adverse impacts to the observatory use.

c. All outdoor lighting in the Development shall conform to all Town of Hinesburg lighting regulations.

7. Permits, Easements, Etc. Each Lot in the Development is subject to and benefitted and/or burdened by the following, all of which are appurtenant to the Lots. The easements,

rights, obligations and agreements established or referred to herein are intended to run with the land and be binding upon and inure to the benefit of the present and future owners of the Lots.

a. Each Lot in the Development has the benefit of a shared 60' right-of-way over Observatory Road as described in the Warranty Deed from Maurice J. Goodrich, Ralph B. Goodrich, and Robert H. Goodrich to the Town of Hinesburg dated October 4, 1991 and recorded in Book 79, Pages 32-35 of the Town of Hinesburg Records.

b. The Lots have the benefit of perpetual easements over the shared roadways and stormwater infrastructure as described herein and as depicted on the Plat.

c. Each Lot is subject to the terms and conditions of State of Vermont Wastewater Systems and Potable Water Supply Permit WW-4-5629-1 dated March 24, 2023 and recorded in Book ____, Page ____ of the Town of Hinesburg Land Records.

d. Each Lot is subject to the terms and conditions of State of Vermont Stormwater General Permit _____3-9050 dated _____, 2024 and recorded in Book ____, Page ____ of the Town of Hinesburg Land Records, and the Stormwater Management Site Plan, Infiltration Basin Site Plans, and EPSC/Stabilization Site Plan upon which the Stormwater General Permit is based.

e. The Lots are benefitted and burdened by the easements, rights of way, and other matters depicted on the Plat, including but not limited to the shared roadways, stormwater infrastructure, and utility easements depicted thereon.

f. Each Lot is subject to the terms and conditions of the Town of Hinesburg Development Review Board Findings of Fact, Conclusions & Order for PR&R Development, LLC Eight-Lot Subdivision and Planned Unit Development, Observatory Road, Hinesburg, VT dated _____, 2024 and recorded in Book ____, Page ____ of the Town of Hinesburg Land Records.

8. Miscellaneous.

a. All terms and provisions hereof shall be binding upon, inure to the benefit of, and apply equally to all Lot purchasers, their heirs, successors or assigns, and shall constitute covenants which touch and concern and run with the land.

b. Any party acquiring an interest in any of the Lots shall be subject to and bound by, and shall enjoy the benefit of, all terms and provisions hereof in the same manner and to the same extent as if these provisions were set forth at length in the deed, decree or other instrument under or by which said interest is acquired.

c. The covenants contained in this Agreement may be enforced by the undersigned, by the Association, or by any one or more Lot owner(s) against any person violating or attempting to violate the same, and the party or parties seeking enforcement may seek to enjoin such violation or recover damages or both. Should Declarant, the Association, or a Lot owner or owner(s) be required to employ legal counsel in order to enforce these covenants, then all costs incurred in such enforcement, including

reasonable attorney fees, shall be paid by the owner(s) of such Lot or Lots found to be in violation.

d. Invalidation of any of the terms and provisions hereof shall not affect the validity of any of the remaining terms and provisions, rather the latter shall remain in full force and effect.

e. These covenants may be amended at any time by written instrument, setting forth the amendment, executed by all of the holders of record title to any interests in the property subject to the covenants at the time the covenants are amended; provided, however, that no amendment may contravene the requirements of any permit to which the Development is subject.

IN WITNESS WHEREOF, the Declarant executes this Agreement as of the date set forth below.

PR&R DEVELOPMENT, LLC

By: _____
Duly Authorized Agent

STATE OF VERMONT)
CHITTENDEN COUNTY) SS.

This record was acknowledged before me on _____, 2024
by _____ on behalf of PR&R Development, LLC.

(STAMP/SEAL)

Notary Public
Print Name: _____
My Commission Expires: 1/31/25
Credential #: _____