

## EASEMENT AND ROAD MAINTENANCE AGREEMENT

This Agreement is entered into effective the \_\_\_\_ day of \_\_\_\_\_, 2022, between **Rose Torrey, Trustee of the M. Hartley MacFadden Trust**, of Brandon, Vermont ("MacFadden"), and **Michael P. Palmer and Gisela Palmer**, of Cornwall, Vermont ("Palmer").

### Background

A. MacFadden owns 17.33 acres, more or less, located on the southeasterly side of Vermont Route 30 in Cornwall, Vermont (the "MacFadden Property"). The MacFadden Property is all and the same lands and premises described in the Warranty Deed of M. Hartley MacFadden to Rose Torrey, Trustee of the M. Hartley MacFadden Trust, dated August 25, 2022, and recorded in Book \_\_\_\_ at Page \_\_\_\_ of the Cornwall Land Records.

B. Palmer owns 20.10 acres, more or less, located southerly of the MacFadden property (the "Palmer Lot"). The Palmer Lot is all and the same lands and premises described in the Warranty Deed of Merritt C. Chandler to Michael P. Palmer and Gisela Palmer, dated January 31, 2000, and recorded in Book 49 at Page 73 of the Cornwall Land Records.

C. A private road known as Bardon Drive begins at Route 30 and proceeds in a generally southerly direction across the MacFadden Property and onto the Palmer Property.

D. The Palmer Lot is benefited by an existing easement over the portion of Bardon Drive located on the MacFadden Property, as originally set forth in (i) an Executrix's Deed from M. Hartley MacFadden, Executrix of the Estate of Barbara A. MacFadden, to Merritt C. Chandler and Ruth B. Chandler, dated May 2, 1983, and recorded in Book 29 at Page 436 of the Cornwall Land Records a Warranty Deed from M. Hartley MacFadden to Merritt C. Chandler and Ruth B. Chandler, dated May 2, 1983, and recorded in Book 29 at Page 445 of the Cornwall Land Records.

E. MacFadden has subdivided the MacFadden Property into three lots, designated as "Lot 1," "Lot 2," and "Lot 3" and depicted on a survey entitled "plat showing a proposed subdivision of lands of M. Hartley MacFadden, 625 VT Route 30, Cornwall, Addison County, Vermont," prepared by LaRose Surveys, P.C., dated March 1, 2022, and recorded as Map # \_\_\_\_\_ of the Cornwall Land Records (hereinafter the "Survey").

F. The Survey depicts a 50' wide right of way labeled as "existing 50' wide right of way" and following the centerline of Bardon Drive (the "Easement"). The Easement begins at Route 30 and ends at the southerly line of the MacFadden Property, which is also the northerly line of the Palmer Lot.

G. Lots 1, 2, and 3 will each be served by portions of the Easement and will have the right to use the Easement in common with Palmer.

H. For purposes of this Agreement, the term "Lot" refers to any of Lots 1, 2, or 3 and the Palmer Lot, as well as any future lots that may be created by future subdivision of any of the existing Lots. The term "Owner" refers to any owner of a Lot.



I. The parties wish to enter into this Agreement to confirm and update the terms governing their shared use of the Easement and their responsibilities for maintenance and repairs to any roadway and utility infrastructure located within the Easement.

**Now, therefore,** the parties agree as follows:

1. The parties hereby confirm and agree that Palmer has a valid, permanent, easement and right of way for access to the Palmer Lot, in common with MacFadden and the future Owners of Lots 1, 2, and 3, over the Easement, in the location shown on the Survey.

2. The Owners of Lots 1, 2, and 3 shall each have the right to use the appropriate segments of the Easement, in common with each other and Palmer, for ingress and egress between Route 30 and their respective Lots, and for underground utility service to their respective Lots.

3. For purposes of this Agreement, a Lot shall be considered “developed” if (i) a residence has been constructed on the Lot; or (ii) any other structure or use has been established on the Lot that generates traffic at a level comparable to or greater than a typical residence.

4. Except as otherwise provided in Section 5, the costs of construction, maintenance, repair, snowplowing and any other expenses for the shared roadway located within the Easement (Bardon Drive) shall be borne as follows:

- a. The Owners of any Lots that are not yet developed shall have no road maintenance obligations.
- b. Costs for any segment of roadway that serves only one developed Lot shall be the sole responsibility of the Owner of that Lot.
- c. Costs for any segment of roadway that serves multiple developed Lots shall be shared equally by the Owners of the developed Lots served by that segment.

5. Except as otherwise provided in Section 5, the costs of construction, maintenance, repair, and any other expenses for any utility infrastructure within the Easement shall be borne as follows:

- a. Costs for any utility infrastructure that serves only one developed Lot shall be the sole responsibility of the Owner of that Lot.
- b. Costs for any utility infrastructure that serves multiple developed Lots shall be shared equally by the Owners of the developed Lots served by that infrastructure.

6. Notwithstanding any other provision of this Agreement, if an Owner or its guests, invitees, or licensees causes damage to any roadway or utility infrastructure, that party agrees to be solely responsible for the cost of repairing such damage and to hold the other Owners harmless therefrom.

7. Management of the roadway and utilities within the Easement shall be overseen by an association consisting of the Owners (the “Association”). Owners of undeveloped Lots shall qualify for membership in the Association, but shall not have any voting rights unless and until their Lots are developed. The Association shall be unincorporated unless the Owners unanimously decide to form



a formal corporation or other entity. Membership in the Association shall run with the land and shall automatically transfer to the new Owner(s) in the event of a sale or transfer of any Lot.

8. The Owners shall hold an annual meeting within the last three months of each calendar year to elect a treasurer (the "Treasurer"), to establish an annual operation and maintenance budget for the upcoming calendar year, to determine each Lot Owner's respective share of the budget pursuant to the terms of this Declaration, and to make any and all other decisions regarding maintenance, repair, snowplowing, and other expenses. Special meetings may be called at any time by two or more Owners for the purpose of revising the budget or conducting any other business. Written notice of the meeting date, time and place shall be sent by the Treasurer to all Owners at least ten (10) days in advance of the meeting. All decisions at any annual or special meeting shall be made by a majority vote of the Owners, with each developed Lot having one vote.

9. The Treasurer shall manage a maintenance fund, to which the Owners shall each contribute their respective shares of the operation and maintenance budget. The Treasurer shall calculate and bill each Owner for its share at suitable periodic intervals. Each bill shall be due and payable within thirty (30) days of the date of mailing.

10. Any Owner who fails to pay any sum owed under this Agreement by the due date shall be liable for interest on the unpaid amount at the rate of 1% per month or portion thereof, together with all costs of collection and enforcement (including reasonable attorneys' fees) incurred by the Association and/or the other Owners. Unpaid bills assessed against an Owner, including interest and costs for which the Owner is liable pursuant to this Section, shall be a lien against that Owner's Lot, foreclosable in the same manner as a mortgage.

11. All notices sent to an Owner in connection with this Agreement shall be mailed to that Owner's address of record in the Grand List of the Town of Cornwall, or to such other address or email address which that Owner provides to the Treasurer.

12. This Agreement shall run with the land and be binding upon and inure to the benefit of the parties and their respective heirs, successors and assigns.

13. This Agreement shall be governed by the laws of the State of Vermont. Any litigation arising out of or connected with this Agreement shall be brought in the Vermont Superior Court, Addison Civil Division.

14. No amendments to this Agreement shall be effective unless in writing and signed by all of the parties to be bound thereby.

**IN WITNESS WHEREOF**, we have set our hands and seals effective as of the date first stated above.

*[Signature page follows]*



\_\_\_\_\_  
Rose Torrey, Trustee of the M. Hartley  
MacFadden Trust

STATE OF VERMONT  
ADDISON COUNTY, SS.

This record was acknowledged before me on \_\_\_\_\_, 2022, by Rose Torrey,  
Trustee of the M. Hartley MacFadden Trust.

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

\_\_\_\_\_  
Michael P. Palmer

\_\_\_\_\_  
Gisela Palmer

STATE OF VERMONT  
ADDISON COUNTY, SS.

This record was acknowledged before me on \_\_\_\_\_, 2022, by Michael P. Palmer  
and Gisela Palmer.

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