

AGENDA SUMMARY
February 28, 2024

AGENDA ITEM NO. A-6

**Development and Consecutive Water and Sewer System Agreements: Rivers Edge
Subdivision – Cape Cod Road – Ski Lag Partnership (Percy’s)**

Summary: Enclosed please find Final Drafts for review and possible acceptance of the following Development Agreements associated with the Rivers Edge Subdivision:

1. Public Works Development Agreement
2. Consecutive Water System Agreement
3. Consecutive Sewer System Agreement

In November 2023, the DRB granted Preliminary Approval of a proposed 12 lot PUD subdivision of 29 acres of land at 281 Cape Cod Road. Water service to the property is proposed to be provided by a 2300 LF+/- public water main extension in Cape Cod Road from Sinclair Drive to the site entrance. Water service to the individual lots is proposed to be provided by a private on-site water system from the extended public water main. Sewer service for each lot is proposed to be provided by a private on-site sewer system, discharging to a private on-site sewer pump station, discharging to 900LF+/- private sewer force main, discharging to the existing municipal sewer on 876 Mountain Road (behind the former Town and Country Inn). This will require crossings of both the Rec Path and West Branch in easements across other properties, which the developer proposes to do with directional drilling. Each lot will be individually metered customers to the municipal systems and members of a private Homeowners Association (HOA). The Development Agreement will be for the public water main extension in Cape Cod Road. The Consecutive Water and Sewer System Agreements will be for the private water and sewer system elements owned by the HOA. All three are in accordance with our template agreements.

Town Plan Impact:

Sewage Disposal Policies:

1. *Stowe’s municipal wastewater treatment and associated allocations of plant capacity will be operated and expanded as appropriate, in a manner that reinforces the land use, economic development, housing and natural resource protection goals and policies of the plan.*
2. *The allocation of wastewater treatment capacity shall be limited to properties located within the sewer service area.*

Water System Policies:

2. *The municipal water system will be operated and expanded as appropriate, in a manner that reinforces the land use, economic development, housing and natural resource protection goals and policies of the plan.*
3. *The beneficiary of water line expansions should pay for the cost (e.g. developer, property owner(s)).*

Fiscal Impact: N/A

Recommendation: Move to approve the Public Works Development Agreement and Water and Sewer Consecutive System Agreements for the Rivers Edge subdivision and, authorize the Town Manager to sign on behalf of the Town, conditioned upon:

1. All required private easements are secured and filed in the Land Records
2. All final engineering details are approved by the Public Works Department.

**PUBLIC WORKS INFRASTRUCTURE DEVELOPMENT AGREEMENT
(River’s Edge)**

This Public Works Infrastructure Development Agreement (the “Agreement”) is made this _____ day of _____, 2024, by and between **SKI LAG PARTNERSHIP**, an unregistered Vermont partnership (Dana T. Percy, Jr. and Peter E. Percy) with its principal place of business in the Town of Stowe, County of Lamoille, and State of Vermont (“SKI LAG”) and the **TOWN OF STOWE**, a Vermont municipality located in Lamoille County, Vermont (the “Town”), each acting by and through its duly authorized agent and hereinafter collectively referred to as the “Parties”.

RECITALS

WHEREAS, Owner is the owner of a certain real property comprised of four parcels, together containing approximately 29.2 acres, located at 281 Cape Cod Road in the Town of Stowe (the “Property”), acquired by the following Warranty Deeds:

- “Ski Lag Parcel” or Riley/Murphy/Savage Parcel”. Being all and the same lands and premises conveyed to Dana T. Percy, Jr., by Warranty Deed of Dale E. Percy dated April 18, 1991 and recorded at Book 218, Page 345 of the Town of Stowe Land Records, and to Peter E. Percy by Warranty Deed of Dale E. Percy dated November 2, 1995 and recorded at Book 307, Page 322 of the Town of Stowe Land Records;
- “Percy Park Office Parcel”. Being all and the same lands and premises conveyed to Dana T. Percy, Jr. and Peter E. Percy by Warranty Deed of Dale E. Percy dated February 16, 1995 and recorded at Book 307, Page 326 of the Town of Stowe Land Records;
- “Cape Cod Parcels B and C”. Being all and the same lands and premises conveyed to Dale E. Percy and Peter E. Percy by Warranty Deed of Cape Cod Associates dated September 23, 1994 and recorded at Book 287, Page 255 of the Town of Stowe Land Records. The interest of Dale E. Percy was conveyed to Dana T. Percy, Jr. by Warranty Deed dated October 25, 1995 and recorded at Book 307, Page 324; and

WHEREAS, the Property, is shown on the following plats:

- “Ski Lag Parcel” or Riley/Murphy/Savage Parcel”. “Ski Lag Property Stowe, VT – July 1991,” prepared by Glenn Towne, dated November 18, 1991, and recorded at Map Book 8, Page 131 of the Town of Stowe Land Records;
- “Percy Park Office Parcel”. “Dale Percy to Dana T. Percy, Sr., Stowe, Vermont, April 1983,” prepared by Glenn Towne, last revised May, 1983, and recorded at Map Book 4, Page 55 of the Town of Stowe Land Records;
- “Cape Cod Parcels B and C”. “Cape Cod Associates, Stowe, Vermont, August 1994,” prepared by Glenn Towne, Project No. T-80842A as Lot B and Lot C, and filed at Map Book 10, Page 44 of the Town of Stowe Land Records; and

WHEREAS, on November 21, 2023, the Town of Stowe Development Review Board (“DRB”) granted Owner preliminary subdivision approval for a Planned Unit Development (“PUD”) for twelve (12) residential lots (the “Project”) as depicted on a plan entitled “Site Plan – Proposed PUD, River’s Edge – Owner, Percy & Percy, Cape Cod Road, Stowe,” prepared by Grenier Engineering, P.C., dated April 7, 2023, and of record in Town of Stowe Planning and Zoning Office (the “Plan”); and

WHEREAS, the Town has established and operates a public water supply system (“Town Water System”), and a public sewer collection and treatment system (“Town Sewer System”), and the Project is located within the respective service areas of the Town’s Water System and the Town’s Sewer System; and

WHEREAS, SKI LAG proposes to serve the water supply and sewage disposal requirements of the Project by connecting to the Town Water System and Town Sewer System and installing public water main and sewer collection system extensions through common/shared use portions of the Property to the proposed buildings as shown on the Site Utility Plan, Drawing _____ prepared by _____ dated _____ (the “Project Water and Sewer System”); and

WHEREAS, the DRB, as a condition of approval, required that SKI LAG enter into a Public Works Infrastructure Development Agreement with the Town regarding the design, construction, inspection, testing, commissioning and possible acceptance by the Town of the proposed Project Water and Sewer System and to irrevocably dedicate and execute and deliver to the Town, in a form acceptable to the Town and its legal counsel, all documents necessary to convey all of SKI LAG’s rights, title and interest in and to: 1) the water main, valves and related appurtenances comprising the water system improvements, necessary to deliver Town water service to the service valves for each residential unit in the Project (but not the individual service connections from the water main to each unit) (the “Project Water System”) and, 2) the sewer pipes, manholes, connections and related appurtenances necessary to convey domestic sewage from each building in the Project (but not individual service laterals from each building to the sewer main) (the “Project Sewer System”).

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Parties hereto enter into this Agreement for the design, construction, inspection, testing, commissioning, ownership, operation, maintenance, repair, and/or replacement of the Project Water and Sewer System and their connections to the Town Water System and Town Sewer Systems. To that end, the Parties hereto stipulate and agree as follows:

- **Irrevocable Offer of Dedication and Easement Deed.**

A. Prior to SKI LAG’s application for a Water/Sewer Construction permit from the Town, SKI LAG shall deliver to the Town, at SKI LAG’s sole cost and expense, a fully executed Irrevocable Offer of Dedication together with a fully executed, recordable form Easement Deed, together with all necessary consents, releases or subordinations of any liens on the property, for the Project Water and Sewer Systems. The Easement Deed shall provide the Town with an access and construction easements and include bill of sale language conveying to the Town all of SKI LAG’s right, title and ownership interest in and to all materials and appurtenances incorporated into the Project Water and Sewer System components, to be transferred free and clear of any and all liens, encumbrances and rights of any kind and the warranty provisions contained herein. The easement shall authorize the Town to access the affected property to operate, maintain, repair, replace, reconstruct and upgrade the Project Water and Sewer System within the area of the easement, which shall be defined as 20’ wide minimum centered on

the Project Water and Sewer System and the water services to the individual water service valves and the sewer lateral connections.

B. The Town shall hold the original Irrevocable Offers of Dedication and shall have the right, but not the obligation, to accept the offered dedication and to record the Easement Deed, at any time in the future. For purposes of this Agreement, “acceptance” shall not be deemed to have occurred until the Town’s Water and Sewer Commissions have voted to accept ownership of the Project Water and Sewer Systems.

2. Engineer of Record.

- SKI LAG shall retain, at its sole cost and expense, **John D. Grenier, P.E. of Grenier Engineering, P.C. (“Grenier Engineering”)**, as the Engineer of Record (the “EOR”), to complete the Final Plans required by Section 3 herein and perform resident engineering inspection of the construction, testing and commissioning of the Project Water and Sewer Systems. The resident engineering inspector (the “RE”) assigned to the Project must be approved by the Town. Before the EOR or RE may be replaced with another EOR or RE, the proposed replacement must be approved by the Town and no work may be advanced until the EOR or RE is so approved. The Town’s approval of any replacement EOR or RE shall not be unreasonably withheld or delayed, provided the proposed replacement EOR or RE has relevant knowledge, experience and background in public water and sewer system design, construction and testing.

- The Town shall be directly copied on all work product produced by the EOR in connection with the Project Water and Sewer Systems, including but not limited to daily field reports, photographs, field measurements and testing results, as the same are generated and delivered to SKI LAG. EOR shall provide both SKI LAG and the Town periodic written confirmation that the Project Water and Sewer Systems have been constructed, installed, inspected and tested in accordance with the requirements of Sections 3 through 8 below.

- The Town shall have the right but not the duty to inspect the work independently and shall advise SKI LAG and the EOR regarding any work deemed by the Town to be unacceptable in a reasonable exercise of its judgment. SKI LAG shall promptly fix or correct any aspect of the work deemed by the Town to be non-compliant with the requirements set forth below, to the Town’s reasonable satisfaction and at SKI LAG’s sole cost and expense.

- **Final Plans.**

A. Prior to SKI LAG’s application for a Water/ Sewer Construction permit from the Town, SKI LAG shall submit to the Town for review and, if acceptable, approval, Final Water System Plans, Details and Technical Specifications (collectively the “Final Plans”) for the Project Water and Sewer Systems, certified by the EOR.

B. Review and approval of the Final Plans by the Town is done in discharge of the Town’s governmental responsibilities and in furtherance of the general public health, safety and welfare and the Town has and assumes no specific relationship with, or duty of care to, SKI LAG or third parties by such review and approval nor is immunity thereby waived by the Town or any of its officers and employees.

C. Any changes proposed to the Final Plans must be reviewed and approved by the EOR and thereafter submitted to the Town for its review and, if acceptable, approval prior to any implementation of any such changes. SKI LAG shall be responsible for all costs to uncover, test, examine and correct or reinstall any aspect of the construction not in compliance with the Final Plans as approved by the Town.

4. **Surety.** Upon application of a Water/Sewer Construction Permit, SKI LAG shall provide an Irrevocable Letter of Credit (“the Surety”) in favor of the Town and acceptable to its legal counsel. Surety shall be held by the Town until the expiration of the two-year warranty period under Section 9 below. The amount of the Surety will be established by the Town’s Water and Sewer Commissions on recommendation of the Town’s Public Works Department based upon the estimated construction cost of the Project Water and Sewer System. Upon acceptance of ownership and recording of the Easement Deed(s), the Town’s Water and Sewer Commissions may agree reduce the Surety amount to no less than 25% of the original Surety amount during the Warrantee Period.

5. **Submittals.** SKI LAG shall submit to the Town, for its review and records, all finally shop drawings and submittal documents reviewed and approved by the EOR for all water and sewer system materials and components.

6. **Maintenance and Protection of Flows Plan.** Prior to commencing construction of the Project Water and Sewer Systems, SKI LAG’s Contractor shall submit to the Town for its review and if acceptable approval, a Maintenance and Protection of Flows Plan (the “MPF Plan”). The MPF Plan shall demonstrate the intended methods and means of assuring adequate potable water supply and sewage waste disposal for any existing Town water customers potentially impacted by the construction of the Project Water and Sewer Systems. The MPF Plan shall include a detailed sequence of construction, interfaced with the proposed excavation, excavation bracing, foundation and other underground site construction. The MPF Plan shall also demonstrate the proposed methods and means of testing, flushing and disinfecting the Project Water System prior to the connection to the Town Water System.

7. **Construction of the Project Water and Sewer System.** SKI LAG shall have constructed, by a qualified Contractor experienced in public water and sewer construction and acceptable to the Town, at its sole cost and expense, the construction of the Project Water and Sewer System as depicted on the approved Final Plans, together with other improvements as may be necessary to facilitate municipal water and sewer service to the boundary of each lot within the Project. The construction of the Project Water and Sewer System shall be commenced, prosecuted, advanced and completed in a timely, good and workmanlike manner by an adequately staffed and supervised work crew with appropriate knowledge and sufficient equipment to properly perform the work.

8. **Certificate of Final Completion and As-Built Documents.** The EOR shall provide the Town, at SKI LAG’s sole cost and expense, a Certificate of Final Completion and As-Built Drawings, certified by the EOR, depicting all components of the Project Water and Sewer System and any other installed underground elements located within and directly abutting the easement area(s) irrevocably offered to the Town. The Certificate of Final Completion shall confirm compliance with the design documents, material specifications and test requirements referenced in the approved Final Plans. The As-Built Drawings shall provide the horizontal and vertical locations of all components of the Project Water and Sewer System and all other underground construction within and directly abutting the easement area, in a GIS compatible format, geo-referenced to 0.1’ accuracy.

9. Warranty Period

- Upon receipt of the Certificate of Final Completion and the As-Built Documents required by Section 8 acceptable to the Town, the Town shall consider its acceptance of the Project Water and Sewer Systems. For the purposes of this Agreement “acceptance” shall be deemed to have occurred when the Town’s Water and Sewer Commission has voted to accept, upon recommendation of the Town’s Public Works Department, ownership of the Project Water and Sewer Systems, and records the related Easement Deed(s) required by Section 1B in the Town of Stowe land records. Upon acceptance, the two-year warranty period shall commence.
- During the two (2) year warranty period, SKI LAG shall be responsible for all costs and expenses for the repair and/or replacement of any or all of the Project Water and Sewer System components determined by the Town during that period to be defective. Under the terms and conditions of the Surety, the Town shall be entitled to draw against the Surety for such costs and expenses in the event that SKI LAG fails to make timely, repair and/or replacement of the Project Water and Sewer System or any components thereof, during the two (2) year warranty period.
- At the end of the two (2) year warranty period, the Town shall prepare a final warranty report regarding the condition of the Project Water and Sewer System. Upon completion of any repairs and/or replacements noted in the final warranty report to the satisfaction of the Town, SKI LAG shall be relieved of any further responsibility associated with the Project Water and Sewer Systems, the Surety will be released, and the parties’ respective obligations under this Agreement shall be deemed satisfied.

10. Costs and Expenses. SKI LAG shall at all times promptly make payments of all amounts due to persons supplying labor, materials or services in connection with the required improvements by this Agreement and to any persons who may otherwise be entitled to assert a lien by virtue of 9 V.S.A. § 1921, et seq. or otherwise. SKI LAG shall indemnify and defend the Town with respect to any such lien regardless of the merits of the claimed lien and shall immediately take all steps necessary to remove such lien (including the provision of alternative security for the claim).

11. Breach of Agreement. Should either party to this Agreement commit a breach of the Agreement, the non-breaching party shall provide written notice of the breach to the breaching party. The breaching party shall have thirty (30) days to cure any claimed breach or, in the event that a cure cannot be accomplished within thirty (30) days, to initiate those actions necessary to cure any claimed breach within thirty (30) days and thereafter complete such actions with reasonable promptness. If a claimed breach is not cured within the times set forth above, the non-breaching party may commence a civil action and may request an order compelling the breaching party to cure the breach, as well as any other appropriate relief. In addition, the substantially prevailing party in any such action shall be entitled to recover from the other party its reasonable attorneys’ fees and other costs of litigation, including expert witness fees.

12. Indemnity. SKI LAG shall indemnify and hold the Town harmless from and against any and all liabilities, obligations, claims, suits, liens, judgments, damages, penalties, causes of action, losses and expenses, including reasonable attorneys’ fees and litigation costs, arising in whole or in part, and in any manner, related to construction of the Project Water and Sewer Systems or its connection to the Town Water and Sewer Systems, including but not limited to any that cause a failure to maintain or protect

public water flows or quality, uncontrolled sewage discharge, or that results in property damage or personal injury, including death.

13. Insurance. SKI LAG shall obtain and maintain throughout the term of this Agreement and any renewal thereof, a policy or policies of general liability insurance naming the Town of Stowe as an additional insured and indemnifying the Town against all claims and demands, except claims and demands based on the Town's gross negligence, for injury to or death of any person, and damage or destruction or loss of property, in an amount not less than Two Million Dollars (\$2,000,000) for each and every occurrence. Upon request, SKI LAG shall furnish to the Town a Certificate of Insurance for the coverage and limits mentioned above. This obligation of SKI LAG to maintain insurance shall expire upon expiration of the warrantee period.

14. General Provisions.

- (a) **Duly Authorized.** The Town and SKI LAG represent and warrant that the execution, delivery and performance of this Agreement has been duly authorized by all necessary proceedings of the Town and SKI LAG, as the case may be, and the persons signing this Agreement on their behalf have been duly authorized to do so, and by doing so, to bind the Town and SKI LAG, as the case may be, to the terms and conditions hereof.
- (b) **Severability.** In case any one or more of the provisions of this Agreement shall be held by a court of competent jurisdiction to be invalid or unenforceable for any reason or in any respect, such invalidity or unenforceability shall not limit or impair enforcement of the remaining provisions hereof.
- (c) **No Waiver.** No failure to exercise, and no delay in exercising any right, power or remedy hereunder or under any document delivered pursuant hereto shall impair any right, power or remedy which the Parties hereto may have, nor shall any such delay be construed to be a waiver of any such rights, powers or remedies, or an acquiescence in any breach or default under this Agreement, nor shall any waiver of any breach or default of any party hereunder be deemed a waiver of any default or breach subsequently occurring. Nothing in this Agreement shall be construed as limiting or restricting the Town's right to pursue enforcement actions against SKI LAG under the terms of any applicable Town Ordinance and/or any applicable municipal and state permits.
- (d) **Choice of Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Vermont. Any suit, action or proceeding against any party with respect to this Agreement or any judgment entered by any court in respect thereof, may be brought in the courts of the State of Vermont and each party hereby irrevocably submits to the non-exclusive jurisdiction of such courts for the purpose of any such suit, action or proceeding. Each party hereby irrevocably waives any objections which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement brought in the courts located in the State of Vermont, and hereby further irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.
- (e) **Counterparts.** This Agreement may be executed in any number of duplicate original counterparts, and each such counterpart is to be considered a duplicate original, each and all of

which shall constitute one and the same Agreement.

15. Notices. Any notices required by this Agreement shall be provided, via hand-delivery or first class mail, to the following addresses:

To the Town: Town of Stowe
 P.O. Box 730
 Akeley Memorial Building 67 Main Street
 Stowe, Vermont 05672

To SKI LAG: SKI LAG PARTNERSHIP
 Dana T. Percy, Jr. and Peter E. Percy
 269 Weeks Hill Road
 Stowe, VT 05672

16. Recording. This Agreement will be recorded by the Town in the land records of the Town of Stowe and shall be binding upon the Parties hereto, and their respective affiliates, subsidiaries, successors and assigns, and references in this Agreement to any party shall be construed to include their respective successors and assigns. Any assignment, transfer or conveyance of the lands or any rights in the lands of SKI LAG shall specifically reference this Agreement and shall bind the assignee or transferee to faithful performance of this Agreement as a successor or assign of SKI LAG.

17. Entire Agreement. This Agreement shall constitute the entire agreement between the Parties relative to the subject matter hereof, and supersedes all prior agreements, written or oral. This Agreement may be modified or amended only by mutual written consent of the Parties. If any provision of this Agreement shall be deemed invalid or unenforceable by a Vermont court of competent jurisdiction, the remainder of the Agreement shall continue in full force and effect.

18. Effective Date. This Agreement shall become effective on the date that is the later of: (a) the date of the last party to sign this Agreement; or (b) the date that a Town zoning permit for the construction of the Project is issued in final form and is not the subject of an appeal.

Dated at Stowe, Vermont, this ____ day of _____, 2024.

TOWN OF STOWE

By: _____
Duly Authorized Agent

**STATE OF VERMONT
COUNTY OF LAMOILLE, SS.**

At Stowe, this ____ day of _____, 2024, personally appeared _____,
Duly Authorized Agent of **TOWN OF STOWE**, to me known to be the person who executed the
foregoing instrument, and he/she acknowledged this instrument, by him/her signed, to be his/her free act
and deed and the free act and deed of **TOWN OF STOWE**.

Before me,

Notary Public

My commission expires: 1/31/25

Dated at Stowe, Vermont, this ____ day of _____, 2024.

SKI LAG PARTNERSHIP

Dana T. Percy, Jr., General Partner

Peter E. Percy, General Partner

**STATE OF VERMONT
COUNTY OF LAMOILLE, SS.**

At Stowe, this ____ day of _____, 2024, personally appeared Dana T. Percy, Jr. and Peter E. Percy, the General Partners and Duly Authorized Agents of SKI LAG PARTNERSHIP, to me known to be the persons who executed the foregoing instrument, and they acknowledged this instrument, by them signed, to be their free act and deed and the free act and deed of SKI LAG PARTNERSHIP.

Before me,

Notary Public

My commission expires: 1/31/25

CONSECUTIVE SEWER SYSTEM AGREEMENT

This **CONSECUTIVE SEWER SYSTEM AGREEMENT** (“Agreement”) is made this ___ day of _____ 2024 (“Effective Date”), by and between SKI LAG PARTNERSHIP, an unregistered Vermont partnership (Dana T. Percy, Jr. and Peter E. Percy) with its principal place of business in the Town of Stowe, Lamoille County, Vermont (“Owner”), and the TOWN OF STOWE, a Vermont municipality located in Lamoille County, Vermont (“Town”).

RECITALS

WHEREAS, Owner is the owner of a certain real property comprised of four parcels, together containing approximately 29.2 acres, located at 281 Cape Cod Road in the Town of Stowe, acquired by the following Warranty Deeds:

- a. “Ski Lag Parcel” or Riley/Murphy/Savage Parcel. Being all and the same lands and premises conveyed to Dana T. Percy, Jr., by Warranty Deed of Dale E. Percy dated April 18, 1991 and recorded at Book 218, Page 345 of the Town of Stowe Land Records, and to Peter E. Percy by Warranty Deed of Dale E. Percy dated November 2, 1995 and recorded at Book 307, Page 322 of the Town of Stowe Land Records;
- b. “Percy Park Office Parcel”. Being all and the same lands and premises conveyed to Dana T. Percy, Jr. and Peter E. Percy by Warranty Deed of Dale E. Percy dated February 16, 1995 and recorded at Book 307, Page 326 of the Town of Stowe Land Records;
- c. “Cape Cod Parcels B and C”. Being all and the same lands and premises conveyed to Dale E. Percy and Peter E. Percy by Warranty Deed of Cape Cod Associates dated September 23, 1994 and recorded at Book 287, Page 255 of the Town of Stowe Land Records. The interest of Dale E. Percy was conveyed to Dana T. Percy, Jr. by Warranty Deed dated October 25, 1995 and recorded at Book 307, Page 324; and

WHEREAS, on November 21, 2023, the Town of Stowe Development Review Board (“DRB”) granted Owner preliminary subdivision approval for a Planned Unit Development (“PUD”) for twelve (12) residential lots as depicted on a plan entitled “Site Plan – Proposed PUD, River’s Edge – Owner, Percy & Percy, Cape Cod Road, Stowe,” prepared by Grenier Engineering, P.C., dated April 7, 2023, and of record in Town of Stowe Planning and Zoning Office (the “Plan”); and

WHEREAS, the Owner proposes to install a private Sewer collection system as depicted on the Plan (the “PRIVATE SEWER SYSTEM”), which will be connected and discharge to the Town’s public sewer system (the “TOWN SEWER SYSTEM”); and

WHEREAS, the DRB's approval is conditioned in part on "Final Plans, Details and Technical Specifications for the proposed Sewer and Sewer Connections shall be approved by the Department of Public Works;" and

WHEREAS, prior to a Connection Permit, the Town requires a written agreement between the parties establishing all rights and responsibilities regarding the ownership, easement, operational control, maintenance, repair and replacement responsibilities of the PRIVATE SEWER SYSTEM connected and discharging to the TOWN SEWER SYSTEM.

NOW, THEREFORE, based on the above stated premises and other good and valuable consideration, the parties hereto agree as follows:

1. Confirmation. The parties hereby confirm that the statements and facts set forth as Recitals hereinbefore are true and correct, in reliance upon which the parties are entering into this Agreement.
2. Duties and Responsibilities of the Town: The Town shall have operational control of the PRIVATE SEWER SYSTEM as a consecutive sewer system to the TOWN SEWER SYSTEM. The Town shall have the following specific duties and responsibilities hereunder:
 - 2.1 Issue required Public Notices to all customers of the TOWN SEWER SYSTEM connected to the PRIVATE SEWER SYSTEM.
 - 2.2 Exercise general supervision and operational control over all maintenance, repairs, replacements and improvements required to the PRIVATE SEWER SYSTEM.
 - 2.3 Provide general management, administration, and customer service to the customers of the TOWN SEWER SYSTEM connected to the PRIVATE SEWER SYSTEM in accordance with policies, procedures and practices of the Town as now exist and as hereafter amended or adopted.
 - 2.4 If Owner fails to maintain, repair, replace or improve the PRIVATE SEWER SYSTEM as required under Section 3 below, including but not limited to the collection system piping, manholes and appurtenances thereto, but specifically excluding all service laterals that connect each building to the PRIVATE SEWER SYSTEM, the Town shall undertake to make the repairs, replacements or improvements required and shall be reimbursed by the Owner for all cost incurred pursuant to Section 3.5 and 5.2 below.
3. Duties and Responsibilities of Owner: Owner shall remain the owner of the PRIVATE SEWER SYSTEM and shall be responsible to perform and fulfill all duties and responsibilities relating to the PRIVATE SEWER SYSTEM

that are not expressly the responsibility the Town as set forth in Section 2 above, including, but not limited to, the following:

- 3.1 Owner shall construct and commission the PRIVATE SEWER SYSTEM in compliance with all applicable permit requirements, and the rules and regulations of the Stowe Sewer Department.
 - 3.2 Owner shall notify and obtain approval from the Town before commencing any maintenance, repair, replacement, improvement and/or expansion of the PRIVATE SEWER SYSTEM and shall undertake the same under the supervision and operational control of the Town.
 - 3.3 Owner shall maintain, repair, replace, or improve the PRIVATE SEWER SYSTEM, including but not limited to the collection system piping, manholes and appurtenances thereto, as required to maintain compliance with the Vermont Water Pollution Control Permit Regulations (Chapter 13 of the Vermont Environmental Protection Rules) and the Town of Stowe Sewer Ordinance, as the same are amended from time to time, and maintain flow, protect from damage and prevent extraneous and illicit discharges to the TOWN SEWER SYSTEM thru the PRIVATE SEWER SYSTEM. Owner shall undertake and prosecute such maintenance, repair, replacement, or improvement promptly and diligently upon receiving notice from the Town, or otherwise becoming aware that such work is required.
 - 3.4 Owner shall make all payments on any existing or hereafter incurred indebtedness or other financial obligations and pay all expenses incident to the ownership, maintenance, repair, replacement, or improvement of the PRIVATE SEWER SYSTEM.
 - 3.5 Reimburse the Town for all costs and expenses reasonably incurred by the Town in accordance with Section 2.9 above within thirty (30) days after the Town invoices Owner for such cost and expenses.
 - 3.6 Obtain all required federal, state and municipal permits prior to making or allowing any connection, alteration, or expansion of or to the PRIVATE SEWER SYSTEM.
4. Rights for Operations, Maintenance, Repair, Replacement, and Improvements:
- 4.1 Owner hereby grants to Town rights of access to the PRIVATE SEWER SYSTEM as may be reasonably necessary for the operations, maintenance, repair, replacement, and improvements of the PRIVATE SEWER SYSTEM.
 - 4.2 The Town and its agents shall have the right to enter upon any land or property on which the PRIVATE SEWER SYSTEM is located, with or without prior notice to Owner, for the purpose of operation, inspection, testing, maintenance, repair, replacement, or improvement of the

PRIVATE SEWER SYSTEM.

- 4.3. If Owner has failed to perform its repair, replacement, or improvement obligations or, if there is an emergency that requires an immediate response, the Town shall have the right, with or without the prior notice or approval of Owner, to take such measures as the Town, in its sole discretion, determines are necessary to maintain flows of the TOWN SEWER SYSTEM or PRIVATE SEWER SYSTEM and to protect the environment from contamination. Owner agrees to indemnify and hold the Town harmless for any costs or expenses reasonably incurred by the Town for actions taken pursuant to this provision that are not within the scope of the Town's duties and responsibilities as provided by Section 2 above.
- 4.4 Any and all future connections or expansion and all repairs, replacements, improvements, modifications or expansion of, the PRIVATE SEWER SYSTEM by Owner shall require the advance written approval of the Town.

5. Customers, Sewer Rates, Billing and Collections:

- 5.1 All connections to the PRIVATE SEWER SYSTEM shall be customers of the Stowe Sewer Department and pay Sewer rates, charges and fees established by the Town; comply with all laws, rules, ordinances and regulations applicable to customers of the Stowe Sewer Department.
- 5.2 If any payments for costs and expenses incurred by the Town under Section 3.5 remain unpaid for more than thirty (30) days after the Town invoices Owner for reimbursement of such costs and expenses, the Town shall be entitled to charge Owner in the same manner and amounts it charges customers of the TOWN SEWER SYSTEM consistent with the Town's policies and procedures.

6. Breach of Agreement.

- 6.1 Should either party to this Agreement commit a breach of the Agreement, the non-breaching party shall provide written notice of the breach to the breaching party. The breaching party shall have thirty (30) days to cure any claimed breach or, in the event that a cure cannot be accomplished within thirty (30) days, to initiate those actions necessary to cure any claimed breach within thirty (30) days and thereafter complete such actions with reasonable promptness.
- 6.2 If a claimed breach is not cured within the times set forth above, the non-breaching party may commence a civil action and may, in such action, request an order compelling the breaching party to cure the breach, as well as any other appropriate relief. In addition, the substantially prevailing party in any such action shall be entitled to recover from the other party its reasonable attorneys' fees and other costs of litigation, including expert witness fees.

7. General Provisions:

- 7.1 Recording; Binding Agreement. This Agreement will be recorded by the Town in the Stowe Land Records and shall run with the land and be binding upon Owner and its successors, assigns, and transferees, and references in this Agreement to Owner shall be construed to include its successors, assigns, and transferees. Any assignment, transfer or conveyance of the lands or any rights in the lands of Owner shall specifically reference this Agreement and shall bind the successor, assignee or transferee to faithful performance of this Agreement as a successor or assign of Owner.
- 7.2 Entire Agreement. This Agreement is a complete and entire agreement with respect to the subject matter hereof, and there are no representations, understandings, reliance's, commitments, or agreements other than those set forth or referred to herein. This Agreement may only be amended, modified, or terminated by a written instrument duly executed by the parties.
- 7.3 Counterparts. This Agreement may be executed in any number of duplicate original counterparts, and each such counterpart is to be considered a duplicate original, each and all of which shall constitute one and the same Agreement.
- 7.4 Severability. In case any one or more of the provisions of this Agreement shall be held by a court of competent jurisdiction to be invalid or unenforceable for any reason or in any respect, such invalidity or unenforceability shall not limit or impair enforcement of the remaining provisions hereof.
- 7.5 Notices. Any notice required by this Agreement shall be sent by United States first class mail, postage prepaid:

To Owner:

Ski Lag Partnership
269 Weeks Hill Road
Stowe, VT 05672

To the Town:

Town of Stowe
67 Main Street
P.O. Box 730
Stowe, VT 05672

- 7.6 Choice of Law and Forum; Consent to Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Vermont. Any suit, action or proceeding against any party with respect to this Agreement or any judgment entered by any court in respect thereof, may be brought in the courts of the State of Vermont, or in the United States Courts located in the State of Vermont and each party hereby irrevocably submits to the non-exclusive jurisdiction of such courts for the

purpose of any such suit, action or proceeding.

- 7.7 No Waiver. No failure to exercise, and no delay in exercising any right, power or remedy hereunder or under any document delivered pursuant hereto shall impair any right, power or remedy which the parties hereto may have, nor shall any such delay be construed to be a waiver of any such rights, powers or remedies, or an acquiescence in any breach or default under this Agreement, nor shall any waiver of any breach or default of any party hereunder be deemed a waiver of any default or breach subsequently occurring.
- 7.8 Reviewed by Attorneys. Each party represents and warrants to the other party that it (a) understands fully the terms of this Agreement and the consequences of the execution and delivery of this Agreement, (b) has been afforded an opportunity to have this Agreement reviewed by, and to discuss this Agreement and document executed in connection herewith with, such attorneys and other persons as such party may wish, and (c) has entered into this Agreement and executed and delivered all documents in connection herewith of its/his own free will and accord and without threat, duress or other coercion of any kind by any person.
- 7.9 Waiver of Jury Trial. To the extent allowed by law, the parties hereto waive all rights to trial by jury in any action, suit or proceeding brought to resolve any dispute, whether arising in contract, tort or otherwise between the parties arising out of, connected with, related or incidental to this agreement or transactions related thereto.

This Agreement is approved and executed by the parties hereto on the dates set forth below.

[SIGNATURE PAGES TO FOLLOW]

SKI LAG PARTNERSHIP

Date

Dana T. Percy, Jr., General Partner

Date

Peter E. Percy, General Partner

STATE OF VERMONT
LAMOILLE COUNTY ss.

At Stowe, this __ day of _____ 2024, personally appeared Dana T. Percy, Jr. and Peter E. Percy, General Partners and Duly Authorized Agents of SKI LAG PARTNERSHIP, known to me to be the same persons described in and who executed the foregoing Consecutive Sewer System Agreement, and they acknowledged to me that they executed the same as their free act and deed and the free act and deed of SKI LAG PARTNERSHIP.

Before me,

Notary Public
My Commission Expires: 1/31/25

TOWN OF STOWE

Date

Duly Authorized Agent

STATE OF VERMONT
LAMOILLE COUNTY ss.

At Stowe, this __ day of _____ 2024, personally appeared _____, known to me to be the same persons described in and who executed the foregoing Consecutive Sewer System Agreement, and s/he acknowledged to me that s/he executed the same as her/his free act and deed and the free act and deed of the Town of Stowe.

Before me,

Notary Public
My Commission Expires: 1/31/25

CONSECUTIVE WATER SYSTEM AGREEMENT

This **CONSECUTIVE WATER SYSTEM AGREEMENT** (“Agreement”) is made this ___ day of _____ 2024 (“Effective Date”), by and between SKI LAG PARTNERSHIP, an unregistered Vermont partnership (Dana T. Percy, Jr. and Peter E. Percy) with its principal place of business in the Town of Stowe, Lamoille County, Vermont (“Owner”), and the TOWN OF STOWE, a Vermont municipality located in Lamoille County, Vermont (“Town”).

RECITALS

WHEREAS, Owner is the owner of a certain real property comprised of four parcels, together containing approximately 29.2 acres, located at 281 Cape Cod Road in the Town of Stowe, acquired by the following Warranty Deeds:

- “Ski Lag Parcel” or Riley/Murphy/Savage Parcel. Being all and the same lands and premises conveyed to Dana T. Percy, Jr., by Warranty Deed of Dale E. Percy dated April 18, 1991 and recorded at Book 218, Page 345 of the Town of Stowe Land Records, and to Peter E. Percy by Warranty Deed of Dale E. Percy dated November 2, 1995 and recorded at Book 307, Page 322 of the Town of Stowe Land Records;
- “Percy Park Office Parcel”. Being all and the same lands and premises conveyed to Dana T. Percy, Jr. and Peter E. Percy by Warranty Deed of Dale E. Percy dated February 16, 1995 and recorded at Book 307, Page 326 of the Town of Stowe Land Records;
- “Cape Cod Parcels B and C”. Being all and the same lands and premises conveyed to Dale E. Percy and Peter E. Percy by Warranty Deed of Cape Cod Associates dated September 23, 1994 and recorded at Book 287, Page 255 of the Town of Stowe Land Records. The interest of Dale E. Percy was conveyed to Dana T. Percy, Jr. by Warranty Deed dated October 25, 1995 and recorded at Book 307, Page 324; and

WHEREAS, on November 21, 2023, the Town of Stowe Development Review Board (“DRB”) granted Owner preliminary subdivision approval for a Planned Unit Development (“PUD”) for twelve (12) residential lots as depicted on a plan entitled “Site Plan – Proposed PUD, River’s Edge – Owner, Percy & Percy, Cape Cod Road, Stowe,” prepared by Grenier Engineering, P.C., dated April 7, 2023, and of record in Town of Stowe Planning and Zoning Office (the “Plan”); and

WHEREAS, the private water distribution system as depicted on the Plan (the “PRIVATE WATER SYSTEM”) will be supplied with potable water from the Town’s public water system (the “TOWN WATER SYSTEM”) through a connection to the TOWN WATER SYSTEM; and

WHEREAS, the DRB’s November 21, 2023 preliminary subdivision approval for the PUD is conditioned in part on the parties entering into a consecutive water system agreement; and

NOW, THEREFORE, based on the above stated premises and other good and valuable consideration, the parties hereto agree as follows:

1. Confirmation. The parties hereby confirm that the statements and facts set forth as Recitals hereinbefore are true and correct, in reliance upon which the parties are entering into this Agreement.
2. Duties and Responsibilities of the Town: The Town shall supply water to and have operational control of the PRIVATE WATER SYSTEM as a consecutive water system to the TOWN WATER SYSTEM. The Town shall have the following specific duties and responsibilities hereunder:
 - 2.1 Issue required Public Notices and Consumer Confidence Reports to all customers of the TOWN WATER SYSTEM connected to the PRIVATE WATER SYSTEM;
 - 2.2 Include the PRIVATE WATER SYSTEM in the Town’s water quality sampling plan and to conduct required monitoring of the TOWN WATER SYSTEM and the PRIVATE WATER SYSTEM as a combined single distribution system;
 - 2.3 Supply water to the PRIVATE WATER SYSTEM in compliance with the water quality requirements applicable to a public water supply system, as required by the Vermont Water Supply Rules, as amended from time to time;
 - 2.4 Supply an adequate quantity of water to the PRIVATE WATER SYSTEM for the uses approved and flows allocated by the Town;
 - 2.5 Conduct periodic flushing and valve exercising of the PRIVATE WATER SYSTEM.

- 2.6 Exercise general supervision and operational control over all repairs, replacements and improvements required to the PRIVATE WATER SYSTEM;
 - 2.7 Provide general management, administration and customer service to the customers of the TOWN WATER SYSTEM connected to the PRIVATE WATER SYSTEM in accordance with policies, procedures and practices of the Town as now exist and as hereafter amended or adopted;
 - 2.8 Maintain and renew operational permits and operator certifications to operate and maintain the PRIVATE WATER SYSTEM as part of the TOWN WATER SYSTEM in accordance with this Consecutive Water System Agreement; and
 - 2.9 If Owner fails to repair, replace or improve the PRIVATE WATER SYSTEM as required under Section 3 below, including but not limited to the distribution piping, valves, hydrants and appurtenances thereto, but specifically excluding all service lines that connect each meter to the PRIVATE WATER SYSTEM, the Town shall undertake to make the repairs, replacements or improvements required and shall be reimbursed by the Owner for all cost incurred pursuant to Section 3.5 and 5.2 below.
3. Duties and Responsibilities of Owner: Owner shall remain the owner of the PRIVATE WATER SYSTEM and shall be responsible to perform and fulfill all duties and responsibilities relating to the PRIVATE WATER SYSTEM that are not expressly the responsibility the Town as set forth in Section 2 above, including, but not limited to, the following:
- 3.1 Owner shall construct and commission the PRIVATE WATER SYSTEM in compliance with all applicable permit requirements, and the rules and regulations of the Stowe Water Department;
 - 3.2 Owner shall notify and obtain approval from the Town before commencing any repair, replacement, improvement and/or expansion of the PRIVATE WATER SYSTEM and shall undertake the same under the supervision and operational control of the Town;
 - 3.3 Owner shall repair, replace, or improve the PRIVATE WATER SYSTEM, including but not limited to the distribution piping, hydrants, valves and appurtenances thereto, as required to maintain compliance with the

Vermont Water Supply Rule (Chapter 21 of the Vermont Environmental Protection Rules) and any other operating standards for public water systems issued by the Vermont Department of Environmental Conservation under 10 V.S.A. Chapter 56, as the same are amended from time to time, and to maintain flow, protect from damage and prevent contamination of the TOWN WATER SYSTEM and/or the PRIVATE WATER SYSTEM. Owner shall undertake and prosecute such repair, replacement, or improvement promptly and diligently upon receiving notice from the Town, or otherwise becoming aware that such work is required;

- 3.4 Owner shall make all payments on any existing or hereafter incurred indebtedness or other financial obligations and pay all expenses incident to the ownership, repair, replacement, or improvement of the PRIVATE WATER SYSTEM;
- 3.5 Reimburse the Town for all costs and expenses reasonably incurred by the Town in accordance with Section 2.9 above within thirty (30) days after the Town invoices Owner for such cost and expenses;
- 3.6 Obtain all required federal, state and municipal permits prior to making or allowing any connection, alteration, or expansion of or to the PRIVATE WATER SYSTEM.

4. Rights for Operations, Maintenance, Repair, Replacement, and Improvements:

- 4.1 Owner hereby grants to Town rights of access to the PRIVATE WATER SYSTEM as may be reasonably necessary for the operations, maintenance, repair, replacement and improvements of the PRIVATE WATER SYSTEM.
- 4.2 The Town and its agents shall have the right to enter upon any land or property on which the PRIVATE WATER SYSTEM is located, with or without prior notice to Owner, for the purpose of operation, inspection, testing, maintenance, repair, replacement, or improvement of the PRIVATE WATER SYSTEM.
- 4.3. If Owner has failed to perform its repair, replacement, or improvement obligations or, if there is an emergency that requires an immediate response, the Town shall have the right, with or without the prior notice or approval of Owner, to take such measures as the Town, in its sole

discretion, determines are necessary to maintain flows of the TOWN WATER SYSTEM or PRIVATE WATER SYSTEM and to protect the two systems from damage or contamination. Owner agrees to indemnify and hold the Town harmless for any costs or expenses reasonably incurred by the Town for actions taken pursuant to this provision that are not within the scope of the Town's duties and responsibilities as provided by Section 2 above.

- 4.4 Any and all future connections or expansion and all repairs, replacements, improvements, modifications or expansion of, the PRIVATE WATER SYSTEM by Owner shall require the advance written approval of the Town.

5. Customers, Water Rates, Billing and Collections:

- 5.1 All connections to the PRIVATE WATER SYSTEM shall be customers of the Stowe Water Department and pay water rates, charges and fees established by the Town; comply with all laws, rules, ordinances and regulations applicable to customers of the Stowe Water Department.
- 5.2 If any payments for costs and expenses incurred by the Town under Section 3.5 remain unpaid for more than thirty (30) days after the Town invoices Owner for reimbursement of such costs and expenses, the Town shall be entitled to charge Owner in the same manner and amounts it charges customers of the TOWN WATER SYSTEM consistent with the Town's policies and procedures.

6. Breach of Agreement.

- 6.1 Should either party to this Agreement commit a breach of the Agreement, the non-breaching party shall provide written notice of the breach to the breaching party. The breaching party shall have thirty (30) days to cure any claimed breach or, in the event that a cure cannot be accomplished within thirty (30) days, to initiate those actions necessary to cure any claimed breach within thirty (30) days and thereafter complete such actions with reasonable promptness.
- 6.2 If a claimed breach is not cured within the times set forth above, the non-breaching party may commence a civil action and may, in such action, request an order compelling the breaching party to cure the breach, as well as any other appropriate relief. In addition, the

substantially prevailing party in any such action shall be entitled to recover from the other party its reasonable attorneys' fees and other costs of litigation, including expert witness fees.

7. General Provisions:

- 7.1 Recording; Binding Agreement. This Agreement will be recorded by the Town in the Stowe Land Records and shall run with the land and be binding upon Owner and its successors, assigns, and transferees, and references in this Agreement to Owner shall be construed to include its successors, assigns, and transferees. Any assignment, transfer or conveyance of the lands or any rights in the lands of Owner shall specifically reference this Agreement and shall bind the successor, assignee or transferee to faithful performance of this Agreement as a successor or assign of Owner.
- 7.2 Entire Agreement. This Agreement is a complete and entire agreement with respect to the subject matter hereof, and there are no representations, understandings, reliances, commitments, or agreements other than those set forth or referred to herein. This Agreement may only be amended, modified, or terminated by a written instrument duly executed by the parties.
- 7.3 Counterparts. This Agreement may be executed in any number of duplicate original counterparts, and each such counterpart is to be considered a duplicate original, each and all of which shall constitute one and the same Agreement.
- 7.4 Severability. In case any one or more of the provisions of this Agreement shall be held by a court of competent jurisdiction to be invalid or unenforceable for any reason or in any respect, such invalidity or unenforceability shall not limit or impair enforcement of the remaining provisions hereof.
- 7.5 Notices. Any notice required by this Agreement shall be sent by United States first class mail, postage prepaid:

To Owner:
Ski Lag Partnership
269 Weeks Hill Road
Stowe, VT 05672

To the Town:
Town of Stowe
67 Main Street
P.O. Box 730
Stowe, VT 05672

- 7.6 Choice of Law and Forum; Consent to Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Vermont. Any suit, action or proceeding against any party with respect to this Agreement or any judgment entered by any court in respect thereof, may be brought in the courts of the State of Vermont, or in the United States Courts located in the State of Vermont and each party hereby irrevocably submits to the non-exclusive jurisdiction of such courts for the purpose of any such suit, action or proceeding.
- 7.7 No Waiver. No failure to exercise, and no delay in exercising any right, power or remedy hereunder or under any document delivered pursuant hereto shall impair any right, power or remedy which the parties hereto may have, nor shall any such delay be construed to be a waiver of any such rights, powers or remedies, or an acquiescence in any breach or default under this Agreement, nor shall any waiver of any breach or default of any party hereunder be deemed a waiver of any default or breach subsequently occurring.
- 7.8 Reviewed by Attorneys. Each party represents and warrants to the other party that it (a) understands fully the terms of this Agreement and the consequences of the execution and delivery of this Agreement, (b) has been afforded an opportunity to have this Agreement reviewed by, and to discuss this Agreement and document executed in connection herewith with, such attorneys and other persons as such party may wish, and (c) has entered into this Agreement and executed and delivered all documents in connection herewith of its/his own free will and accord and without threat, duress or other coercion of any kind by any person.
- 7.9 Waiver of Jury Trial. To the extent allowed by law, the parties hereto waive all rights to trial by jury in any action, suit or proceeding brought to resolve any dispute, whether arising in contract, tort or otherwise between the parties arising out of, connected with, related or incidental to this agreement or transactions related thereto.

This Agreement is approved and executed by the parties hereto on the dates set forth below.

SKI LAG PARTNERSHIP

Date

Dana T. Percy, Jr., General Partner

Date

Peter E. Percy, General Partner

STATE OF VERMONT
LAMOILLE COUNTY ss.

At Stowe, this __ day of _____ 2024, personally appeared Dana T. Percy, Jr. and Peter E. Percy, General Partners and Duly Authorized Agents of SKI LAG PARTNERSHIP, known to me to be the same persons described in and who executed the foregoing Consecutive Water System Agreement, and they acknowledged to me that they executed the same as their free act and deed and the free act and deed of SKI LAG PARTNERSHIP.

Before me,

Notary Public
My Commission Expires: 1/31/25

TOWN OF STOWE

Date

Duly Authorized Agent

STATE OF VERMONT
LAMOILLE COUNTY ss.

At Stowe, this __ day of _____ 2024, personally appeared _____, known to me to be the same persons described in and who executed the foregoing Consecutive Water System Agreement, and s/he acknowledged to me that s/he executed the same as her/his free act and deed and the free act and deed of the Town of Stowe.

Before me,

Notary Public
My Commission Expires: 1/31/25