

# **DECLARATION OF CONDOMINIUM FOR COLONIAL ESTATES DEVELOPMENT**

This Declaration of Condominium (the “Declaration”) is made by Colonial Estates Development, LLC of P.O. Box 69, Milton, Vermont 05468 (the “Declarant”).

## **Background**

1. The Declarant plans to build a thirty (30) unit condominium development. The condominium development (the “Property”) is depicted on a condominium plan entitled “Colonial Estates Condominium, Route 104, Fairfax, Vermont”, dated September 22, 2000, of record in Map Slide \_\_\_\_ of the Land Records of the Town of Fairfax, Vermont, by O’Leary-Burke Civil Associates, PLC.
2. Declarant intends to establish a multi-unit Common Interest Community on the Property, substantially as depicted and approved on the Plan attached hereto as Exhibit B, comprised of a condominium regime.
3. The Property has received permits and approvals for the construction of thirty (30) Condominium Units in five (5) buildings as shown on the Plan attached hereto as Exhibit B.
4. The thirty (30) Condominium Units on the Property will each be conveyed with the benefit of rights of way and easements for access and utilities leading from Route 104 through the lands of the Property to serve the Condominium Units and adjoining properties with legal access. The roads shall be part of the common lands of the Colonial Estates Condominium Association, Inc.

NOW, THEREFORE,

Declarant hereby makes and executes this Declaration of Condominium for the purposes stated herein and upon the following terms and conditions.

## **ARTICLE 1**

### **Submission; Defined Terms**

Section 1.1: **Submission**. Declarant hereby submits the Property to this Declaration and to the provisions of Title 27A, V.S.A. §§ 1-101 *et seq.*, known as the Vermont Common Interest Ownership Act (the “Act”), and hereby creates with respect to the Property a condominium to be known as the “Colonial Estates Condominium” (the “Condominium”) which shall be created, held, sold, transferred, conveyed, used, occupied, mortgaged, or otherwise encumbered subject to the reservations, covenants, conditions, restrictions, easements, assessments, and liens hereinafter set forth which are for the purpose of protecting the value and desirability of the Property, and which shall run with the title to the Property, and which shall be binding on all parties having any right, title, or interest in or to the Property 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.

Section 1.2: **Definitions.** Each capitalized term used herein without definition shall have the meaning specified in this Declaration or the Bylaws of the Colonial Estates Condominium Association, Inc. attached hereto as Exhibit E (the “Bylaws”), or if not otherwise defined in this Declaration or the Bylaws then as defined in the Act:

- “Act” means the Vermont Common Interest Ownership Act 27A V.S.A. §§ 1-101 *et seq.*
- “Allocated Interests” means the undivided interest in the Common Elements, the Common Expense Liability, and the votes in the Association.
- “Assessment” means the amount assessed against the owners of each Unit from time to time by the Association described below in the manner provided herein.
- “Association” means the Colonial Estates Condominium Association, Inc., a Vermont non-profit corporation organized under § 3-101 of the Act.
- “Board of Directors” means the board of directors charged with the management and operation of the Association and is the Executive Board as defined in the Act.
- “Building(s)” means the structures and related improvements which, upon construction, contain the Units in the Condominium.
- “Bylaws” means the Bylaws of the Association, attached hereto as Exhibit E, as amended from time to time.
- “Common Elements” means all portions of the Property and appurtenances thereto other than the Units.
- “Common Expenses” means the expenditures made by or financial liabilities of the Association and any allocations to reserves.
- “Common Expense Liability” means the liability for common Expenses allocated to each Unit pursuant to § 2-107 of the Act.
- “Condominium” means Colonial Estates Condominium, a Common Interest Community in which portions of the real estates (the Units) are designated for separate ownership and the remaining portions of the real estates (the Common Elements) are designated for common ownership solely by the owners of the Units.
- “Declarant” means Colonial Estates Development, LLC, and its successors and assigns.
- “Declaration” means this Declaration of Condominium for Colonial Estates Development, Routes 104 and 128, Fairfax, Vermont as it may be amended from time to time, and includes all of the Exhibits hereto.

- “Development Rights” means any right or combination of rights reserved by the Declarant in this Declaration to create Units, Common Elements or Limited Common Elements within the Condominium, to subdivide Units or convert Units into Common Elements, or to add or withdraw real estate from the Condominium. The Declarant’s Development Rights include the Special Declarant Rights defined in the Act.
- “First Mortgagee” means the holder of any first mortgage lien or the beneficiary under any first deed of trust encumbering a Unit. The term “mortgage” includes both mortgages and deeds of trust.
- “Floor Plans” means the plans of the Units prepared by O’Leary-Burke Civil Associates, PLC, certifying that the Buildings which comprise the Units of the Condominium have been substantially completed in accordance with the Plans. The Floor Plans are filed in the Town of Fairfax Land Records, copies of which are attached hereto as Exhibit B, as amended from time to time.
- “Institutional,” as used in conjunction with “Leander,” “Holder,” “Mortgagee,” or “First Mortgagee,” means commercial and savings banks, savings and loan associations, trust companies and established mortgage companies, insurance companies, private mortgage insurance companies, pension funds, any corporation, including a corporation of or affiliated with the State of Vermont or United States Government, including, without limitation, the Vermont Economic Development Agency and its affiliates, or any federal credit unions, and other entities or agencies chartered under federal or state laws.
- “Limited Common Elements” means a portion of the common Elements allocated for the exclusive use of one or more, but less than all, of the Units.
- “Property” means the real property, together with any improvements located thereon, which is declared and subjected to this Declaration by incorporation in the description set forth in Exhibit A as amended from time to time.
- “Rules and Regulations” means the provisions and limitations promulgated from time to time by the Board of Directors governing the use of the Common Elements and Units.
- “Plan” means the plan entitled: “Colonial Estates Condominium, Route 104, Fairfax, Vermont”, dated September 22, 2000, by O’Leary-Burke Civil Associates, PLC, a reduced copy of which is attached hereto as Exhibit B, as amended from time to time.
- “Unit” means a physical portion of the Condominium designed for separate ownership, the boundaries of which are described in Article 2 of this Declaration, together with all other appurtenant rights described in this Declaration.
- “Unit Owner” means the Declarant or other person who owns a Unit, but does not include a person having an interest in a unit solely as security for an obligation. The Declarant is the owner of any Unit created by this Declaration until the Unit is sold or conveyed.

## **ARTICLE 2**

### **Condominium Property**

Section 2.1: **Property**. The Property consists of all and the same land and premises, together with improvements thereon, and all easements benefiting and burdening the Property, and rights appurtenant thereto, as depicted and described in the Property Description and the Condominium Plan attached hereto as Exhibits A and B, respectively.

Section 2.2: **Description of Condominium Generally**. As of the date hereof, the Declarant intends to eventually develop the Property as a condominium development consisting of thirty (30) Units in five (5) Buildings, substantially as depicted on the Plan. The condominium development initially subject to this Declaration will consist of one (1) Building constructed on the Property, depicted as Building A (Units 25-30), with related site and utility improvements, and containing six (6) Units each and related site improvements, may be included in the Condominium, in whole or in part, from time to time, in one or more phases, by the execution of one or more amendments to this Declaration.

As Units are added to the Condominium, the Allocated Interests in the Common Elements and Limited Common Elements appurtenant to the existing Units will be redetermined as set forth herein and in Exhibit D as amended from time to time.

Section 2.3: **Description of Buildings**. The location of the Building which is a part of the Condominium is shown on the Plan. The one (1) Building which is to be built and the four (4) Buildings to be built are shown on Exhibit B and are more particularly described as follows: Buildings A, B, C, D, and E each contain two stories and six (6) units. Building A contains Units 25-30, Building B contains Units 19-24, Building C contains Units 13-18, Building D contains Units 7-12, and Building E contains Units 1-6.

The principal materials which each Building is or is to be constructed of are: concrete foundation, wood frame construction, vinyl siding over OSB board for sheathing the exterior walls, asphalt shingles for the roof, and gypsum wallboard (sheetrock) for the interior walls.

Section 2.4: **Description of Units and Improvements**. The Units and other improvements to the Property are depicted and described on the Plan of Condominium. The Floor Plans (reduced) attached hereto as part of Exhibit B show the layout, number of rooms, and approximate square footage of each Unit. There are five (5) Buildings each with two (2) types of Units: Floor Plan for Units 1-18 and another Floor Plan for Units 19-30. Each Unit contains two (2) bedrooms and a single car garage. Exhibit D is a list of all Units made subject to the Condominium on the date hereof, the assigned value of each Unit, and the Allocated Interest in the Common Elements allocated to each Unit.

Section 2.5: **Unit Boundaries**. The Units are multi-level, townhouse style dwelling units consisting of the enclosed space of more than one room occupying more than one floor, including a single car garage space, having a direct exit to a Limited Common Element or Common Element.

The Units are depicted on the Floor Plans. The lower boundary of each Unit is the upper surface of the subfloor, the upper boundary of each Unit is the second floor ceiling, and the vertical (parametric) boundaries are the interior surface of the perimeter or load-bearing walls. All wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces of the Unit shall be a part of the Unit, and all other portions of the walls, floors, or ceilings shall be a part of the Common Elements.

If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a Unit, any portions serving only that Unit is a Limited Common Element allocated solely to that Unit, and any portion of it serving more than one Unit or any portion of the Common Elements is a part of the Common Elements. Subject to the foregoing, all spaces, interior partitions and other fixtures, improvements and appliances within the boundaries of a Unit shall be a part of the Unit.

Each Unit shall have the burdens and benefits of the easements set forth in Article 5 herein.

### **ARTICLE 3**

#### **Common Elements**

##### **Section 3.1: Limited Common Elements.**

- (a) A “Limited Common Element” is a portion of the Common Elements allocated for the exclusive use of one or more than one, but fewer than all, of the Units.
- (b) All fixtures or improvements designated to serve, attached to, or adjacent to a single Unit, but located outside the Unit’s boundaries, all areas designated on Exhibit B (Floor Plans) as front and back entrances, porches, decks, shutters, awnings, window boxes, doorsteps, stoops, balconies, patios, and all exterior doors and windows, and any driveway parking spaces allocated to the Unit, are Limited Common allocated exclusively to that Unit to which they are appurtenant. Any expense for maintenance, repair or replacement relating to the Limited Common Elements shall be treated as and paid for as part of the Common Expenses, except that a Unit Owner shall be responsible for the expense of maintaining, repairing and replacing the exterior doors and windows of a Unit.

##### **Section 3.2: Common Elements.**

- (a) The “Common Elements” include the Limited Common Elements and consist of all the Property and appurtenances thereto described and depicted on Exhibits A, B, and C, except the Units.
- (b) Except as otherwise set forth herein as to the use of the Limited Common Elements, the Common Elements shall remain undivided and shall be devoted to the common use and enjoyment of all Unit Owners. No unit Owner or any other person shall

- (c) maintain any action for partition or division thereof, unless the Property has been removed from the provisions of this Declaration pursuant to the Act.
- (d) Each Unit Owner may use the Common Elements in accordance with the purposes for which they were intended without hindering or encroaching upon the lawful rights of other Unit Owners. Use of the Common Elements shall be subject to the limitations set forth herein for use of the Limited Common Elements and to the Rules and Regulations regarding use thereof as shall be established from time to time by the Board of Directors.
- (e) The Common Elements include, without limitation, all easements for ingress and egress, including all driveways designated as common areas on the Plan, all wells, water lines, and septic systems and sewer lines, the stormwater drainage system located on the Property, including any drains, catch basins, fences, trees, shrubs, landscaping, and other site improvements located in the common area as depicted on the Plan. Utility lines, equipment and other improvements serving the Property or serving more than one Unit are Common Elements.
  - (i) All easements, restrictions, and other encumbrances included with the Property as described in Exhibit A or depicted on Exhibits B and C.
  - (ii) The foundations, footings, basement slabs, bearing walls, perimeter walls, main walls, footings, roofs, columns, girders, beams and supports.
  - (iii) Utility lines, equipment and other improvements serving the Property or serving more than one Unit.
  - (iv) All driveways, all water mains and sewer mains until accepted by the Town of Fairfax, the stormwater drainage system located on the Property, including drains, catch basins, closed lines and detention ponds, sidewalks, fences, trees, shrubs, landscaping, and other site improvements located on the Property.

Section 3.3: **Allocated Interests**. The value of each Unit and each Unit's Allocated Interest in the Common elements and Limited Common Elements is set forth on the attached Exhibit D. A Unit's Allocated Interest shall be redetermined in accordance with Exhibit D as additional Units are made a part of the Condominium. Except as otherwise set forth herein for the redetermination of the Allocated Interest by Declarant upon filing an amendment to this Declaration to add additional Units, the percentages determined in accordance with Exhibit D shall be of a permanent character and may not be changed without the consent of all Unit Owners. The Unit's Allocated Interest shall be determinative of all matters under the Act, this Declaration and the Bylaws which are properly determined by reference to the respective percentages, including, but not limited to the weight of each Unit Owner's vote for Association purposes and the allocation of Common Expenses.

## **ARTICLE 4**

### **Occupancy And Use Restrictions**

Section 4.1: **Use of Unit.** Each Unit shall be for residential purposes only. The number of persons residing in the Units shall not exceed the maximum number allowed by State or local law. No trade or business of any kind may be carried on therein, except customary home occupations and leases for residential purposes, provided such lease are for a minimum term of six (6) months, limit occupancy as stated herein and comply with any other provisions of the Declaration, Bylaws or Rules and Regulations.

The occupancy of each Unit is subject to and benefited by all easements, restrictions and permits of record, as depicted on the Plans and described in Exhibit A.

Section 4.2: **Alteration Of Units.** A Unit Owner may make improvements or alterations to a Unit which do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Condominium. No structural improvements may be made to a Unit and no change in the appearance of the Common Elements, the exterior appearance of a Unit, or any other portion of the Condominium may be made by any Unit Owner without prior written approval of the Board of Directors. No Units may be subdivided. However, after acquiring an adjoining Unit, a Unit Owner may move or alter any intervening partitions or create apertures in it even if the partition in whole or in part is a Common Element if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Condominium. Removal of partitions or creation of apertures under these circumstances shall not alter the boundaries of the Units.

The boundaries between adjoining Units may be relocated only in accordance with the terms and requirements of § 2-112 of the Act.

Section 4.3: **Declarant's Reservations.** Declarant reserves the right to use or maintain any portion of the Property as sales offices, management offices, models, and for the placement of signs until such time as the Declarant has conveyed title to all of the Property and Units to Unit Owners. The Unit Owners and the Association shall not interfere with the Declarant's efforts to complete the improvements to the Property, including the construction of additional Buildings and Units, to market and sell Units in the initial or subsequent Buildings, or with Declarant's exercise of any Development Rights reserved in Article 13.

Section 4.4: **State And Municipal Laws.** Each Unit Owner shall comply with all applicable permits, codes, laws, ordinances, rules, and regulations, of the state of Vermont and the Town of Fairfax affecting the use of the units and Common Elements.

Section 4.5: **Interference With Others.** No Unit shall be used or maintained in a manner which shall interfere with the comfort or convenience of occupants of other Units or contrary to the Bylaws or the Rules and Regulations.

Section 4.6: **Garages.** Every Unit Owner shall be responsible for maintaining their respective garages in such a manner as to make the garage available for parking. Garages may not

be converted to living space. The Association may allocate specific parking spaces near each Unit for the exclusive use of that Unit.

## **ARTICLE 5**

### **Easements**

Section 5.1: **Easement For Access.** Each Unit Owner is hereby granted an easement, in common with Declarant and each other Unit Owner, in all Common Elements for ingress and egress, utility service for, and support, maintenance and repair of each Unit, subject to such reasonable Rules and Regulations of the Association. Each Unit is hereby benefited by and subjected to an easement for ingress and egress through all common Elements by persons lawfully using or entitled to the same. Such easements and rights are subject to the limitations upon the use of the Limited Common Elements as otherwise set forth herein.

Section 5.2: **Easement For Encroachment.** To the extent that any Unit or Common Element unintentionally and non-negligently encroaches on any other Unit or Common Element, an easement for the encroachment shall exist.

Section 5.3: **Easement for Completion; Utilities; Public Areas.** Declarant, for itself and its successors and assigns, reserves the right to grant and reserve easements and rights of way:

- (i) Through under, over and across the Common Elements and undeveloped portions of the Property for the installation, maintenance, repair, replacement, and inspection of lines and appurtenances for public or private sewer, water, drainage, gas, electricity, telephone, television, and other utility services to the Units;
- (ii) For the purpose of completing the construction of the Buildings, Units and other improvements on the Property; and
- (iii) For the purpose of erecting, maintaining, and removing signs advertising Units for sale or lease within the Property.

Section 5.4: **Easement For Support.** Each Unit and the Common Elements shall have an easement for lateral and subadjacent support from every other Unit and the Common Elements.

Section 5.5: **Additional Easements.** The Board of Directors of the Association shall have the power (without submitting the same to the Unit Owners for approval) to authorize the appropriate officers of the Association to execute any and all instruments conveying such easements as the Board of Directors may deem desirable for the benefit of the Condominium over, under, above or through any of the Common Elements for such purposes and upon such terms as the Board, in its sole judgment, deems desirable; provided, however, that all such easements shall be subordinate to the liens and rights of all mortgages and deeds of trust recorded prior in time thereto unless the mortgagee or trustee shall join therein.

Section 5.6: **Upkeep.** Maintenance, repair and replacement of the Common Elements and of the Units shall be as provided for in this Declaration, the Bylaws and the Act. Each Unit Owner



shall afford to the Association and the other Unit Owners, and to their agents or employees, access across his or her Unit reasonably necessary for those purposes. If damage is inflicted on the Common Elements or any Unit through which access is taken, the Unit Owner is responsible for the damage, or the Association, if it is responsible, shall promptly repair such damage, restoring the Unit to substantially the condition which existed immediately prior to the event causing the damage.

## **ARTICLE 6**

### **Damage or Destruction**

Section 6.1: **Duty To Restore**. Any portion of the Property for which insurance is required under 27A V.S.A. § 3-113, or for which insurance carried by the Association is in effect, whichever is more extensive, shall be repaired or replaced promptly by the Association unless:

- (a) The Condominium is terminated, in which case § 2-118 of the Act shall apply;
- (b) Repair or replacement would be illegal under any State or local statute or ordinance governing health or safety; or
- (c) Eighty percent (80%) of the Unit Owners, including Unit Owners of Units that will not be rebuilt, vote not to rebuild.

Section 6.2: **Cost**. The cost of repair or replacement in excess of insurance proceeds shall be a Common Expense.

Section 6.3: **If Condominium Is Not Rebuilt**. If the entire Condominium is not repaired or replaced:

- (a) The insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the condition prior to the damage.
- (b) Except to the extent that other persons will be distributes:
  - (i) The insurance proceeds attributable to Units and Limited Common Elements which are not rebuilt shall be distributed to the Owners of those Units and the Owners of the Units to which those Limited Common Elements were allocated, or to lienholders, as their interests may appear, in proportion to the Common Expense Liability of all of those Units; and
  - (ii) The remainder of the proceeds shall be distributed to all of the Unit Owners or lienholders, as their interests may appear, in proportion to the Common Expense Liability of those Units.
- (c) If the Unit Owners vote not to rebuild any Unit, that Unit's Allocated Interest shall be automatically reallocated to the remaining Units upon the vote, and the

Association shall promptly prepare, execute and record an amendment to this Declaration reflecting the reallocation.

## **ARTICLE 7**

### **Termination: Condemnation**

Section 7.1: **Requirements For Termination**. The Condominium may be terminated only by the recorded agreement of the Unit Owners to which at least eighty percent (80%) of the votes in the Association are allocated and only in accordance with and subject to the provisions of § 2-118 of the Act.

Section 7.2: **Condemnation**. If all or a part of the Condominium is taken by any power having the authority of eminent domain, all compensation and damages arising from such taking shall be payable in accordance with § 1-107 of the Act.

## **ARTICLE 8**

### **Insurance**

Section 8.1: **Casualty Insurance**. In order to ensure that sufficient reconstruction or repair funds, or both, will be available to the Association if and when needed, the Board of Directors shall insure Condominium facilities (which means all Buildings, Common Elements and Limited Common Elements on the Property) that are normally included in coverage, in such amounts as it shall determine, to provide not less than one hundred percent (100%) of the current replacement value (exclusive of foundations, land, excavations, and other items that are normally excluded from such insurance coverage) in the event of damage or destruction from the casualty against which such insurance is obtained. Such insurance shall protect against fire and all other hazards or perils customarily covered for similar types of condominiums and the proceeds of such insurance shall be used only for the repair, replacement and reconstruction of the Common Elements unless determined otherwise in accordance with Article 6. The Board of Directors may elect such endorsements and deductible provisions as are, in its judgment, consistent with good business practice and the purpose for which the insurance is bought.

Policies of casualty insurance hereunder shall name the Association as the insured and the person to which payment is to be made as trustee on behalf of the Unit Owners and lienholders as their interests may appear. A policy shall provide that it may not be canceled or substantially changed, except upon at least ten (10) days written notice to the insured.

Section 8.2: **Liability Insurance**. The Board of Directors of the Association shall also purchase broad form comprehensive liability coverage in such amount and in such forms as prudent condominium management practice suggests. A policy shall provide that it cannot be canceled or substantially changed, except upon at least ten (10) days written notice to the insured.

Section 8.3: **Other Provisions**. Insurance policies carried pursuant to this Section shall provide that:

- (a) Each Unit Owner is an insured person under the policy to the extent of liability, if any, arising out of his or her interest in the Common Elements or membership in the Association.
- (b) The insurer waives its rights to subrogation under the policy against any Unit Owner or member of his or her household.
- (c) No act or omission by any unit Owner, unless acting within the scope of his or her authority on behalf of the Association, will void the policy or be a condition to recovery under the policy.
- (d) If, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

Section 8.4: **Fidelity Coverage**. The Association may obtain fidelity coverage against dishonest acts on the part of the Board of Directors, managers, employees and volunteers responsible for handling funds belonging to or administered by the Association in such amounts and in such forms as prudent condominium management practices suggest. Any such policy shall provide that it cannot be canceled or substantially changed, except upon at least (10) days written notice to the insured.

Section 8.5: **Premiums**. Premiums and expenses for all insurance and fidelity coverage purchased by the Association shall be Common Expenses. Where insurance premiums are increased as a result of increased risk attributable to a particular Unit, the Unit at issue shall be responsible for the increase, based upon the insurance carrier's appraisal of risk inherent to said Unit. A levy made against a Unit for an increase in premiums may be enforced in the same manner as Common Expenses.

Section 8.6: **Separate Insurance**. No insurance purchased by the Association shall in any way prejudice the right of each Unit Owner to obtain insurance for his or her own Unit and the property therein for his or her own benefit, nor shall the insurance purchased by the Association under this Declaration. All such separate policies of insurance obtained by a Unit Owner shall contain a waiver of subrogation if available.

Section 8.7: **Adjustment; Insurance Trustee**. Any loss covered by the property policy shall be adjusted with the Association, but the proceeds for that loss are payable to any insurance trustee designated in the policy for that purpose, or otherwise to the Association, in either case to be held in trust for the Association, each Unit Owner and such Unit Owner's mortgagee, as their interests may appear.

## **ARTICLE 9**

### **The Association**

Section 9.1: **Authority.** The business affairs of the Condominium shall be managed by the Association. The Association shall be governed by the Bylaws, as they may be amended from time to time.

#### Section 9.2: **Membership.**

- (a) Each Unit shall be assigned one 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 Unit. Multiple or joint Owners of a single Unit shall be treated for all purposes as jointly owning and holding the one membership appurtenant to that particular Unit.
- (b) A membership appurtenant to a Unit shall be initiated by subjecting such unit to the terms of this Declaration. Once a membership is initiated, liability for Common Expenses shall automatically commence. Membership in the Association shall be owned and held by each Unit Owner, including the Declarant with respect to unsold Units which have been subjected to the terms of this Declaration.
- (c) The number of memberships in the Association shall automatically increase as additional Units are declared and subjected to this Declaration. No membership rights or liability for Common Expenses shall be allocated or attributed to a Unit until the Unit is subjected to this Declaration.
- (d) Liability for Common Expenses shall be assessed among the members in accordance with their Allocated Interest, unless altered as hereinafter as set forth in Section 9.6.

Section 9.3: **Voting Rights.** 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 as Unit Owner. A non-voting membership shall be any membership owned and held by any unit Owner other than Declarant. All memberships in the Association shall automatically become voting memberships: (i) sixty (60) days after the sale by Declarant of seventy-five percent (75%) of the proposed thirty (30) Units in the Condominium; (ii) two (2) years after the Declarant has ceased to offer Units in the Condominium for sale in the ordinary course of business; or (iii) 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. Notwithstanding the foregoing, non-voting memberships shall be entitled to vote on those matters, identified in the Act, upon which Unit Owners may vote during the period of Declarant control.

When a membership is a voting membership, each Unit Owner, or one of the Unit Owners if record title in a Unit is held by more than one person, shall be entitled to vote in any meeting of the membership. Such person shall be known as the "voting member" of a Unit and shall be designated in a writing signed by all the Owners of the Unit and delivered to the Association.

Section 9.4: **Board Of Directors.** The initial Board of Directors 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, so long as the Declarant retains control of the Association. Notwithstanding the foregoing, at least twenty-five percent (25%) of the members of the Board of Directors shall be elected by Unit Owners who are not the Declarant within sixty (60) days after twenty-five percent (25%) of the total proposed Units are conveyed to Unit Owners (other than the Declarant). At least thirty-three and one third percent (33 1/3%) of the members of the Board of Directors shall be elected by Unit Owners who are not the Declarant within sixty (60) days after fifty percent (50%) of the total proposed Units are conveyed to Unit Owners (other than the Declarant).

Section 9.5: **Declarant Control.** The Declarant will transfer control of the Association: (i) sixty (60) days after the sale by Declarant of seventy-five percent (75%) of the proposed thirty (30) Units in the Condominium; (ii) two (2) years after the Declarant has ceased to offer Units in the Condominium for sale in the ordinary course of business; or (iii) voluntary relinquishment in writing by the Declarant, whichever is the first to occur. As long as Declarant retains control of the Association, no person may record any declaration or amendment to this Declaration or similar instrument affecting any portion of the Condominium without Declarant's written consent thereto, and any attempted recording without compliance herewith shall result in such or similar instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Declarant.

Section 9.6: **Miscellaneous.** In addition to any other powers and authority given the Association or its Board of Directors in the Bylaws or in this Declaration:

- (a) Common Expenses of the Association shall be borne among the Units in accordance with their Allocated Interest, except that the Board of Directors may allocate expenses among the Units on a different basis if the basis is reasonably related to the benefits of the services provided. In addition, allocation of expenses to Units constructed and owned by Declarant, but not occupied may be less than Assessments allocated to Units which have been conveyed to persons other than Declarant.
- (b) The Board of Directors may enter into a management agreement to operate the affairs of the Association until such time as all memberships in the Association become voting memberships. At the time all memberships become voting memberships, any management agreement entered into by Declarant may be terminated by the Association without cause upon giving ninety (90) days notice.
- (c) The Association shall maintain current copies of its Declaration, Bylaws, and any Rules and Regulations concerning the Condominium, as well as its own books, records and financial statement. These will be available for inspection by Unit Owners and First Mortgagees.

## **ARTICLE 10**

### **Assessment And Collection Of Common Expenses**

Section 10.1: **Definition Of Common Expenses.** Common Expenses shall include:

- (a) Expenses of administration, maintenance, and repair or replacement of the Common Elements, except as herein provided otherwise;
- (b) Expenses declared to be Common Expenses by the Board of Directors or by the Act;
- (c) Expenses agreed upon as Common Expenses by the Association; and
- (d) Such reserves as may be established by the Association, whether held in trust or by the Association, for repair, replacement or addition to the Common Elements or any other real or personal property acquired or held by the Association.

Section 10.2: **Assessment And Apportionment Of Common Expenses.** Except as provided in Section 9.6 and 10.3, all Common Expenses shall be assessed against all Units in accordance with their Allocated Interest in the Common Expenses as shown on Exhibit D to this Declaration. If the Common Expense Liability is modified due to a redetermination of the Allocated Interests (as described above in Sections 2.2 and 3.3), and Assessments for Common Expenses not yet due shall be recalculated in accordance with the modified Common Expense Liability.

Section 10.3: **Common Expenses Attributable To Fewer Than All Units.** The following expenses may be assessed against less than all of the Units:

- (a) Any Common Expense for services provided by the Association to an individual Unit at the request of the Unit Owner shall be assessed against the Unit which benefits from such service.
- (b) Any insurance premium increase attributable to a particular Unit by virtue of activities of construction of the Unit shall be assessed against that Unit.
- (c) Assessments to pay a judgment against the Association may be made only against Units in the Common Interest Community at the time the judgment was rendered, in proportion to their Common Expense Liabilities.
- (d) Any Common Expense arising from the misconduct of a Unit Owner.
- (e) Fees, charges, late charges, fines and interest charged against a Unit Owner pursuant to the Declaration, the Bylaws, the Rules and Regulations of the Association, and the Act are enforceable as Common Expense assessments.
- (f) Any expense incurred by the Board of Directors and/or the Association on behalf of a Unit Owner or as a result of a Unit Owner's failure to perform any of the obligations under Section 11.2(b) hereof is a Common Expense.
- (g) Units 7-30 shall equally share the Common Expense for the maintenance, repair and replacement of the Limited Common Areas designated as Primary Septic Disposal system for Lots 7-30 LCE and Replacement Septic Disposal System for Units 7-30 LCE on the Plan attached hereto as Exhibit B.

- (h) Units 1-6 shall equally share the Common Expense for the maintenance, repair and replacement of the Limited Common Areas designated as Primary Septic Disposal System for Lots 1-6 LCE and Replacement Septic Disposal System for Units 1-6 LCE on the Plan attached hereto as Exhibit B.

Section 10.4: **Lien**. The Association has a statutory lien on a Unit in accordance with § 3-116 of the Act for any Assessment imposed against a Unit Owner.

Section 10.4: **Budget Adoption And Ratification**. Within thirty (30) days after adoption of any proposed budget for the Condominium, the Board of Directors shall provide a summary of the budget to all the Unit Owners. The Board of Directors shall set a date, not less than fourteen (14) nor more than thirty (30) days after the date the budget summary is sent to the Unit Owners, for a meeting of the Unit Owners to ratify the budget. The budget shall be ratified, unless a majority of the Unit Owners rejects the budget, whether or not a quorum is present. If the budget is rejected, the budget last ratified by the Unit Owners shall be in effect until the Unit Owners ratify a budget proposed by the Board of Directors. If the Board of Directors votes to levy a Common Expense assessment not included in the current budget, in an amount greater than fifteen percent (15%) of the current annual operating budget, the Board of Directors shall submit such Common Expense to the Unit Owners for notice and ratification in the same manner as a budget under this Section.

Section 10.6: **Certificate Of Payment Of Common Expense Assessments**. The Association on written request shall furnish to a Unit Owner a statement in recordable form setting forth the amount of unpaid Assessments against the Unit and any other matters required by § 4-109 of the Act. The statement shall be furnished within ten (10) days after receipt of the request and is binding on the Association, the Board of Directors and every Unit Owner.

Section 10.7: **Monthly Payment Of Common Expenses**. All Common Expenses assessed under Sections 10.2 and 10.3 shall be due and payable monthly. Any past due Common Expenses shall accrue interest at the rate of twelve percent (12%) per annum.

## **ARTICLE 11**

### **Maintenance**

Section 11.1: **Maintenance Of Common Elements**. The Association shall maintain and keep in good repair at all times the Common Elements, including, without limitation, the lighting, landscaping, open space, and utility lines and facilities, and including the Limited Common Elements, except for such maintenance of certain Limited Common Elements by the Unit Owners as provided for herein or as the Board of Directors shall, from time to time, delegate to the Unit Owners appurtenant thereto.

The maintenance shall be performed in a workmanlike manner. In addition, the Association shall have the right, but not the obligation, to maintain property not owned by the Association where the Board has determined that such maintenance would benefit the Owners. The Association shall also have the obligation to maintain such property not owned by the Association as required by any permit or approval for the Property by any governmental agency.

Section 11.2: **Maintenance Of Units.**

- (a) Each Unit Owner shall maintain, repair and replace, at his or her own expense, all portions of his or her Unit. However, the Board of Directors may, by resolution, decide to maintain any portion of the Units.
- (b) In the event that a Unit Owner should fail, as may be determined by the Board of directors, to perform any obligation required in Subsection (a) or maintain any Limited Common Element delegated to a Unit Owner, than the Board of Directors may provide for the performance of any such neglected obligation by whatever reasonable means it may determine in its sole discretion. In case of emergency as determined by the Board of Directors, it may act immediately; and in all other cases the Board of Directors may act herunder following thirty (30) days written notice to the Unit Owner. All expenses incurred by the Association as a result of taking action under this Section shall be chargeable to the Unit Owner as provided for under sections 9.6 and 10.3 hereof.

**ARTICLE 12**  
**Compliance And Default**

Section 12.1: **Compliance.** Each Unit Owner shall be governed by and with, all of the provisions of this Declaration, the Bylaws, and any Rules and Regulations established by the Board of Directors of the Association, as the same may be amended from time to time, and the Act. In addition to the remedies provided by the Act, the Declaration, or the Bylaws, the failure of a Unit Owner to comply with any of said requirements shall entitle the Association acting through its Board of Directors or through its agent or an aggrieved Unit Owner, to the following relief after appropriate notice to the defaulting Unit Owner:

- (a) **Liability.** A Unit Owner shall be liable for the expenses of any maintenance, repair, or replacement rendered by the Unit Owner's act, neglect, or carelessness, or by that of any employees, agents, lessees, or other invitees. No Unit Owner shall conduct any activity which may result in an increase in insurance rates occasioned by use, misuse, occupancy, or abandonment of a Unit or its appurtenances, or of the Common Elements.
- (b) **Fines.** The Board of Directors of the Association shall have the right to impose upon a defaulting Unit Owner a reasonable fine, commensurate with the severity of the violation of any of the provisions of the above-referenced documents, which fine shall become a continuing lien against the Unit of the defaulting Unit Owner enforceable in the manner provided by the Act and the Bylaws.
- (c) **Injunctions.** The Board of Directors of the Association or any aggrieved Unit Owner shall have the right or remedy by appropriate legal proceedings, either at law or in equity, to abate or enjoin the continuance of any violation of the provisions of the above-referenced documents, including, without limitation, an action to recover any sums due for money, damages, injunctive relief, foreclosure of the lien for



- (d) payment of all assessments, any combination thereof, and any other relief afforded by a court of competent jurisdiction. Such remedies shall be deemed cumulative and shall not constitute an election of remedies. The failure of the Association or its Board of Directors to enforce any rights, covenants, or conditions of the Condominium shall not constitute a waiver of the right to enforce such rights, covenants, or conditions in the future. There shall be and there hereby is created and declared to be, a conclusive presumption that any violation or breach, or any attempted violation or breach, of any of the covenants and restrictions of the Declaration or Bylaws shall so damage the community and its property values that it cannot be adequately remedied by action as law or exclusively by recovery of damages.
- (e) **Costs And Attorneys' Fees**. In any proceeding of an alleged failure of a Unit Owner to comply with the terms of this Declaration, the Bylaws or the Rules and Regulations of the Association, the prevailing party shall be entitled to recover the costs of the proceeding and reasonable attorneys' fees.

Section 12.2: **Rights Of Unit Owners**. Each Unit Owner shall have a right of action against the Association for failure of the Association to comply with the provisions of this Declaration, the Bylaws, and Rules and Regulations of the Association, or the decisions made by the Association.

Section 12.3: **Waiver**. No provision of this Declaration shall be deemed to have been waived by reason of any failure to enforce regardless of the occurrence of violations or breaches from time to time.

## **ARTICLE 13**

### **Declarant's Reserved Development Rights**

Section 13.1: **Easement For Completion**. For so long as the Declarant owns any interest in the Property, the Declarant hereby reserves for itself and its successors and assigns, easements, rights of way, and licenses, and the right to grant easements, rights of ways and licenses to others, over, under, across and through all of the Property for the purpose of: (i) completing the improvements to the Property described in this Declaration, including Buildings, driveways, community septic systems, sewer lines, wells, water lines, stormwater drainage systems, parking areas, sidewalks, fences, trees, shrubs, landscaping, and utility lines, equipment and improvements, and for the purpose of sales activities, such as erecting signs advertising the Condominium; (ii) providing utility service to the Property; and (iii) compliance with permits, laws, rules, regulations, ordinances and other governmental requirements.

Section 13.2: **Alteration Of Units Or Buildings**. Declarant reserves the right to alter the design and arrangement of the Units and Buildings, said right to last as long as the Declarant controls alterations, they shall be reflected in an amendment to this Declaration. The Declarant may make any structural alterations within or affecting any unit, so long as Declarant owns said Unit, without the prior written consent of the Board of Directors.

Section 13.3: **Amendment To Enlarge Condominium.** For so long as the Declarant owns any interest in the Property, the Declarant reserves for itself and its successors and assigns, the absolute right, which may be exercised at any time or from time to time in the Declarant's sole discretion, to develop and improve all of the Property. The location and configuration of the Buildings proposed for the Property on Exhibit B may be modified by the Declarant in its sole discretion. Declarant also reserves the right, in its sole discretion, at any time or from time to time to amend this Declaration to complete the Condominium, to subject additional property to this Declaration or to withdraw portions of the Property from the Condominium.

Section 13.4: **Easement For Further Development.** For so long as the Declarant owns any interest in the Property, the Declarant hereby reserves for itself and its successors and assigns, without restriction or limitation, perpetual non-exclusive easements, rights of way, and licenses, and the right to grant easements, rights of way and licenses, over, under, across and through all of the Property for the purpose of storing building materials and supplies and equipment used in improving the Property; construction, maintenance, repair, and replacement of Buildings, driveways, sidewalks, pedestrian trails, fences, trees shrubs, landscaping, utility lines, equipment and other improvements included as part or necessary to serve the portion of the Property being developed by Declarant and any Buildings located thereon; making future connections, hookups, and tie-ins to utility lines, equipment, and other improvements constructed to serve the Property, the Buildings or other improvements located thereon. The easements, rights of way and licenses reserved hereunder shall be sufficient in scope to permit development, use and occupancy on the Property of as many Buildings and Units as the Declarant, in its sole discretion, shall determine; provided, however, that the Declarant will not build more than thirty (30) Units on the Property as described in Exhibit A.

Section 13.5: **Permits And Approvals For Further Development.** Each Owner acknowledges, by acceptance of a Warranty Deed, that the Declarant has the right to develop thirty (30) Units on the Property, and that the Declarant may also, in the future, seek to develop the Property in a different manner, subject to the specific limitations set forth in this Declaration. In such event, neither the Association nor any Unit Owner may take any action or adopt any rule that will interfere with or diminish any special Declarant right without the prior written consent for the Declarant.

Section 13.6: **Amendments Under This Article.** Any amendment to this Declaration permitted by this Article need be signed and acknowledged only by the Declarant, and it shall be deemed that the Association, Unit Owners, lienholders or mortgage holders have voted for such amendment or amendments. In addition, prior to the sale of any Units, the Declarant may make whatever amendment it deems advisable, in its sole discretion, without the consent of any person.

Section 13.7: **Transfer Of Declarant's Development Rights.** Declarant's reserved Development Rights, if any, may be transferred in accordance with § 3-104 of the Act.

## **ARTICLE 14**

### **Covenants And Environmental Restrictions**

Section 14.1: **Use Of Property Subject To Permits.** The Property may be used and conveyed only in accordance with the conditions of the existing state and local permits for the

development of the Property and the permits and approvals referenced therein; the Town of Fairfax Planning Commission Approval; all protective covenants and easements and rights of way for utilities set forth on Exhibit A, as all of the foregoing may be amended from time to time.

Section 14.2: **Promulgation Of Rules And Regulations.** The Board of Directors may, from time to time, without consent of the members, promulgate, modify, or delete use restrictions and Rules and Regulations applicable to the Units and the Common Elements. Such Rules and Regulations and use restrictions shall be binding upon all Unit Owners and occupants until and unless overruled, canceled, or modified in a regular or special meeting by the vote of the members holding a majority of the total votes in the Association. Such Rules and Regulations and use restrictions may impose stricter standards than those contained in this Section. The Association, acting through its Board of Directors, shall have standing and the power to enforce such standards.

Section 14.3: **Satellite Dishes.** No satellite dishes or television antennae shall be installed on the exterior portion of any Building without the prior approval of the Board of Directors.

Section 14.4: **Lighting.** Except for seasonal decorative lights, all exterior lights must be installed and used in a manner which will not unduly disturb surrounding Unit Owners and must be approved by the Board of Directors. The installation of exterior light fixtures is limited to those approved by District Environmental Commission #6 and shall be mounted no higher than twelve (12) feet above grade level. All exterior lighting shall be installed and shielded in such a manner to conceal the light source and reflection surface from view beyond the perimeter of the area needed for illumination.

Section 14.5: **On-Site Fuel Storage.** No on-site storage of gasoline, heating, or other fuels shall be permitted on any part of the Property, except for propane, and not more than ten (10) gallons of other fuel stored in each Unit for emergency purposes and operation of household and yard tools or equipment.

Section 14.6: **Outbuildings and Signs.** No structures of a temporary character, tents, shacks, barns, trailers, garages, unfinished basements, or other outbuildings shall be occupied as living quarters on the Property. No exterior signs shall be installed without the prior written approval of district Environmental Commission #6.

Section 14.7: **Parking.** No unregistered motor vehicle, or any boat, boat trailer, snowmobile, snowmobile trailer, camper, truck (other than pick-up trucks), or recreational vehicle may be parked, stored or maintained on any portion of the Property, including garages, as garages are to be used for the parking of motor vehicles only. The parking of motor vehicles in spaces which have not been designated for parking in permits or by the Board of Directors shall be strictly prohibited. The Rules and Regulations approved by the Board of Directors may establish appropriate penalties for parking violations.

Section 14.8: **Rubbish, Trash And Garbage.** All rubbish, trash, and garbage shall be stored in containers in enclosed areas and regularly removed from the Property. There shall be no burning of trash.

Section 14.9: **Nuisance**. It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition within his or her Unit and Limited Common Elements. No noxious or offensive activity shall be carried on upon any Unit or the Common Elements. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way are noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Property, the Units or the Common Elements.

Section 14.10: **Use Of Motor Vehicles Restricted**. No motor vehicles may be used on any portion of the Common Elements except driveways, or for authorized maintenance and emergency purposes.

Section 14.11: **Occupant Bound**. All provisions of the Declaration and any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Unit Owners and which provide for sanctions against Unit Owners shall also apply to all occupants of the Property.

Section 14.12: **Leasing**. Units may be leased for residential purposes. All leases shall have a minimum term of six (6) months. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, Bylaws, use restrictions, and Rules and Regulations of the Association. The lease shall also obligate the tenant to comply with the foregoing and shall provide that in the event of noncompliance, the Board, in addition to any other remedies available to it, may, in the event the Owner shall fail to initiate and reasonably maintain an action to evict the tenant after written request to do so by the Association, evict the tenant on behalf of the Owner and specifically assess all costs associated therewith against the Owner and the Owner's property.

Section 14.13: **Wetlands**. No alteration, drainage, dredging, filling, grading or other disturbance shall take place on the wetland in the Limited Common Area.

Section 14.14: **Annual Maintenance of Septic System**. Annually during the month of April, a professional engineer shall make a thorough inspection, evaluation, and report of the completed sewage collection, treatment, and disposal systems. The engineer's inspection shall include, but not be limited to, the following:

- (a) Observation of the alternating of the disposal fields;
- (b) Inspection of the lift station and observation of the operation of each pump and the alarm system;
- (c) Checking the levelness of all distribution boxes;
- (d) Verifying the pumping of the septic tanks; and
- (e) Noting any necessary repairs.

The engineer's report shall include, but not be limited to, the following:

- (a) A complete discussion of the investigation and observations;
- (b) Recommend repairs, maintenance, and construction for the next season.

A copy of the engineer's written report shall be submitted to the Vermont Agency of Natural Resources prior to May 15th of each year for review and approval.

The Association shall have the necessary rights and easements for the full operation, maintenance, and repair of the community wastewater collection, delivery, and disposal system. Such rights shall also enable the users (and designees) thereof to enter upon the property for construction, inspection, maintenance, and other such reasonable purposes as may arise regarding the wastewater disposal system.

14.15: **No Hazardous Use Or Waste.** Nothing shall be done or kept in any Unit or on the Common Elements which will increase the rate of insurance for the Property or any part thereof applicable for residential use. No Unit Owner shall permit anything to be done or kept in his or her Unit or on the Common Elements which will result in the cancellation of insurance on the Property or any part thereof, or which would be in violation of any law, regulation or administrative ruling. No waste shall be committed in or on the Common Elements. No hazardous waste as defined by federal, state, or municipal laws or regulation shall be kept or discharged in a Unit or the Common Elements.

14.16: **Animal Control.** No animals shall be permitted on the Property other than dogs and other domestic pets. All dogs and other domestic pets shall be in the control of the Unit Owner at all times while on the Property. Unit Owners are responsible for immediate cleanup of any waste and/or damage to Common Elements. Owners are also responsible for all impoundment costs incurred in the control of dogs or other domestic animals while on the Common Elements. In addition, Unit Owners are subject to the animal control ordinances of the Town of Fairfax.

14.17: **Energy Conservation Measures.**

- (a) All plumbing fixtures utilized shall comply with the following performance specifications: water closets – 3.5 gallons/flush, maximum; showerheads – 2.0 gpm, maximum; and lavatory/sink faucets (aerators or flow regulators) – 2.0 gpm, maximum. Fixtures complying with such performance standards shall be permanently maintained throughout the project.
- (b) Without the prior written consent of the Vermont District #6 Environmental Commission, or its successors, no alteration may be made to any Unit or other Building which would reduce the effect of the water-conserving plumbing fixtures or insulation, including low-flush toilets, low-flow showerheads, and aerator or flow-restricted faucets. All leases shall require maintenance of same.

- (c) All heated structures shall be constructed to meet the Residential Building Energy Standards of the Vermont Department of Public Service. The installation and/or use of electric resistance space heating is specifically prohibited.

Section 14.18: **Landscaping**. The Association shall continually maintain all Common Elements, facilities, recreational amenities, and landscaping substantially as approved by the Town of Fairfax Planning Commission and the District #6 Environmental Commission. All dead or diseased landscape plantings shall be replaced as soon as seasonably possible. All electric power and telephone line shall be installed underground. Trash areas shall be surrounded by fencing.

Section 14.19: **Amendments**. No amendment to Sections 14.1, 14.13, 14.14, 14.17, or 14.18 of this Article shall be effective without the prior written consent of the Vermont District #6 Environmental Commission.

## **ARTICLE 15**

### **Amendments**

Section 15.1: **General**. Except for amendments which may be made by the Declarant hereunder and in § 2-109(f) or § 2-110 of the Act, amendments by the Association under §§ 2-106(d), 2-108(c) or 2-112(a) of the Act, or by Unit Owners under §§ 2-108(b), 2-112(a) or 2-118(b) of the Act, and except for the limitations set forth in § 2-117(d) of the Act, this Declaration may be amended by vote or agreement of Unit Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association is allocated. All amendments to this Declaration shall be made in accordance with § 2-117 of the Act.

Section 15.2: **Rights Reserved In Declarant**. Notwithstanding the amendment provisions set forth above in Section 15.1, the Declarant may unilaterally amend this Declaration in accordance with the provisions of Article 13, and any also unilaterally amend this Declaration at any time to satisfy and meet any requirement of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, Vermont Housing Finance Agency, the District Environmental Commission #6, the Vermont Environmental Board, the Town of Fairfax, or a title insurance company insuring or offering to insure all or a portion of the Property.

Section 15.3: **Special Declarant Rights**. The Provisions in this Declaration creating special Declarant Rights may not be amended without the consent of the Declarant.

Section 15.4: **Consent Of Mortgage Holders**. Amendments are subject to the consent requirements of Article 16.

## **ARTICLE 16**

### **Rights Related To Mortgages**

Section 16.1: **Notice of Action**. Upon written request to the Association from any Institutional Mortgagee, identifying its name and address and the Unit number or address, such Institutional Mortgagee shall be entitled to timely written notice of:

- (a) Any condemnation loss or any casualty loss which affects any material portion of the Condominium or any Unit on which there is a first mortgage held, insured or guaranteed by such qualified requesting party;
- (b) Any delinquency in the payment of Assessments or other charges by a Unit Owner subject to a first mortgage held or insured by such party, which delinquency remains uncured for a period of sixty (60) days;
- (c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; or
- (d) Any proposed action which would require the consent of a specified percentage of Institutional Mortgagees.

Section 16.2: **Special Voting Rights Of Institutional Mortgagees**. Any action with respect to the Condominium including, but not limited to, material amendment to this Declaration, restoration or repair after partial or total condemnation or casualty loss, or termination of the legal status of the Condominium under the Declaration, requiring the votes of the Unit Owners shall also require the consent of Institutional Mortgagees holding mortgages on Units which represent at least fifty-one percent (51%) of the mortgages of Institutional Mortgagees in the Condominium; provided, however, that in the case of a termination of the Condominium not made as a result of destruction, damage or condemnation, the applicable percentage shall be sixty-seven percent (67%) instead of fifty-one percent (51%). For purposes of this Section, a “material amendment” includes, but is not limited to, any provision affecting:

- (a) Assessments, assessment liens, or subordination of assessment liens;
- (b) Voting rights;
- (c) Reserves for maintenance, repair and replacement of Common Elements;
- (d) Responsibility for maintenance and repairs;
- (e) Reallocation of interest in the Common Elements or Limited Common Elements (other than reallocation under Sections 2.2 and 3.3) except that when Limited Common Elements are reallocated by agreement between Unit Owners, only those Unit Owners and only the Institutional Mortgagees which hold mortgages on such Units must approve such action;
- (f) Rights to use Common Elements and Limited Common Elements;
- (g) Boundaries of Units except that when boundaries of only adjoining Units are involved, then only those Unit Owners and the Institutional Mortgagees holding mortgages on such Unit or Units must approve such action;
- (h) Convertibility of Units into Common Elements or Common Elements into Units;

- (i) Expansion or contraction of the Condominium, or the addition, annexation or withdrawal of property to or from the Condominium, except for the Development Rights reserved by Declarant in this Declaration;
- (j) Insurance or fidelity bonds;
- (k) Leasing of Units;
- (l) Imposition of restrictions on a Unit Owner's right to sell or transfer his or her Unit;
- (m) Restoration or repair of the Condominium after a hazard damage or partial condemnation in a manner other than that specified in the Declaration;
- (n) Termination of the Condominium after occurrence of substantial destruction or condemnation; and
- (o) Any provision that expressly benefits mortgage holders, insurers or grantors.

Section 16.3: **Failure To Provide Negative Responses.** For the purposes of Section 16.2 above, an Institutional Mortgagee who receives a written request to approve action in accordance with Section 16.2, delivered by certified or registered mail, return receipt requested, shall be deemed to have consented to such action unless said Mortgagee provides a negative response to the Association within thirty (30) days of the date of receipt by the Mortgagee of the written request.

## **ARTICLE 17**

### **Miscellaneous**

Section 17.1: **Invalidity.** If any provision of this Declaration is held invalid, the invalidity thereof shall not affect other provisions of this Declaration which can be given effect without the invalid provisions and to this end the provisions of this Declaration are severable.

Section 17.2: **Headings.** The headings in this Declaration are for purposes of reference only and shall not limit or otherwise affect the meaning thereof.

Section 17.3: **Agent.** The person who shall receive service of process for the Association is Eugene J. Ward, III, Esq., 3069 Williston Road, South Burlington, Vermont 05403-6030.

Section 17.4: **Declarant's Disclaimer For Economic Benefit.** Declarant has made no representations, and Declarant hereby disclaims any representations made by anyone claiming to act as Declarant's authorized agent, as to the feasibility of renting a Unit in the Condominium or otherwise generating income or deriving any other economic benefit from a Unit.

Section 17.5: **Declarant's Disclaimer For Security.** Neither the Association nor the Declarant shall be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. All Unit Owners, tenants, guests, and invitees of any Unit Owner, as applicable, acknowledge that the



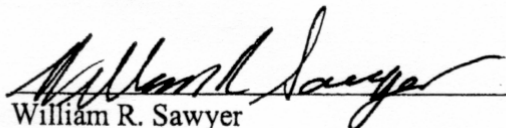
Declarant and the Association are not insurers and that each Unit Owner, tenant, guest, and invitee assumes all risk of loss or damage to persons, to Buildings, and to contents of Buildings, and further acknowledge that neither the Declarant nor the Association has made any representation or warranty, nor has any Unit Owner, tenant, guest, or invitee relied upon any representation or warranty, express or implied, including any warranty of merchantability or fitness for any particular purpose relative to any security measures recommended or undertaken.

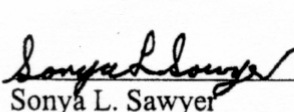
Section 17.6: **Governing Law.** This Declaration shall be governed by and construed in accordance with the laws of the State of Vermont, without giving effect to such jurisdiction's principles of conflicts of laws.


IN WITNESS WHEREOF, the Declarant has executed or caused this Declaration to be executed as of the 12<sup>th</sup> day of January, 2001.

IN THE PRESENCE OF:                      **COLONIAL ESTATES DEVELOPMENT, LLC**

  
Witness


By:   
William R. Sawyer

By:   
Sonya L. Sawyer

  
Paul Gattony

STATE OF VERMONT  
COUNTY OF CHITTENDEN, SS.

At Milton, Vermont, this 12<sup>th</sup> day of January, 2001, personally appeared **WILLIAM R. SAWYER and SONYA L. SAYER, husband and wife as tenants by the entirety, Member,** and they acknowledged this instrument by them signed and sealed to be their free act and deed, and the free act and deed of **COLONIAL ESTATES DEVELOPMENT, LLC.**

Before me:   
Notary Public  
My Commission Expires: 2/10/03

