

**DECLARATION OF HASTINGS MEADOW, LLC COMMON INTEREST OWNERSHIP COMMUNITY**

**TABLE OF CONTENTS**

ARTICLE 1..... 2  
    Submission: Defined Terms..... 2  
ARTICLE 2..... 4  
    Common Interest Community Property..... 4  
ARTICLE 3..... 5  
    Common Elements..... 5  
ARTICLE 4..... 6  
    Occupancy and Use Restrictions ..... 6  
ARTICLE 5..... 7  
    Easements ..... 7  
ARTICLE 6..... 8  
    Damage or Destruction ..... 8  
ARTICLE 7..... 8  
    Termination/Condemnation ..... 8  
ARTICLE 8..... 9  
    Insurance ..... 9  
ARTICLE 9..... 10  
    The Association ..... 10  
ARTICLE 10..... 12  
    Assessment and Collection of Common Expenses..... 12  
ARTICLE 11..... 13  
    Maintenance..... 13  
ARTICLE 12..... 14  
    Compliance and Default ..... 14  
ARTICLE 13..... 14  
    Declarant's Reserved Development Rights..... 14  
ARTICLE 14..... 16  
    Covenants and Environmental Restrictions ..... 16  
ARTICLE 15..... 19  
    Amendments ..... 19  
ARTICLE 16..... 20  
    Rights Related to Mortgages..... 20  
ARTICLE 17..... 21  
    Miscellaneous ..... 21

# **DECLARATION OF HASTINGS MEADOW, LLC COMMON INTEREST OWNERSHIP COMMUNITY**

This Declaration of a Common Interest Ownership Community (the "Declaration") is made by **Hastings Meadow, LLC**, a Vermont limited liability company with a place of business on Route 100, Waitsfield, County of Washington and State of Vermont (the "Declarant").

## **Background**

1. Hastings Meadow, LLC is the owner in fee simple of approximately 39 acres of land, more or less, located on Hastings Road in Waitsfield, Vermont, together with all easements, rights, appurtenances, and improvements thereto, described in the attached Exhibit "A," and depicted on a plan entitled: Planned Community Plat Hastings Meadow, LLC Common Interest Ownership Community Hastings Road, Waitsfield, Washington County, Vermont, " prepared by Little River Survey Company, LLC, dated December, 2005 Job #00819 and recorded as Map Slide\_\_\_ in the Town of Waitsfield Land Records and attached as Exhibit "B" (the "Property").

2. Declarant intends to establish a multi-unit Common Interest Ownership Community on the Property, substantially as depicted and approved on the Master Site Plan attached hereto as Exhibit B1, comprised of individual housing lots to be created pursuant to the Development Rights reserved herein.

3. The Property has received permits and approvals for the construction of 9 Units as shown on the Plat Plan and Master Site Plan attached hereto as Exhibits B and B1. However, Declarant reserves the right to seek additional permits and/or permit amendments to either modify the layout of the Units on the Property and/or to add additional Units to the Property.

NOW, THEREFORE, Declarant hereby makes and executes this Declaration of Common Interest Ownership 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 planned community to be known as "Hastings Meadow" (the "Community") 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 Hastings Meadow Homeowners Association, Inc. attached hereto as Exhibit "D" (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 Hastings Meadow 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.

"Bylaws" means the Bylaws of the Association, attached hereto as Exhibit "D" 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.

"Community" means Hastings Meadow, a Common Interest Community in which portions of the real estate (the Units) are designated for separate ownership and the remaining portions of real estate (the Common Elements) are designated for common ownership by the Owners of the Units.

"Declarant" means Hastings Meadow LLC, and its successors and assigns.

"Declaration" means this Declaration of Common Interest Community of Hastings Meadow homes, 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 Community, to subdivide Units or convert Units into Common Elements, or to add or withdraw real estate from the Community. 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.

"Institutional," as used in conjunction with "Lender," "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 unit of State 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.

"Master Site Plan" means the plan entitled: Hastings Meadow, Hastings Road, Waitsfield, Vermont," Sheet SP1 prepared by Little River Survey Company, Inc., dated November, 2001, Revised December, 2005 and recorded as Map Slide \_\_\_ of the Town of Waitsfield Land Records, a copy of which is attached hereto as Exhibit "B1", as amended from time to time.

"Plat Plan" means the Common Interest Community Plat Plan entitled: Planned Community Plat, Hastings Meadow, LLC, Common Interest Ownership Community, Hastings Road, Waitsfield, Washington County, Vermont, " prepared by Little River Survey Company, LLC, dated December, 2005 Job #00819, Sheets 1 and 2 of 2 and recorded as Map Slide\_\_\_ in the Town of Waitsfield Land Records and attached as Exhibit "B" (the "Property"), as amended from time to time.

"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, as such Property may be expanded as permitted herein.

"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.

"Unit" means a physical portion of the Community 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. Units may also be called "Lots" on the Plat Plan and Master Site Plan.

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**

### **Common Interest Community Property**

Section 2.1. **Property.** The Property consists of all and the same lands 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, Plat Plan and the Master Site Plan attached hereto as Exhibits A, B and B1. The Property is subject to the Declarant's rights reserved in Article 13 hereof.

Section 2.2. **Description of Common Interest Ownership Community Generally.** As of the date hereof, the Declarant intends to eventually develop the Property as a planned community consisting of ten (10) Units, substantially as depicted on the Plat Plan and Master Site Plan. However, Declarant reserves the right to seek additional permits for the construction on the Property and adjacent property and to add them to the Community in one or more phases. Declarant hereby reserves the Development Rights to add the additional Units to the Community and related site improvements, may be included in the Community, 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 Community, 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 Units and Improvements.** The Units and other improvements to the Property are depicted and described in the Plat Plan and Master Site Plan. Exhibit "C" is a list of all Units made subject to the Community on the date hereof, the assigned value of each Unit, and the Allocated Interests in the Common Elements allocated to each Unit.

Section 2.4. **Unit Boundaries.** Unit boundaries are depicted on the Plat Plan attached as Exhibits B. Each Unit shall have the burdens and the 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, infrastructure or improvements designated to serve a one or more than one, but fewer than all Units, but located outside the Unit's boundaries, all areas depicted on the Plat Plan Exhibit "B". Except as otherwise provided herein, any expense for maintenance, repair or replacement relating to the Limited Common Elements shall be paid for by the Unit Owner(s) benefited by the infrastructure or improvement.

##### **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 Exhibit "B" 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 maintain any action for partition or division thereof, unless the Property has been removed from the provisions of this Declaration pursuant to the Act.
- c. 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 Common Elements and to the Rules and Regulations regarding use thereof as shall be established from time to time by the Board of Directors.
- d. The Common Elements include, without limitation:
  - (i) All easements, restrictions, and other encumbrances included with the Property as described in Exhibit A and depicted on Exhibit B.
  - (ii) Utility lines, equipment and other improvements serving the Property or serving more than one Unit.
  - (iii) All roads, until accepted by the Town of Waitsfield as public roads, the stormwater drainage system located on the Property, parking areas in the Common Elements, pedestrian trails (until accepted by the Town of Waitsfield as public trails), fences, trees, shrubs, landscaping, and other site improvements located on the Common Elements of 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 "C". A Unit's Allocated Interest

shall be redetermined in accordance with Exhibit "C" as additional Units are made a part of the Community. Except as otherwise set forth herein for the redetermination of the Allocated Interest by Declarant upon the filing of an amendment to this Declaration to add additional Units, the percentages determined in accordance with Exhibit "C" shall be of a permanent character and may not be changed without the consent of all Unit Owners. Unit's Allocated Interest shall be determinative of all matters under the Act, this Declaration and the Bylaws that 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 used for residential purposes. No trade or business of any kind may be carried on therein, except customary home occupations and leases for residential purposes, provided such leases are for a minimum term of six months, and are made subject to any and all other provisions of the Declaration and Bylaws. The occupancy of each Unit is subject to and benefited by all easements, restrictions and permits of record, as depicted on the Plat Plan and Master Site Plans attached as Exhibits B and B1, and described in Exhibit "A."

Section 4.2. **Alteration of Units.** A Unit Owner may make improvements or alterations to a Unit that do not impair any common or limited common elements or lessen the support of any portion of the Community. No change in appearance of the Common Elements or any other portion of the Community may be made by any Unit Owner without the prior written approval of the Board of Directors. No Units may be resubdivided. 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. Unit Owners and the Association shall not interfere with Declarant's efforts to complete the improvements to the Property, including the subdivision or construction of Units and infrastructure serving them, to market and sell Units, 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 Town of Waitsfield affecting the use of Units and the Common Elements.

Section 4.5. **Interference with Others.** No Unit shall be used or maintained in a manner that 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. **Parking Allocations.** In addition to the parking space located within each Unit's drive or garage, the Declarant may establish guest parking spaces substantially as depicted on the Master Site Plan, the use of which shall be regulated and restricted by the Board of Directors.

## 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 Owner is also hereby granted an easement, in common with Declarant and others, for ingress and egress over all roadways shown on the Plans until such roadways, or portions of said roadways, are accepted as public streets. 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:

- a. through, under, over and across the Common Elements and the 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 Units;
- b. for the purpose of completing the construction of all infrastructure, Units and other improvements on the Property; and
- c. 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 sub adjacent support from every other Unit and the Common Elements.

Section 5.5. **Additional Easement.** The Board of Directors of the Association shall have the power (without submitting the same to 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 Community 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 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 responsible for the damage, or the Association, if it is responsible, shall promptly repair such damage, restoring Unit to substantially the condition that existed immediately prior to the event causing the damage.

Section 5.7. **Existing Easements.** In addition to the general easement created by this Declaration and noted above, the Property, and all or specified Units within the Property is subject to and benefited by the easements depicted or noted on the Plat Plan, Exhibit B.

## 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 Community 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 Unit Owners, including every Unit Owner of Units with Limited Common Elements 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 Community is Not Rebuilt.** If the entire Community 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 remainder of the Community.
- b. Except to the extent that other persons will be distributees:
  - (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 Units to which those Limited Common Elements were allocated, or to lien holders, as their interests may appear in proportion to the Common Expense Liability of all of Units; and
  - (ii) The remainder of the proceeds shall be distributed to all Unit Owners or lien holders, as their interests may appear, in proportion to the Common Expense Liability of those Units.
- c. If 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 Community may be terminated only by the recorded agreement of 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 Community 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 Community facilities (which means all 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 Communities and the proceeds of such insurance shall be used only for the repair, replacement and reconstruction of the Common facilities 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 Unit Owners and lien holders 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 amounts and in such forms as prudent community 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 Community management practices suggest. Any such policy shall provide that it cannot be canceled or substantially changed, except upon at least ten (10) days' written notice to the insured.

Section 8.5. **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 Owner prejudice the Association's rights and protection under policies 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 Community 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 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 a 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 Units in the Community; (ii) two (2) years after the Declarant has ceased to offer Units for sale in the ordinary course of business; (iii) two (2) years after the exercise of any Development Rights to add new Units; or (iv) 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 created 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 created Units are conveyed to Unit Owners (other than the Declarant).

Section 9.5. **Declarant Control and transfer of Common Elements.** 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 Units in the Community; (ii) two (2) years after the Declarant has ceased to offer Units for sale in the ordinary course of business; (iii) two (2) years after the exercise of any Development Rights to add new Units; or (iv) 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 Community 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. Upon its sale or transfer of ownership of the last Unit, or beforehand at the election of the Declarant, the Declarant shall execute a deed transferring ownership of the Common Elements to the Homeowners Association.

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 divided among 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 25% of Assessments allocated to Units that have been conveyed to persons other than Declarant. Additionally, the Declarant may contribute assessments due from it in services or materials, rather than money ("in kind" contribution). Any in kind contribution shall be allocated against the account of the Declarant at its fair market value. If the Declarant and the Association cannot agree on the fair market value of the Declarant's in kind contribution, Declarant shall provide the Association with a detailed accounting of the materials, supplies or services furnished. The Association may solicit three bids for performing like services and materials from 3 independent contractors approved by the Declarant who are in the business of supplying like services and materials. If the association and the Declarant are still unable to agree on the fair market value of the in kind contribution, the value shall be deemed the average of the three bids secured.
- 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 Community, as well as its own books, records and financial statements. 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 otherwise provided herein;
- 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 Sections 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), any 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 or construction of 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 Regulation 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.

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 10.5. **Budget Adoption and Ratification.** Within thirty (30) days after adoption of any proposed budget for the Community, the Board of Directors shall provide a summary of the budget to all 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 Unit Owners, for a meeting of Unit Owners to ratify the budget. The budget shall be ratified, unless a majority of Unit Owners rejects the budget, whether or not a quorum is present, If the budget is rejected, the budget last ratified by Unit Owners shall be in effect until 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 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 or monthly installment of 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 private loop roadway until such roadway or portions thereof are accepted by the Town of Waitsfield, the mailbox area, recreation facilities, stormwater drainage systems located on the Property, lighting, landscaping, open space, utility lines and facilities, and including the Limited Common Elements including the septic system serving each Unit and any shared drives, except for such maintenance of the Limited Common Elements as the Board of Directors shall, from time to time, delegate to Unit Owners appurtenant thereto and until such time as the Town of Waitsfield shall accept responsibility for such property. The Association shall also be responsible for all snow removal from the Community's private roadway, all driveways, walkways and the mailbox area.

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 and all buildings, fixtures, or utilities serving his or her unit and located within the boundaries of his or her unit. However, the Board of Directors may, by resolution, decide to maintain any portion of the Units and specifically reserves the right to maintain the septic system serving the Unit, regardless of its location on the Unit or on the Common elements.
- b. In the event that a Unit Owner should fail to perform any obligation required in Subsection (a) hereof as may be determined by the Board of Directors, then 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 hereunder 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, 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 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 that 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 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 Community 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 at law or exclusively by recovery of damages.
- d. **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, the 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 as 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, roads, driveways, sewer lines, 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 Community; (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.** Declarant reserves the right to alter the design and arrangement of Units, said right to last as long as the Declarant controls the Association or owns any of the Units so altered, or owns any interest in the Property. If Declarant shall make any such 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 the Declarant owns said Unit, without the prior written consent of the Board of Directors.

Section 13.3. **Amendment to Alter Community.** 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 including amendments to enlarge the Community to include the adjacent property owned by Ritchie Crockett Lawton or withdraw portions of the Property from the Community. The location and configuration of any Units or buildings proposed for the Property on Exhibit "B" may be modified by the Declarant in its sole discretion. Declarant also reserves the right, for itself and its successors and assigns, in its sole discretion, at any time or from time to time to amend this Declaration to complete the Community, to subject the Lawton property to this Declaration or, if additional property is subjected to this Declaration, to withdraw such additional property from the Community in accordance with §2-110 of the Act. Declarant shall exercise these rights to amend or withdraw within 20 years of the execution of this Declaration.

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, replacement of Buildings, roads, driveways, 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, and or the adjacent property currently owned by Ritchie Crockett Lawton of as many Units as the Declarant in his sole discretion shall determine up to a maximum of 25 Units;

Section 13.5. **Permits and Approvals for Further Development.** Each Owner acknowledges, by acceptance of a Common Interest Community Deed, that the Declarant has the right to develop 10 Units on the Property, 9 of which are depicted on Exhibit B, and that the Declarant may also, in the future, seek to develop the Property in a different manner as, subject to the specific limitations set forth in this Declaration, or to develop the adjacent property of Ritchie Crockett Lawton with up to a total of 25 Units. 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 of 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 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 Vermont Land Use Permit for the development of the Property and the permits and approvals referenced therein; the Town of Waitsfield Planning Commission Approval; all protective covenants and easements and rights of way for utilities of record; and as all of the foregoing may be amended from time to time and as set forth on Exhibit "A."

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 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 larger than two feet in diameter or taller than 3 feet in height 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 that will not unduly disturb surrounding Unit Owners and must be approved by the Board of Directors. All lighting should be cut, screened and downcast so as to minimize intrusion of light across property lines, eliminate upward illumination and reduce glare and maximize the effectiveness of sight lighting to a target area.

Section 14.5. **On-Site Fuel Storage.** No on-site storage of gasoline, or other fuels shall be permitted on any part of the Property, except for propane or other heating fuel, and not more than 10 (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.** 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, unless specifically allowed by the Board of Directors.

Section 14.7. **Parking.** No unregistered motor vehicle, 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 Common Elements or limited Common Elements of the Property. Unit owners may maintain no more than one of any of type of the above named vehicles in a screened area on their property for no more than 3 months. Garaging of such vehicles is encouraged at all times. The parking of motor vehicles along the



roadway or in other spaces that have not been designated for parking 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, 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 roadways and driveways, or for authorized and emergency maintenance purposes.

Section 14.11. **Occupants 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 vegetation or wildlife located in any wetland areas on any Unit or the Common Elements shall be disturbed, except as depicted on Exhibit B. Additionally, the Owner of Unit 10 shall maintain a 10' buffer zone around the edge of the wetland depicted on Unit 10, all as depicted on Exhibit B.

Section 14.14. **No Hazardous Use or Waste.** Nothing shall be done or kept in any Unit or on the Common Elements that 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 regulations shall be kept or discharged in or on a Unit or the Common Elements.

Section 14.15. **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 Unit Owner at all times while on the Property. Unit Owners are responsible for immediate cleanup of any waste in the public thoroughfares 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 Waitsfield.

Section 14.16. **Energy Conservation Measures.**

- a. Without the prior written consent of the Vermont District #5 Environmental Commission, or its successor, homes built on all units shall include water and energy conserving devices as required by the Land Use permit issued by the State of Vermont.
- b. All heated structures shall be constructed to meet Energy Conservation Recommendations of the Vermont Department of Public Service or shall meet the "Four Stars Plus" rating of Energy Homes of Vermont. The installation and/or use of electric resistance space heating is specifically prohibited.

Section 14.17. **Landscaping**. The Association shall continually maintain all Common Elements, facilities, recreational amenities, and landscaping substantially as approved by the Town of Waitsfield Planning Commission and the District #5 Environmental Commission.

Section 14.18. **Septic System Maintenance**. The Association shall be responsible for the routine maintenance of all septic systems serving the Units. All Unit owners shall provide access to the agent of the Association as necessary to maintain all septic systems. The cost of routine maintenance of the septic systems will be assessed, pro rata, as part of the association dues.

Section 14.19. **Central Common Area Garden/Open Space**. The area inside the circular drive serving each unit has been designed to be preserved as agricultural, meeting and open space for the community. It also serves to provide primary and reserve septic capacity for both specified and unspecified lots in the community. It shall be used for agricultural, community events, septic disposal or open space only. Agricultural purposes shall include use of this Common Area for cultivated fields and gardens, orchards and pastures in accordance with acceptable agricultural practices as defined in 12 V.S.A. Ch. 195, together with the right to construct, maintain and repair appurtenant buildings and fences. No residential, commercial or industrial buildings or structures shall be constructed, created, installed, or erected on the common area within the drive, except that constructed for permitted purposes, or as shown on the Site Plan. In the event the open meadow on the common area within the drive lies fallow for more than one year, the Association shall brush hog or mow the meadow to maintain it in its open condition.

Section 14.19a. **Lot 12**. Lot 12, as depicted on Exhibit B shall remain as open, undeveloped land. Conservation easements prohibiting construction and in favor of an appropriate institution preserving it permanently in its natural condition shall be recorded in the Land Records in the Town of Waitsfield concurrently with or shortly after the filing of Exhibit B. It is anticipated that Lot 12 may be encumbered with conservation easements and transferred to the Town of Waitsfield in fee simple for its use as a natural recreational area.

Section 14.20. **Adjacent Agricultural/Forestry Activities**. The area surrounding this project is largely open land that is currently or may be used for farming or forestry uses. Current or future operations may include without limitation, plowing, planting fertilizing, or controlling pests through the application of agricultural pesticides or herbicides in the course of cultivating, harvesting, storing and transporting agricultural feed or product. Consistent with this notice, each lot is conveyed subject to a perpetual easement for any noise, odor, dust or other impacts that may occur in the course of conducting acceptable agricultural or forestry practices on the nearby lands. Lot owners, by acceptance of this covenant waive any objection to the impacts arising from accepted agriculture or forestry best management practices which are consistent with the rules established pursuant to 6 V.S.A. Ch. 215.

Section 14.21. **Deer Wintering Area**. Each Unit owner is hereby put on notice that this development is in the immediate vicinity of a deer wintering area. Domestic dog activity seriously jeopardizes this critical habitat and the existence of deer in this area. A person who owns a dog that is not leashed, kenneled or otherwise under the

owner's immediate control is subject to the penalties of 10 V.S.A. 4748 (Dogs Pursuing Deer) and Section 4514 (Possession of Flesh of Game). Additionally, the Association shall maintain the common land as open space and manage that portion of the common land depicted as undisturbed deer wintering area to encourage deer habitat. No softwood trees within the undisturbed portion of the Deer wintering area in Lot 12 or as depicted on the common land on Exhibit B1 shall be harvested or removed without the prior approval of the Department of Fish and Wildlife, unless recommended by a habitat management plan approved by the Department of Fish and Wildlife.

Section 14.22. **Architectural Standards.** No exterior construction, alteration, addition or erection of any nature whatsoever, including, but not limited to, alteration of the color of the dwelling located on a unit may be commenced, except that which is installed by the Declarant, until the plans for such have been approved in accordance with this section. Prior to any activity the Unit Owner or his or her agent shall submit plans detailing the scope, nature and location of the proposed change to the Board of Directors or its designated representative for its approval. No activity may commence until approval is granted. The Board may create rules governing this review.

The Board of Directors, or its designated representative shall be the sole arbiter of such plans and may withhold the approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction or other activity in violation of these restrictions. In the event the Board or its representative fails to act within 30 days after its actual receipt of any plans submitted, the plans as submitted shall be deemed approved and the owner shall have satisfied the requirements of this section.

Section 14.23. **Maintenance of Lots in Natural Condition.** Unit owners shall restrict their landscaping activities after initial construction to maintain the natural condition of the lots and shall not cut any trees with a diameter of greater than 4" at breast height outside of the building envelope without first securing the written consent of the Board of Directors. Trees within 15 feet of all lot lines should be maintained to provide screening for each unit.

Section 14.24. **Specific Unit Restriction.** All structures to be constructed on Unit 1 shall be limited in height to a story and a half (28 feet) as necessary to comply with Condition 12 of the Final Plan Approval issued by the Town of Waitsfield on July 18, 2002.

Section 14.25. **Amendments.** No amendment to Sections 14.10, 14.13, 14.15, 14.16, 14.17, 14.18, 14.19, 14.20 or 14.21 of this Article shall be effective without the prior written consent of the Vermont District #5 Environmental Commission or the Town of Waitsfield.

## **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 to 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 may 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, the District #5 Environmental Commission, the Vermont Environmental Board, the Town of Waitsfield, 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 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 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 that 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 Community 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 Community under the Declaration, requiring the votes of 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 Community; provided, however, that in the case of a termination of the Community 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 interests 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 Community, or the addition, annexation or withdrawal of property to or from the Community, 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 Community after a hazard damage or partial condemnation in a manner other than that specified in the Declaration;
- n. Termination of the Community 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 that 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 Adam G. Lougee, Esq. 31 Partridge Way Shelburne, Vermont 05482.

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 Community 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 \_\_\_\_ day of \_\_\_\_\_ 2005.

IN PRESENCE OF:

Hastings Meadow, LLC

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Duly Authorized Agent of Conservation Designs, Inc.  
Managing Partner

STATE OF VERMONT  
WASHINGTON COUNTY, SS.

At \_\_\_\_\_ Vermont this \_\_\_\_ day of \_\_\_\_\_ 2005, personally appeared, \_\_\_\_\_, Duly Authorized Agent of Conservation Designs, Inc, the managing partner of **Hastings Meadow, LLC**, to me known, and he acknowledged this instrument by him signed and sealed, to be his free act and deed and the free act and deed of **Hastings Meadow, LLC and Conservation Designs, Inc.**

Before me

\_\_\_\_\_  
Notary Public  
My commission expires: 2/10/07