

**DECLARATION OF PLANNED COMMUNITY  
FOR SOUTH POINTE**

This Declaration of Planned Community for South Pointe (the "Declaration") is made by **THE SNYDER SOUTH POINTE LIMITED PARTNERSHIP**, a Vermont limited partnership with a place of business in Essex Junction, County of Chittenden and State of Vermont (the "Declarant").

Background

1. Declarant is the owner in fee simple of 25.62 acres of land, more or less, located on Spear Street in South Burlington, Vermont, together with all easements, rights, appurtenances, and improvements thereto, described in Exhibit "A" (the "Property") and depicted on a plat entitled: "South Pointe, The Snyder Group, Inc., 1700 Spear Street, South Burlington, Subdivision Plat," prepared by Lamoureux & Dickinson Consulting Engineers, Inc., dated April 3, 2003, last revised May 7, 2004 and recorded in Map Volume 437 at Page 2 of the City of South Burlington Land Records (the "Plat").

2. Declarant intends to establish a common interest community on the Property, substantially as depicted on the Plat, in one or more phases.

3. The Property has received permits and approvals for the subdivision and development of thirty-one (31) lots (Lots 1-31 on the Plat) which are zero lot line carriage home lots (the "Lots"), surrounded by open space (Lots 33-36 on the Plat) and roads (Lot 37 on the Plat), and one single family lot (Lot 32 on the Plat)

4. Excluded from the Property and this Declaration is all of Lot 32, a 1.21 acre lot with an existing dwelling and other improvements thereon, depicted on the Plat. Declarant reserves the Development Rights to add Lot 32 to the Property and to construct up to six (6) additional carriage homes on Lot 32.

5. Declarant will establish an association known as The South Pointe Homeowners' Association, Inc., a Vermont non-profit corporation (the "Association"), the control of which is described in further detail in this Declaration. All of the owners of the Lots will be members of the Association. The Declarant intends to convey the open space on the Property as shown on the Plat to the Association, which will be responsible for the maintenance, repair and upkeep of these areas for the benefit of all owners. The Association will also be responsible for the maintenance, repair and replacement of additional common elements and facilities described in this Declaration, including the stormwater drainage system for the Planned Community.

**NOW, THEREFORE,**

Declarant hereby makes and executes this Declaration of Planned Community 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 "South Pointe" (the "Planned Community") which shall be 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 South Pointe Homeowners' Association, Inc. (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 Common Expense Liability and the votes in the Association.

"Assessment" means the amount assessed against the Owners of each Lot from time to time by the Association described below in the manner provided herein.

"Association" means The South Pointe Homeowners' Association, Inc., a Vermont non-profit corporation organized under § 3-101 of the Act.

"Board of Directors" means the board of directors of the Association charged with the management and operation of each respective association, being the Executive Board as defined in the Act.

"Bylaws" means the Bylaws of the Association, as amended from time to time.

"Common Elements" means all portions of the Property that are owned or will be owned or leased by the Association and all appurtenances thereto, other than the Lots.

"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 Lot pursuant to § 2-107 of the Act.

"Declarant" means The Snyder South Pointe Limited Partnership, and its successors and assigns.

“Declaration” means this Declaration of Planned Community for South Pointe 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 Lots, Common Elements or Limited Common Elements within the Planned Community, to subdivide Lots or convert Lots into Common Elements, or to add or withdraw real estate from the Planned Community. The Declarant’s Development Rights include the Special Declarant Rights defined in the Act.

“Dwelling” shall mean the single-family residential structure, including garage, which is located on a Lot.

“First Mortgagee” means the holder of any first mortgage lien or the beneficiary under any first deed of trust encumbering a Lot. 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 United States Government, including, without limitation, the Vermont Economic Development Authority 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 Lots.

“Lot” means a Unit as defined in the Act, being a portion of the Property, other than the Common Elements, intended for individual ownership and use as permitted in this Declaration, being the thirty-one (31) zero lot line carriage home building envelope lots depicted as Lot Nos. 1-31 on the Plat. Each Lot shall contain one Dwelling only. The ownership of each Lot shall include, and there shall pass with each Lot as an appurtenance thereto, membership in the Association. Each Lot shall for all purposes constitute real property which may be owned in fee simple and which may be conveyed, transferred, or encumbered in the same manner as any other real property.

“Lot Owner” or “Owner” means the Declarant or other person who owns a Lot, but does not include a person having an interest in a Lot solely as security for an obligation. The Declarant is the owner of any Lot created by this Declaration until sold or conveyed to a third party.

“Planned Community” means South Pointe, a Common Interest Community in which portions of the real estate are designated for separate ownership by the Lot Owners and the remainder of the real estate is designated for ownership by the Association.

“Plans” means the Plat and all of the engineering plans for the Property entitled: “South Pointe, The Snyder Group, Inc., 1700 Spear Street, South Burlington, Vermont,” Sheet Nos. 1-14, prepared by Lamoureux and Dickinson Consulting Engineers, Inc., including, without limitation the plan entitled: “South Pointe, The Snyder Group, Inc., 1700 Spear Street, South Burlington, Layout and Utility

Plan,” prepared by Lamoureux & Dickinson Consulting Engineers, Inc., dated October 15, 2003, last revised April 28, 2005 and recorded in Map Volume 461 at Page 2 of the City of South Burlington Land Records, and the site plan entitled: “South Pointe, The Snyder Group, Inc., 1700 Spear Street, South Burlington, Site Plan,” prepared by Lamoureux & Dickinson Consulting Engineers, Inc., dated October 15, 2003, last revised April 28, 2005 and recorded in Map Volume 461 at Page 1 of the City of South Burlington Land Records.

“Plat” means the plat entitled: “South Pointe, The Snyder Group, Inc., 1700 Spear Street, South Burlington, Subdivision Plat,” prepared by Lamoureux & Dickinson Consulting Engineers, Inc., dated April 3, 2003, last revised May 7, 2004 and recorded in Map Volume 437 at Page 2 of the City of South Burlington Land Records.

“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 Lots.

## ARTICLE 2

### Planned Community Property

Section 2.1. **Property.** The Property consists of all and the same lands and premises, together with improvements thereon, and all easements and rights appurtenant thereto, as described in Exhibit “A” and as depicted on the Plans.

Section 2.2. **Description of Planned Community.** As of the date hereof, the Declarant intends to develop the Property as a Planned Community consisting of thirty-one (31) Lots substantially as depicted on the Plat and Plans. One Dwelling may be constructed on each Lot for use and occupancy as a residence.

Section 2.3. **Lot Boundaries.** The boundaries of the Lots shall be the building envelope lot lines depicted on the Plat. The lower and upper boundary of each Lot shall be determined by common law principles for the fee simple ownership of real property. If any pipe, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a Lot, any portion serving only that Lot is a Limited Common Element allocated solely to that Lot, and any portion of it serving more than one Lot or any portion of the Common Elements is a part of the Common Elements.

Each Lot 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 Lots.
- (b) All fixtures or improvements designated to serve, attached to, or adjacent to a Lot, but located outside the Lot's boundaries, are Limited Common Elements allocated exclusively to that Lot to which they are appurtenant. Except as otherwise provided herein, 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.
- (c) The Limited Common Elements for the Lots include any improvements located outside of the building envelope lot shown on the Plat which serve only one Lot including, without limitation, driveways, walkways, patios, decks, pipes, lines, ducts, conduits, or other apparatus (including all gas, electricity, telephone, cable television, water, sewer, foundation drainage, or air conditioning pipes, lines, ducts, conduits, or other apparatus) serving only one Lot.

#### Section 3.2. Common Elements.

- (a) The "Common Elements" include the Limited Common Elements and consist of all the Property and appurtenances thereto described on Exhibit "A" and depicted on the Plat except the Lots.
- (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 Lot Owners. No Lot 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 Lot 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 Lot 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.
- (d) The Common Elements include, without limitation:
  - (i) All easements, restrictions, and other encumbrances included with the Property as described in Exhibit "A" or depicted on the Plans.

- (ii) Utility lines, equipment and other improvements serving the Property or serving more than one Lot.
- (iii) All roads until accepted by the City of South Burlington as public roads, all driveways, all water mains and all sewer mains until accepted by the City of South Burlington, the stormwater drainage system located on the Property, including drains, catch basins, closed lines and detention ponds, all recreation/bike paths (until accepted by the City of South Burlington as public paths), open lands, fences, trees, shrubs, landscaping, and other site improvements located on the Property.

Section 3.3. **Allocated Interests.** Each Lot will be assigned one (1) of the thirty-one (31) memberships in the Association, one for each Lot. Each Lot shall have a one thirty first (1/31st) Allocated Interest in the Association. 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 exercise Development Rights and/or Special Declarant Rights, the Allocated Interest shall be of a permanent character and may not be changed without the consent of all Lot Owners. The Lot'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 Allocated Interest, including, but not limited to the weight of each Lot Owner's vote for Association purposes and the allocation of Common Expenses. In the event Declarant exercises its Development Rights to add Lot 32 to the Planned Community, the Allocated Interests shall be redetermined so that each Lot's Allocated Interest shall be a fraction, the numerator of which shall be one (1) and the denominator of which shall be the total number of Lots declared in the Planned Community.

## ARTICLE 4

### Occupancy and Use Restrictions

Section 4.1. **Use of Lot.** Any Dwelling constructed on a Lot shall be used for residential purposes only, and no trade or business of any kind may be carried on therein, except home occupations allowed by municipal bylaws, and leases for residential purposes, provided such leases are for a minimum term of six months, and as otherwise provided in the Declaration and Bylaws.

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

Section 4.2. **Alteration of Lots.** A Lot Owner may make improvements or alterations upon a Lot provided such improvements do not impair the Common Elements, Limited Common Elements, or infrastructure or utilities within any portion of the Planned Community, and provided prior written approval has been obtained by the Declarant or Board of Directors as provided in Section 14.10. Other than the construction of Dwellings and related improvements on the Lots, no structural improvements may be made to the Common Elements, or any other portion of the Planned Community by any Lot Owner without the prior written approval of the Board of Directors. No Lots may be further subdivided by Lot Owners.

The boundaries between adjoining Lots 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 signs until such time as the Declarant has conveyed title to all of the Lots to third party Lot Owners. The Lot Owners and the Association shall not interfere with Declarant's efforts to complete the improvements to the Property, including the construction of additional Dwellings and Lots, to market and sell Lots and Dwellings, or with Declarant's exercise of any Development Rights reserved in Article 13.

Section 4.4. **State and Municipal Laws.** Each Lot Owner shall comply with all applicable permits, codes, laws, ordinances, rules, and regulations, of the State of Vermont and City of South Burlington affecting the use of the Lots and the Common Elements.

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

## ARTICLE 5

### Easements

Section 5.1. **Easement for Access.** Each Lot Owner is hereby granted an easement, in common with Declarant and every other Lot Owner, in all Common Elements for ingress and egress, including all roadways shown on the Plat until the same are accepted by the City of South Burlington as public roadways, for utility service, and support, maintenance and repair of each Lot, subject to such reasonable Rules and Regulations of the Association. Each Lot is hereby benefitted by an easement in common with others for ingress and egress through and over all Common Elements by persons lawfully using or entitled to the same, including, without limitation, easements for the benefit of Lots 17 and 18 for the maintenance of a sewer collection line over Lot 34 as shown on the Plat. Such easements and rights are subject to the limitations upon the use of the Limited Common Elements as otherwise set forth herein. Until accepted as public streets, Upswept Lane and South Pointe Drive, both depicted on the Plat, are further subject to the easement rights of the owner of Lot 32 which are set forth in the Warranty Deed of Raymond R. Unsworth and Norma C. Unsworth to The Snyder South Pointe Limited Partnership dated October 12, 2004 and recorded in Volume 684 at Page 695 of the City of South Burlington Land Records, and described in Exhibit "A." In addition, South Point Drive is subject to the easement rights of the owner of the lands and premises depicted on the Plat as being now or formerly owned by Nancy A. Belisle as set forth in the Warranty Deed of Raymond C. Unsworth and Norma C. Unsworth to M.F.P. Construction, Inc. dated March 31, 1978 and recorded in Volume 139 at Page 431 of the City of South Burlington Land Records, and described in Exhibit "A."

Section 5.2. **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 Lots owned by Declarant 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 Lots; (ii) for the purpose of completing the construction of the Dwellings and other improvements on the Property; (iii) for the purpose of erecting, maintaining, and removing signs advertising Lots for sale or lease within the Property; and (iv) through, under, over and across the Common Elements and Lots for the maintenance, repair, replacement and inspection of the stormwater systems for the Property.

Section 5.3. **Easement for Support.** Each Lot and the Common Elements shall have an easement for lateral and subadjacent support from every other Lot and the Common Elements.

Section 5.4. **Additional Easements.** The Board of Directors of the Association shall have the power (without submitting the same to the Lot Owners for approval) to authorize the appropriate officers of the Association to execute any and all easements as it may deem desirable for the benefit of the Planned 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 5.5. **Upkeep.** Maintenance, repair and replacement of the Common Elements and of the Lots shall be as provided for in this Declaration, the Bylaws for the Association, and the Act. Each Lot Owner shall afford to the Association and the other Lot Owners, and to their agents or employees, access across his or her Lot reasonably necessary for those purposes. If damage is inflicted on the Common Elements or any Lot through which access is taken, the Lot Owner responsible for the damage, or the Association or if it is responsible, shall promptly repair such 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 Planned 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 the Lot Owners 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. **Election Not to Rebuild.** If the entire Planned 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 Planned Community; and
- (b) Except to the extent that other persons will be distributees: (i) the insurance proceeds attributable to Limited Common Elements which are not rebuilt shall be distributed to the Owners of the Lots 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 the Lots; and (ii) the remainder of the proceeds shall be distributed to all of the Lot Owners or lienholders, as their interests may appear, in proportion to the Common Expense Liability of those Lots.

## ARTICLE 7

### Termination; Condemnation

Section 7.1. **Requirements for Termination.** The Planned Community may be terminated only by the recorded agreement of the Lot 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 Planned 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 obtain insurance for the Common Elements and the Limited Common Elements on the Property, 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 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. 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 8.2. **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 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 Lot 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 Lot Owner or member of his or her household.

- (c) No act or Omission by any Lot 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 Lot 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 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 Lot, the Lot at issue shall be responsible for the increase, based upon the insurance carrier's appraisal of risk inherent to said Lot. A levy made against a Lot for an increase in premiums may be enforced in the same manner as Common Expenses.

Section 8.6. **Separate Insurance.** Each Lot Owner shall be responsible for obtaining, at his or her own expense, separate casualty and liability insurance for his or her own Lot and the Dwelling constructed thereon. No insurance purchased by the Association shall in any way prejudice the right of each Lot Owner to obtain insurance for his or her own Lot and the Dwelling thereon 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 Lot 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 Lot Owner and such Lot Owner's mortgagee, as their interests may appear.

## ARTICLE 9

### The Association

Section 9.1. **Authority.** The business affairs of the Planned Community shall be managed by the Association. The Association shall be governed by the Bylaws, a copy of which is attached as Exhibit "B," as they may be amended from time to time.

Section 9.2. **Membership.**

- (a) Each Lot 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 Lot. Multiple or joint Owners of a single Lot shall be

treated for all purposes as jointly owning and holding the one membership appurtenant to that particular Lot.

- (b) A membership appurtenant to a Lot shall be initiated by either: (i) the recording of a deed in the City of South Burlington Land Records conveying a Lot to a purchaser; or (ii) the issuance of a certificate of occupancy by the City of South Burlington for a Dwelling constructed on a Lot, whichever sooner occurs. Once a membership is initiated, liability for Common Expenses shall automatically commence. Membership in the Association shall be owned and held by each Lot Owner, including the Declarant with respect to unsold Lots which have been issued a certificate of occupancy by the City of South Burlington.
- (c) The number of memberships in the Association shall automatically increase if additional Lots are declared and subjected to this Declaration. No membership rights or liability for Common Expenses shall be allocated or attributed to a Lot until the Lot is either sold by Declarant to a third party or has been issued a certificate of occupancy.
- (d) Liability for Common Expenses shall be assessed among the Lot Owners 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 Lot Owner. A non-voting membership shall be any membership owned and held by any Lot Owner other than Declarant. All memberships in the Association shall automatically become voting memberships: (i) sixty (60) days after the sale by Declarant of seventy-five percent (75%) of the proposed thirty-one (31) Lots in the Planned Community; (ii) two (2) years after the Declarant has ceased to offer Lots for sale in the ordinary course of business; (iii) two (2) years after the exercise of any Development Rights to add new Lots; 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 Lot Owners may vote during the period of Declarant control.

When a membership is a voting membership, each Lot Owner, or one of the Lot Owners if record title in a Lot is held by more than one person, shall be entitled to vote in any meeting of the membership.

**Section 9.4. Board of Directors.** The initial Board of Directors of both the Association shall be three (3) in number and shall be appointed by the Declarant acting in its sole discretion and shall serve at the pleasure of the Declarant, 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 Lot Owners who are not the Declarant within sixty (60) days after twenty-five percent (25%) of the Lots are conveyed to Lot Owners (other than the Declarant). At least thirty-three and one third percent (33⅓%) of the members of the Board of Directors shall be elected by Lot Owners who are not the Declarant within sixty (60) days after fifty percent (50%) of the Lots are conveyed to Lot Owners (other than the Declarant).

**Section 9.5. Declarant Control.** The Declarant will convey to the Association marketable title to the Common Elements by standard Warranty Deed(s) and/or Easement Deed(s) for One Dollar (\$1.00), and the Association will accept said title. Said conveyances of title (and the transfer of control of the Association

which may or may not be made at the same time) shall be made: (i) sixty (60) days after the sale by Declarant of seventy-five percent (75%) of the proposed thirty-one (31) Lots in the Planned Community; (ii) two (2) years after the Declarant has ceased to offer Lots for sale in the ordinary course of business; (iii) two (2) years after the exercise of any Development Rights to add new Lots; 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 Planned 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.

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

- (a) Common Expenses of the Association shall be borne among the Lots in accordance with their Allocated Interest, except that the Board of Directors may allocate expenses among the Lots on a different basis if the basis is reasonably related to the benefits of the services provided. In addition, allocation of expenses to Lots constructed and owned by Declarant, but not occupied, may be less than Assessments allocated to Lots 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 this Declaration, their Bylaws, and any Rules and Regulations concerning the Planned Community, as well as its own books, records and financial statements. These will be available for inspection by Lot Owners or 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;
- (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 Lots in accordance with their Allocated Interest in the Common Expenses as set forth in this Declaration. If the Common Expense Liability is modified due to a redetermination of the Allocated Interests, 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 Lots.** The following expenses may be assessed against less than all of the Lots:

- (a) Any Common Expense for services provided by the Association to an individual Lot at the request of the Lot Owner shall be assessed against the Lot which benefits from such service.
- (b) Any insurance premium increase attributable to a particular Lot by virtue of activities or construction of the Lot shall be assessed against that Lot.
- (c) Assessments to pay a judgment against the Association may be made only against the Lots 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 Lot Owner.
- (e) Fees, charges, late charges, fines and interest charged against a Lot 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 Lot Owner or as a result of a Lot 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 shall have a statutory lien on a Lot in accordance with § 3-116 of the Act for any Assessment imposed against a Lot Owner.

Section 10.5. **Budget Adoption and Ratification.** Within thirty (30) days after adoption of any proposed budget for the Planned Community, the Board of Directors of the Association shall provide a summary of the budget to all the Lot 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 Lot Owners, for a meeting of the Lot Owners to ratify the budget. The budget shall be ratified, unless a majority of the Lot Owners rejects the budget, whether or not a quorum is present. If the budget is rejected, the budget last ratified by the Lot Owners shall be in effect until the Lot 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 Lot 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 Lot Owner a statement in recordable form setting forth the amount of unpaid assessments against the Lot and any other matters required by § 4-109 if 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 Lot Owner.

Section 10.7. **Payment of Common Expenses.** All Common Expenses assessed under Sections 10.2 and 10.3 shall be due and payable as determined by the Board of Directors. Any past due payments shall accrue interest at the legal 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 roadways, water lines and sewer lines until accepted by the City of South Burlington, the stormwater drainage system including stormwater basins, lighting, landscaping, open space, utility lines and facilities, and including the Limited Common Elements (other than those facilities and improvements located within a public right of way), except for such maintenance of the Limited Common Elements as the Board of Directors shall, from time to time, delegate to the Lot Owners appurtenant thereto and until such time as the City of South Burlington shall accept responsibility for such Property.

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 and the Association shall have the obligation to maintain such property not owned by the Association as required by any permit or approval of the Planned Community by any governmental agency.

### Section 11.2. **Maintenance of Lots.**

- (a) Each Lot Owner shall maintain, repair and replace, at his or her own expense, all portions of his or her Lot and the Dwelling thereon in good repair. Such maintenance shall be consistent with this Declaration. In addition, each Lot Owner shall be responsible for paying the real estate taxes assessed against the Lot, for insuring the Lot and all improvements thereon, and for maintaining all private electricity, telephone, cable television, and water or sewer pipes, lines, ducts, conduits, or other apparatus which serve only the Lot. However, the Board of Directors may, by rule, decide to maintain any portion of the Lots.
- (b) In addition, each Lot Owner shall be responsible for maintaining, repairing and replacing any driveway, walkway, patio or deck located outside a Lot which serves only the Owner's Lot and all landscape plantings located within the Lot or surrounding decks or patios. All

other landscaping located within the Common Elements shall be maintained, repaired and replaced by the Association.

- (c) In the event that a Lot Owner should fail to perform any obligation required in subsection (a) and (b) 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 Lot Owner. All expenses incurred by the Association as a result of taking action under this section shall be chargeable to the Lot Owner as provided for under Sections 9.6 and 10.3 hereof.

## ARTICLE 12

### Compliance and Default

Section 12.1. **Compliance.** Each Lot 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 Lot 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 Lot Owner, to the following relief after appropriate notice to the defaulting Lot Owner:

- (a) **Liability.** A Lot Owner shall be liable for the expenses of any maintenance, repair, or replacement rendered by the Lot Owner's act, neglect, or carelessness or by that of any employees, agents, lessees, or other invitees. No Lot Owner shall conduct any activity which may result in an increase in insurance rates occasioned by use, misuse, occupancy, or abandonment of a Lot 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 Lot 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 Lot of the defaulting Lot Owner enforceable in the manner provided by the Act and the Bylaws.
- (c) **Injunctions.** The Board of Directors of the Association or any aggrieved Lot 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 Planned 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 Planned 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 Lot 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 Lot Owners. Each Lot 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 (other than Lots which have been sold by Declarant to Lot Owners) for the purpose of: (i) completing the improvements to the Property described in this Declaration, including Dwellings, roads, driveways, sewer, water and other utility lines, stormwater drainage systems, sidewalks, fences, trees, shrubs, landscaping, equipment and improvements, and for the purpose of sales activities, such as erecting signs advertising the Planned Community or the sale of Lots within the Planned 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 Lots. Declarant reserves the right to alter the layout and arrangement of the Lots, said right to last as long as the Declarant controls the Association or owns any of the Lots so altered. 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 Lot; so long as Declarant owns said Lot, without the prior written consent of the Board of Directors.

Section 13.3. Amendment to Enlarge Planned 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. The location and configuration of the Lots proposed for the Property on the Plat 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 Planned Community or to subject additional property to this Declaration, including, without limitation, the right to add Lot 32 to the Planned Community and to add up to six (6) additional carriage homes on Lot 32.



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 (other than Lots which have been sold by Declarant to Lot Owners) for the purpose of storing building materials and supplies and equipment used in improving the Property; construction, maintenance, repair, replacement of Dwellings, roads, 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 Dwellings located thereon; making future connections, hookups, and tie-ins to utility lines, equipment, and other improvements constructed to serve the Property, the Dwellings 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 Dwellings and Lots as the Declarant in its sole discretion shall determine; provided, however, that the Declarant will not build more than thirty-seven (37) Lots on the Property.

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 up to thirty-seven (37) Lots 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 Lot Owner may take any action or adopt any rule that will interfere with or diminish any Special Declarant Rights 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, Lot Owners, lienholders or mortgage holders have voted for such amendment or amendments. In addition, prior to the sale of any Lots, 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, and the City of South Burlington Development Review Board; 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 the Lots and the Common Elements. Such Rules and Regulations and use restrictions shall be binding upon all Lot 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 their Boards of Directors, shall have standing and the power to enforce such standards.

Section 14.3. **Setbacks**. All Dwellings shall be constructed within the building envelopes depicted on the Plat.

Section 14.4. **Use**. Only one single-family Dwelling, and improvements appurtenant thereto, shall be erected or maintained on each Lot.

Section 14.5. **Animals**. No animals, or fowl, except domestic pets, shall be kept on a Lot and no nuisance shall be permitted thereon.

Section 14.6. **Subdivision**. No Lot shall be further subdivided by a Lot Owner for sale purposes or otherwise.

Section 14.7. **Signs**. No signs, signboards or advertising structures of any kind shall be erected or placed on a Lot at any time except for signs advertising the Lot for sale.

Section 14.8. **Rubbish**. There shall be no disposal of trash, rubbish or garbage or the burning of same on any Lot.

Section 14.9. **Grading and Drainage**. The grading and/or drainage patterns of any Lot in the Planned Community shall not be altered for any reason due to each Lot's necessary conformance with the plans submitted and approved by the City of South Burlington and the District #4 Environmental Commission.

Section 14.10. **Architectural Control**. Except for Dwellings or improvements constructed or installed by the Declarant, no building, fence, wall or other structure shall be commenced, erected, maintained or placed on a Lot, nor shall any addition or external alteration be made, until the design and location or alterations have been approved in writing by the Declarant or, upon transfer of Declarant's control of the Association, by the Board of Directors. No approval shall be required for the design and location of any Dwelling or improvement constructed by Declarant on the Property. All central air-conditioning units shall be placed to the rear of each Dwelling and not along the side yard.

Section 14.11. **Satellite Dishes**. No antennas shall be installed on a Lot or on the exterior of any Dwelling erected thereon. One dish type receiver, no greater than 18" in diameter or length, may be installed on the side or rear exterior wall of any Dwelling or in the rear or side yard of the Lot except where a side yard has frontage on a public street.

Section 14.12. **Vehicles and Garage Use**. Garages are restricted to use by the Lots for which they belong as a parking space for vehicles. Garages may not be converted to living space. 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. The parking of motor vehicles along the roadway or in other spaces which have not been designated for parking shall be strictly prohibited.

Section 14.13. **Trees.** Except for trees removed by Declarant, no tree six (6") inches or larger on the stump shall be cut on the Property until approved in writing by the Declarant or, after Declarant transfers control to the Association, by the Board of Directors. All Owners shall comply with City of South Burlington zoning regulations for tree planting.

Section 14.14. **Lighting.** Except for seasonal decorative lights, all exterior lights must be installed and used in a manner which will not unduly disturb surrounding Lot Owners, do not violate any permit conditions and must be pre-approved by the Board of Directors.

Section 14.15. **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 on each Lot for emergency purposes and operation of generators, snow blowers, lawn mowers and similar tools or equipment.

Section 14.16. **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.

Section 14.17. **Occupants Bound.** All provisions of the Declaration and any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Lot Owners and which provide for sanctions against Lot Owners shall also apply to all occupants of the Property.

Section 14.18. **Leasing.** Lots 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 Lot 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 Lot Owner and specifically assess all costs associated therewith against the Lot Owner and the Lot Owner's property.

Section 14.19. **Energy Conservation Measures.**

- (a) Without the prior written consent of the Vermont District #4 Environmental Commission, or its successor, no alteration may be made to any Dwelling 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 and prohibit replacement with non-water conserving fixtures.
- (b) All heated structures shall be constructed to meet the Residential Building Energy Standards (RBES) in effect at the time of construction. The installation and/or use of electric resistance space heating is specifically prohibited.

Section 14.20. **Landscaping.** The Association shall continually maintain all Common Elements, facilities, and landscaping substantially as approved by the City of South Burlington Development Review Board and the District #4 Environmental Commission. All dead or diseased landscape plantings shall be replaced as soon as seasonably possible.

Section 14.21. **Special Covenants.** The following special covenants shall apply:

- (a) The Class Two wetland and associated 50-foot buffer zones shown on the Plans will remain in a natural undisturbed manner with the exception of the proposed impacts as shown on the Plans. There shall be no draining, dredging, tilling, grading, dumping of yard waste or other debris and refuse, alterations of the water flow, cutting, clearing or removal of vegetation within the wetland or buffer zone with the exception of the proposed impact areas as approved by the Conditional Use Determination for this Property. Construction of paths into or through the wetlands and wetland buffers is specifically prohibited. Allowed uses within the wetlands and their buffer zones are to be in conformance with Section 6 of the Vermont Wetland Rules, effective February 23, 1990. These restrictions run with the land and are enforceable under the Vermont Wetland Rules and the associated Conditional Use Determination for this Property.
- (b) The Declarant will construct the stormwater treatment system on the Property, including two required offset projects, in accordance with the approved plans and permit conditions. After construction, the stormwater treatment system and offset projects shall be maintained, repaired and replaced by the Association and by accepting a Deed for a Lot in South Pointe, each Lot Owner shall consent to the Association's responsibility for such obligations. After construction, the Declarant shall have no further obligations for the maintenance, repair or replacement of the stormwater systems, except for construction defects occurring prior to the delivery of the systems to the Association.
- (c) The open space within the Project is a Common Element that will be owned and maintained by the Association as described above in Sections 3.2(d), 9.5 and 11.1. Specifically, the open space area depicted as Lot 36 on the Plat (15.16 acres) shall be maintained in a natural condition and shall be subject to the following additional covenants: (i) footpaths within Lot 36 shall be established only as primitive unimproved footpaths to provide pedestrian access through the open space and wooded ridge; (ii) there shall be no mowing or cutting on Lot 36 except for necessary maintenance along the footpath and selective cutting to remove dead or diseased trees or invasive species; and (iii) there shall be no disturbance of the Class II wetlands and buffers located within Lot 36. Notwithstanding the foregoing, the Association shall agree to make the open space area depicted as Lot 36 on the Plat (15.16 acres) available for agricultural uses.

Notice is hereby given that the Association will agree in the future to make the open space area available irrevocably and in perpetuity for agricultural purposes with access to such open space over the roadways depicted on the Plat. These agricultural uses may include, without limitation, plowing, planting, fertilizing and the use of agricultural chemical, pesticides and herbicides in the course of cultivating, harvesting, storing and transporting agricultural feed or product. Consistent with this notice, all Lots are conveyed subject to a perpetual easement for any noise, odors, dust and/or byproducts and impacts that may occur in the course of conducting accepted agricultural and best-management practices on the nearby lands, including Lot 36, and for any noise, odors, dust, mud or slowing of traffic on the project roadways by agricultural vehicles. All Lot Owners, by the acceptance of their deed, waive any objection to impacts arising from accepted agricultural and best-

management practices which are consistent with the rules established pursuant to 6 V.S.A., Ch. 215 and are further notified that agricultural activities which are consistent with accepted agricultural and best-management practices do not constitute a nuisance.

Section 14.22. **Amendments.** No amendment of Section 14.19, 14.20 or 14.21 of this Article shall be effective without the prior written consent of the Vermont District #4 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 Lot 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 Lot Owners of Lots 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 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 #4 Environmental Commission, the Vermont Environmental Court, the City of South Burlington, 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 Lot 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 Planned Community or any Lot 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 Lot 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 Planned 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 Planned Community under the Declaration, requiring the votes of the Lot Owners shall also require the consent of Institutional Mortgagees holding mortgages on Lots which represent at least fifty-one percent (51%) of the mortgages of Institutional Mortgagees in the Planned Community; provided, however, that in the case of a termination of the Planned 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 in connection with the exercise of Declarant's Development Rights) except that when Limited Common Elements are reallocated by agreement between Lot Owners, only those Lot Owners and only the Institutional Mortgagees which hold mortgages on such Lots must approve such action;
- (f) Rights to use Common Elements and Limited Common Elements;
- (g) Boundaries of Lots except that when boundaries of only adjoining Lots are involved, then only those Lot Owners and the Institutional Mortgagees holding mortgages on such Lot or Lots must approve such action;
- (h) Convertibility of Lots into Common Elements or Common Elements into Lots;
- (i) Expansion or contraction of the Planned Community, or the addition, annexation or withdrawal of property to or from the Planned Community, except as otherwise reserved by Declarant in Article 13 or other than as specified in the Declaration;
- (j) Insurance or fidelity bonds;
- (k) Leasing of Lots;

- (l) Imposition of restrictions on a Lot Owner's right to sell or transfer his or her Lot;
- (m) Restoration or repair of the Planned Community after a hazard damage or partial condemnation in a manner other than that specified in the Declaration;
- (n) Termination of the Planned 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 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 during the period of Declarant control is Robert H. Rushford, Esq., Gravel and Shea, 76 St. Paul Street, Burlington, VT 05402-0369.

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 Lot in the Planned Community or otherwise generating income or deriving any other economic benefit from a Lot.

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 Lot Owners, tenants, guests, and invitees of any Lot Owner, as applicable, acknowledge that the Declarant and the Association are not insurers and that each Lot Owner, tenant, guest, and invitee assumes all risk of loss or damage to persons, to Dwellings, and to contents of Dwellings, and further acknowledge that neither the Declarant nor the Association has made any representation or warranty, nor has any Lot 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 6<sup>th</sup> day of September, 2005.

IN PRESENCE OF:

THE SNYDER SOUTH POINTE  
LIMITED PARTNERSHIP

By: The Champlain Land Company, Inc.  
General Partner

Patricia B. Corneig  
Witness

By: Christopher R. Snyder  
Duly Authorized Agent

STATE OF VERMONT  
CHITTENDEN COUNTY, SS.

At Essex Junction, Vermont this 6<sup>th</sup> day of September, 2005, personally appeared CHRISTOPHER R. SNYDER, Duly Authorized Agent of **THE CHAMPLAIN LAND COMPANY, INC., General Partner of THE SNYDER SOUTH POINTE LIMITED PARTNERSHIP**, to me known, and he affirmed the truth of the foregoing statements and acknowledged this instrument by him signed and sealed, to be his free act and deed and the free act and deed of **THE CHAMPLAIN LAND COMPANY, INC. and THE SNYDER SOUTH POINTE LIMITED PARTNERSHIP**.

Before me, Patricia B. Corneig  
Notary Public

Notary Commission issued in Chittenden County  
My commission expires: 2/10/07