

DECLARATION
LOCUST HILL CONDOMINIUM

ARTICLE I
SUBMISSION; DEFINED TERMS

Section 1.01 Reaffirmation of Submission of Property.

The lands and premises described in Exhibit A and being located in the Town of Shelburne, County of Chittenden, State of Vermont (the "Land"), together with all easements, rights, and appurtenances thereto (the "Property"), were submitted to condominium ownership by virtue of the terms and provisions of a Declaration of Condominium of Locust Hill dated May 21, 1981 and of record in Volume 70 at Page 192 of the Land Records of the Town of Shelburne and it is hereby reaffirmed, confirmed, and reasserted with respect to the Property that the same is submitted to the provisions of Chapter 15 of Title 27 of the Vermont Statutes Annotated, known as the Vermont Condominium Ownership Act (the "Act") and the same shall be known as the LOCUST HILL CONDOMINIUM (the "Condominium").

Section 1.02. Definitions. Each capitalized term used herein without definition shall have the meanings specified in the By-Laws of The Locust Hill Condominium Association (the "Association") attached as Exhibit B (the "By-Laws"), as it may be amended from time to time, or as provided in the Act.

ARTICLE II
BUILDINGS ON THE LAND; UNIT BOUNDARIES AND DESCRIPTIONS

Section 2.01. Number and Location of Buildings. The number, location, dimensions and area of each Building on the Land is depicted on Exhibit C1.

Section 2.02. Description of Buildings. There shall be seven (7) Buildings. Each Building shall contain eight (8), fourteen (14), or fifteen (15) units, as more particularly set forth in Exhibit C1. Each Building shall be constructed on a slab foundation and shall have a ground floor and a first floor and, in some instances, a second floor and a third floor, all as more particularly set forth on the Floor Plans of the units in Exhibit C2. The Buildings shall be wood framed with clapboard siding on the exterior. Roofs will be constructed with wooden trusses and overlaid with asphalt shingles or seamed steel roofing. Interior walls of each unit will be plasterboard. Open unallocated parking spaces shall be located in the vicinity of each building, all as more particularly depicted on Exhibit C1.

Section 2.03. Description of Units; Allocation. The location of all Apartments (the "Units") within each Building is shown on Exhibit C1. The Floor Plan set forth, as to each Unit, its layout, location, Unit number and dimensions. See Exhibit C2. The Buildings have no names assigned to them. Exhibit C3 is a list of all Units, the identifying number of each Unit, the value of the Property and each Unit, and the percentage of undivided interest in the Common Areas and Facilities (the "Common Elements"), including voting interest, allocated to each Unit. The locations of the Common Elements to which each Unit has direct access are shown on Exhibit C1; balconies, terraces, fences, and covered parking spaces, if any, shown adjacent or appurtenant to any Unit are Limited Common Areas and Facilities ("Limited Common Elements") appurtenant to such Unit.

Section 2.04. Unit Boundaries. Each Unit consists of the space within the following boundaries:

(a) upper and lower (horizontal) boundaries: The upper and lower boundaries of the Unit shall be the following boundaries extended to an intersection with the vertical (perimetric) boundaries:

(i) upper boundary: The horizontal plane of the bottom surface of the ceiling joists above the top floor of each Unit.

(ii) lower boundary: The horizontal plane of the top surface of the concrete floor slab.

(b) vertical (perimetric) boundaries: The vertical boundaries of the Unit shall be the vertical plane which includes the outermost surface of the plaster board of all walls bounding the Unit extended to intersections with each other and with the upper and lower boundaries.

(c) if any chute, fire duct, wire, conduit, bearing wall, bearing column or any other fixture lies partially within and partially outside the designated boundaries of any Unit, any portion thereof serving only that Unit is a Limited Common Element allocated solely to that Unit, and any portion thereof serving more than one Unit or any portion of the Common Elements is a part of the Common Elements. Subject to the foregoing, all spaces, interior partitions and other fixtures and improvements within the boundaries of a Unit are a part of the Unit.

(d) any shutters, awnings, windowboxes, doorsteps, stoops, porches, balconies, patios and all exterior doors and windows or other fixtures or improvements designated to serve a single Unit, but located outside the Unit's boundaries, are Limited Common Elements allocated exclusively to that Unit.

(e) a piece or parcel of land having a uniform width equal to the width of the Unit and a uniform depth of twelve feet (12 feet) and being situated directly to the rear of the Unit and adjacent thereto shall be Limited Common Elements allocated exclusively to that Unit.

ARTICLE III

COMMON AREAS AND FACILITIES

Section 3.01 Limited Common Elements. A Limited Common Element is a portion of the Common Elements allocated for the exclusive use of one or more but fewer than all of the Units.

Section 3.02 Assignment of Limited Common Elements. A portion of the Common Elements is marked on the Plans as Limited Common Elements. This portion of the Common Elements includes but is not limited to all of the covered parking spaces. Said covered parking spaces are Limited Common Elements for the

exclusive use of the Unit owners to whose Units these parking spaces shall become appurtenant.

Section 3.03 Common Areas and Facilities. The Common Elements are all of the Property depicted on Exhibit C1 except Units and Limited Common Elements as depicted thereon or as provided herein. The Common Elements shall remain undivided and shall be devoted to the common use and enjoyment of all Unit owners. No Unit owner nor 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. Each Unit owner may use the respective Common Elements in accordance with the purposes for which they were intended without hindering or encroaching upon the lawful rights of other Unit owners. The Common Elements include, without limitation, the following:

- (a) the Land described in Exhibit A, including the real estate upon which each Building and other improvements are located, together with the benefit of, and subject to, all rights, easements, restrictions and agreements recorded in the Land Records of the Town of Shelburne.
- (b) a right-of-way, in common with others, over the roadways shown and depicted on Exhibit C1, for vehicular and pedestrian traffic, until such time as those roadways are accepted as public streets by the Town of Shelburne, if ever.
- (c) all portions of each Building except those portions identified as Units or Limited Common Elements; and
- (d) all improvements other than Buildings and Limited Common Elements.

ARTICLE IV

USE RESTRICTIONS

Section 4.01 Residential Use. Each Building and each Unit therein shall be used solely for single-family residential purposes and no trade or business of any kind (including professional and business offices) may be carried on therein (the lease

or rental of any Unit for single-family residential purposes shall not be considered to be carrying on of a trade or business). In no event shall any Unit be occupied by more than four (4) permanent residents or without the consent of the Association.

Section 4.02 Alteration of Units. No improvement or alteration to any Unit may be made which would impair the structural integrity or mechanical systems or lessen the support of any portion of the Land or the Building in which the Unit is located. Without the prior consent of the Association, the appearance of the Common Elements or the exterior appearance of any Unit or any Building may not be changed. No Unit may be subdivided or converted into two or more Units.

Section 4.03 Interference with Others. No Unit shall be used or maintained in a manner which shall interfere with the comfort or convenience of occupants of other Units or the provisions of the By-Laws.

Section 4.04 Prospective Covenants and Restrictions. Each Unit and any person having any interest therein shall be subject to and have the benefit of certain Covenants, Restrictions, and Agreements as set forth in the By-Laws.

ARTICLE V

EASEMENTS

Section 5.01 Easement for Access. Each Unit owner is hereby granted an easement, in common with each other Unit owner, for ingress and egress through all Common Elements, subject to such reasonable rules, regulations and restrictions as may be imposed by the Association. Each Unit is hereby burdened with and subjected to an easement for ingress and egress through all

Common Elements by persons lawfully using or entitled to the same.

Section 5.02 Easement for Encroachment. To the extent that any Unit or Common Element encroaches on any other Unit or Common Element, an easement for the encroachment shall exist.

Section 5.03 Easement for Completion. The Declarant hereby reserves an easement through the Common Elements for the purpose of completing improvements described in this Declaration or to make improvements in the Condominium and to erect and remove signs advertising the Condominium.

Section 5.04 Upkeep of Condominium. The Association shall be responsible for the maintenance, repair, and replacement of the Common Elements and Limited Common Elements and each Unit owner shall be responsible for the maintenance, repair, and replacement of his Unit. Each Unit owner shall afford to the Association and the other Unit owners, and to their agents or employees, access across his Unit reasonable necessary for those purposes. If damage is inflicted on the Common Elements, Limited 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 properly repair such damage.

ARTICLE VI

DAMAGE OR DESTRUCTION

Section 6.01 Common Elements. Any portion of the Common Elements or Limited Common Elements which is damaged or destroyed shall be promptly repaired or replaced by the Association unless:

- (a) repair or replacement would be illegal under any State or local health or safety statute or ordinance, or
- (b) the Condominium is terminated.

Section 6.02 Buildings.

(a) If any portion of any Building in which a Unit is located shall be damaged or destroyed, the damaged portion shall be promptly repaired or replaced by the Association unless (i) repair or replacement would be illegal under any State or local health or safety statute or ordinance, or (ii) 80% of the Unit owners, including the owner of a Unit which will not be rebuilt, if any, and the owner of any Limited Common Element which will not be rebuilt, if any, vote not to rebuild, or (iii) the Condominium is terminated.

(b) In the event that the damage or destruction is limited to the interior of a Unit, then the owner of the Unit shall promptly repair or replace the damaged portion:

Section 6.03 Insurance. The Association shall maintain, to the extent available, property and liability insurance on the Common Elements, Limited Common Elements, and Buildings exclusive of the betterments and improvements installed by Unit owners, insuring against all risks of direct physical loss commonly insured against and comprehensive general liability insurance, all in such amounts as the Association shall determine from time to time. Any loss covered by insurance shall be adjusted by the Association which shall hold the proceeds in trust for the Unit owners and lienholders as their interest may appear; in the event of repair or replacement, the proceeds shall be disbursed first for repair or replacement. The cost of repair or replacement in excess of insurance proceeds and reserves, if any, shall be a Common Expense.

Section 6.04 Insuring Units. The owner of a Unit shall maintain property insurance on that Unit and the contents therein insuring against all risks of direct physical loss commonly insured against and comprehensive general liability insurance in such amount as the Association shall determine from time to time.

ARTICLE VII

CONDEMNATION

Section 7.01 Common Elements. If any portion of the Common Elements or Limited Common Elements is taken by condemnation, the Condominium shall not terminate unless 80 percent of the Unit owners so vote. The Association shall divide any portion of the award not used for any restoration or repair of the remaining Common Elements before the condemnation, but the portion of an award attributable to the acquisition of a Limited Common Element shall be divided equally among the owners of the Units to which that Limited Common Element was allocated at the time of acquisition.

Section 7.02 Units. Upon acquisition by condemnation of any Unit or such a part of a Unit that the Unit owner is left with a remnant which may not practically or lawfully be used for any purpose permitted by this Declaration, that Unit's entire Common Element interest shall be reallocated to the remaining Units in proportion to the respective interests of those Units prior to condemnation, and the Association shall promptly prepare, execute and record an amendment to the Declaration reflecting the reallocation. The Common Element interest of a Unit prior to condemnation, and any remnant of a Unit remaining after part of a Unit is taken, thereafter shall be a Common Element.

ARTICLE VIII

THE ASSOCIATION

Section 8.01 Authority. The business affairs of the Condominium shall be managed by the Association. The Association shall be governed by its By-Laws, as may be amended from time to time.

Section 8.02 Membership. The membership of the Association shall at all times consist exclusively of all the Unit owners or, following termination of the Condominium, of all former Unit owners.

Section 8.03 Powers. The Association shall have all of the powers, authority and duties permitted pursuant to the Act necessary or appropriate to manage the business and affairs of the Condominium.

ARTICLE IX

AMENDMENTS

Section 9.01 Generally. Except as otherwise provided in Section 9.04, this Declaration may be amended only by vote or agreement of Unit owners of Units to which at least fifty-one percent (51%) of the votes in the Association are allocated. Every amendment shall be prepared, executed, recorded and certified by the Association and shall be effective only when recorded.

Section 9.02 Individual's Consent. No amendment which alters the dimensions of any Unit or which alters the percentage of the Common Element interest to which any Unit is entitled shall be valid unless the same has been signed by the Unit owner so affected.

Section 9.03 Statutory Compliance. No instrument of amendment which alters this Declaration in any manner which would render it contrary to or inconsistent with any requirements or provisions of the Act shall be valid.

Section 9.04 Amendment by Declarant. Notwithstanding the provisions of Section 9.01, this Declaration may be amended by the Association without the consent of any Unit owner in order to comply with any statute, regulation, or other directive having

the force of law, provided, however, that in the event that such amendment shall diminish the value of any Unit or Common Element interest of any Unit owner, the written consent of the holder of any mortgage on said Unit must be first obtained; and any such amendment, upon execution and certification by the Association and recording thereof in the Land Records of the Town of Shelburne, shall be effective upon delivery of the same to the Shelburne Town Clerk for recording.

ARTICLE X

MISCELLANEOUS

Section 10.01 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 provision, and to this end the provisions of this Declaration are severable.

Section 10.02 Waiver. No provisions 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.

Section 10.03 Headings. The headings in this Declaration are for purposes of reference only and shall not limit or otherwise affect the meaning hereof.

Section 10.04 Service of Process. Pursuant to Section 1311 (8) of the Act, the person to receive service of process shall be the President of The Locust Hill Condominium Association or any authorized agent of any management firm handling the operation and maintenance of the condominium.

Section 10.05 Termination. This Declaration, as it may be amended from time to time, may be terminated as provided by law.

Section 10.06 Recording of Instruments. This Declaration and all Exhibits appended hereto, including a lot plan and floor plan, are being recorded in the Land Records of the Town of Shelburne.

IN WITNESS WHEREOF, the undersigns, being the owners of more than fifty-one percent (51%) of the aggregate ownership interest in the Locust Hill Condominium, do hereby execute this Amendment for the purpose of consenting thereto.

DATED this 29th day of February, 1988.

AMENDMENT TO DECLARATION OF CONDOMINIUM
OF LOCUST HILL CONDOMINIUM

WHEREAS, the Locust Hill Condominium was established by virtue of a Declaration of Condominium of Locust Hill dated May 21, 1981 and of record in Volume 70 at Page 192 of the Land Records of the Town of Shelburne;

WHEREAS, said Declaration of Condominium was amended by virtue of an Amendment to Declaration of Condominium of Locust Hill Condominium on January 19, 1982;

WHEREAS, said Declaration of Condominium was further amended by means of a Second Amendment to Declaration of Condominium of Locust Hill Condominium dated March 30, 1982 and of record in Volume 76 (Misc.) at Page 78 of said Land Records;

WHEREAS, said Declaration of Condominium was further amended by means of a Third Amendment to Declaration of Condominium of Locust Hill Condominium dated February 11, 1983 and of record in Volume 76 (Misc.) at Page 524 of said Land Records;

WHEREAS, said Declaration of Condominium was further amended by means of a Fourth Amendment to Declaration of Condominium of Locust Hill Condominium dated July 25, 1985 and of record in Volume 96 at Page 123 of said Land Records;

WHEREAS, said Declaration of Condominium was further amended by means of a Fifth Amendment to Declaration of Condominium of Locust Hill Condominium dated December 5, 1985 and of record in Volume 96 at Page 212 of said Land Records;

WHEREAS, said Declaration of Condominium was further amended by means of a Sixth Amendment to Declaration of Condominium of Locust Hill Condominium dated January 13, 1986 and of record in Volume 96 at Page 241 of said Land Records;

WHEREAS, said Declaration of Condominium was further amended by means of a Seventh Amendment to Declaration of Condominium of

Locust Hill Condominium dated , 198 and of record
in Volume at Page of said Land Records;

WHEREAS, said Declaration of Condominium and the Amendments thereto are chaotic, inconsistent, and extremely difficult to coordinate and comprehend;

WHEREAS, the owners of more than fifty-one percent (51%) of the total aggregate ownership interest in the Locust Hill Condominium desire to reaffirm and confirm the Locust Hill Condominium and correct the documents establishing the same which are presently of record in the Land Records of the Town of Shelburne;

WHEREFORE, pursuant to Subsection 1 of Section 16 of the Declaration of Condominium of Locust Hill Condominium dated May 21, 1981 and of record in Volume 70 at Page 192 of the Land Records of the Town of Shelburne, the undersigns, being the owners of more than fifty-one percent (51%) of the aggregate ownership interest in the Locust Hill Condominium do hereby amend said Declaration by striking all of the terms and provisions thereof and all of the terms and provisions of the Amendments thereto and by substituting, in lieu thereof, the following:

**AMENDMENT TO DECLARATION OF CONDOMINIUM OF
LOCUST HILL CONDOMINIUM**

At a meeting of the Unit Owners convened in accordance with the Locust Hill Condominium Association (the "Association"), the holders of fifty-one percent (51%) of the votes of the Association approved amending the Declaration of Condominium of Locust Hill Condominium dated February 29, 1988 and recorded in Volume 119 at Pages 376-460 of the Town of Shelburne Land Records, as amended by an Amendment to the Bylaws of the Locust Hill Condominium, received for record by the Town Clerk's Office on November 29, 1995 and recorded in Volume 189 at Page 34 of the Town of Shelburne Land Records, and as further amended by an Amendment to the Locust Hill Condominium Association Bylaws dated October 15, 2007 and recorded in Volume 347 at Page 730 of the Town of Shelburne Land Records (collectively, the "Declaration"), as follows:

- I. Section 10.04, entitled Service of Process, is hereby amended to add the following sentence to the end of the section:

The current management company authorized to receive service of process on behalf of the Association is Appletree Bay Property Management, 1205 North Avenue, P.O. Box 3009, Burlington, Vermont, 05408.

- II. The following Article shall be appended to and be a part of the Declaration:

ARTICLE XI

11.01 Rights Related To Mortgagees

- (a) Limitations On Ability To Sell/Right Of First Refusal. Any right of first refusal in this Declaration shall not adversely impact the rights of a mortgagee or its assignee to:

- (i) Foreclose or take title to a Condominium Unit pursuant to the remedies in the mortgage;
- (ii) Accept a deed or assignment in lieu of foreclosure in the event of default by a mortgagor; or
- (iii) Sell or lease a Unit acquired by the mortgagee or its assignee.

- (b) Amendments To Documents.

- (i) Any amendments of a material adverse nature to mortgagees shall be agreed to by mortgagees that represent at least fifty-one percent (51%) of the votes of Unit estates that are subject to mortgages;

- (ii) Any action to terminate the legal status of the project after substantial destruction or condemnation occurs or for other reasons shall be agreed to by mortgagees that represent at least fifty-one percent (51%) of the votes of the Unit estates that are subject to mortgages; and
- (iii) Implied approval shall be assumed when a mortgagee fails to submit a response to any written proposal for an amendment within sixty (60) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

(c) **Rights Of Condominium Mortgagees And Guarantors.** The mortgagee and guarantor of the mortgage on any Unit in the Condominium project shall be given timely written notice of:

- (i) Any condemnation or casualty loss that affects either a material portion of the project or the Unit securing its mortgage;
- (ii) Any sixty (60) day delinquency in the payment of Assessments or charges owed by the owner of any Unit on which it holds the mortgage;
- (iii) A lapse, cancellation, or material modification of any insurance policy maintained by the Association; and
- (iv) Any proposed action that requires the consent of a specified percentage of mortgagees.

(d) **First Mortgagee's Rights Confirmed.** No provision of this Declaration shall give a Condominium Unit Owner or any other party priority over any rights of the First Mortgagee of the Condominium Unit pursuant to its mortgage in the case of payment to the Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of Condominium Units and/or Common Elements.

(e) **Unpaid Dues.** Any First Mortgagee who obtains title to a Condominium Unit pursuant to the remedies in the mortgage or through foreclosure will not be liable for more than six (6) months of the Unit's unpaid regularly budgeted dues or charges accrued before acquisition of the title to the Unit by the Mortgagee. If the Association's lien priority includes costs of collecting unpaid dues, the lender will be liable for any fees or costs related to the collection of the unpaid dues.

(f) **Priority.** In the event of a conflict between the provisions contained in this article and any other of the Declaration, the provisions hereof shall control.

III. Except as specifically amended hereby, the Declaration remains in full force and effect.

The President of the Association hereby certifies that fifty-one percent (51%) of the Unit Owners approved the foregoing Amendment to Declaration of Condominium of Locust Hill Condominium in person or by proxy.

Dated this 12 day of March 2010.

Locust Hill Condominium Association

By:

Heidi Wetherbee
Heidi Wetherbee, its President and Duly
Authorized Agent

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

Burlington
At Shelburne, in said County and State, this 12 day of March
2010, personally appeared Heidi Wetherbee, President and Duly Authorized Agent of **Locust Hill Condominium Association** and she acknowledged this instrument, by her signed, to be her free act and deed and the free act and deed of said association.

Before me,

John D. Dineen
Notary Public

My Commission Expires: 02/10/11

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