

DECLARATION
OF
HAKONE HOUSE CONDOMINIUM

Book 58
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ARTICLE I

SUBMISSION: DEFINED TERMS

Section 1.01. Submission of Property; Creation. Stahmar, Inc., a Massachusetts corporation having a place of business in Sudbury, Middlesex County, Massachusetts (the "Declarant"), owner in fee simple of the lands described in Exhibit D, located in the Town of Cambridge, County of Lamoille and State of Vermont (the "Land"), hereby submits the Land, together with all easements, rights and appurtenances thereto (the "Property") to the provisions of Chapter 15 of Title 27 of the Vermont Statutes Annotated, known as the Vermont Condominium Ownership Act, as amended (the "Act"), and hereby creates with respect to the Property a condominium, to be known as Hakone House 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 Hakone House Condominium Association (the "Association") attached as Exhibit C (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 Building. The location of the Building on the Land is depicted on Exhibit A.

Section 2.02. Description of Building. The building on the Land (the "Building") is a combination of steel, wood, precast concrete, and masonry construction on a concrete and masonry foundation. The walls of the central core, stairwell (which in part form common walls between the central core and the adjoining Units) and bearing walls are masonry and/or steel stud construction. Exterior walls and firewalls are comprised of masonry and/or steel frame construction. Decks and roofs are of wood frame construction. The first floor and basement are of poured concrete. Floor construction for the first floor entry hall, second floor and third floor levels is prestressed concrete plank. The Building is three stories and is divided into a total of two Units (individually a "Unit", collectively, the "Units"). Units are designated as "Hakone House A" and "Hakone House B" as shown on Exhibit B. Each Unit contains twelve Apartments

(individually an "Apartment"; collectively, the "Apartments"). Each Unit contains four Apartments on the first floor, four Apartments on the second floor, and four Apartments on the third floor. Apartments are as designated on the Plans for each floor and are consecutively numbered H-1 through and inclusive of H-24.

Each floor of each Unit will contain a central core which adjoins the Apartments located on such floors. The central core located on the second floor and third floor will provide access to a common stairwell in each Unit, leading to a central core located on the first floor, then leading to a partially enclosed entrance platform located at the first floor of each Unit. The central core on the second floor and third floor contains lockable ski storage lockers for use by each Apartment and designated as such, storage closets and maids closets. The second floor core will also contain a public washer and dryer. The first floor central core contains lockable ski storage lockers for use by each Apartment and designated as such, and maids closets. The first floor also contains a trash closet at the partially enclosed entrance platform. The Building has a basement for the purpose of mechanical equipment.

The exterior of the Building has wood shingles and diagonal wood boarding with wood trim and an asphalt shingled roof. There are balconies at each first, second and third floor level in the rear and front of each Unit with each Apartment having direct access to the one adjoining balcony in the front and one adjoining balcony in the rear by means of a sliding glass door.

Section 2.03. Description of Apartments; Allocation. The location of all Apartments within each Building is shown on the "Plans" attached as Exhibits A and B. The plans set forth as to each Apartment, its layout, location, Unit number and dimensions. See Exhibits A and B. Exhibit E is a list of all Apartments, the identifying number of each Apartment, the value of the property and each Apartment and the percentage of undivided interest in the Common Areas and Facilities (the "Common Elements") including voting, allocated to each Apartment. The locations of the Common Elements to which each Apartment has direct access are shown on Exhibit A; balconies, terraces, and fences, if any, shown adjacent to any Apartment are Limited Common Areas and Facilities ("Limited Common Elements") appurtenant to such Apartment.

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

(a) upper and lower (horizontal) boundaries: The upper and lower boundaries of the Apartment 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 precast concrete planks on the first and second floors and the bottom chords of the roof trusses on the third floor.

(ii) lower boundary: The horizontal plane of the top surface of the subflooring.

(b) vertical (perimetric) boundaries: The vertical boundaries of the Apartment shall be the vertical plane which includes the outermost surface of the wall studs or strapping bounding the Apartment 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 Apartment, any portion thereof serving only that Apartment is a Limited Common Element allocated solely to that Apartment, and 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 an Apartment are a part of the Apartment.

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

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 Apartments.

Section 3.02. Common Areas and Facilities. The Common Elements are all the Property depicted on Exhibits A and B except Apartments and Limited Common Elements. The Common Elements shall remain undivided and shall be devoted to the common use and enjoyment of all Apartment owners. No Apartment 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 Apartment 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 Apartment 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 Cambridge;
- (b) all portions of each Building (including the central core referred to in Section 2.02) except those portions identified as Apartments or Limited Common Elements; and
- (c) all improvements other than Buildings and Limited Common Elements.

ARTICLE IV

USE RESTRICTIONS

Section 4.01. Residential Use. Each Building and each Apartment therein shall be used solely for residential purposes and no trade or business of any kind (except professional and business offices) may be carried on therein; (the lease or rental of any Apartment for residential purposes shall not be considered to be carrying on of a trade or business).

Section 4.02. Rights Reserved by Declarant. The Declarant reserves the right to use or maintain any Apartment as a sales office, management office or model until such time as the Declarant conveys the title thereto.

Section 4.03. Alteration of Apartments. No improvements or alteration to any Apartment 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. Without the prior consent of the Association, the appearance of the Common Elements or the exterior appearance of any Apartment or the Building may not be changed.

Section 4.04. Interval Shares. An Apartment may be committed to Interval Shares upon the recording of a declaration thereof with the Town Clerk of the Town of Cambridge. For the purposes of this Declaration, an Interval Share means an estate in land (a) conferring the exclusive right of occupancy and possession of the Apartment during a finite number of separated time periods of fixed duration, together with a vested estate in fee simple in the remainder interest in the Apartment or (b) in fee simple coupled with the exclusive right to occupy and possess the Apartment during a potentially infinite number of separated time periods of fixed duration. An Interval Share is not created by a mere contractual right to exclusive occupancy and possession for any separated time period. For the purposes of this Declaration, "Apartment Owner" shall mean, as to an Apartment committed to Interval Shares, each owner of an Interval Share.

Section 4.05. Interference with Others. No Apartment shall be used or maintained in a manner which shall interfere with the comfort or convenience of occupants of other Apartments or the provisions of the By-laws.

ARTICLE VEASEMENTS

Section 5.01. Easement for Access. Each Apartment owner is hereby granted an easement, in common with each other Apartment 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 Apartment 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 Apartment or Common Element encroaches on any other Apartment 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 maintenance, repair and replacement of the Common Elements and each Apartment owner shall be responsible for the maintenance, repair and replacement of his Apartment. Each Apartment owner shall afford to the Association and the other Apartment owners, and to their agents or employees, access across his Apartment reasonably necessary for those purposes. If damage is inflicted on the Common Elements or any Apartment through which access is taken, the Apartment owner responsible for the damage, or the Association, if it is responsible, shall promptly repair such damage.

Section 5.05. Roads, Open Lands; Utilities. The Association shall share in the expense and cost of maintenance, repair and replacement of the roads, open lands and utilities serving the Condominium located within The Village at Smugglers' Notch, on a prorata basis with others having the right, use or enjoyment of such facilities.

ARTICLE VIDAMAGE OR DESTRUCTION

Section 6.01. Common Elements. Any portion of the 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. Apartments. (a) If any portion of the Building 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 percent of the Apartment owners, including the owner of an Apartment and the owner of any Limited Common Element which will not be rebuilt, 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 an Apartment or a Limited Common Element, then the owner of the Apartment or Limited Common Element, as the case may be, shall promptly repair or replace the damaged portion.

Section 6.03. Insurance. The Association shall maintain, to the extent available, property insurance on the Common Elements and Apartment, exclusive of betterments and improvements installed in Apartments by Apartment 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 Apartment owners and lienholders as their interests 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.

ARTICLE VII

CONDEMNATION

Section 7.01. Common Elements. If any portion of the Common Elements is taken by condemnation, the Condominium shall not terminate unless 80 percent of the Apartment 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 Apartments to which that Limited Common Element was allocated at the time of acquisition.

Section 7.02. Apartments. Upon acquisition by condemnation of any Apartment or such a part of an Apartment that the Apartment owner is left with a remnant which may not practically or lawfully be used for any purpose permitted by this Declaration, that Apartment's entire Common Element interest shall be reallocated to the remaining Apartments in proportion to the respective interests of those Apartments 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 an Apartment prior to condemnation, and any remnant of an Apartment remaining after part of an Apartment 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 it 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 Apartment owners or, following termination of the condominium, of all former Apartment 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 IXAMENDMENTS

Section 9.01. Generally. Except as otherwise provided in Section 9.04, this Declaration may be amended only by vote or agreement of Apartment owners of Apartments to which at least 75 percent 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 in the Land Records of the Town of Cambridge.

Section 9.02. Individual's Consent. No amendment which alters the dimensions of any Apartment or which alters the percentage of the Common Element interest to which any Apartment is entitled shall be valid unless the same has been signed by the Apartment 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 Declarant, without the consent of any other Apartment owner (a) prior to the sale by the Declarant of 50 percent of the Apartments, or (b) in order to comply with any provision of law; and any such amendment, upon execution and certification by the Declarant and recording by the Town Clerk of the Town of Cambridge, shall be effective upon recording.

ARTICLE XMISCELLANEOUS

Section 10.1. Invalidity. If any provisions 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 10.02. 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.

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. Right of First Refusal. No Apartment may be conveyed, sold or leased to any person on any terms unless at least 45 days prior to such conveyance the Apartment shall have been offered to the Declarant, or its successors, on the same terms and conditions and the Declarant shall not have accepted such offer within 15 days after its receipt. Notice shall be in writing, addressed to the Declarant and shall include the name and address of the offeror, the date of the offer and the amount and terms thereof. Acceptance or waiver by the Declarant shall be in writing in form satisfactory for recording in the Land Records of the Town of Cambridge.

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. Agent. The person who shall receive service of process as required by the Act is Robert T. McGrath and his place of business is The Village at Smugglers' Notch, Cambridge, Vermont.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed by its President and duly authorized Agent this 10th day of December, 1979.

WITNESSES:

STANMAR, INC.

Christine E. Spaulding

BY:

Stanley Snider
Stanley Snider

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

Personally appeared Stanley Snider and he acknowledged the foregoing instrument by him signed and sealed to be his free act and deed and the free act and deed of Stanmar, Inc. this 10th day of December, 1979.

Before me,

[Signature]
Notary Public