

## DECLARATION OF PROTECTIVE COVENANTS

### FOR STERLING TOWNHOUSES 1-10

KNOW EVERYONE BY THESE PRESENTS that the undersigned owners of townhouses located at The Village at Smugglers' Notch (formerly Madonna Village) in the town of Cambridge, County of Lamoille and State of Vermont desire to subject their properties known as Sterling Townhouses numbered 1-10, being designated as Lots S-1 through S-10 at the Village at Smugglers' Notch, as shown on a plans of maps in Volume VI at Pages 6 through 10 and Volume I at Page 3-M of the Land Records of the Town of Cambridge) to certain protective covenants, restrictions and conditions that are for the benefit of the said premises and the purpose of protecting the value and desirability thereof, and which shall run with the land and be binding on all parties having any right, title or interest in and to the premises or any portion thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

#### DEFINITIONS:

- A. "Townhouses" shall mean those properties subject to the provisions of this Declaration of Protective Covenants.
- B. "Association" shall mean the Sterling Townhouses 1-10 Association.
- C. "Owner" shall mean and refer to the owner(s) of record of any of the Sterling Townhouses as disclosed in the Land Records of the Town of Cambridge, Vermont. (Whether one or more persons or entities, which collectively shall be deemed to be but one [1] owner), excluding, however, those having such interest merely as security for the performance of an obligation. The recorded title to a townhouse shall be conclusive evidence as to its ownership. Recorded title may be by one (1) or more deeds.

#### COVENANTS

1. Each and every lot hereinabove referenced shall be well maintained with healthy grass and appropriate shrubs and trees.
2. The exterior of each and every Townhouse shall be well maintained so that all roofs, exterior building surfaces, gutters, downspouts and other exterior improvements are sound, attractive and in harmony with other townhouses.
3. Prior to changing the color of any exterior siding or any portion thereof or the roof of any Townhouse situated on any of the lots hereinabove referenced, the owner of the said lot shall obtain the written consent of the owners of at least two-thirds (2/3) of the Townhouses hereinabove referenced.
4. No new building, fence, wall or other structure of any kind shall be commenced, erected or maintained on any of the Townhouses hereinabove referenced, nor shall any addition to or change in any existing structure thereon be made without the proponent thereof first obtaining the written approval of the owners of at least two thirds (2/3) of the Townhouses.
5. To the extent that any structure on any Townhouse lot currently encroaches on any other lot, an easement for such encroachment shall exist.

6. The reasonable cost of repair and maintenance of a party wall shall be shared by the owners who make use of the wall in proportion to such use. If a party wall is destroyed or damaged by fire or other casualty, any owner who has used the wall may restore it, and if the other owner thereafter makes use of the wall, he or she shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such owner to contribution from any other owner under this covenant shall be appurtenant to the land and shall pass to such owners' successors in title.

7. Except in cases where resort to a court of law is absolutely necessary to avoid irreparable injury, any owner of any townhouse seeking to enforce any of these covenants shall refrain from instituting any action at law or in equity until the owner seeking enforcement has given written notice to those owners against whom he wishes to enforce covenant(s), stating clearly the provisions sought to be enforced and the corrective action desired. In the event that the matter has not been satisfactorily resolved within fifteen (15) days thereafter, or within any other period of time stipulated to by all parties in interest, then the matter may be submitted to a court of law and the prevailing party shall be entitled to reasonable attorney's fees and costs.

8. The owner of each Townhouse shall be a member of the Sterling Townhouse 1-10 Association. Each of the said Townhouses shall be subject to the ByLaws, rules and regulations of the Association. Membership in the Association shall be a benefit to the real property, running with the land perpetually.

9. Maintenance, repair, and replacement of each Townhouse roof, all exterior surfaces of each Townhouse, and any structural elements of any Townhouse damaged by fire or other casualty shall be the ultimate responsibility of each Townhouse owner, but shall be made under the control and direction of the Association, The Association shall not control or direct repairs to or changes in the interiors of any Townhouse which do not affect other Townhouses. Each Townhouse owner shall afford to The Association and to its agents or employees access into and across his Townhouse property as reasonably necessary for these purposes. The exterior of each Townhouse shall be maintained in first-class quality condition. The Association shall have a right to enter upon any Townhouse if the exterior or structure of that Townhouse is not maintained in first-class quality condition, after first giving thirty (30) days notice to the owner of such Townhouse, to maintain and repair such property to first-class quality condition, if in the opinion of not less than a majority of the Board of Directors of the Association such action is necessary, and all expenses necessitated by the negligence, misuse or neglect of any Townhouse owner shall be assessed to such owner, rather than to the Association as a whole. All assessments made by the Association shall constitute liens identical to the lien created by Title 27 V.S.A. § 1323 for assessment of common expenses of condominiums.

10. The owner of each Townhouse shall be a member of the Smugglers' Notch Homeowners' Association, Inc., with dues and other obligations paid in good standing. The Smugglers' Notch Homeowners' Association, Inc. is an express third party beneficiary of this Declaration, and shall have the right to enforce this provision of this Declaration.

11. The Association may employ one or more persons or entities to manage the Association's business. Until the Association shall vote to the contrary, Smugglers' Notch Homeowners' Association, Inc. shall serve as such a manager.

12. In the event of destruction or substantial damage to one or more of the Townhouses, the property or properties shall be promptly repaired or replaced as required by two-thirds (2/3) majority vote of the Members of the Association.

13. The owner or owners of each Townhouse shall keep the same at all times fully insured against fire and other casualty as well as general liability, all with broad form property insurance coverage, which policy or policies of insurance shall name the Smugglers' Notch Homeowners' Association, Inc. or the Association as loss payee for said owners. The Smugglers' Notch Homeowners' Association, Inc. or the Association shall receive insurance proceeds in the event of any loss, and shall apply the same as follows: (a) first, to the payment of outstanding mortgages against Townhouses if the Association is unable to negotiate the continuation of such mortgages, (b) second, to the repair and replacement of the structural elements of the Townhouses, which were damaged by such casualty, and (c) third, to the refurbishing of the interiors of the damaged Townhouses in accordance with the directions of the owner of each damaged townhouse; then (d) any unused proceeds shall be disbursed to the owners of the damaged Townhouse(s). The recipient of the insurance proceeds, whether it be the Smugglers' Notch Homeowners' Association, Inc. or the Association, shall make all disbursements in a fair and equitable fashion. In the event that available insurance fails to pay the full cost of the repair and replacement of structural elements of Townhouses, the Association shall assess the owner(s) of each Townhouse for additional costs of repair and replacement. Such cost may include administrative costs incurred by the Association, and all such costs shall constitute a lien against each Townhouse identical to the lien created by Title 27 V.S.A. § 1323 for condominium expenses.

14. All repairs and replacements to Townhouses shall be of first-class quality.

15. In any proceeding arising because of an alleged failure of any party to comply with the terms of this Declaration, or the ByLaws or rules and regulations of the Association, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be awarded by the court. The Association shall have the right to enforce, by any proceeding at law or in equity, all of the restrictions, conditions, covenants, liens and charges now or hereinafter imposed in accordance with the provisions of the Declaration as the same are now or may hereinafter be amended. Failure by the Association to enforce any provision of this Declaration shall in no event be deemed a waiver of the Association's right to enforce the same thereafter.

16. This Declaration may be amended only by vote of at least two-thirds (2/3) of all Members of the Association. 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.

17. These Protective Covenants are in addition to all prior covenants currently of record.

18. If any portion 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. To this end, the provisions of this Declaration are severable.

19. Owners of Sterling Townhouses at The Village at Smugglers' Notch who are not signatories to this Declaration of Protective Covenants may subject their properties to this Declaration at any time by referencing the volume and page at which this Declaration shall be

recorded in the Land Records of the Town of Cambridge in a separate declaration which incorporates the provisions hereof by reference.

20. The provisions of this Declaration shall run with the land and bind the land, and shall be and remain in effect perpetually to the extent permitted by law. Every purchaser or grantee of any interest in any real property subject to this Declaration, by the acceptance of a deed or other conveyance therefore, thereby agrees that the provisions of this Declaration shall be extended and renewed. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void or voidable for violation of the Rule Against Perpetuities, then such provisions shall continue only twenty-one years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

DATED: May 20, 1995