

**STONE RIDGE FARM**  
**AMENDED AND RESTATED**  
**DECLARATION OF EASEMENTS, COVENANTS,**  
**CONDITIONS AND RESTRICTIONS**

This Amended and Restated Declaration, made as of the 29th day of March, 2007 (the “Declaration”), by **ROTH ROGERS REALTY, LLC**, a Maine limited liability company with a mailing address of 712 Lippincott Avenue, Moorestown, New Jersey 08057 (hereinafter referred to as “Declarant”).

**W I T N E S S E T H**

**WHEREAS**, Declarant is the owner in fee simple of certain real property in the Town of Falmouth, Cumberland County, Maine, as described in that certain deed dated March 24, 2006 and recorded in the Cumberland County Registry of Deeds in Book 23838, Page 85 (the “Original Property”), which Property is delineated on a certain plan entitled “Amended Subdivision Plat Plan, Stone Ridge Farm” prepared by Mitchell & Associates for Declarant, dated December 5, 2006, revised January 10, 2007 and recorded in the said Registry of Deeds in Plan Book 207, Page 80.

**WHEREAS**, Declarant executed and recorded a Declaration of Easements, Covenants, Conditions and Restrictions dated September 13, 2006 and recorded in the Cumberland County Registry of Deeds in Book 24371, Page 223 (the “Original Declaration”). Declarant now wishes to amend and restate the Original Declaration in its entirety as set forth herein.

**NOW THEREFORE**, Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following easements, covenants, conditions and restrictions, which are for the purpose of protecting the value and desirability of, and which shall run with the title to the said Property and be binding on all parties having any right, title or interest in the said real property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner (as defined below) thereof.

**ARTICLE I**  
**DEFINITIONS**

**Section 1.1. General Definitions.** In addition to terms defined elsewhere in this Declaration, the following terms shall have the meanings set forth below, when used in this Declaration:

“**Additional Lots**” shall have the meaning specified in Section 12.3.

“**Association**” means the Stone Ridge Farm Owners Association, a Maine non-profit corporation, and its successors and assigns as may be created or designated for the purposes of carrying out the Association’s obligations pursuant to this Declaration.

**“Board of Directors”** means the Board of Directors of the Association.

**“Buffer Zones”** mean the Vegetated No-Cut Buffers and the No Cut Vegetated Buffers.

**“Building Envelope”** means the area within each Lot on which improvements can be constructed, which envelopes are depicted on the Subdivision Plan and which envelopes expressly exclude the Buffer Zones.

**“Bylaws”** means the document having that name and providing for the governance of the Association, as such document may be amended from time to time.

**“Class A Members”** shall have the meaning specified in Section 4.2 hereof.

**“Class B Member”** shall have the meaning specified in Section 4.2 hereof.

**“Common Areas”** means, at any time, all portions of the Property then subject to this Declaration (including all improvements now or hereafter located thereon) other than the Lots, including without limitation, all Open Space depicted on the Subdivision Plan, all Roads that may exist from time to time (whether owned by the Declarant or the Association), walkways, walking trails and paths, drainage systems, the Storm Water Management System (including those portions of the Storm Water Management System located within the boundaries of a Lot), landscaped areas, as such Common Areas may be revised from time to time in connection with changes to the Common Areas permitted in Section 12.4, together with all lighting and utilities located on, under or above the above described areas. The foregoing notwithstanding, if at any time any Road, or portion thereof, is accepted by the Town of Falmouth as a public road, that Road or portion thereof so accepted, shall no longer be part of the Common Areas from and after date of such acceptance.

**“Common Expenses”** means those costs and expenses necessary or appropriate, as reasonably determined by the Board of Directors, in connection with the ownership, maintenance, repair, replacement, insurance and administration of the Common Areas, including the Storm Water Management System, including without limitation, real and personal property taxes, together with all costs and expenses necessary and adequate for the proper administration, management and operation of the Association.

**“Declarant”** means Roth Rogers Realty, LLC, its successors and assigns as may be designated by it as successor Declarant hereunder, or designated by any such previously designated successor, by an instrument recorded in the Registry of Deeds.

**“Declarant Control Period”** means the period which extends from the date of the recording of this Declaration until the latter of (i) the conveyance of all Lots (including any Lots that Declarant reserves the right to create pursuant to Article XII) to a purchaser other than to an affiliate of Declarant or to a successor Declarant; or (ii) thirty (30) years from the date of recordation of this Declaration; provided, however, that Declarant shall have the right to terminate the Declarant Control Period prior to such date by filing a notice of termination in the Registry of Deeds.

**“Declaration”** means this Amended and Restated Declaration of Easements, Covenants, Conditions and Restrictions, as such may be amended from time to time.

**“DEP Permit”** means that certain permit issued by the Maine Department of Environmental Protection with respect to the Property, which permit is entitled "Site Location of Development, Natural Resource Protection, Water Quality Certification, Traffic" and which permit is dated July 17, 2006, as the same may be amended or supplemented from time to time.

**“Drainage Areas”** means the areas designated on the Subdivision Plan as “Drainage Easement”, including the easement area located on Lot 7; located along the common boundary of Lots 7 and 8; located along the common boundary of Lots 9 and 10 and across the Buffer Zone on Lot 10 to the Storm Water Retention Pond, as depicted on the Subdivision Plan; located along the common boundary of Lots 4 and 5 and from such common boundary alongside Rogers Trail and across Lots 5 and 6; the area located on Lot 22; alongside the common boundary of Lots 16 and 17; the detention ponds and surrounding areas on Lot 19; and the area depicted on Lot 1.

**“Dwelling”** means any residential structure or any building or any part thereof designed and intended for use and occupancy as a residence.

**“Dwelling Accessory”** means a subordinate building, the use of which is incidental to the Dwelling and customary in connection with that use.

**“Eligible Mortgage Holder”** means the holder of a recorded first mortgage on a Lot who has delivered written notice to the Association by certified or registered mail, return receipt requested, or by delivery in hand securing a receipt therefor, which notice shall state the Mortgagee’s name and address and the Owner’s name and address, and shall further state that the mortgage is a recorded first mortgage.

**“Lot”** means a parcel of land designated as a Lot on the Subdivision Plan. For purposes of this Declaration, multiple Lots owned by a common Owner, whether or not such Lots are contiguous, shall be considered to remain separate Lots. If a Lot is owned by multiple Owners, it shall remain a single Lot.

**“Member”** means any Owner entitled to membership in the Association as provided in the Declaration.

**“Mortgagee”** means the holder of any recorded first mortgage encumbering one or more of the Lots.

**“Nitrate Plume Plan”** shall mean that certain plan entitle “Nitrate Plum Plan” prepared by Mitchell & Associates for Declarant, dated October 18, 2005 and recorded in the Registry of Deeds herewith.

**“No Cut Vegetated Buffers”** means the 100 foot setback areas from Blackstrap Road, located on Lots 19 and 24 and in the Common Area located southerly of Lot 19 and adjacent

land now or formerly owned by Reed and the 50-foot setback area on Lot 1, all as depicted on the Subdivision Plan.

**“Open Space”** shall mean that area depicted as “Open Space” on the Subdivision Plan.

**“Owner”** means the record owner, whether one or more persons or entities, of the fee simple title to any Lot that is part of the Property, but does not include the holder of a mortgage unless and until such holder has acquired title after foreclosure or by sale or other transfer in lieu of foreclosure.

**“Property”** shall mean the Original Property and any Additional Land subjected to this Declaration, as provided in Section 12.2 herein.

**“Registry of Deeds”** means the Cumberland County (Maine) Registry of Deeds.

**“Regular Assessment”** means an Owner’s share of the Common Expenses, allocated by Lot, for each regular period of the Association’s fiscal year as reflected in the budget adopted by the Board of Directors for such year.

**“Roads”** means all road and travelways for common use of the Owners and as depicted on the Subdivision Plan from time to time, which shall initially include Stone Ridge Road, Rogers Trail and Hilltop Trail, as shown on the Subdivision Plan. Hilltop Trail does not touch the southerly boundary of the Original Property.

**“Rules and Regulations”** means such rules and regulations as are promulgated by the Board of Directors from time to time with respect to the use of all or any portion of the Property.

**“Special Assessment”** means an Owner’s share of any assessment made by the Board of Directors in addition to the Regular Assessment.

**“Storm Water Management System”** means the “Retention Pond” lying westerly of Lots 13 and 14; the “Detention Ponds” situated on Lot 19; the Buffer Zones and the Drainage Areas.

**“Subdivision Plan”** means that certain plan entitled “Amended Subdivision Plat Plan, Stone Ridge Farm” prepared by Mitchell & Associates for Declarant, dated December 5, 2006 and revised through January 10, 1007 and recorded in the Registry of Deeds in Plan Book 207, Page 80, as the same may be amended from time to time.

**“Vegetated No Cut BMP Buffers”** means the storm water buffers located on the Common Areas and on Lots 1, 5-11, 13-15, 17-20 and 24, as depicted on the Subdivision Plan as “No Cut Zones”.

## **ARTICLE II**

### **PROPERTY RIGHTS**

**Section 2.1. Owners' Easements.** Every Owner shall have a nonexclusive right and easement of access, ingress and egress across and use and enjoyment in, of and to the Common Areas which shall be appurtenant to and shall pass with the title to every Lot, subject to the right of the Association to suspend such right and easement of any owner for any period during which any assessment or charge which such Owner is obligated to pay under the Declaration remains unpaid, and for a period not to exceed thirty (30) days for any infraction of the Rules and Regulations; provided, however, that no such suspension shall impair the right of access, ingress and egress to such Owner's Lot. Every Owner's right and easement of use and enjoyment in, of and to the Common Areas is further subject to the rights of the Declarant and the Association as set forth herein, provided that the exercise of such rights shall not impair the right of ingress and egress to an Owner's Lot, except on a temporary or emergency basis from time to time to grant easements or leases affecting the Common Areas or to grant a mortgage of or convey fee title to portions of the Common Areas; provided, however that no such grant or conveyance shall impair the right of access, ingress or egress to any Lot, and to modify the Common Areas, as provided in Section 3.2. The vote of Owners approving the grant or conveyance shall be evidenced by an instrument recorded in said Registry of Deeds. The Owners' easement in, of and to the Common Areas is and shall be subject further to the rights and easements of the Declarant and others as set forth, or referred to, in this Declaration and the restrictions on the use of the Common Areas, as set forth herein. Notwithstanding anything to the contrary herein, Owners shall have no rights with respect to that portion of the Common Area between the southwesterly terminus of Hilltop Trail and the southwesterly side of the Original Property, unless and until such portion of the Common Areas is conveyed to the Association.

**Section 2.2. Association Easements.** Each Lot shall be and is hereby made subject to an easement in favor of the Association and its agents, employees, servants and contractors, (i) for inspection of the Lots in order to verify the compliance by Lot Owners with the terms of this Declaration; and (ii) for performing inspections, maintenance, repair, correction of emergency conditions on and replacement of the Common Areas accessible from such Lots, as necessary and appropriate; (iii) for inspection, maintenance, repair and replacement of the Common Areas accessible from such Lots, and (iv) for correction of emergency conditions on or in one or more Lots, or casualties to the Common Areas, and (v) to access and to perform such inspections, maintenance, repairs, corrections of emergency conditions on and replacement of the Storm Water Management System located on or accessible from such Lots, as necessary and appropriate and (vi) for minor encroachments by roadways or sidewalks constructed by the Declarant or the Association.. It is understood and agreed that the Association and its agents, employees, servants and contractors shall take reasonable steps to minimize any interference with a Lot Owner's use of his Lot resulting from the Association's exercise of any rights it may have pursuant to this Section 2.2. The Declarant shall have the right to convey such rights to the Association as may be necessary in connection with the Association's easement as herein described.

**Section 2.3. Drainage Easements.** Each Lot shall be and is hereby made subject to an easement in favor of the Association and its agents, employees, servants and contractors, and to each other Lot, for storm water drainage, over, under and through the Drainage Areas, as depicted on the Subdivision Plan.

**Section 2.4. Parking.** Owners, their family members, tenants, licensees, and invitees, are prohibited from parking vehicles of any type on or within the Roads or any other Common Areas, except as expressly permitted by the Rules and Regulations.

**Section 2.5. Roads.** The Roads are expressly reserved as private rights of way, as described in this Declaration, and are not dedicated for public use or intended for acceptance as public ways. The foregoing notwithstanding, Declarant reserves the right at any time and from time to time to offer all or any portion of the Roads to the Town of Falmouth as public roads. In addition, Declarant reserves the right, but shall not be obligated, to convey all or any portion of the Roads to the Association, at Declarant's sole discretion. If Declarant elects to convey such Road or portions thereof to the Association, the Association shall be obligated to accept such conveyance. Following any such conveyance, the right in this Section to offer the Roads to the Town of Falmouth as public roads shall inure to the benefit of the Association. Other than Rogers Trail, the Roads and that portion of the Common Area between the southwesterly end of Hilltop Trail and the southerly side of the Original Property are subject to an Easement Agreement in favor of Skillin Greenhouses dated March 5, 2007 and recorded in the Registry of Deeds in Book 24909, Page 293 (the "Skillin Easement Agreement"). The terms and conditions of the Skillin Easement Agreement are incorporated herein by reference. The Owners shall have no ownership interest in the Roads, by implication or otherwise, but the Owners shall have the easement rights in the Roads expressly granted in this Declaration.

**Section 2.6. Common Areas.** Declarant reserves the right, but shall not be obligated, to convey the Common Areas, or any portions thereof, to the Association. If Declarant elects to convey such Common Areas or portions thereof to the Association, the Association shall be obligated to accept such conveyance. If Declarant conveys the Common Areas to the Association, in addition to any other rights reserved in the instrument of conveyance, such conveyance shall be expressly subject to the rights reserved by the Declarant hereunder, including without limitation the rights set forth in Article XII hereof whether or not such instrument of conveyance expressly reserves such rights.

**Section 2.7. Easement for Utilities.** The Common Areas shall be, and hereby are made, subject to an easement in favor of each Lot for the use, maintenance, repair and replacement of wires, cables, conduits and pipes for utilities serving such Lot in the location of such utility facilities originally constructed, or such other area as the Association may designate from time to time, including electricity, gas, drinking water, sprinkler system water, storm water, sanitary sewer, telephone, cable television and other utilities as may from time to time be required to serve the residential use of the Lot. Provided, however, that the location for connection to all such utilities within the Common Areas shall be approved in accordance with the procedures set forth in Article VII of this Declaration.

**Section 2.8. Grading Easement.** Each Lot within the Property shall be and hereby is made subject to an easement for the benefit of the Association, or such other owner from time to time of the Common Areas, to enter upon each such Lot for all purposes to grade the land in such Lot adjoining any one or more of the Roads as necessary to satisfy any slope or grading requirements of any applicable agency or jurisdiction or to conform with good road construction

practice or industry standards. Such easement shall include without limitation the right to excavate, pave, place fill material, loam and seed and other necessary incidental work.

**Section 2.9. Use of Association Easements.** All easements granted to Association shall also run to the benefit of Declarant for so long as Declarant shall own the Common Areas. The Association (or the Declarant so long as Declarant shall own the Common Areas) shall have the right to assign, on an exclusive or non-exclusive basis, or to grant licenses or other rights with respect to any easement reserved or granted herein. Nothing herein shall limit the right of the Association (or the Declarant so long as Declarant shall own the Common Areas) to grant additional easements over property owned by it, so long as such easements are not prohibited by or inconsistent with this Declaration.

**Section 2.10. Access by the Town of Falmouth.** In accordance with Paragraph 8(K) of Appendix 8 of the Town of Falmouth Subdivision Ordinance, the Code Enforcement Officer, the Plumbing Inspector, or his authorized representative, or the Town Engineer, and other duly authorized employees of the Town of Falmouth bearing proper credentials or identification, shall be permitted to enter at all reasonable times, upon all real or personal property in the Common Areas or in the Buffer Zones necessary to the operation of the private common use improvements, for inspection, observation, measurement, sampling, and testing related to the operation, maintenance, and repair of the private common use improvements on the Common Areas or in the Buffer Zones.

**Section 2.11 Open Space Conservation Easement.** The Open Space parcel being 48.53 acres and shown on the Subdivision Plan as the westerly portion of the Original Property is subject to a conservation easement in favor of the Falmouth Conservation Trust dated December 28, 2006 and recorded in the Registry of Deeds in Book 24707, Page 305 (the "Conservation Easement"). The terms and conditions of the Conservation Easement are incorporated herein by reference.

### **ARTICLE III** **MAINTENANCE AND REPAIR**

**Section 3.1. Association Responsibilities.** The Association shall be responsible for maintaining and repairing the Common Areas. The cost of any such maintenance and repair shall be included as Common Area Expenses. Without limiting the generality of the foregoing, the Association shall be responsible for the maintenance and upkeep of the Storm Water Management System, which maintenance shall include, at a minimum, following the maintenance procedures set forth on **Exhibit A** attached hereto, which minimum standards are derived from that certain Storm Water Management Report prepared by Gorrill-Palmer Consulting Engineers dated March 13, 2006, a copy of which report shall be maintained with the Association records (the "Storm Water Management Report"). The Association shall indemnify and hold Declarant harmless from any loss, damage liability, cost or expense, including reasonable attorneys' fees arising out of the Association's failure to comply with its responsibilities under this Section 3.1. Not less often than annually, the Association shall cause an inspection to be conducted of the Storm Water Management System by a qualified inspector

and to cause such inspector to file with the Association an Inspection Report, substantially in the form of **Exhibit B** attached hereto.

**Section 3.2. Modification of Common Areas.** The Association shall have the right to modify the Common Areas, from time to time; provided, however, that so long as Declarant shall have any rights under Article XII hereof, no such modification shall be permitted without the consent of Declarant.

**Section 3.3. Lot Owner Responsibilities.** Lot Owners shall be responsible, individually or in cooperation with other Lot Owners, for maintaining and repairing all utility lines (“Individual Utilities”) leading from the main utility lines serving the Property to their respective Lots, whether such Individual Utilities are located within or outside of the Roads or other Common Areas. All maintenance, repair and construction of utility lines conducted within the Roads or the other Common Areas shall be completed with due diligence and in good and workmanlike manner so as not unreasonably to interfere with the rights of the Declarant, other Lot Owners or the Association in the use of the Roads or other Common Areas.

#### **ARTICLE IV** **MEMBERSHIP AND VOTING RIGHTS**

**Section 4.1. Membership in Association.** Every Owner shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. The transfer of title to a Lot shall automatically transfer the Association membership appurtenant to that Lot to the transferee or transferees. The granting of a mortgage, however, shall not transfer such membership until foreclosure or sale in lieu of foreclosure.

**Section 4.2. Classes of Vote.** The Association shall have two classes of voting membership:

(a) **Class A.** Class A Members shall be all Owners; provided, however that the Declarant shall not be a Class A Member until the Class B membership shall cease. A Class A Member shall be entitled to one (1) vote for each Lot owned.

(b) **Class B.** The Class B Member shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each Lot owned and three (3) votes for each Lot that the Declarant has reserved the right to submit to this Declaration pursuant to Article XII whether or not such Lot has been submitted hereto; provided, however, that the Class B membership shall cease upon the earlier to occur of (i) when all such Lots have been sold by Declarant to purchasers other than successor Declarants (including any Lots that Declarant reserves the right to create pursuant to Article XII), or (ii) such time as Declarant or such successor Declarants elect to terminate the Class B membership as evidenced by a written statement so providing executed by Declarant or successor Declarants and recorded in the Cumberland County Registry of Deeds, or (iii) such time as all rights reserved by Declarant in Article XII have terminated in accordance with the provisions of Article XII. Upon such termination of Class B membership,



only Class A Members shall be entitled to vote as set forth in this Declaration and the Articles of Incorporation of the Association.

**Section 4.3. Casting of Votes.** If a Lot is owned of record by one person, that Owner's right to vote shall be established by the record title to the Lot. When more than one person is the record owner of any Lot, all such persons shall be Members of the Association, but in no event shall more than one vote be cast with respect to any Lot other than a Lot owned by the Class B Member. If record ownership of a Lot is in more than one person, the person entitled to cast the vote allocated to that Lot shall be determined as set forth in the Bylaws.

## **ARTICLE V**

### **ASSESSMENTS; LIABILITY OF LOT OWNERS**

**Section 5.1. Association Budgets.** The Association, acting through the Board of Directors in accordance with the Bylaws, shall have the power to fix and determine, from time to time, the sums necessary and adequate to provide for the Common Expenses, including, but not limited to, such amounts as are necessary for uncollected assessments, budget deficits, such reserves as are described in this Declaration and such additional reserves as the Board of Directors shall deem necessary or prudent, and such other expenses as are specifically provided for in this Declaration or the Bylaws and shall further have the right to make assessments for such expenses against the Lots and the Owners thereof in accordance with this Article V. Such assessments shall be made by the Association on an annual, monthly or other periodic basis as the Board of Directors shall from time to time determine. The Association shall establish an adequate reserve fund for maintenance, repair and replacement of the portions of the Common Areas that are anticipated to require maintenance, repair or replacement on a periodic basis. The reserve fund shall be funded by periodic payments as a part of the Common Expenses. The Board of Directors shall use its best effort, at least thirty (30) days prior to the Association's annual meeting to prepare a budget covering the estimated cost of operating the Association during the coming calendar or fiscal year. The operating budget shall be deemed ratified and approved unless disapproved at the annual meeting by a vote of sixty seven percent (67%) of the total votes allocated to Members or by the Board of Directors.

**Section 5.2. Special Assessments.** If the cash requirement estimated at the beginning of any fiscal year of the Association shall prove to be insufficient for any reason to cover the actual Common Expenses (including, by way of illustration and not limitation, any Lot Owner's non-payment of assessments or municipal assessments not yet assessed), the Board of Directors shall have the power, at any time it deems necessary and proper, to levy one or more Special Assessments against each Lot. The Special Assessment may be levied against a Lot for the purpose of promoting the recreation, health, safety, and welfare of the Members, and in particular for the improvements and maintenance of the Roads, services and facilities devoted to such purpose and related to the use and enjoyment of the Common Areas including, but not limited to, establishing necessary reserves as determined by the Association, the right to correct conditions on individual Lots, which in the determination of the Board of Directors, will impact negatively on the Association, payment of taxes upon the Common Areas assessed to the Association and repair, replacement and maintenance of streets, roadways, pathways, sidewalks, roadways, pathways, sidewalks, roadside vegetation, water draining system, pond, street lights,

walls, main entrances to Association, and other common utilities. Special Assessments shall be due and payable in the manner and on the date set forth in the notice thereof. Any expense incurred by the Association as a result of the negligence or willful misconduct of any Owner or the failure of an Owner to comply with the provisions of this Declaration may, at the discretion of the Board of Directors, be assessed as a Special Assessment against such Owner, and said Owner's Lot.

**Section 5.3. Payment of Assessments.** Each Owner shall pay, on or before the designated due date, all assessments levied by the Association. All Owners, as Members, shall share equally in the Common Expenses. An Owner's liability for such assessments shall begin accruing at the time the Association makes the initial Common Expense assessment. The sum due the Association from each Owner or Member shall constitute an assessment of the Association and unpaid assessments shall constitute liens on the individual Lots, subject to foreclosure as hereinafter provided. Except as otherwise provided herein, such assessments shall be due and payable on a periodic basis as designated by the Board of Directors. Assessments that are unpaid for over fifteen (15) days after the due date thereof shall bear interest at the rate of eighteen percent (18%) per annum from the due date until paid. In the sole discretion of the Board of Directors, a late charge not to exceed five percent (5%) per assessment not paid when due may be assessed against the delinquent Owner.

**Section 5.4. Failure to Fix New Assessments.** If the Board of Directors shall fail to fix new Regular Assessments for Common Expenses for the subsequent fiscal year before the expiration of any fiscal year, the Owners shall continue to pay the same sums they were paying for such Regular Assessments during the fiscal year just ended and such sums shall be deemed to be the new Regular Assessments for the succeeding fiscal year. If the Board of Directors shall change the Regular Assessment at a later date, the difference between the new Regular Assessment, if greater, and the previous fiscal year's Regular Assessment up to the effective date of the new Regular Assessment shall be treated as if it were a Special Assessment under Section 5.2 hereof; thereafter, each Owner shall pay the new Regular Assessment. In the event the new Regular Assessment is less than the previous fiscal year's Regular Assessment, in the sole discretion of the Board of Directors, the excess shall be refunded to the Owners, credited against future Regular Assessments or retained by the Association for reserves.

**Section 5.5. No Exemption by Waiver.** No Owner may exempt himself from liability for Common Expenses by waiver of the enjoyment of the right to use any portion or all of the Common Areas or by the abandonment of his Lot or otherwise.

**Section 5.6. Personal Liability of Lot Owners; Lien on Lot.**

(a) All sums assessed by the Association as a Regular or Special Assessment shall constitute the personal liability of the Owner of the Lot so assessed and also, from the time such sums become due until fully paid, shall constitute a lien against such Lot in favor of the Association. If a Special Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment thereof becomes due. Such lien may be foreclosed in the same manner as a mortgage of real estate. The Association shall take prompt action to remedy an Owner's failure to pay any assessment or other charge, including without

limitation foreclosing the lien, taking a deed in lieu of foreclosure, or bringing an action to recover unpaid assessments. The recording of this Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this Article V is required.

(b) The delinquent Owner shall be obligated to pay (i) all expenses of the Association, including reasonable attorneys' fees, incurred in the collection of the delinquent assessment by legal proceedings or otherwise, and (ii) any amounts paid by the Association for taxes or on account of superior liens or otherwise to protect the Association's lien, which expenses and amounts, together with accrued interest, shall be deemed to constitute part of the delinquent assessment and shall be collectible as such.

**Section 5.7. Subordination of Certain Charges.** The lien arising under Section 5.6 hereof as a result of the non-payment of any Regular or Special Assessment, fee, charge, late charge, fine or interest that may be levied by the Association pursuant to this Declaration shall be subordinate to any first mortgage recorded before such Regular or Special Assessment, fee, charge, late charge, fine or interest became due.

**Section 5.8. Working Capital Funds.** Upon the sale of a Lot, whether the initial sale by Declarant or any subsequent sale, the buyer shall pay to the Association an amount equal to two (2) months estimated Common Expense liability for each Lot at the time of such sale. Each Lot's initial share of the working capital fund shall be collected from the Lot purchaser upon the closing of such Lot and shall be transferred to the Association for deposit into the appropriate working capital fund. The amount paid by the Lot purchaser shall not be considered to be an advance payment of the normal Common Expense liability and no Owner shall be entitled to a refund of these monies by the Association upon the subsequent conveyance of his Lot or otherwise. If the Declarant elects to make a contribution to the working capital fund with respect to any Lot prior to the sale of such Lot by the Declarant, then the Declarant shall be entitled to a refund of such contribution from the Association upon payment of the working capital contribution by the Lot purchaser at the time of transfer of title from the Declarant. Declarant shall ensure that at the end of the Declarant Control Period there are sufficient working capital funds in the Association to meet the anticipated expenses for the one year after the end of the Declarant Control Period. If there are not sufficient working capital funds in the Association to meet the anticipated expenses for one year after the end of the Declarant Control Period, Declarant shall contribute to the Association, on or before the end of the Declarant Control Period, the amount necessary so that the Association will have sufficient working capital funds to meet the anticipated expenses for one year thereafter.

**Section 5.9. Surplus.** The budget of the Association shall set forth Common Expenses. Any amounts accumulated from assessments for Common Expenses in excess of the amounts required for such actual expenses and reserve for future expenses, unless otherwise directed by the Board of Directors, in its sole discretion, shall be credited proportionately to each Owner, such credit to be applied to the next Regular Assessment of Common Expenses due from said Owner under the current fiscal year's budget, and thereafter, until exhausted or retained by the Association for reserves.

**ARTICLE VI**  
**USE AND OCCUPANCY REGULATIONS**

**Section 6.1 Use Restrictions**

(a) Use of Common Areas. Each Owner shall have the right, in common with all other Owners to use the Common Areas for ingress and egress to and from the respective Lots by Owners, their family members, tenants, guests and invitees and for such other purposes as are incidental to the use of the Lots permitted under this Declaration. The Common Areas shall not be obstructed in any way. No Owner may store anything in or on the Common Areas without the prior written consent of the Board of Directors.

(b) Lease of Lots. An Owner may lease his Lot subject to the following: the lease agreement shall be in writing, shall provide that the tenant and the lease are subject in all respects to the provision of this Declaration, the Bylaws and any Rules and Regulations of the Association and shall state that a failure by the tenant to comply with such provisions shall be a default under the lease. No Dwelling Accessory building shall be used for rental purposes or can be occupied by a non-family member that is separate from the Dwelling. All leases shall be for a minimum term of six (6) months.

(c) Rules and Regulations. The Board of Directors may, from time to time, promulgate, Rules and Regulations applicable to the use and enjoyment of the Property as well as adopt, modify, and revoke in whole or in part, such reasonable rules, and regulations, for governing the conduct of persons on said Lots as it may deem necessary, including but not limited to methods and procedures of enforcing compliance with the Declaration. Such rules and regulations upon adoption, and every amendment, modification, and revocation thereof by the Board of Directors, shall be delivered promptly to each Owner and shall be binding upon all Owners. No such rules and regulations shall be established which are inconsistent with the terms of this Declaration or which shall unreasonably restrict the use of the Lots by the Owners thereof nor shall such rules or regulations be in violation of or modify any of the conditions of approval established by the Town of Falmouth or set forth in the DEP Permit. This authority shall include, but shall not be limited to, the right to limit the type and size and to set the maximum and minimum speeds of vehicles within the Property. The Association shall also have the authority to impose other traffic and parking regulations and to restrict the maximum noise levels of vehicles on the Property. Such Rules and Regulations shall be binding upon all Owners and occupants until and unless amended or modified by the vote of the Class A members holding a majority of the total votes in the Association held by Class A members and by the vote of the Class B member, so long as such membership shall exist.

(d) Use of Lots. Except as permitted by Article XIV and Section 6.1(m) of this Declaration, all Lots shall be used for single family residential purposes exclusively and no business or business activity shall be carried on within any improvement on a Lot at any time without the written approval of the Board of Directors. Leasing of an improvement on a Lot for residential use shall not be considered a business or business activity. No Lot shall be used, occupied or kept in a manner which in any way would increase the fire insurance premiums for the Property without the prior written permission of the Board of Directors.

(e) Fences Etc. No fences, hedges or walls shall be erected or maintained upon the Common Areas or upon a Lot by an Owner, except as approved by the Board of Directors or its designated representative. Perimeter fences along Lot boundaries are prohibited. In addition, movable or decorative items, including, but not limited to, playground equipment or portable swimming pools, shall not be placed or maintained upon the Common Areas or upon the exterior of a Lot without the prior written consent of the Board of Directors or its designated representative.

(f) Parking. No Owner or occupant of a Lot shall park any boat, boat trailer, snowmobile, snowmobile trailer, ATV, dirt bike, tractor trailer, motor home, house trailer, camping trailer, camper, motorcycle or recreational vehicle on any portion of the Property other than in the garage that is located on the Lot. Garage doors shall remain closed at all times, except for necessary use, ingress and egress. Owners may park no more than two registered, non-commercial passenger vehicles outside of the garage on a Lot on a regular basis, provided that such vehicles are parked on the driveway or an approved parking area adjacent to the driveway. Temporary parking of additional passenger vehicles, not to exceed seven (7) days, for guests is allowed on driveways. Temporary parking for guests on the Roads is prohibited after 1 AM. Excepting vehicles for service providers and contractors, no house trailer, business or commercial vehicle or vehicles of similar nature shall be brought upon, or be permitted to remain on any Lot, except a business vehicle normally used by the Owner in his or her occupation, provided said vehicle is parked in an enclosed garage. Unregistered vehicles shall not be placed on portions of the Property for more than 48 hours, unless stored in a closed garage on a Lot. However, visitors are allowed to park motor homes, boats, camping trailer, or recreational vehicle on a Lot temporarily (defined as a period of time of less than 7 days) while visiting a Lot Owner. All such vehicles must be parked in a neat manner.

(g) Animals and Pets. No animals, including, without limitation, horses, cattle, sheep, goats, pigs, poultry or other livestock, other than common household pets shall be allowed upon the Property. An Owner who keeps a pet upon the Property shall be liable to the Association for any damage to the Common Areas caused by such pet. No more than three household pets (excluding caged pets, such as birds and fish) shall be kept or maintained on any Lot. No dog shall be permitted on the Common Areas unless the dog is on a leash. No dog shall be left unattended on the Common Areas even if leashed or tied. Dogs may be retained by way of a dog containment system such as an invisible fence system. No commercial boarding or breeding of household pets shall be permitted.

(h) Rubbish, Trash and Garbage. Owners shall cause all rubbish, trash and garbage to be regularly removed from the Lots and shall not allow it to accumulate thereon. There shall be no burning of trash on the Property. All trash shall be kept in covered receptacles made of plastic or metal. Such trash receptacles must remain within an enclosed structure, such as a garage or Dwelling Accessory, at all times except when set out for pick-up. Trash receptacles shall be placed outside no earlier than 7:00 p.m. the night before the scheduled pick-up, and must be brought back indoors by the end of the day of pick-up.

(i) Antennas. No exterior television or radio antennas or satellite dish of any kind shall be placed, allowed or maintained upon any portion of the Property, without the prior written consent of the Board of Directors or its designated representative. A satellite dish cannot be larger than three (3) feet in diameter.

(j) Nuisance. It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his Lot. No substance, thing, or material may be kept or used upon any Lot in a manner that will cause any noise, light or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property.

(k) Unsightly or Unkempt Conditions. The pursuit of hobbies or other activities, including without limitation, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Property. Each Owner shall keep his Lot in a good state of cleanliness

(l) Mortgage of Lot. An Owner who mortgages his Lot shall notify the Board of Directors of the name and address of the holder of the mortgage and shall, upon request, file a conformed copy of the mortgage with the Board of Directors.

(m) Home Occupations. No portion of the Lot shall be used for any commercial activity, provided that a residence may consist of a personal or professional office or customary home occupation to the extent permitted by local zoning and land use ordinances and to the extent that such use does not entail any increase in the flow of traffic through the Property. No business activity is permitted if such business requires storing inventory in the Dwelling or daily delivery of packages, etc. Such professional or personal office use is permitted if such activity does not allow for clients or business associates to travel to such Lot to meet or conduct any form of activity related to the occupation or profession of the person operating within the Dwelling.

(n) Ingress or Egress. Each Lot shall be limited to one curb cut on one of the Roads, with the location of such curb cut to be approved by the Declarant in advance. Access to a Lot shall be directly from a Road. No Lot shall provide access between two Roads or between a Road and another Lot.

(o) Building Variance. No variance shall be sought for modification of Town of Falmouth standards for front, rear or side yard setbacks for any Lot boundary abutting land owned by the Association, its successors and assigns, except with prior consent of the Board of Directors.

(p) Lot Division. There shall be no further division or subdivision of any Lot, nor shall any Lot boundaries be changed except by prior written approval of the Board of Directors, subject also to all required governmental approvals.

(q) Firewood. Firewood or cut wood shall be stacked neatly, and at locations that cannot be seen from another Lot or Common Areas.

(r) Vernal Pools. From February to June each year, Owners and their guests are prohibited from entering upon the Vernal Pools located on the Open Space bordering on Lot 19. The Association shall post signs reminding Owners and their guests not enter this area. The two Vernal Pools located in this area consist of a pool of water that accumulated from spring rain and melting snow to create a highly sensitive natural environment that must be preserved to protect certain frogs, salamanders, other amphibians and wildlife dependent on the Vernal Pools as a natural habitat for breeding and migrating activities.

(s) Stonewalls. No stonewalls on the Property shall be altered or removed without the prior written approval of the Board of Directors. All stonewalls shall be maintained by the Owners of the Lots on which such stonewalls are situated. Lots 1 through 6 contain stonewalls on and near the rear boundary of each of those Lots, which stonewalls may not be removed or relocated, provided that maintenance of said stone walls is permitted with the advance consent of the Declarant. No trees or vegetation shall be removed within 30 feet of the rear boundary of said Lots 1 through 6, excepting the removal of dead trees.

(t) Maintenance of Lot. All Lots and all improvements shall be kept and maintained by the Owner thereof in clean, safe, attractive and appealing condition and in good repair.

(u) Pond in Common Area. A storm water retention pond will be constructed by the Association adjacent to Lot 13 and Lot 14 as shown on the Subdivision Plan (the "Retention Pond"). If so constructed, the Retention Pond shall be maintained by the Association, the cost of which shall be a Common Expense. Owners and their guests and pets shall remain at least five feet away from the edge of the Retention Pond. Wading, swimming or fishing in the Retention Pond is strictly prohibited. Owners shall be responsible for any injury or damages resulting from any violations of these restrictions by such Owner or its guests or pets.

(v) Landscaping in Common Areas. Landscaping in the Common Areas by Owners is prohibited without the prior written approval of the Declarant. This restriction applies to that portion of the Common Areas between the front of any Lot and the edge of the pavement of any Road, in addition to all other Common Areas.

(w) Recreational Structures. No tennis court, basketball court or other recreational structures can be installed without the prior written approval by the Declarant. Above ground swimming pools are prohibited on the Property.

(x) Surface Water. No Owner can alter or cause to be altered the natural courses of surface water on the Property.

(y) Signs. Upon completion of construction, no sign of any nature or description shall be displayed or placed upon any part of a Lot or Common Areas.

(z) Preservation of Landscape. Clear cutting of trees on any Lot is prohibited. To the extent that it is consistent with residential use of a Lot, existing vegetation, including significant trees (having a diameter of fifteen (15) inches when measured three (3) feet from the base of the

tree) shall be preserved. Where large trees are being preserved and may pose a hazard to nearby home(s), a forester or tree expert should be consulted by the Owner for advice on safety.

(aa) No Owner shall store any business-related equipment or materials (staging, lobster traps, construction or property maintenance equipment and the like) on any Lot unless such equipment or material is appropriately screened from sight from the Roads or other Lots.

## **Section 6.2 General Restrictions**

(a) Offensive Activities. No offensive activity shall be carried on upon the Lots. Offensive activity shall include but not be limited to a public nuisance and shall also include any behavior which is inconsistent with both the reasonable pleasurable use of the Lots by Owners, their lessees and guests and their reasonable expectations of vacationing, year-round living, studying, working, recreating, or enjoying sports free of excessively noisy behavior grossly disrespecting the rights of others, flashing or excessively bright lights, racing vehicles, operating snowmobiles, offensive displays of public sexuality, significantly loud electronic music distractions, or other similar unreasonable behavior or activity curtailing or likely to curtail the reasonable pleasure and use of the Lots or Common Areas by others who are not participating in such offensive or noxious activity.

(b) No Hazardous Activities. No activities shall be conducted on the Lots and no improvements constructed on the Lots that are or might be unsafe or hazardous to any person or Lot. No open fires shall be lighted or permitted on the Lots or Common Areas except within a contained barbecue unit while attended and in use for cooking purposes.

(c) Prohibition of Off-Road Vehicles. No snowmobiles or all terrain vehicles or trail bikes shall be permitted within the Common Areas or upon any unpaved area of a Lot.

## **Section 6.3. Buffer Zones.**

(a) The following acts shall not be permitted in any of the Buffer Zones:

(i) no soil, loam, peat, sand, gravel, concrete, rock, or other mineral substance, refuse, trash, vehicle bodies or parts, rubbish, debris, junk waste, point source pollutants or other fill material will be placed, stored, or dumped in the Buffer Zones and the surface waters contained thereon, nor shall the topography of the area be altered or manipulated in any way;

(ii) no trees, grasses, shrubs, vines, or other vegetation shall be cut or destroyed;

(iii) no building, sign, fence, utility pole, or other temporary or permanent structure shall be constructed, placed, or permitted to remain on the Buffer Zones;



(iv) no trucks, cars, dirt bikes, ATVs, snowmobiles, motorcycles, bulldozers, backhoes, or other motorized vehicles or mechanical equipment shall be permitted on the Buffer Zones, except those necessary to make emergency repairs.

(b) Maintenance of the drainage courses, trails or paths shall be permitted, provided that reasonable good faith efforts shall be taken to minimize any disruption to the Buffer Zones.

(c) It is the purpose of the restriction in this Section to assure that the Buffer Zones will be retained in their natural state and to prevent any use of the Buffer Zones that will impair or impede the conservation uses of the Buffer Zones, except to the extent specifically permitted herein. Plot Plans for Lots 7-11, 13-15, 17-20 and 24, depicting the Buffer Zones on each of such Lots, are attached hereto as **Exhibit C**.

#### **Section 6.4. Drainage Areas.**

(a) The following acts shall not be permitted on any of the Drainage Areas:

(i) no soil, loam, peat, sand, gravel, concrete, rock, or other mineral substance, refuse, trash, vehicle bodies or parts, rubbish, debris, junk waste, point source pollutants or other fill material will be placed, stored, or dumped in the Drainage Areas, nor shall the topography of the area be altered or manipulated in any way;

(ii) no trees, grasses, shrubs, vines, or other vegetation shall be cut or destroyed;

(iii) no building, sign, fence, utility pole, or other temporary or permanent structure shall be constructed, placed, or permitted to remain in the Drainage Areas;

(iv) no trucks, cars, dirt bikes, ATVs, snowmobiles, motorcycles, bulldozers, backhoes, or other motorized vehicles or mechanical equipment shall be permitted on the Drainage Areas, except those necessary to make emergency repairs.

(b) Maintenance of the drainage courses, trails or paths shall be permitted, provided that reasonable good faith efforts shall be taken to minimize any disruption to the Drainage Areas.

(c) It is the purpose of the restriction in this Section to assure that the Drainage Areas function properly to facilitate the runoff of storm water and to prevent any use of the Drainage Areas that will impair or impede such purpose, except to the extent specifically permitted herein.

#### **Section 6.5. Open Space.**

(a) Open Space as depicted on the Subdivision Plan is in a substantially undisturbed natural state and has significant aesthetic and ecological value, in particular, the preservation of Open Space and a natural habitat for indigenous animal and plant populations. By creating the Open Space, the purpose is to assure that the Open Space will be retained forever in its natural

undeveloped condition and to prevent any use of the Open Space that will significantly impair or interfere with its conservation value, subject to the terms and conditions of the Conservation Easement. Except as provided in subsection (b) below, the following acts shall not be permitted in any of the Open Space:

(i) no soil, loam, peat, sand, gravel, concrete, rock, or other mineral substance, refuse, trash, vehicle bodies or parts, rubbish, debris, junk waste, point source pollutants or other fill material will be placed, stored, or dumped in the Open Space and the surface waters contained thereon, nor shall the topography of the area be altered or manipulated in any material way;

(ii) no trees, grasses, shrubs, vines, or other vegetation shall be cut or destroyed, except as required for safety or good husbandry and upon receiving approval in advance from the Board of Directors;

(iii) no building, sign, fence, utility pole, or other permanent structure shall be constructed, placed, or permitted to remain on the Open Space, except for small directional signs in connection with the use of trails or paths; and

(vi) except for maintenance purposes authorized by the Association, no motor vehicles of any kind, including recreational vehicles, snowmobiles, all-terrain vehicles, motorcycles and dirt bikes shall be permitted on the Open Space.

(b) Maintenance, repair and replacement of the drainage courses, bridges, trails or paths shall be permitted so as to make them function and drain properly and also to ensure or promote safety with respect to their usage. In addition, it is acknowledged that a pond will be constructed in the Open Space area as depicted on the Subdivision Plan. It is the intention of Declarant to permit the use of the area surrounding such pond to be used for picnicking and general use by the members of the Association. In furtherance of such goal, Declarant and the Association shall have the right to remove trees and brush, install trails, paths, picnic tables, gazebos, benches and the like and to generally make the area surrounding the pond aesthetically appealing for the use and enjoyment of the members of the Association.

(c) Upon deeding some or all of the Common Areas to the Association, the Declarant's obligations and liabilities with respect to same shall cease, except as herein specifically provided for to the contrary. Thereafter, it shall be the obligation of the Association to periodically inspect and maintain the Common Areas.

(d) Without granting any rights to the general public to enter the Open Space, it is expressly intended that all activities of the Owners, their dependents, heirs, assigns or successors guests or the general public entering upon the Open Space be subject to the limited liability provisions of Title 14 of the Maine Revised Statutes, 1964, as amended, Section 159-A, or its successor provisions. The Declarant or Association has the right to control, by posting or other lawful means, public use of the open space and any use by anyone that is destructive to the natural values to be conserved by the Declaration or to other Members of the Association or general public and their non-destructive use of the Open Space.

(e) A twenty (20) foot wide pedestrian walking trail (also an emergency vehicle access way), as shown on the Subdivision Plan, is the only permitted access way for Owners and their guests to access the Open Space. The Association is responsible for repairing and maintaining the walking trail to the pond.

**Section 6.6 Governmental Restrictions.** The Property is subject to the DEP Permit and to approvals granted by the Town of Falmouth from time to time, including but not limited to the subdivision approval, as reflected by the Subdivision Plan, and to all terms and conditions of the DEP Permit and such municipal approvals, **all of which are incorporated herein by reference with the same force and effect as if set forth in full herein.** Each Owner agrees that the Property and its respective Lot is subject to, and each Owner agrees to comply with, the restrictions set forth in the DEP Permit and as reflected on the Subdivision Plan.

**Section 6.7 Declarant's Consent and Approval.** Whenever in this Article VI, it provides that certain matters require the consent or approval of Declarant or which provide certain powers to the Declarant, such consent and approval right, and such powers, shall be exercised solely and exclusively by Declarant until the later of (a) the end of the Declarant Control Period; or (b) the date that Declarant no longer has any rights under Article XII hereof, or specifically relinquishes its rights under this Article; thereafter, the Declarant shall no longer have such powers, or rights of consent or approval, and all decisions, consents and approvals under this Article VI shall be made by the Design Review Board, or if there is no Design Review Board, by the Board of Directors.

**ARTICLE VII**  
**ARCHITECTURAL CONTROL AND REQUIRED APPROVAL OF CONSTRUCTION**  
**OF DWELLINGS, STRUCTURES, OF CLEARING, GRADING AND RELATED**  
**MATTERS**

**Section 7.0 Statement of Intent.** The intent of these standards is to preserve the beauty, integrity and value of the Dwellings and Common Areas and to insure that all Dwellings and Dwelling Accessories shall be of a quality of design, workmanship and materials that are compatible and harmonious with the natural setting of the area and other Dwellings within the development. In addition, it is intended that this development will be environmentally sound and will be in ecological and aesthetic harmony with the environment and the neighborhood. It is the goal that each Dwelling and Dwelling Accessory has no adverse impact on the Common Areas and abutting Lots.

**Section 7.1 Approval of Plans.** No improvements of any kind, including, but not limited to, Dwellings, Dwelling Accessory, swimming pools, ponds, garages, parking areas, retaining walls, tennis courts, greenhouses, driveways, antennae, flag poles, lamp posts, mail boxes, curbs and walks shall ever be erected, altered or permitted to remain on any Lot, nor shall any excavating, clearing, removal of trees, or shrubs, or landscaping be done on any Lot, unless the complete plans and specifications therefore are approved in writing by Declarant prior to the commencement of such work. Declarant shall consider the materials to be used on the external features of said buildings or structures, the location with respect to topography and finished

grade elevations and harmony of landscaping with the natural setting and surrounds and shall ascertain whether the architecture conforms to the design guidelines set forth herein.

**Section 7.2 General Requirements.** Declarant or designated agent shall exercise its best judgment to see that all improvements, construction, landscaping and alterations on the properties approved by Declarant conform and harmonize with the Design Guidelines and the natural surrounds and with existing structures as to external design, bulk, rooflines, materials, color, sitting, height, topography, grade and finished group elevation. Declarant shall disapprove any plans submitted to it, which are not sufficient for it to exercise the judgment required of it by these covenants. Refusal of approval by Declarant of plans, locations or specifications may be based upon any ground, including purely aesthetic conditions, which in the sole and uncontrolled discretion of Declarant shall seem sufficient.

**Section 7.3 Liability.** Declarant shall not be liable in damages to any persons submitting any plans for approval, or to any Owner by reason of any action, failure to act, approval, disapproval or failure to approve or disapprove with regard to such plans. Any Owner or any person submitting plans to Declarant for approval, by so doing, shall be deemed to have agreed and covenanted that he will not bring any action or suit to recover damages against Declarant, its officers as individuals, or its advisors, employees or agents.

**Section 7.4 Procedures for Obtaining Required Approval.** Whenever approval is required of Declarant, appropriate complete plans, specifications and stake out shall be submitted to Declarant for preliminary and final review (see Section 7.6 for process of review) and approval. Declarant shall give notice to the applicant of receipt of the completed application for either preliminary or final approval and shall either approve, disapprove or approve with conditions such application within ten (10) days after such notice. If the application is disapproved in any respect, the applicant shall be notified wherein such plans and specifications are deficient. Minor adjustments to plans may be approved by the Declarant on an accelerated basis. At the discretion of Declarant, a reasonable filing fee may be required to accompany the submission of such plans to defray administrative expenses.

**Section 7.5 Location of Dwellings and Structures.** To assure that buildings and other structures will be located so that desirable view, privacy and breeze will be available to the largest practical number of Dwellings and Dwelling Accessories built, and that such Dwellings and Dwelling Accessories will be located with regard to the topography of each Lot taking into consideration the location of large trees and other aesthetic and environmental considerations, Declarant shall have the right to control and to decide the precise site and location of any Dwelling or Dwelling Accessory within a Lot. The location shall be determined only after reasonable opportunity is afforded the Owner to recommend a specific site. Owner is responsible for hiring qualified surveyor to stake out no cut zones, building envelope, Lot lines, driveway, and if necessary, wetland areas for Lot prior to receiving construction plan approval by Declarant.

**Section 7.6 Process of Review.**

- (a) Submission Requirements

1. Site Plan: scale 1" = 10' or, when inappropriate for size of Lot and when approved by Declarant, 1" = 20'. Information to be included on the site plan is as follows:
  - a. All building footprints
  - b. Location and width of driveway
  - c. Limit of clearing
  - d. Landscape plan with description and size of all materials
  - e. The location and extent of exterior lighting, retaining walls and other amenities.
2. Floor plans: Scale 1/4" = 1'. Plans shall be dimensioned and noted. Indicate where all windows and exterior doors are to be located
3. Elevations: Scale 1/4" = 1". Elevations shall indicate actual locations and sizes of all windows, doors, overhangs, etc. All materials must be noted, dimensioned and located. Accompanying the elevations should be color samples of all exterior materials.
4. Outline specifications: Indicate all construction materials and techniques for the exterior elements of building. Include thickness, spacing, sizes, quality and locations. Material descriptions should be for all buildings, retaining walls, drives, patios, and any other items visible on the exterior.

(b) Basis of Acceptance: Review of each application will be made with the intent of these design review standards as the basis. Specific criteria for evaluation shall include, but not be limited to, the following:

1. Integration with the site and its natural features.
2. Propriety and quality of the building design and site layout.
3. Adherence to these standards.
4. Construction impact on the site and adjacent areas.
5. Visual impact from the roadside, pond, vernal pool and other Common Areas within the Association.

(c) Waiver Process: Should there be, for reasons of hardship, the inability of the applicant to meet these submission requirements, the applicant may request a waiver of that specific submission requirement. The Declarant will consider this and judge whether the waiver shall be granted. The decision of the Declarant is final.

### **Section 7.7 Design Standards.**

(a) Planning: While the use of a licensed architect is encouraged, it is not mandatory. However, the absence of an architect does not relieve the applicant of fulfilling all requirements of these design review standards. Demonstration of adherence to these standards must be clear and fully documented in accordance with the submission requirements. A technical adherence to these standards must be carried out throughout the construction process.

(b) Size: Minimum size of the Dwelling unit must be 2,700 square feet of enclosed heated living space exclusive of basements, garages, porches and breezeways. Accessory Structures must conform to all applicable standards contained herein. Garages are required and every garage shall have at least two (2) bays. Bays should not be directly visible to roadway unless such Lot surface area or available building envelope will not adequately support the construction of two (2) garage bays from being visible from the road.

(c) Height: Maximum height of Dwellings shall be the lower of (i) the standards established by the ordinances of the Town of Falmouth and (ii) 35 feet, measured in accordance with said ordinances. The maximum height of Dwelling Accessory buildings shall be 25 feet.

(d) Setbacks: The setback standards for all structures and appurtenances thereto shall not be less than the following:

Front yard:	75 feet
Side yard:	50 feet
Back yard	50 feet

(e) Plans and specifications for driveways, culverts, pavement edging and markers shall be approved in writing by Declarant. All homes shall include a two (2) bay garage attached to the Dwelling, except as otherwise approved by Declarant. All driveways must be either asphalt paved, cobble stoned, concrete paved or bricked. Any variance from these driveway materials will have to be approved by the Declarant. Driveways shall be a maximum of twelve (12) feet wide except in parking areas and turnaround spaces near garage.

### **Section 7.8 Design Guidelines.**

(a) General: Buildings should be designed to integrate functionally and aesthetically with the site. Visual impact from adjacent building sites should be minimized.

(b) Site Planning: The Following standards should be used when siting and designing the structures:

1. Minimize the impact on topographic features. Work with the contours that naturally exist on the site. The buildings should respond to elevation changes and the natural features on the site, incorporating them into the design.
2. Maintain mature trees not only within the setback but also within the property as a whole. In siting a building, adjust the location wherever possible to maintain mature trees.
3. Minimize paving and driveways. Orient the entrance to garages and houses in such a way that hard surfaces are minimized.
4. Orient the Dwelling and garage to downplay the garage doors. Side garage entrances are required except for conditions referenced in Section 7.6.(B).
5. Locate recreational items in areas not visually prominent from the road or abutting Lots. Provide screening where location does not obscure such visual impact.
6. All utilities must be underground. No overhead service will be permitted.

7. Trailers, recreational vehicles of all sorts and satellite dish antennas shall be situated or stored so as to not be visible from the inside of Dwelling on abutting Lots or the roadways in the Association.

(c) Architecture: Dwelling shall not be of the split foyer or raised ranch design or log cabin-type, modular home, or mobile home. All buildings and structures on the Lot shall consist of a basement having a solid masonry foundation. The design of each Dwelling should maintain the following standards:

1. Foundation walls shall be covered to 8 inches above the ground line. Exposed concrete is discouraged.
2. Exterior siding shall be clear-grained natural wood, painted or treated with natural preserving stains. Brick or stone may be used as an alternate facing material. The use of aluminum siding, vinyl siding and stucco is prohibited.
3. Any accessory building built shall be constructed of material similar the principal Dwelling and shall be of the same color as the principal Dwelling. Building shape, rooflines, window treatment and site orientation of any accessory building shall be harmonious with the natural beauty of the immediate natural surroundings and the principal Dwellings.
4. All exterior painting or stain colors shall be approved by the Declarant, in its sole discretion on all newly constructed Dwellings. All exterior painting or stain color changes on any existing homes shall be approved by the Declarant, in his sole discretion.
5. Building mass fenestration should be well proportioned and residentially scaled.
6. Roofs should be predominantly sloped and covered with shingles darker than the siding unless otherwise approved by the Design Review Board. No appurtenances other than the chimney should extend above the ridge.
7. All fireplaces and chimneys must be masonry with brick or stone facing where exposed to the exterior. Unfaced concrete block or metal chimneys are not allowed on the exterior of the Dwellings.
8. Porches and decks should be integrated into the building and be consistent with the aesthetics of the house and the surrounding yard.
9. Fuel tanks, for heating purposes only, shall be located in the basement of the Dwelling or underground in compliance with all laws and regulations. Fuel tanks containing fuel such as propane used for cooking or hot water heating shall be buried below the ground or shall be screened by vegetation or trees.
10. The proposed means of fire protection for all lots shall be through the use of individual sprinkler system as approved by the Falmouth Fire Chief.

(d) Landscaping: Landscaping is required to be integrated with the design of all buildings.

1. All areas disturbed by construction must be planted with ground cover and returned to its natural state or be landscaped.

2. Exterior lighting must be contained within the site. Glare should not be apparent off the Lot. Low intensity light is recommended. Light Poles shall not exceed 8 feet in high. Where lights are attached to a building, the requirements for glare must be maintained.
3. The front landscaping of a dwelling must be completed to the specifications of the approved landscape design prior to applying for an occupation certificate.

(e) Dwelling Quality. It is the intention and purpose of this Declaration to insure that all Dwellings shall be of a quality of design, workmanship and materials that are compatible and harmonious with the natural setting of the area and other Dwellings within the development. All Dwellings shall be constructed in accordance with applicable government building, safety or other codes. Declarant shall, as part of the design and construction approval process, have the right to approve or disapprove the general contractor for any construction project.

(f) Mailbox: Declarant reserves the right to approve the design and construction of all mailboxes.

#### **Section 7.9 Construction and Development Rule and Restrictions.**

(a) Construction Rules. The following requirements must be met at all times during the construction or improvement of a Lot, Dwelling or Dwelling Accessory. The Board of Directors reserves the right to stop construction if in its opinion these requirements are not being met.

1. All state, local and federal codes and requirements must be met. All necessary permits must be obtained in advance from the appropriate governmental authorities.
2. No Dwelling or Dwelling Accessory shall be substantially comprised of pre-fabricated or manufactured structural components.
3. Prior to the start of any work on the site, approvals must be obtained from the Design Review Board.
4. Adequate erosion control measures shall be maintained at all times.
5. Dust shall be kept to a minimum. Watering or calcium should be used as appropriate during dry periods.
6. No construction should go beyond 8 PM if any Dwelling is occupied within the Association that is located within 100 yards of the construction site.
7. Any damage done to common areas and roads resulting from construction or transportation to and from the construction site will be repaired by the Owner as to the specifications of the Association.
8. The construction site shall be kept neat and orderly. Storage of material must be inconspicuous from the road and other common areas.
9. Trash must be removed frequently enough to avoid any trash piles. Burning of trash or burial of trash shall not be permitted.



10. Construction signs shall be limited to one 24" by 24" sign naming the contractor and one similar size sign naming the architect only. No other signs shall be permitted without the approval of the Declarant.

Where the requirements of #7, #8, and #9 above have not been met by the Owner, the Association reserves the right to have a separate contractor fulfill those requirements at the expense of the Owner. The Owner will be billed for the cost to bring about conformance to those requirements. Any such charges shall be treated as an assessment, and collection shall be enforced according to this Declaration and the By-Laws of the Association.

(b) Location of Dwellings and Structures; Building Envelopes. In order to comply with the DEP Order and all other approvals for the Property, all structures must be located within the Building Envelopes as depicted on the Subdivision Plan. Plot Plans for Lots 7-11, 13-15, 17-20 and 24, depicting the Building Envelopes on each of such Lots, are attached hereto as **Exhibit C**.

(c) Temporary Structures. No trailer, tent, shack or other structure, except as otherwise permitted herein, and no temporary building or structure of any kind shall be used for a residence, either temporary or permanent. Temporary buildings or structures used during the construction of a Dwelling shall be in a close proximity to the Dwelling and in a location approved by Declarant and such buildings or structures shall be removed upon completion of construction.

(d) Commencement and Completion of Construction. Any construction undertaken shall be continued with diligence toward the completion thereof and the exterior construction of any Dwelling shall be completed within one (1) year of the date on which construction (including excavation) commences, except that such period may be extended by reason of strikes, fires, natural disaster and other matters beyond the Owner's control. If construction is not commenced and completed as stated, the approval obtained shall be void and new approval must be obtained. Houses and other Dwelling structures may not be temporarily or permanently occupied until the exteriors thereof have been completed. Substantially all of the landscaping shown in plans submitted to and approved by Declarant must be completed within ninety (90) days of completion of exterior construction unless Declarant shall approve an extension of such ninety (90) day period. As a condition of approval of proposed plans for all structures, a bond may be required by Declarant which guarantees payment of the landscape contractor's estimated cost of installation to implement the plan as submitted to and approved by Declarant.

(e) Signs. No signs or advertising devices, including, but without limitation, commercial, political, informational or directional signs or devices, or for sale or for rent signs, shall be erected or maintained on the properties, except signs which comply with the requirements of the Stone Ridge Sign Guidelines. Dwelling identification signage is limited to one sign no larger than 6" X 8" mounted on the Dwelling unit, by or on the door or at or near the driveway entrance or main entrance walkway. The Board of Directors shall have the right to erect reasonable and appropriate signs consistent with all applicable state and local permits.

(f) Subsurface Wastewater Disposal Systems. Each individual subsurface wastewater disposal system shall not exceed the design flow for the number of bedrooms specified in the septic design plan that was filed along with the building application permit and approved by the Town of Falmouth and shall be located as shown on the Nitrate Plume Plan. Relocation of an individual subsurface wastewater disposal system shall require review and approval from the DEP prior to installation of the system.

(g) Wetlands. In accordance with DEP and Town of Falmouth regulations, there shall be no filling of any wetlands as are currently delineated. No development, vegetation cutting, clearing, grading or filling shall occur in wetland areas on a lot, except as provide for in the approved plans for driveways, and walking paths. A minimum buffer of 50 feet of natural vegetation shall be preserved between all disturbed areas and wetland edges, except for driveway crossings.

(h) Drainage. Declarant may establish reasonable regulations and restrictions pertain to drainage and siltation originating on construction sites and parking lots, porosity of pavement materials used on driveways and similar provision relating to hydrological factors on the Lots.

(i) Pools. All in ground swimming pools shall be constructed in accordance with all local and state laws. Pools must be enclosed with material similar to the principal Dwelling and shall be of the same color as the principal Dwelling. Above ground pools shall not be permitted.

(j) Identification Number. Each Dwelling shall be marked with a Dwelling identification number located by or on the front door or at the near the driveway entrance or main entrance walkway. Dwelling indent faction numbers are required on all mailboxes.

(k) No Cut/Disturb Zone. It is the Declarant's intention that the natural woodland characteristics of the properties be preserved to the extent practicable. In addition to any other restrictison set forth in this Declaration, no trees, vegetation or other ground cover may be cut, removed or disturbed within twenty-five (25) feet of any boundary line of any Lot without the prior written approval from Declarant, unless such removal is necessary for access or utilities to the Dwelling unit, such as for an approved driveway. Any disturbance within the "no-cut" zone that has not been approved by the Declarant will be restored at the full expense of Owner of such Lot.

(l) Trees. It is the Declarant's intention that the natural woodland characteristics of the properties be preserved to the extent practicable. No trees measuring fifteen (15) inches or more in diameter at breast height may be removed without prior written approval from Declarant, unless such tree is located within twenty (20) feet of a Dwelling or Dwelling Accessory and such tree is not within the No Cut Buffer Zone or such tree needs to be removed for access or utilities to the Dwelling unit. Any tree cut without approval from Declarant will be replaced with a similar species tree having a height of not less than ten feet or equal to the height of the tree that was cut down at the full expense of Owner of such Lot. In cases where the Owner has cut more than one tree, the Declarant can levy a fine of \$500 per tree in addition to requiring the Owner to replace each tree.

**Section 7.10 Declarant's Consent and Approval.** Whenever in this Article VII, it provides that certain matters require the consent or approval of Declarant, such consent and approval right, shall be exercised solely and exclusively by Declarant until the later of (a) the end of the Declarant Control Period; or (b) the date that Declarant no longer has any rights under Article XV hereof, or specifically relinquishes its rights under this Article; thereafter, the Declarant shall no longer have such powers, or rights of consent or approval, and all decisions, consents and approvals under this Article VII shall be made by the Design Review Board, or if there is no Design Review Board, by the Board of Directors.

**Section 7.11 Design Review Board.**

(a) The Board of Directors may elect to establish a Design Review Board for the following purposes:

- (i) Promulgation of design review guidelines and procedures.
- (ii) Consideration of and action upon applications for approval of improvements.
- (iii) Inspection of all construction activities on the properties and enforcement of architectural controls and compliance with approvals.
- (iv) Other activities necessary or convenient to carry out this Article VII.

(b) If established, the Design Review Board Members shall consist of two (2) to six (6) persons. The members of the Design Review Board shall be appointed by the Board of Directors.

**ARTICLE VIII  
INSURANCE; LIMITATION OF LIABILITY**

**Section 8.1. Association Insurance.** The Association shall maintain, as a Common Expense, such types and amounts of insurance as are required by the Bylaws, or such additional types or amounts as the Board of Directors shall approve.

**Section 8.2. Limited Liability of the Board of Directors.** The Board of Directors, and its members in their capacity as Members, officers and employees:

(a) Shall not be liable for the failure of any service to be obtained by the Board of Directors and paid for by the Association, or for injury or damage to persons or property caused by the elements or by an Owner or other person on the Property, or resulting from electricity, gas, water, rain, dust or sand which may leak or flow from the outside or from any improvement on the Property, or from any of its pipes, drains, conduits, appliances, or equipment, or from any

other place unless in each such instance such injury or damage has been caused by the willful misconduct or gross negligence of the Association or the Board of Directors;

(b) Shall not be liable to the Owners as a result of mistakes or judgment, negligence or otherwise arising during the course of the performance of duties by members of the Board of Directors, except for the willful misconduct or gross negligence of the members of the Board of Directors;

(c) Shall have no personal liability in contract to an Owner or any other person or entity under any agreement, check, contract, deed, lease, mortgage, instrument or transaction entered into by them on behalf of the Board of Directors or the Association in the performance of duties by members of the Board of Directors;

(d) Shall not be liable to an Owner, or such Owner's tenants, employees, agents, customers or guests, for loss or damage caused by theft of or damage to personal property left by such Owner or his tenants, employees, agents, customers or guests on any Lot or in or on the Roads except for the willful misconduct or gross negligence of the members of the Board of Directors in the performance of their duties;

(e) Shall have no personal liability in tort to an Owner or any other person or entity, direct or imputed, by virtue of acts performed by or for them, except for the willful misconduct or gross negligence of members of the Board of Directors in the performance of their duties; and

(f) Shall have no personal liability arising out of the use or misuse of any Lot except for the willful misconduct or gross negligence of the members of the Board of Directors in the performance of their duties.

**Section 8.3. Indemnification.** Each member of the Board of Directors in his capacity as a member of the Board of Directors, officer or both, shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon him in connection with any proceeding in which he may become involved by reason of his being or having been a member and/or officer of the Board of Directors, or any settlement of any such proceeding, except in such cases wherein such member of the Board of Directors and/or officer is adjudged guilty of willful misconduct or gross negligence in the performance of his duties; provided, that, in the event of a settlement, this indemnification shall apply only if and when the Board of Directors (with the affected member abstaining if he is then a member of the Board of Directors) approves such settlement and reimbursement as being in the best interests of the Association. The indemnification by the Owners set forth in this Section 8.2 shall be paid by the Association on behalf of the Owners and shall constitute a Common Expense and shall be assessed and collectible as such. Such right of indemnification shall not be deemed exclusive of any other rights to which such member of the Board of Directors and/or officer may be entitled as a matter of law or agreement or otherwise.

**Section 8.4. Defense of Claims.** Complaints brought against the Association, the Board of Directors or the officers, employees or agents thereof in their respective capacities as such, or the development as a whole, shall be directed to the Board of Directors, which shall promptly

give written notice thereof to the Owners and the holders of any mortgages and such complaints shall be defended by the Association. The Owners and the holders of the mortgages shall have no right to participate other than through the Association in such defense.

**Section 8.5. Storage; Disclaimer of Bailee Liability.** Neither the Board of Directors, the Association nor Declarant shall be considered a bailee of any personal property stored on the Roads or the Common Areas, and shall not be responsible for the security of such personal property or for any loss or damage thereto, whether or not due to negligence.

## **ARTICLE IX** **MORTGAGE PROVISIONS**

**Section 9.1. Subject to Declaration.** Whether or not they expressly so state, any mortgage which constitutes a lien against a Lot or any improvement thereon and an obligation secured thereby shall provide generally that the mortgage and the rights and obligations of the parties thereto shall be subject to the terms and conditions of this Declaration. An Owner who mortgages his Lot shall notify the Board of Directors in writing of the name and address of his mortgagee(s).

**Section 9.2. Rights of Eligible Mortgage Holders.** The Association shall send reasonable and timely prior written notice by prepaid United States Mail to Eligible Mortgage Holders of the consideration by the Association of the following proposed actions:

- (a) Any proposed amendment of the Declaration; and
- (b) Any sixty (60) day delinquency in the payment of Regular Assessments or other charges owed by the Owner of any Lot on which the Eligible Mortgage Holder holds the Mortgage.

An Eligible Mortgage Holder or its representative shall have the right to attend Association and Board of Directors meetings for the purpose of discussing the matters described in this Section. An Eligible Mortgage Holder who receives a written request to approve any additions or amendments which do not constitute either a material change to the Declaration or Bylaw or any amendment who does not deliver to the requesting party a negative response within thirty (30) days after the giving of notice shall be deemed to have approved such request in writing.

**Section 9.3. Liability for Use and Charges.** Any Mortgagee who obtains title to a Lot pursuant to the remedies provided in its mortgage shall not be liable for such Owner's unpaid assessments or charges which accrue prior to the acquisition of title to such Lot by the Mortgagee, except to the extent that such Mortgagee is liable as an Owner for the payment of such unpaid assessment or charge that is assessed against the Mortgagee as a result of all Owners being reassessed for the aggregate amount of such deficiency.

**Section 9.4. Books and Records.** Any Mortgagee shall have the right, exercisable by written notice to the Board of Directors, to examine the books and records of the Association during normal business hours of the Association and to require that it be provided with a copy of

each annual report of the Association and other financial data of the Association reasonably requested by such Mortgagee.

**ARTICLE X**  
**BOARD OF DIRECTORS OF THE ASSOCIATION**

**Section 10.1. Appointment and Election of Directors.**

(a) The Declarant shall have the right during the Declarant Control Period to appoint, remove and replace from time to time any and all members of the Board of Directors and the Design Review Board and officers of the Association, without the necessity of obtaining resignations. The directors appointed by the Declarant need not be Owners.

(b) The transition from Declarant-appointed members of the Board of Directors to the Owners generally shall occur no later than the earlier of (a) sixty (60) days after the end of the Declarant Control Period or (b) at such earlier date as the Declarant in its sole discretion shall specify. Prior to the expiration of the Declarant Control Period, a transition meeting of the Association and a transition election shall be held at which all of the members of the Board of Directors and officers of the Association appointed by the Declarant shall resign, and the Owners, including the Declarant if the Declarant owns any Lots, shall thereupon elect a Board of Directors to act in the place and stead of those resigning.

(c) Following the expiration of Declarant Control Period, the affairs of the Association shall be governed by a Board of Directors composed of no less than three (3) and no more than seven (7) natural persons, the exact number of which shall be established by the Bylaws of the Association. A majority of the members at the Board of Directors shall be Owners or spouses of Owners or in the case of a Owner that is a corporation, limited liability company, partnership, trust or estate or other legal entity, a designated agent thereof. The terms of all members of the Board of Directors following the transition period described in Section 10.1(b) shall be as follows: The candidate receiving the most votes will have a three-year term, the candidate receiving the second most votes will have a two-year term and the candidate receiving the third most votes will have a one-year term. All subsequently elected Board members will have a three-year term, such that the term of only one Board member will expire each year.

(d) By written notice duly recorded in said Registry of Deeds specifically referring to this Section, the Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board of Directors prior to the termination of the Declarant Control Period, but in that event the Declarant may require, for the duration of the Declarant Control Period that specified actions of the Association or Board of Directors, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before such action can become effective.

**Section 10.2. Abating and Enjoining Violations by Owners.** The violation of any Rules and Regulations adopted by the Board of Directors, the breach of any provision contained in the Bylaws or the breach of any provision of this Declaration or the Bylaws by any Mortgagee, Owner, or any invitee of such Owner, shall give the Board of Directors the right, in addition to any other rights to which it may be entitled, to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach. Any Owner against whom the Board of Directors successfully acts in accordance with this Section shall be liable to pay all expenses of

the Board of Directors, including reasonable attorneys' fees, incurred by the Association in resulting legal proceedings or otherwise in connection with that Owner's violation or breach.

## **ARTICLE XI MANAGEMENT**

**Section 11.1 Professional Management.** The Association shall have the right to employ a professional experienced managing agent who shall oversee the daily operation of the Property, Common Areas and the implementation of the Association's obligations in accordance with the provisions of this Declaration, the Bylaws and the Rules and Regulations; provided, however, that no agreement for such professional management may exceed a term of three (3) years, but such agreement may be renewed upon consent of the Association. Such agreement shall be cancelable by either party without cause and without a termination fee upon not less than sixty (60) days or more than ninety (90) days written notice and shall be cancelable by the Board of Directors with cause upon not less than thirty (30) days written notice. Any agreement for professional management negotiated by Declarant shall not exceed one (1) year and shall contain like termination provisions.

**Section 11.2 Access by Town to Records.** Upon request by the Code Enforcement Officer, Plumbing Inspector, or Town Engineer for the Town of Falmouth, the Association shall produce for inspection and copying at the Falmouth Town Hall, or permit the inspection and copying at its own office of, any or all of its corporate, financial, operating, inspection, and maintenance records, reports, contracts, budgets and other papers, for the purpose of determining its performance of any compliance with the requirements of this Declaration and the provisions of Appendix 8 of the Town of Falmouth Subdivision Ordinance.

**Section 11.3 Enforcement by the Town.** If the Declarant, the Association, or any Owner is found to be in violation of any provision of this Declaration, such violation shall be deemed a violation of Appendix 8 of the Town of Falmouth Subdivision Ordinance and in addition to remedies available to other interested persons, the Town of Falmouth shall have all powers of enforcement with respect to such violation as it has with respect to violations of said Appendix 8.

## **ARTICLE XII ADDITIONAL DECLARANT RIGHTS**

**Section 12.1. Rights of Declarant.** In addition to and not in limitation of the other rights of the Declarant as described in this Declaration, Declarant shall have the right until the end of the Declarant Control Period conveyance of all Lots (including any Lots that Declarant reserves the right to create pursuant to this Article XII) to a purchaser other than to an affiliate of Declarant or to a successor Declarant to:

(a) Grant easements for access to and from the Lots and for the installation, maintenance, repair, replacement and inspection of utility lines, pipes, poles conduits, and other equipment, garbage collection facilities, drainage ways, informational/traffic signs and facilities on the Property, including but not limited to water, electricity, cable, tanks, telephone, gas and



sewer. Declarant, its officers, employees, agents, servants, and contractors shall have a reasonable right of access to the Roads and the Lots.

(b) Install and maintain signs and lighting on the Property for the purpose of sales or rental of Lots or to light the entryways from Blackstrap Road to Stone Ridge Road.

(c) Lease or license for occupancy any Lots, or any portion thereof, and the improvements thereon owned by the Declarant for such terms as Declarant may deem appropriate, and otherwise continue the operation of the Property in substantially the same manner as it is operated as of the date of this Declaration;

(d) Appoint members of the Board of Directors in accordance with Section 10.1(a) hereof.

(e) Reserve the right to transfer any such utilities and easements, in whole or in part, which it owns to the Association, at which time the Association shall be responsible for and shall have the obligations to operate and maintain such utility easements

(f) Reserve the right to transfer any such utilities and utility easements and easement of access to such utility and utility easements, in whole or in part, to another entity, whether public or private, which shall undertake to provide such utility service.

(g) cut any trees, bushes or shrubbery, make any grading of the soil or take any other similar action reasonably necessary to provide economical and safe appearance and use of Common Areas as well as utility installation and to maintain reasonable standard of health, safety and appearance.

(h) have an unobstructed use at all times of all streets and roadways and the right to construct and maintain on the Common Areas, paths and trails for recreational use by Members and household family members.

(i) connect with and use of utility lines, wires, pipes and conduits located within the Common Areas and Association roadways for construction, sales proposes, provided that Declarant shall be responsible for the cost of service so used.

(j) use Common Areas for egress and ingress and for the storage of construction materials and equipment used in the construction of Dwellings or other improvements on the Lots or Common Areas or any adjacent real property.

**Section 12.2 Additional Reserved Rights.** Declarant also reserves to itself, and for the benefit of its successors and assigns, the right to use any Lot owned or leased by the Declarant for storage, models, management, sales, customer service or similar purposes; and the Declarant reserves the right to relocate the same from time to time within the Subdivision. The Declarant further reserves the right to maintain within the Subdivision such advertising signs as comply

with applicable governmental regulations, which signs may be placed in any location and may be relocated or removed, as the Declarant may from time to time determine. The Declarant retains the right to use the Common Area for sales purposes and to erect temporary offices on the Common Area for models, sales, management, customer service and similar purposes.

**Section 12.3. Additional Land.** Declarant shall have the right at any time, and from time to time, to subject to this Declaration any additional property adjacent to the Property (the “Additional Land”) and to create additional Lots on the Additional Land, by recording in the Registry of Deeds a Supplemental Declaration of Easements, Covenants, Conditions and Restrictions (a “Supplemental Declaration”) that describes such additional real property and states that such additional real property shall be subject to this Declaration. If Declarant also creates additional lots on the Additional Land, Declarant shall also record in the Registry of Deeds an amended Subdivision Plan depicting such additional lots. Such Supplemental Declaration may contain such additions and modifications as may be necessary or appropriate in the opinion of Declarant to reflect the different characteristics, if any, of such additional property. Upon the recording of any such Supplemental Declaration, the Additional Land described therein shall be deemed to be a part of and included in the Property for all purposes hereunder and shall be held, transferred, sold, conveyed and occupied subject to this Declaration, as supplemented, modified or amended by such Supplemental Declaration. Upon the recording of any such Supplemental Declaration and amended Subdivision Plan, any additional lots created on the Additional Land (the “Additional Lots”) shall each be deemed to be a “Lot” for all purposes of this Declaration and shall be subject to and have the benefits of this Declaration, and the easements established herein. The maximum number of Additional Lots that may be created on the Additional Land is fifteen (15) (for a total number of Lots equal to thirty-nine (39)). If Additional Lots are added to the Subdivision by the Declarant in the exercise of its rights as reserved in the Declaration, the votes in the Association shall be reallocated among all of the Lots such that each Lot shall have one vote. No assurances are made in regard to the architectural style, quality of construction, size or location of any buildings or other improvements that may be erected on the Additional Land.

**Section 12.4. Reservation of Rights.** In addition to other rights reserved by Declarant herein, Declarant reserves to itself and for the benefit of its successors and assigns the right to reduce or enlarge the size of any unsold Lot, to cause the Roads to be accepted as public roads, to convert Common Area to Lots and vice versa and to otherwise modify the Common Areas.

**Section 12.5 Use and Extension of Roads.** Without limiting the generality of Section 12.1 above, the Declarant specifically reserves the right to construct or permit to be constructed, an extension of the Roads over the Common Area and to use the Roads and extended Roads for ingress and egress to the Lots or other portions of the Property, including any Additional Land and to grant easements over such all Roads and any such extended Roads to adjacent landowners or for the benefit of any additional development that may be undertaken by Declarant or any affiliate or assignee of Declarant, which easements shall be for ingress and egress and for supplying utilities. Declarant further reserves the right to grant to any third party an easement or license in, on, over or through the Common Areas, in addition to and not in limitation of those set forth above.

**Section 12.6 Exercise of Rights.** Notwithstanding any other limitation set forth herein, the rights reserved by Declarant pursuant to Sections 12.2, 12.3, 12.4 and 12.5 herein may be exercised by Declarant or its successors or assigns at any time and from time to time until the later of (a) the conveyance of all Lots (including any Lots that Declarant reserves the right to create pursuant to this Article XII) to a purchaser other than to an affiliate of Declarant or to a successor Declarant; or (b) thirty (30) years from the date of recordation of this Declaration.

**Section 12.7 Assignability of Declarant's Rights.** Declarant may assign any or all of its rights or privileges reserved or established by this Declaration, which assignment shall be recorded in the Registry of Deeds.

**Section 12.8 Lot Subject to Right of Entry.** Each Lot is subject to the right of the Association or its agents to enter thereon at all reasonable times and, in the case of an emergency, without notice, for the purpose of performing maintenance or repair or for carrying out any of the rights or duties of the Association.

### **ARTICLE XIII** **GENERAL PROVISIONS**

**Section 13.1. Applicability of Covenants and Restrictions.** Each present and future Owner, tenant, occupant and Mortgagee shall be subject to and comply with the covenants, conditions and restrictions set forth in this Declaration, the Bylaws, the Rules and Regulations and any deed; provided, however, that nothing contained herein shall impose upon any occupant, tenant or Mortgagee any obligation which one or more of such documents make applicable only to Owners. The acceptance of a deed or mortgage to any Lot, or the entering into of a lease or the entering into occupancy of any Lot shall constitute an agreement that the covenants, conditions and restrictions set forth in this Declaration, the Bylaws, the Rules and Regulations and any deed are accepted and ratified by such grantee, Mortgagee, tenant or occupant. All of such provisions shall be covenants running with the land and shall bind any person having at any time any interest or estate in the Property, as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. Upon sale or transfer of title to a Lot by any Owner, the party taking title to the Lot as new Owner shall be required to notify the Board of Directors in writing of the new Owner's taking of title to the Lot and the mailing address to which correspondence and assessments should be sent. The Association and any aggrieved Owner shall have a right of action against Owners who fail to comply with the provisions of this Declaration, the Bylaws, or the rules and Regulations or with decisions made by the Association or the Board of Directors. Owners against whom the Association or any aggrieved Owner successfully brings an action pursuant to this Section shall be liable to pay all expenses of the successful party, including reasonable attorneys' fees, incurred in the action or otherwise in connection with the Owners' noncompliance. Aggrieved Owners shall have similar rights of action against the Association.

**Section 13.2. Real Estate Taxes.** It is understood that each Owner shall be responsible for the payment of all taxes assessed against such Owner's Lot or the improvements thereon by any governmental authority. If, during any period, such taxes are not assessed separately against individual Lots but are assessed on the entire Property, then each Owner shall pay his share

thereof in accordance with the valuation of his Lot and the improvements thereon shown on the records of the taxing authority, as reasonably determined by the Board of Directors. Real estate taxes assessed against the Common Areas shall be paid by the Association and shall be included as a Common Expense.

**Section 13.3. Utility Charges.** Each Owner shall pay for all telephone, water, electricity, gas and other utilities, which are separately metered or billed to each such Owner by the respective utility company.

**Section 13.4. Severability.** Invalidation of any one of these covenants or restrictions by a court shall in no way affect any other provision hereof, and all such other provisions shall remain in full force and effect.

**Section 13.5. Eminent Domain.**

(a) If any Lot is acquired by eminent domain, any award thereof shall be paid to such Owner as compensation for such taking. Upon a taking of the entirety of any Lot, unless the decree otherwise provides, the Owner's membership in and obligations to the Association shall cease and his percentage of contribution to Common Expenses and shall be reallocated equally to the remaining Owners.

(b) Except as provided in subsection (a) of this Section, if part of a Lot is acquired by eminent domain, any award therefor shall be paid to the Owner of such Lot for the reduction in value of the Lot. The Owner's voting rights, Common Expense liabilities shall not be affected by such taking.

(c) If a part of a Road is acquired by eminent domain, the Association shall be a party to and shall represent the Members in any condemnation proceedings or negotiations, settlements or agreements with the condemning authority, and any award for such taking shall be paid to the Association.

(d) Nothing in this Declaration or the Bylaws shall be deemed to give any Owner priority over any rights of a holder of a first mortgage of a Lot pursuant to such holder's mortgage documents in the case of an award to an Owner for the taking of a Lot.

**Section 13.6. Applicable Law.** This Declaration shall be governed and construed according to the laws of the State of Maine.

**Section 13.7. Interpretation.** The provisions of this Declaration shall be liberally construed in order to affect Declarant's desire to create a uniform plan for development and operation of the Property.

**Section 13.8. Effective Date.** This Declaration shall become effective when it and the Subdivision Plan have been recorded.

**Section 13.9. Notices.** All notices and other communications required or permitted to be given under or in connection with this Declaration shall be in writing and shall be deemed given when delivered in person or on the second business day after the day on which mailed by certified mail, return receipt requested, addressed, if to an Owner to that Owner's Lot address or otherwise to such address as may be designated by written notice given to the Association, if to the Declarant to 712 Lippincott Avenue, Moorestown, New Jersey 08057, and if to the Association, to the principal office of the Association, or to such other address as such party shall designate in writing to the Association for its future notices.

**Section 13.10. Exhibits.** All exhibits attached to this Declaration are hereby made a part of this Declaration.

**Section 13.11 Termination of Declarant's Consent or Approval.** Except as otherwise provided in Section 6.7 and Section 7.5, upon the cessation of Class B Membership, as provided in Section 4.2(b), all right of Declarant to approve or consent hereunder, shall be deemed to have been assigned to the Board of Directors, except for those matters described herein that are deemed to have been assigned to the Design Review Board. The foregoing notwithstanding, Declarant shall have the right to relinquish its right to approve or consent hereunder prior to cessation of Class B Membership by filing a notice of such relinquishment in the Registry of Deeds.

#### **ARTICLE XIV** **AMENDMENT OF DECLARATION AND PLAN**

**Section 14.1. Amendment of Declaration.** Except as provided in Section 14.2 or otherwise herein, this Declaration may be amended only by vote of the Members of the Association as follows. An amendment may be proposed by either the Declarant or by Owners holding in the aggregate no less than forty (40%) percent of the votes in the Association. From and after the date that this Declaration is recorded in the Registry of Deeds, such amendment shall require the affirmative vote of Owners who or which are entitled to vote at least sixty-seven percent (67%) of the total votes of the Class A members of the Association and by Declarant, if Declarant is then a Class B member of the Association. Votes may be cast in person, by proxy or by mail, as permitted and described in the Bylaws. Notice of the subject matter for a proposed amendment shall be mailed to each Owner of record at least 30 days prior to the day in which such amendment is to be voted upon. In lieu of a Board of Directors' meeting to hold an amendment vote, Declarant can declare that a vote be conducted by mail or email.

**Section 14.2 Exercise of Declarant's Reserved Rights.** Anything to the contrary contained in this Article XIV, or elsewhere in this Declaration, Declarant shall have the unilateral right to record Supplemental Declarations and to record amended Subdivision Plans in the exercise of its reserved rights as set forth in Article XII hereof.

**Section 14.3 Amendments Affecting Declarant's Rights.** Notwithstanding anything to the contrary herein or in the Bylaws, the Association shall at all times provide written notice to the Declarant, its successors and assigns, of any proposed amendments to the Declaration or Bylaws that would impact in any respect the Declarant's rights or obligations hereunder. Such

amendments shall not become effective, notwithstanding the votes and approvals described in Section 14.1(a) above, without the express written consent of the Declarant, its successors or assigns.

**Section 14.4 Amendment of Subdivision Plan.** The Subdivision Plan has been reviewed by the Town of Falmouth, as described in the Subdivision Plan. Any amendment to the Subdivision Plan, including without limitation any further subdivision of the Lots, must be made in accordance with the then applicable regulations of the Town of Falmouth. Any amendment of the Subdivision Plan must be accompanied by parallel amendments to this Declaration, if required to ensure that the Subdivision Plan and the Declaration remain consistent and that all Owners of the Property contribute to Common Expenses as described herein. Except as provided in Section 14.2 above, the Association shall have sole authority to make an application to the Town of Falmouth for approval of any amendment to the Subdivision Plan, on behalf of the Association and on behalf of all of the Owners, upon a vote of Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated approving such application, provided that any Owner may petition the Association in writing to initiate any such amendment. Notwithstanding anything to the contrary herein or in the Bylaws, the Association shall at all times provide written notice to the Declarant, its successors and assigns, of any proposed amendments to the Subdivision Plan that would impact in any respect the Declarant's rights or obligations hereunder. Such amendments shall not become effective, notwithstanding the votes and approvals of the Owners as described above, without the express written consent of the Declarant, its successors or assigns. A copy of each amendment shall be attached to or included with a certificate, certifying that the amendment was duly adopted, which certificate shall be executed and acknowledged by such officer or officers of the Association and/or Members of the Board of Directors. The amendment shall be effective when such certificate and copy of the amendment are recorded.