

## DECLARATIONS OF COVENANTS, RESTRICTIONS, CONDITIONS AND RESERVATIONS

THIS DECLARATION, made this 30<sup>th</sup> day of December, 1969, by Jasper Valley Development Corporation, hereinafter called the Developer.

WITNESSETH:

*Whereas*, Developer is the owner of the real property described in Article II of this Declaration and desires to create thereon a residential community with permanent parks, open spaces and other common facilities for the benefit of said community; and

*Whereas*, Developer desires to provide for the preservation of the values and amenities in said community and for the maintenance of said parks, open spaces and other common facilities and, to this end, desires to subject the real property described in Article II together with such additions as may hereafter be made thereto (as provided in Article II) to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

*Whereas*, Developer has deemed it desirable for the efficient preservation of the values and amenities in said community to create an agency to which should be delegated and assigned the powers of maintaining and administering the community properties and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

*Whereas*, Developer has incorporated under the laws of the State of New Hampshire, as a non-profit corporation, THE JASPER VALLEY HOMES ASSOCIATION, for the purposes of exercising the functions aforesaid;

*Now therefore*, the Developer declares that the real property described in Article II, and such additions thereto as may hereafter be made pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

### ARTICLE I.

The following words when used in this Declaration of any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

- (a) "Association" shall mean and refer to the JASPER VALLEY HOMES ASSOCIATION.
- (b) "The Properties" shall mean and refer to all such existing properties, and additions thereto, as are subject to this Declaration or any Supplemental Declaration under the provisions of Article II hereof.
- (c) "Common Properties" shall mean and refer to those areas of land on any recorded subdivision plot the Properties and intended to be devoted to the common use and enjoyment of the owners of The Properties except those properties intended for recreational purposes the use of which will be governed by the Jasper Valley Recreation Association, Inc.
- (d) "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of The Properties with the exception of Common Properties as heretofore defined.
- (e) "Living Unit" shall mean and refer to any portion of a building situated upon The Properties designed and intended for use and occupancy as a residence by a single family.
- (f) "Owner(s)" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot or Living Unit situated upon The Properties but, notwithstanding any applicable theory of the mortgage, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.
- (g) "Member" shall mean and refer to all those Owners who are members of the Association as provided in Article III, Section 1 hereof.

# **DECLARATIONS OF COVENANTS, RESTRICTIONS, CONDITIONS AND RESERVATIONS**

## **ARTICLE II.**

### **Property Subject to This Declaration and Additions Thereto.**

Section 1. *Existing Property.* The real property which is, and shall be held, transferred, sold, conveyed and occupied, subject to this Declaration is located in Amherst and is more particularly described as follows:

SEE DEED DESCRIPTION ATTACHED TO THIS  
DECLARATION AS APPENDIX "A" AND  
INCORPORATED HEREIN BY REFERENCE

The additions authorized under this and the succeeding subsection, shall be made by filing of record a Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the scheme of the covenants and restrictions of this Declaration to such property.

(a) Such Supplementary Declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the scheme of this Declaration. In no event, however, shall such Supplementary Declaration revoke, modify or add to the covenants established by this Declaration within the Existing Property.

(b) *Other Additions.* Upon approval in writing of the Association pursuant to a vote of its members as provided in its Articles of Incorporation, the owner of any property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association, may file of record a Supplementary Declaration of Covenants and Restrictions, as described in subsection (a) hereof.

(c) *Mergers.* Upon a merger or consolidation of the Association with another association as provided in its Articles of Incorporation, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall affect any revocation, change or addition to the covenants established by this Declaration within the Existing Property except as hereinafter provided.

## **ARTICLE III.**

### **Membership and Voting Rights in the Association.**

Section 1. *Membership.* Every person or entity who is a record owner of a fee or undivided fee, interest in any Lot which is subject by covenants of record to assessment by the Association shall be a member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a member.

Section 2. *Voting Rights.* Members shall be entitled to one vote for each Lot in which they hold the interests required for membership by Section 1. When more than one person holds such interest or interests in any Lot, all such persons shall be members, and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Lot.

# **DECLARATIONS OF COVENANTS, RESTRICTIONS, CONDITIONS AND RESERVATIONS**

## **ARTICLE IV.**

### **Property Rights in the Common Properties.**

Section 1. *Members' Easements of Enjoyment.* Subject to the provisions of Section 3, every Member shall have a right and easement of enjoyment in and to the Common Properties and such easement shall be appurtenant to and shall pass with the title to every Lot.

Section 2. *Title to Common Properties.* The Association retains the legal title to the Common Properties.

Section 3. *Extent of Members' Easements.* The rights and easements of enjoyment created hereby shall be subject to the following:

- (a) the right of the Association, in accordance with its Articles and By-laws, to borrow money for the purpose of improving the Common Properties and in aid thereof to mortgage said properties. In the event of a default upon any such mortgage the lenders rights hereunder shall be limited to a right, after taking possession of such properties, to charge admission and other fees as a condition to continued enjoyment by the members and, if necessary, to open the enjoyment of such properties to a wider public until the mortgage debt is satisfied whereupon the possession of such properties shall be returned to the Association and all rights of the Members hereunder shall be *fully* restored; and
- (b) the right of the Association to take such steps as are reasonably necessary to protect the above-described properties against foreclosure; and
- (c) the right of the Association as provided in its Articles and By-laws to suspend the enjoyment rights of any Member for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations; and
- (d) the right of the individual Members to the exclusive use of parking spaces as provided in Section 4 thereof; and
- (e) the right of the Association to dedicate or transfer all or any part of the Common Properties to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer, determination as to the purposes or as to the conditions thereof, shall be effective unless an instrument signed by Members entitled to cast two-thirds (2/3) of the votes of membership has been recorded, agreeing to such dedication, transfer, purpose or condition, and unless written notice of the proposed agreement and action thereunder is sent to every Member at least ninety (90) days in advance of any action taken by certified-return receipt mail.

Section 4. *Parking Rights.* The Association shall, in its discretion, maintain such parking facilities upon the Common Properties as may be deemed advisable. Any such parking facilities shall be subject to restriction, reservation or assignment by the Association.

## **ARTICLE V.**

### **Covenants for Maintenance Assessments.**

Section 1. *Creation of the Lien and Personal Obligation of Assessment.* The Developer for each Lot owned by it within the Properties hereby covenants and each Owners of any Lot by acceptance of a deed therefore, whether or not is shall be so expressed in any such deed or other conveyance, be deemed to covenant and agree to pay to the Association annual assessments or charges. The annual assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together

## **DECLARATIONS OF COVENANTS, RESTRICTIONS, CONDITIONS AND RESERVATIONS**

with such interest thereto and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

Section 2. *Purpose of Assessments.* The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in The Properties and in particular for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Properties and of the homes situated upon The Properties, including but not limited to, the payment of taxes and insurance thereon and repair, replacement, and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof.

Section 3. *Basis and Maximum of Annual Assessments.* The annual assessment shall be One-Hundred Dollars (\$100.00) per lot. From and after January 1, 2003 the annual assessment may be increased by vote of the Members as hereinafter provided, for the next succeeding three years and at the end of each such period of three years for each succeeding period of three years. The Board of Directors of the Association may, after consideration of current maintenance costs and future needs of the Association, fix the actual assessment for any year at a lesser amount

Section 4. *Change in Basis and Maximum of Annual Assessments.* Subject to the limitations of Section 3 hereof, and for the periods therein specified, the Association may change the maximum and basis of the assessments fixed by Section 3 hereof prospectively for any such period provided that any such change shall have the assent of an absolute two-thirds majority of the votes of members, who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall have to be sent to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting, provided further that the limitations of Section 3 hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation and under Article II, Section 2 hereof.

Section 5. *Date of Commencement of Annual Assessments: Due Dates.* The annual assessments provided herein shall commence on the date fixed by the Board of Directors of the Association to be the date of commencement.

The assessment for any year shall become due and payable on the first day of March of said year.

Section 6. *Duties of the Board of Directors.* The Board of Directors of the Association shall fix the date of commencement of the assessment against each Lot for each assessment period of at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the properties which shall be kept in the office of the Association and shall be open to inspection by any Owner.

Written notice of the assessment shall thereupon be sent to every Owner thereto.

The Association shall upon demand at any time furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 7. *Effect of Non-Payment of Assessment; The Personal Obligation of the Owner; The Lien; Remedies of Association.* If the assessments are not paid on the date when due then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. The personal obligations of the then Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless assumed by them.

## **DECLARATIONS OF COVENANTS, RESTRICTIONS, CONDITIONS AND RESERVATIONS**

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of six (6%) percent per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest of the assessment as above provided and a reasonable attorney's fee together with the costs of the action.

Section 8. *Subordination of the Lien to Mortgages.* The lien of the assessments provided for herein shall be subordinate to the lien of any mortgages now or hereinafter placed upon the properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

Section 9. *Exempt Property.* The following property subject to this Declaration shall be exempted from the assessments, charge and lien created therein:

- (a) all property to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use;
- (b) all Common Properties as defined in Article I, Section 1 hereof;
- (c) all properties exempted from taxation by the laws of the State of New Hampshire, upon the terms and to the extent of such legal exemption.

Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens.

### **ARTICLE VI Architectural Control Committee**

Section 1. *Review by Committee.* No building, fence, wall, swimming pool or other structure shall be commenced, erected or maintained upon The Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an Architectural Control Committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee fail to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, or in any event, if no suit to enjoin the addition, alteration or change has been commenced prior to the completion thereof, approval will not be required and this Article will be deemed to have been fully complied with.

The Architectural Control Committee shall operate according to the "Objectives, Guidelines and Procedures". This document may only be changed by a 2/3 majority of the Lots by a signed ballot vote. Written notice of which shall have to be sent to all members at least thirty (30) days in advance.

### **ARTICLE VII General Provisions**

Section 1. No temporary structure, including trailers and mobile homes, shall be left upon any Lot other than those necessary to be used in the course of construction of permanent buildings and all such temporary structure shall be removed promptly upon completion of a permanent building. No animals of any kind other than usual household pets shall be kept or maintained on The Properties and no horses, cows, goats, hogs, poultry or similar

## **DECLARATIONS OF COVENANTS, RESTRICTIONS, CONDITIONS AND RESERVATIONS**

animals shall be kept upon The Properties except as may be provided by the Association on the Common Properties.

Section 2. *Duration.* The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the secretary of the Association certifying a ballot vote of then-Owners of two-thirds of the Lots has been recorded agreeing to change said covenants and restrictions in whole or in part. Provided, however, that no such agreement to change shall be effective unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken.

Section 3. *Notices.* Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing, except as may be otherwise provided hereinabove.

Section 4. *Enforcement.* Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association or any Owner to enforce any covenants or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 5. *Severability.* Invalidation of anyone of these covenants or restrictions or portion thereof by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

# **DECLARATIONS OF COVENANTS, RESTRICTIONS, CONDITIONS AND RESERVATIONS**

## **APPENDIX A.**

### **Description of Property Subject to Declaration of Covenants, Restrictions, Conditions and Reservations of The Jasper Valley Development Corporation.**

All that certain tract or parcel of land with any buildings thereon situate in Amherst on the southerly side of Boston Post Road, so-called, being more particularly bounded and described as follows:

Beginning at the northwest corner of the premises herein described and conveyed at the intersection of the easterly side of a proposed bridle path with the southerly side of Boston Post Road at a granite bound set in the ground; thence

Easterly by the southerly side of Boston Post Road forty-three and 3/10th (43.3) feet to a point; thence continuing

Easterly by the southerly side of Boston Post Road by a course forming an interior angle of 179°10' with the last described course a distance of ninety-eight (98) feet to a point; thence continuing

Easterly by the southerly side of said Boston Post Road by a course forming an interior angle of 176°30' with the last described course a distance of one hundred and 2/10th (100.2) feet to a point; thence continuing

By the southerly side of said Boston Post Road by a course forming an interior angle of 177°47' with the last described course a distance of thirty-six and 1/10th (36.1) feet to a point; thence

Southerly by a curved line having a radius of twenty-five (25) feet a distance of thirty-seven and 12/100th (37.12) feet to a point on the westerly side of a roadway; thence

South 36°25' West by the westerly side of said roadway 192 and 6/100ths (192.6) feet to a granite bound; thence

North 53°35' West three hundred (300) feet to a granite bound set on the easterly side of the proposed bridle path; thence

North 36°25' East two hundred twenty-two and 1/10ths (222.1) feet to the point of beginning. Containing 66,000 square feet, more or less, and being shown as Lot #2 on a plan entitled "Subdivision Plan, Land of Jasper Valley Development Corp., Boston Post Road, Amherst, NH. Dated July 15, 1968 by E. A. Leach."