

FIRST AMENDMENT AND RESTATEMENT OF
DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS
OF
NORTH AMHERST FARMS

DECLARATION is made this 16th day of March, 1992, by
PRESCOTT INVESTMENT CORP. of Pinnacle Mountain Farms, South
Lyndeboro, County of Hillsborough and State of New Hampshire
(hereinafter referred to as "Developer").

WHEREAS, the Developer made a Declaration of Covenants and
Restrictions dated October 24, 1991, recorded in the Hillsborough
County Registry of Deeds at Book 5290, Page 1679, and desires to
amend and restate said declaration;

WHEREAS, Developer is owner of certain parcels of land
situated in the Town of Amherst, County of Hillsborough, State of
New Hampshire, said property being more particularly described in
a Quitclaim Deed from New Hampshire Savings Bank dated October 2,
1991, and recorded in the Hillsborough County Registry of Deeds
at Book 5286, Page 1851 (the "Premises"); and

WHEREAS, Developer desires to develop a portion of its land
into individual house lots; and

WHEREAS, Developer desires to provide for the preservation of
the values and amenities in said development, and it is desired
to define easements, covenants, and restrictions for the
protection of both the present and subsequent owners of the homes
and house lots on the property; and

WHEREAS, Developer desires to create an agency to which can
be delegated the powers of maintaining and improving the
property, administering and enforcing the covenant restrictions,
and collecting and disbursing the assessments and charges
hereinafter collected, and to that end will cause North Amherst
Farms Owners' Association (hereinafter referred to as the
"Association") to be incorporated as a nonprofit corporation
under New Hampshire Revised Statutes Annotated ("RSA") Chapter
292; and

WHEREAS, Developer desires that all buildings and other
structures shall be harmoniously designed, landscaped, located,
and maintained, and has provided covenants for this purpose; and

WHEREAS, Developer desires to develop the Premises as a
private, residential community in accordance with a subdivision
plan of land entitled "Subdivision Plan of Land Prepared for
North Amherst Farms, Amherst, New Hampshire, Scale: 1" = 100',
July 31, 1989" by Thomas F. Moran, Inc., Surveyor, and recorded
in the Hillsborough County Registry of Deeds as Plan No. 24253
(the "Subdivision Plan"), the Zoning Ordinances of the Town of
Amherst and this Declaration; and

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WHEREAS, it is the intent of the Developer to preserve the countrified character of the surrounding properties, maintain and preserve the natural amenities, such as any open field areas and natural water courses, and prevent nuisances and other adverse activities within the Premises; and

WHEREAS, it is the intent of the Developer to reserve and retain all future development rights in the Premises and in any and all lots conveyed by Developer to third parties;

NOW, THEREFORE, Developer declares that the real property described in Article II is and shall be held, transferred, and occupied subject to this Declaration.

ARTICLE I

Definitions

The following terms when used herein shall be defined thusly:

1.1. "General Assessments" shall mean assessments for Common Expenses provided for herein or by any subsequent Amendment, which shall be used for the purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of the Home Lots.

1.2. "Flume Assessments" shall mean assessments for expenses associated with the maintenance of the boulevard landscape of the road known as The Flume on the Subdivision Plan and which shall be assessed only to Owners of Lots located on The Flume.

1.3. "Chatham Court Assessments" shall mean assessments for expenses associated with the maintenance of the landscape enhancements along the road known as Chatham Court on the Subdivision Plan and which shall be assessed only to Owners of Lots located on Chatham Court.

1.4. "Sutton Court Assessments" shall mean assessments for expenses associated with the maintenance of the landscape enhancements along the road known as Sutton Court on the Subdivision Plan and which shall be assessed only to Owners of Lots located on Sutton Court.

1.5. "Association" shall mean and refer to North Amherst Farms Owners' Association, a New Hampshire nonprofit organization to be formed and its successor and assigns. The "Board of Directors" or "Board" shall be its elected body.

1.6. "Common Expenses" shall mean and include the actual and estimated expenses of operating the Association, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the By-Laws, and the Articles of Agreement of the Association.

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1.7. "Home Lot" shall be each of up to fifty-nine (59) parcels of land, each restricted for one single-family home, and located within the property as further described herein under Article II and being the same locus shown on the Subdivision Plan. Said Home Lots are designated by the numbers 10-30-2 through 10-30-11 inclusive, 10-30-35 through 10-30-45 inclusive, 11-12-12 through 11-12-34 inclusive, and 11-12-46 through 11-12-60 inclusive, and their respective size and the location within the parcel are as depicted on this Subdivision Plan and shall be so depicted on future plans this Declaration may be amended to include. The words "Subdivision Plan" when referred to in this Declaration shall be deemed to include all such future plans.

1.8. "Lot" or "Lots" shall mean a Home Lot as defined above.

1.9. "Association Land" shall be any land deeded to it by the Developer and shown on the Subdivision Plan.

1.10. "Owner" shall mean and refer to one (1) or more persons or entities who hold the record title to a Home Lot, but excluding any party holding an interest merely as security for the performance of any obligation.

ARTICLE II

Description of Property

2.1. The real property (hereinafter sometimes referred to as the "Property") which is and shall be held, transferred, and occupied subject to the Covenants, Restrictions, and Easements is located in Amherst, New Hampshire and is more particularly described as all Home Lots and streets and roadways contiguous to said Home Lots designated on the Subdivision Plan.

ARTICLE III

Development Plans

3.1. The Premises is being developed according to the following plan:

(a) An initial subdivision of fifty-nine (59) Home Lots on the Subdivision Plan.

(b) Easements for the installation and maintenance of utilities (water, sewage, electric, telephone, etc.) and drainage facilities are to be reserved by Developer, its successors and assigns in, over and under all land subject to this Declaration, provided that such easements not unreasonably interfere with any planned or actual construction of any home on a Home Lot.

ARTICLE IV

North Amherst Farms Owners' Association

4.1. The North Amherst Farms Owners' Association will be a nonprofit corporation created pursuant to RSA Chapter 292, and charged with the duties and empowered with the rights set forth in this Declaration. The affairs of the Association shall be governed by its Articles of Agreement and By-Laws, and in conformity with the requirements of the Declaration.

4.2. Each Owner, including Developer, shall automatically be a member of the Association.

4.3. There shall be one (1) vote for each Home Lot. If a Home Lot is owned in common and undivided by multiple Owners, there shall remain only one (1) vote to be cast as per agreement of the multiple Owners. If the multiple Owners are unable to agree as to how the vote shall be cast, the vote shall not be exercised.

4.4. The Association shall be obligated to maintain all Association properties and facilities, including roadways, any parking areas, any Association Land, any recreation facilities, any utilities and utility rights of way up to the Home Lots, but not those portions of the systems that are on or under said Lots, as may be conveyed to it by Developer pursuant to Article XI. The Association shall take action to enforce the covenants, restrictions, and easements contained in this Declaration and shall collect assessments. The Association shall pay all taxes assessed against said Association properties. In furtherance of these specific purposes and in furthering the peace, safety, health, and general welfare of the Owners, the Association shall have the powers contained in its Articles and is authorized to do all acts necessary or desirable to carry out its purposes.

4.5. The Association may develop recreational facilities on any Association Land as the Board of Directors shall from time to time determine; provided, however, that no expenditure for this purpose in excess of Ten Thousand Dollars (\$10,000.00) shall be made without the concurrence in writing of two-thirds (2/3) of the members of the Association not including the Developer.

4.6. Commencing in 1993, the annual meeting of the Association shall take place on the first Saturday of February of each year at 2:00 p.m. on the property. Such other reasonable place or time may be set by written notice of the Directors mailed or delivered to the Owners of record as of January 1 of each year not less than twenty (20) days prior to the date fixed for said meeting.

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ARTICLE IV

Board of Directors

5.1. The affairs of the Association shall be managed by the Board of Directors consisting of three (3) Directors.

5.2. The Board of Directors shall:

- (a) Adopt and publish rules and regulations governing the use of Association Land and facilities thereon.
- (b) Determine the annual budget and expenses of the Association and determine the amount of annual assessments for which provision is made in Article VI.
- (c) Take such other action as may be reasonably necessary to the good and proper management of the Association.
- (d) Have and exercise such powers as provided in the Association's Articles and By-Laws.

5.3. The Board of Directors shall have the authority to accept, on behalf of the Association, conveyances of real and personal property and assignments of easements, rights, and privileges, including those reserved to Developer by this Declaration. The Board of Directors, on behalf of the Association, shall be obligated to accept from the Developer conveyance of the properties and land as specified by the Developer. The Board of Directors shall serve pursuant to the By-Laws of the Association.

ARTICLE VI

Assessments

6.1. Each Owner of a Lot, by acceptance of title thereto, whether or not there shall be a reference to such covenant in the deed or other conveyance to such Owner, be deemed to covenant and agree to pay to the Association such yearly assessments as may be established or hereinafter provided.

6.2. The amount of the assessment against each Lot subject thereto shall each year be fixed by the Board of Directors. Owners of Lots on The Flume shall be assessed additional assessments for the maintenance of the boulevard landscape of The Flume. Owners of Lots on Chatham Court may be assessed additional assessments for maintenance of landscape enhancements along Chatham Court. Owners of Lots on Sutton Court may be assessed additional assessments for maintenance of landscape enhancements along Sutton Court. The annual assessment shall be due on or before April 1 of each year. In addition to the annual assessments described hereinabove, the Board of Directors may levy a special assessment in any year to obtain funds necessary for any duly authorized purpose under the Association's Articles,

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provided that approval of such levy is given by two-thirds (2/3) of the aggregate voting strength of the Association.

6.3. Annual assessments made pursuant hereto, together with interest thereon computed from the due date of each assessment at the rate of one and one-half percent (1 1/2%) per month, and all costs of collection thereof, including attorneys' reasonable fees, shall be a charge on the Lot and a continuing lien upon the property against which such assessment is made and shall also be the personal obligation of the Owner of such property as of the time payment thereof shall become due. Said lien shall be enforced in the same manner as a Power of Sale Foreclosure pursuant to RSA Chapter 479.

The Association shall have the right to impose a Ten Dollar (\$10.00) monthly service charge upon each Lot Owner whose assessment is thirty (30) days overdue, in addition to the interest imposed as previously set forth. The Secretary of the Association shall, upon conveyance of any Lot, issue a certificate of payment of assessments and release of lien if no outstanding assessments shall be due from said Lot.

6.4. All assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the Owners at the development and, in the minimum, shall provide for maintenance of any Association Land and the Association properties, services and facilities devoted to this purpose, for an adequate reserve fund for maintenance, repairs, and replacement of those elements of Association property that must be replaced on a periodic basis, New Hampshire real estate taxes and liability and fire insurance on the Association Land. Fire insurance on the Association properties shall be in an amount not less than one hundred percent (100%) of the insurable value based on current replacement cost. Any proceeds paid under said policy shall pay for the repairs, replacement, or reconstruction of the lost or damaged property.

6.5. The lien of the assessments provided for herein shall be subordinate to any first mortgage lien of any lender of record now or hereafter placed upon the properties subject to assessment.

6.6. A purchaser of a Lot shall take title to the Lot subject to the lien for all unpaid assessments made against previous Owners thereof, except that a first mortgagee or other purchaser at the foreclosure sale of a first mortgage lien or at a sale in lieu of such foreclosure and a purchaser from a first mortgagee who purchases at such a foreclosure sale or such a sale in lieu of foreclosure, shall not be liable for payment of assessments unpaid and due as of the time of his acquisition, but shall be liable for assessments becoming due thereafter.

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6.7. First mortgagees may, jointly or singly, pay taxes or other charges, including assessments that are in default and which may, or have, become a charge against any Association property and may pay overdue insurance premiums on hazard insurance policies or secure new hazard insurance on the lapse of a policy. Any such payment by a first mortgagee, except for payments of taxes on individual Lots or assessments on the same, shall be entitled to immediate reimbursement from the Association.

6.8. Upon request of any first mortgagee, the Association shall notify the first mortgagee, in writing, of any default in the above provisions by a mortgagor, which have remained in default for a period of sixty (60) days.

ARTICLE VII

Association Land

7.1. Association Land shall be land, improvements, and easements devoted to the social welfare, use, and enjoyment of Owners of the Lots, and so designated in any deed conveying such land or easements to the Association. Such Association Land and Association property shall include, but not be limited to, roadways, utility lines, fire protection water sources, and any recreational facilities.

7.2. Association Land shall be managed in such a way as to promote the Owners' enjoyment of the wooded, natural state of the land.

7.3. Every member shall have a right and easement of enjoyment in common with others in and to the Association Land, including, but not limited to, easements of access to and from any public highways over access roads, which easement shall be appurtenant to and shall pass with the title to every home whether or not expressly mentioned in a deed thereto. Each member shall have the right to delegate such rights of enjoyment to his guests and to persons residing in his home. Such rights are subject to the rights of other Owners in the Association Land, and the rights of the Declarant or its successors or assigns.

7.4. Developer shall have the right to deed any of the Home Lots which it owns, or Lot 11-12-61 or Lot 10-30-62 or Lot 10-30-63 to the Association. All such conveyances shall be accepted by the Association.

ARTICLE VIII

Architectural Review Committee

8.1. The Board of Directors of the Association shall establish an Architectural Review Committee (hereinafter referred to as the "Committee"). The main function and primary purpose of

the Committee shall be to review, approve or reject plans for construction and landscaping, improvements, and supervise and enforce this Declaration, and to serve in such other capacity as is consistent with the provisions of this Declaration.

8.2. The control by the Developer or its designated representatives, successors or assigns regarding development rights, including any potential future expansion of this subdivision, shall continue in full force and effect throughout the duration of these covenants and restrictions, and will not be limited or controlled by this Committee. The Developer has the right to make all decisions regarding the development and expansion of North Amherst Farms and shall transfer or assign such right to its assignee, successor, heir or designated representative.

ARTICLE IX

Use Restrictions

The following restrictions are imposed upon each Lot for the benefit of every other Lot on the property and may be enforced by any Owner, including the Developer, or the Association:

9.1. Residential Use. All Lots are for single-family residential purposes only. No building or structure intended for or adapted to business or commercial purposes and no apartment house, double house, lodging house, rooming house, hospital, school, educational facility, sanatorium or professional office, or other multiple-family dwelling shall be erected, placed, permitted or maintained on any Lot, or on any part of any Lot. No improvement or structure whatever, and its use other than a first class private dwelling house, heliport, patio walls, swimming pools, and customary outbuildings, barn, tennis court, garage, carport, servants' quarters, or guest house may be erected, placed or maintained on any Lot in the Premises.

9.2. Building, Structures, etc. No building, barn, temporary building, guest house, major alteration or addition, non-conforming wall or fence, or any structure or improvement of any significant character shall be constructed on any portion of the property designated as North Amherst Farms and shown on the aforementioned Subdivision Plan until a plan of such construction, picture or diagram of such item, the specific location and particular use of such building or appurtenance thereon has been approved in writing by the Developer, its successors or assigns, or the Architectural Review Committee. All plans and specifications shall be submitted in duplicate; one set to be permanently retained by the said Developer.

The Developer or the Architectural Review Committee shall, in a reasonable manner, approve or disapprove the said plans and specifications according to the design, placement

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of structures, materials and colors to be used in the construction thereof, the harmony of the external design with existing or proposed surrounding structures, the location with respect thereto, the topography and the finished grade elevation of the particular site chosen, the affect of the construction on the outlook from surrounding properties, the particular use to be applicable thereof, and any other factors which may affect the desirability or the suitability of the proposed construction. No construction shall be commenced and no sites shall be graded except in accordance with such approved plans or modifications thereof similarly approved. All structures on Lots on The Flume and Sutton Court shall be at least two thousand eight hundred (2,800) square feet in area if a two-story structure, and two thousand five hundred (2,500) square feet in area if a one-story structure. All structures on Lots on Chatham Court shall be at least two thousand four hundred (2,400) square feet in area if a two-story structure, and two thousand one hundred (2,100) square feet in area if a one-story structure. All one-story structures on Lots must have cape-style exteriors. The method of determining the area of proposed structures shall be to multiply the outside horizontal dimensions of the structure at each floor level, excluding garages, breezeways, decks, porches, patios, and terraces in the calculation of the minimum square foot area. The minimum roof pitch on all structures on all Lots shall be eight (8) feet in twelve (12) feet (for every twelve (12) feet of run there shall be eight (8) feet in rise).

No garage, barn, or appurtenant structure shall be placed, erected or maintained upon any part of the Premises except for use in connection with a residence already constructed or under construction and as approved by Developer.

9.3. Occupancy. No private dwelling house erected upon any Lot shall be occupied in any manner while in the course of construction, nor reasonably at any time prior to its being fully completed. Nor shall any residence, when completed, be in any manner occupied until made to comply with the approved plans, the requirements herein and all other covenants, conditions, reservations and restrictions herein set forth. All construction shall be completed within eighteen (18) months from its start, provided that the Developer may reasonably extend the time when in his opinion conditions warrant an extension. No temporary house, dwelling, garage, outbuilding, trailer home, recreational vehicle or other temporary structure shall be placed or erected upon any Lot unless approved by the Developer.

9.4. Preservation of Natural Environment. The native growth on the Premises, ecology of water courses, marshes and similar wetland shall not be permitted to be destroyed or removed except as approved in writing by the Developer. Developer shall reasonably approve all land disturbances for

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areas of residence, driveways, and amenities. In the event such growth or areas are removed, except as approved, the Developer may require the replanting or replacement of same, at the cost of the Lot Owner.

9.5. Utility Lines and Antennas. All electrical service and telephone lines shall be placed underground and no outside electrical lines shall be placed overhead. This restriction may be waived by the Developer as circumstances dictate.

9.6. Tanks and Other Storage. No elevated tanks of any kind shall be erected, placed or permitted on any part of the Premises, provided that nothing herein shall prevent the reversionary Owner, his heirs and assigns from erecting, placing or permitting the placement of tanks and other water system apparatus on the Premises. Any tanks for use in connection with any residence, including tanks for the storage of fuels, must be stored or walled sufficiently to conceal them from the view from neighboring Lots, roads or streets. All clotheslines, garbage cans, equipment, coolers, wood piles or storage piles shall be walled in to conceal them from the view of neighboring Lots, roads or streets. Plans for all enclosures of this nature must be approved by the Developer or the Architectural Review Committee prior to construction.

9.7. Nuisances: No horses, cattle, swine, goats, poultry, fowl or any other animals (except normal household pets) shall be kept on any Lot unless prior written approval is obtained from the Developer or the Architectural Review Committee. No clotheslines shall be permitted unless concealed by hedges, lattice work or screening acceptable to the Architectural Review Committee. No signs or other advertising, except standard real estate "for sale" signs, shall be displayed on any Lot unless the size, form and number of same are first approved in writing by the Committee. No underbrush or other unsightly growths shall be permitted to grow or remain upon the Premises.

No Lot shall be used in whole or in part for the storage of rubbish of any character whatsoever, nor for the storage of any property, animal or other tangible property that will cause such Lot to appear in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, animal or material be kept upon any Lot that will emit foul or obnoxious odors or that will cause any noise that will disturb the peace, quiet, comfort or serenity of the occupants of surrounding property.

In the event that any Owner of any property in the subdivision shall fail or refuse to keep the Premises free from restrictions and nuisances described herein, then the Developer or the Architectural Review Committee may (but shall not be obligated to) enter upon the lands and remove the same at the expense of the Owner and such entry shall not

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be deemed a trespass. In the event of such a removal, a lien shall arise and be created in favor of the Developer or the Architectural Review Committee and against the Owner's Lot for the full amount chargeable to the Lot and that amount shall be due and payable within thirty (30) days after the Owner is billed for it. In the event any such amount is not paid within thirty days, the Committee has the right to obtain a security interest in the offending Lot by placing a lien on record at the Hillsborough County Registry of Deeds describing the property subject to the lien, Owner's name and the reason and amount of the lien. Reasonable collection and attorney fees will also be included in the lien amount if the lien is placed on record and must be paid in full before the lien will be discharged.

9.8. Walls. No boundary wall or fence shall be constructed with a height of more than four (4) feet and no boundary line hedge or shrubbery shall be permitted with a height of more than four feet. No wall or fence of any height shall be constructed on any Lot until after the height, type, design and approximate location are approved in writing by the Architectural Review Committee. The heights or elevations of any wall or fence shall be measured from the existing elevations of the property at or along the applicable points or lines. Any question as to heights may be completely determined by the Architectural Review Committee.

9.9. Subdivision of Lots. With the following exception, in no event shall any of the specific Lots herein be further subdivided; nor shall any Lot or any portion thereof be used as a private or public road, driveway, right-of-way, easement or other access to abutting or adjacent land to the North Amherst Farms subdivision. This restriction shall not be applicable to the Developer, or its designated representative, assignee or heirs, and the said Developer shall have the right to join or to further subdivide any of the Lots within the aforementioned Premises and to use said Lots as a right-of-way, public or private roadway or other access to provide ingress and egress to abutting or adjacent lands presently owned or that in the future may be acquired by the said Developer, without restriction.

9.10. Developer's Right. The Developer, as the Owner of North Amherst Farms subdivision reserves the right to deviate from the aforementioned restrictions and uses and to grant approval for structures and uses not consistent with these Articles, if, in its reasonable discretion, such action is warranted for the ordinary and necessary development of the said area.

9.11. Injurious Use. No part, or portion of any of the within Lots, shall be used or occupied injuriously to affect the use, occupation, or value of the adjoining or adjacent premises for residential purposes.

ARTICLE X

Disrepair and Destruction

10.1. In the event any structure falls into such a state of disrepair as to be deemed a "hazardous building", being defined as any structure or part of a structure which, because of inadequate maintenance, dilapidation, physical damage, unsanitary condition, or abandonment, constitutes a fire hazard or a hazard to public safety or health, the Board of Directors may order the Owner thereof to correct the hazardous condition of such building. The order of the Board shall state in writing the grounds therefor, specifying the necessary repairs and providing ninety (90) days for compliance. In the event of failure of the Owner to comply, the Board may cause the building to be repaired or, if necessary, in its opinion, razed and rebuilt.

10.2. For purposes of enforcement hereof, each Owner's policy of hazard insurance shall name the Association an insured as its interest may appear.

10.3. The Board of Directors shall keep an accurate account of expenses incurred in carrying out its order and of all other expenses theretofore incurred in connection with its enforcement, including specifically, but not exclusively, any and all attorneys' fees, construction charges connected with labor, materials, and services in repair and/or rebuilding of the premises from the time the order was originally made and shall credit thereon the amounts, if any, received from the sale of the salvage or building or structure and any casualty insurance payments. If the amount received from the sale of the salvage, including any personal property and fixtures situated therein and insurance proceeds does not equal or exceed the amount of expenses, the Board shall establish the amount of the difference as a deficiency which amount shall be a continuing lien against the property together with interest thereon computed from the expiration of the ninety (90) day period for compliance at the rate of one and one-half percent (1 1/2%) per month along with all costs of collection, including attorneys' reasonable fees. Said lien shall also be the personal obligation of the Owner of such property and shall be enforced in the same manner as a Power of Sale Foreclosure pursuant to RSA Chapter 479.

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ARTICLE XI

Reserved Easements and Rights

Developer reserves in all Lots and each shall be conveyed subject to certain easements for all or any of the following uses and purposes:

11.1. Roads, Lighting and Landscaping.

11.1.1. Construction. Developer shall, at its option, construct The Flume, Chatham Court, and Sutton Court, as shown on the Subdivision Plan, and any other roads it deems necessary to service the Premises. Developer hereby declares any and all easements necessary or desirable across the Lots without interference with any improvements on the Lots for the construction and maintenance of all of the said roads, the installation of drainage and utilities around or under the said roads, the installation and maintenance of landscaping around the various entryways to the Premises and along the roads and the installation, maintenance and repair of lighting for the said roads.

11.1.2. Public Ways. Developer will use its best efforts to have the Town of Amherst, New Hampshire accept the roads as public ways, in which event Developer (or the Association) shall transfer its easement rights hereunder with respect to the roads to the Town of Amherst.

If the Town of Amherst will not accept any portion or the whole of said roads as public ways, Developer will have the right to transfer its title, rights, and obligations pursuant to Section 11.1 in and to those portions not accepted or the whole of the roads, the lighting and landscaping to the Association, which shall be obligated to accept said rights, title, and obligations.

11.1.3. Lot Owners' Use. The Owners of each of the Lots shall have the use and benefit of said roads for all purposes for which roads are customarily used in the Town of Amherst, subject, however, to all of the rights of Developer reserved herein. None of the rights of the various Lot Owners shall be construed to inhibit or impede the construction, maintenance, and other easement rights reserved herein by Developer.

11.1.4. Decisions, Maintenance and Costs. Unless and until the roads are accepted as public ways by the Town of Amherst or Developer makes the transfer referred to in Section 11.1.2 above to the Association, all decisions relative to construction, maintenance, liability, and insurance and any other decisions necessary to be made and implemented with respect to the roads shall be made by Developer and the roads shall be maintained by Developer. Until such time, Developer, as well, shall make and implement all such decisions with respect to the lighting and landscaping and shall maintain the lighting and landscaping. During the interim period, identical to the rights of the Association, Developer shall have the right to charge and collect from the Owner of every Lot a pro rata share on the basis of use of the expenses of maintenance, liability, taxes, and insurance of said roads as those costs and expenses are incurred. Any damage, maintenance, or repair of

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the roads, landscaping, or lighting or any liability incurred in connection therewith which is caused by the intentional or negligent acts or omissions of any Lot Owner, its agents, representatives, employees, guests, or invitees shall be paid for solely by the said Lot Owner. All charges shall be paid within thirty (30) days of receipt of the bill therefor.

11.1.5. Utilities. The rights of each Lot Owner hereunder are subject to the rights of Developer to grant easements to utility companies for easements which are beneficial to one (1) or more of the Lots.

11.1.6. Easements to Run with the Land. All of the rights, easements, and obligations declared herein shall run with the land of all Home Lots.

11.2. Septic System.

11.2.1. Construction. The Owners of each of the Lots shall construct the septic systems they are to use. Developer shall have the right to construct any additional septic systems which it deems necessary to service the Premises at any time. Developer hereby declares any and all easements necessary or desirable for the construction and maintenance of all of the said septic systems for itself and the individual Lot Owners.

11.2.2. Lot Owners' Use. Each of the Lots shall have the use and benefit of the said septic systems for all purposes for which septic systems are customarily used in the Town of Amherst, subject, however, to all of the rights of Developer reserved herein. All septic tanks shall be pumped every two (2) years with the expense being the responsibility of the Owners using the system.

None of the rights of the various Lot Owners shall be construed to inhibit or impede the construction, maintenance, and other easement rights reserved herein by Developer.

11.2.3. Decisions, Maintenance and Costs. Unless and until the Premises are connected to the Town of Amherst public sewer system, all decisions relative to the construction, maintenance, liability, and insurance and any other decision necessary to be made and implemented with respect to the septic systems shall be made and implemented by the individual Lot Owners connected to the septic system in question and they shall maintain the said septic systems; provided, however, that any damage, maintenance, or repair of the septic systems caused or necessitated by the intentional or negligent acts or omissions of any Lot Owner, its agents, representatives, employees, or invitees shall be paid for solely by the said Lot Owner.

11.2.4. Easements to Run with the Land. All of the rights, easements, and obligations declared herein are to run with the land of all Home Lots.

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11.3. Drainage.

11.3.1. Construction. Developer intends to construct a drainage system along the roads of the Premises and as required on the Home Lots as approved by the Town of Amherst and convey that drainage system as a part of the public ways as referred to in Section 11.1.2 above. Developer hereby declares any and all easements necessary or desirable for the construction and maintenance of the said drainage system.

11.3.2. Lot Owners' Use. Each of the Lots shall have the use and benefit of the drainage system for the purposes of draining each of the Lots, subject, however, to all of the rights of Developer reserved herein. None of the rights of the various Lot Owners shall be construed to inhibit or impede the construction, maintenance, and other easement rights reserved by Developer herein.

11.3.3. Drainage of Lots. Each of the Lot Owners shall direct the drainage of their Lots in conformance with plans approved by Developer and the Town of Amherst, if Town of Amherst approval is required, and shall construct the drainage for their Lot in accordance with said plans.

11.3.4. Decisions, Maintenance and Costs. Unless and until the Town of Amherst accepts the drainage system, all decisions relative to the construction, maintenance, liability, operation, and insurance and any other decisions necessary to be made and implemented with respect to the drainage system constructed by Developer shall be made and implemented by Developer and the drainage system constructed by Developer shall be maintained by Developer. Developer shall have the right to charge and collect from the Owner of every Lot a pro rata share of the expenses of maintenance, liability, taxes, and insurance for and any other costs incurred by Developer in connection with the drainage system constructed by the Developer as those costs and expenses are incurred in accordance with Section 11.1.4 above; provided, however, that any damage, maintenance, or repair of the drainage system caused by the intentional or negligent acts or omissions of any Lot Owner, its agents, representatives, employees, or invitees shall be paid for solely by the said Lot Owner. All such charges shall be paid within thirty (30) days of receipt of the bill therefor. Developer shall have the right to transfer its title, rights, and obligations pursuant to this Section 11.3.4 in and to the drainage systems to the Association, which shall be obligated to accept said rights, title, and obligations.

11.3.5. Transfer to Town. Developer shall use its best efforts to transfer all of its rights and obligations in and to the drainage systems to the Town of Amherst upon which acceptance these easements for the drainage system shall

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terminate in which event Developer shall transfer its easement rights hereunder with respect to the drainage system to the Town of Amherst.

In the event that the Town of Amherst is unwilling or unable to accept the drainage system as contemplated above, Developer shall have the right to transfer all of its title, rights, and obligations in and to the drainage system constructed by Developer to the Association, which shall be obligated to accept said title, rights, and obligations.

11.3.6. Easements to Run with the Land. All of the rights, easements, and obligations declared herein are to run with the land of all Home Lots.

11.4. General Development of the Premises. Developer does hereby declare an easement for the purposes of the development and construction of the Premises over and across all of the Lots. Developer hereby declares any and all easements necessary or desirable for the construction and development of the Premises. None of the rights of the various Lot Owners herein shall be construed to inhibit or impede the construction and other easement rights reserved herein by Developer. All of the Lot Owners shall cooperate with one another and Developer in order to implement this Declaration. Among the general easements are:

11.4.1. Service boxes, poles, wires, and conduits, above or below ground, for the transmission of electricity and telephone messages, and other purposes and for necessary attachments in connection therewith;

11.4.2. Facilities (pumps, etc.), ditches, pipes, and culverts for surface water drainage and sewer, water, and gas mains and pipes and appurtenances thereto;

11.4.3. The construction and maintenance of slopes and cuts in conjunction with roadways and pathways upon the property;

11.4.4. Any other method of conducting and performing any public or quasi-public utility or service function over or beneath the surface of the ground;

11.4.5. Cables, conduits, and wires above or below ground for community radio and television antenna services;

11.4.6. Installing, replacing, repairing, and servicing any of the foregoing, including trimming and cutting;

11.4.7. Use of Association Land and Association property for building construction and sales purposes conducive to the completion of this development and for construction of recreational facilities and related amenities.

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11.5. Assignment. All the rights, easements, privileges, and powers reserved to and retained by the Developer under the terms of this Declaration shall be assignable by it to the Association, or to any person or entity who has acquired title to all or part of this property now owned by Developer in Amherst, New Hampshire, for the purpose of completing the construction of this development, or to any person or entity who has undertaken to furnish services such as water, sewer, power, and telephone service to the Owners, but in such latter case only those rights and easements necessary or convenient to the providing of such services shall be assignable. The Association shall accept assignment of any such rights, easements, privileges, and powers.

11.6. Emergency Repairs. The Developer, for itself, its heirs, successors, and assigns (including as a possible assignee, the Association) shall have the right to enter any Premises on the property in order to effect emergency repairs or to do any other act necessary to protect the property, health, or safety of any Owner.

11.7. Costs and Expenses. It is the intention in declaring this Declaration that all costs, expenses, and taxes incurred by Developer with respect to the roads, lighting, landscaping, septic systems, and drainage systems and any other items described above shall be passed through from Developer to the Lot Owners (including Developer to the extent it owns any of the Lots), so that after the development and the amenities have been constructed Developer will not be responsible for any costs in connection with the Premises. This Declaration shall be interpreted such that Developer is hereby granted the right to charge a fee for administrative expenses incurred by it in performing its obligations hereunder and Developer shall have the right to hire employees or property managers as it deems fit, the cost of which shall be passed on to the Lot Owners, in order to carry out its obligations hereunder.

Developer (or assignee, the Association) shall pay all costs referred to in this Declaration in the first instance and then charge the Lot Owners therefor. In the event any Lot Owner fails to properly carry out its maintenance responsibilities pursuant to Sections 11.2 and 11.4, Developer shall have the right, but not the obligation, to carry out such responsibility and charge the applicable Lot Owner therefor.

11.8. Utilities. Developer hereby does reserve the right to grant utility easements across, under, or over any part of the Premises, for any utilities necessary to service the Premises or any Lot thereof. Certain utility easements already exist with respect to the Premises and the Lot Owners shall have the benefits thereof and their rights pursuant to this Declaration shall be subject to the burdens thereof.

11.9. Transfer to the Association. If and when Developer has no ownership rights in the Premises or to the extent transfers have not been made, then Developer shall transfer its rights and obligations hereunder to the Association which is

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hereby obligated to accept said rights and obligations. Developer shall also have the right to transfer its rights and obligations hereunder to any Public Utility formed relating to the Premises which is capable of performing Developer's obligations herein.

11.10. Right to Grant Additional Easements. Developer hereby declares the right to allow the Owners of land outside of the Premises to connect to the roads and drainage system referred to in this Declaration so long as the same will not degrade or otherwise unreasonably burden the systems beyond that allowable by then current local, state, or federal regulations. Developer shall have the right to charge a fee which it shall retain for the right to make such connections. Developer shall determine the pro rata share of the maintenance and other costs to be collected pursuant to this Declaration to be paid by any such connecting party on the basis of use as reasonably determined by Developer, and the Lot Owners' share of the costs collected pursuant to this Declaration shall be reduced accordingly. Developer may grant any right to the Town of Amherst or its school district or the like with no charge for costs pursuant to this Declaration.

ARTICLE XII

Amendments

12.1. During the first ten (10) years following the recording of this Declaration in the Hillsborough County Registry of Deeds, the Covenants and Restriction set forth herein or in any declaration supplementary hereto may be amended at any time by a vote of two-thirds (2/3) of the aggregate voting strength of the Association, ratified by the Developer and a majority of the Board of Directors, provided:

(a) No such amendment shall be effective unless written notice of the proposal thereof shall be sent to every member of the Association at least thirty (30) days in advance of the meeting at which the same is considered; and

(b) An instrument setting forth such amendment and signed by the Secretary of the Association in the same manner required for the conveyance of real property is recorded in the Registry of Deeds for the county in which this Declaration is recorded.

12.2. After the expiration of said ten (10) years, amendments to this Declaration or any declaration supplementary hereto may be made in the same manner provided in paragraph 12.1 hereof, except that the ratification of the Developer shall not be required.

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ARTICLE XIII

Miscellaneous

13.1. The Covenants, Restrictions, and Easements 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 or any declaration supplemental hereto, 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 and Restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by the Board of Directors has been recorded, such instrument certifying that a vote of the then Owners of the Lots has been taken and two-thirds (2/3) of such Owners have agreed 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 thirty (30) days in advance of any action taken.

13.2. Any notice required to be sent to any member under the provisions of this Declaration shall be deemed to have been properly sent when mailed in a sealed envelope, postpaid, to the last known address of the person who appears as a member of the records of the Association at the time of such mailing.

13.3. Enforcement of these Covenants, Restrictions, and Easements shall be made 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 Covenant or Restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Developer or members will have the right to collect attorneys' fees and costs for that action from any such person.

13.4. Invalidation of any one of these Covenants or Restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

13.5. It is the expressed intention of the Developer not to create a condominium development subject to RSA Chapter 356-B.

13.6. The title headings as to the contents of particular Articles are inserted only as a matter of convenience and for reference, and in no way are, nor are they intended to be, a part of this Declaration, nor in any way define, limit, or describe the scope or intent of the particular section or clause to which they refer.

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IN WITNESS WHEREOF, PRESCOTT INVESTMENT CORP. has caused this instrument to be executed on the day and date hereinbefore written.

PRESCOTT INVESTMENT CORP.

Catherine L. McLeod By: Jane E. Hager
Witness Jane E. Hager, President

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

On this the 16th day of March, 1992, before me, the undersigned officer, personally appeared JANE E. HAGER, who acknowledged herself to be the President of PRESCOTT INVESTMENT CORP., a New Hampshire corporation, and that she, as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of PRESCOTT INVESTMENT CORP.

Shari M. Jankowski
Notary Public/Justice of the Peace
My Commission Expires: 10/30/96

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