

**DECLARATION OF PLANNED COMMUNITY  
FOR  
HINESBURG CENTER PHASE II**

This Declaration for Hinesburg Center is dated as of ~~June~~August \_\_\_\_, 2015. The person signing this instrument is the Declarant.

***Recitals***

A. The Declarant is the owner of lands and premises in Hinesburg, Vermont more particularly described in Article III, together with all easements, rights, appurtenances and improvements.

B. The Declarant intends to develop commercial and residential properties and by this instrument to create a Planned Community pursuant to 27A V.S.A. in such lands and premises. This instrument also sets forth the covenants, conditions, easements, charges, assessments, affirmative obligations and liens to be applicable to the Property.

***Submission and Dedication***

The Property, as described in Section 3.01, together with all easements, rights and appurtenances thereto, is submitted to common interest ownership, upon the terms, limitations, restrictions, covenants and conditions as set forth herein; all in furtherance of a common plan to enhance and perfect the value, desirability and enjoyment of the Property and the interests therein to be conveyed or reserved.

**ARTICLE I  
Definitions**

**Section 1.01. Definitions.**

(a) The following words and terms when used in this Declaration (unless the context shall clearly indicate otherwise) shall have the following meanings:

“Act” - The Vermont Common Interest Ownership Act, as amended from time to time

“Association” - Hinesburg Center Phase II Owners Association, a Vermont unincorporated association, its successors and assigns

“Board of Directors” - the Executive Board, within the meaning of the Act, and designated by this Declaration to act on behalf of the Association

“Budget” - a pro forma operating statement for a particular fiscal year showing the income and expenses of the Association, and including Common Expenses and reserves

“Commercial Use” or “Commercial Occupancy” - use and occupancy for other than as a dwelling

“Common Elements” - the meaning set forth in the Act

“Common Expenses” - the meaning set forth in the Act

“Declarant” - Hinesburg Center, LLC, a Vermont limited liability company and its successors and assigns either by (i) express assignment of the rights of the Declarant under this Declaration and the Act pursuant to an instrument executed by the Declarant and recorded in the Land Records of the Town of Hinesburg or (ii) through foreclosure of the interest of a First Mortgagee under a mortgage encumbering all of the Declarant’s interest in the Planned Community, provided that the First Mortgagee executes and records in the Land Records of the Town of Hinesburg an acceptance of the rights and obligations of the Declarant

“Declaration” - this instrument, as it may be amended from time to time

“First Mortgagee” - the holder of any first mortgage lien or the beneficiary under any first deed of trust encumbering a Unit

“Governing Documents” - the Declaration, the Bylaws and the Rules

“Limited Common Elements” - the meaning set forth in the Act

“Limited Common Expense” - a Common Expense (or portion) which does not benefit all Units, as described in Section 3-115(c) of the Act

“Member” - each person subject to membership in the Association as set forth in Section 6.01

“Owner” - the holder of fee simple title to any Unit; notwithstanding any applicable theory of mortgage law, “Owner” shall not mean or refer to (A) a mortgagee or its successors or assigns, unless and until the mortgagee has acquired title pursuant to foreclosure or by deed in lieu of foreclosure, (B) any lessee of an Owner, nor (C) any person holding title merely as security for the payment of a debt

“Planned Community” - the type of property ownership described in this Declaration

“Property” - the lands and premises described in Recital A and as more fully described in Section 3.01

“Residential Use” or “Residential Occupancy” - use and occupancy as a primary or secondary dwelling, but not including transient or time-sharing housing

“Review Committee” - as set forth in Section 4.08

“Rules” - the rules promulgated from time to time by the Board of Directors relating to the possession, use and enjoyment of the Planned Community and governing the use and enjoyment of the Property

“Site Plan” - the plan recorded in Map Slide \_\_\_\_ of the Land Records of the Town of Hinesburg

“Special Assessment” - an assessment levied against each Unit to provide funds to the Association in the event an Assessment proves inadequate, in an aggregate amount sufficient to provide for such inadequacy, or otherwise as provided in this Declaration

“Unit” - a Unit within the meaning set forth in the Act

(b) Each capitalized term used in this Declaration without definition shall have the meanings given or used in the Act, except where the context otherwise requires.

## **ARTICLE II** **Names; Designation; Location**

### **Section 2.01. Names.**

(a) The name of the Common Interest Community subject to this Declaration is “Hinesburg Center Phase II.”

(b) The name of the Association is “Hinesburg Center Phase II Owners Association.”

### **Section 2.02. Designation.**

The Common Interest Community subject to this Declaration is a planned community as defined in the Act.

## **ARTICLE III** **Property**

### **Section 3.01. Property.**

The Common Interest Community subject to this Declaration is located in the Town of Hinesburg, County of Chittenden and State of Vermont. The real property which is and shall be held, transferred, sold, devised, bequeathed, conveyed, given,

donated, leased and occupied subject to this Declaration is set forth on Schedule 1.

**Section 3.02. Easements, Licenses, Reservations.**

The following recorded easements are appurtenant to or included in the Property:

(a) Findings of Fact, Conclusions and Order, dated \_\_\_\_\_, 2015, from the Hinesburg Development Review Board, recorded in Volume \_\_\_\_\_, Page \_\_\_\_\_ of the Land Records of the Town of Hinesburg;

(b) Land Use Permit No. 4C1140-\_\_\_\_\_, dated \_\_\_\_\_, 2015, recorded in Volume \_\_\_\_\_, Page \_\_\_\_\_ of the Land Records of the Town of Hinesburg;

(c) Wastewater System and Potable Water Supply Permit No. WW-4-3544-\_\_\_\_\_, dated \_\_\_\_\_, 2015, recorded in Volume \_\_\_\_\_, Page \_\_\_\_\_ of the Land Records of the Town of Hinesburg;

(d) Authorization to Discharge under General Permit 3-9015, dated \_\_\_\_\_, 2015, recorded in Volume \_\_\_\_\_, Page \_\_\_\_\_ of the Land Records of the Town of Hinesburg; and Notice of Authorization, dated \_\_\_\_\_, 2015, recorded in Volume \_\_\_\_\_, Page \_\_\_\_\_ of the Land Records of the Town of Hinesburg; and Construction General Permit 3-9020, dated \_\_\_\_\_, 2015, recorded in Volume \_\_\_\_\_, Page \_\_\_\_\_ of the Land Records of the Town of Hinesburg;

(e) Public water System Permit to Construct, dated \_\_\_\_\_, 2015, recorded in Volume \_\_\_\_\_, Page \_\_\_\_\_ of the Land Records of the Town of Hinesburg;

(f) Easements depicted on the plans recorded in Map Slides \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ of the Land Records of the Town of Hinesburg.

There are no recorded licenses appurtenant to or included in the Property.

**ARTICLE IV**  
**Units; Boundaries**

**Section 4.01. Numbers of Units; Identification.**

(a) The initial number of Units in the Common Interest Community is \_\_\_\_\_. The maximum number of Units shall be \_\_\_\_\_.

(b) The location of each of the initial Units is depicted on the Site Plan. The initial Units are numbered \_\_\_\_\_ through \_\_\_\_\_, respectively.

**Section 4.02. Boundaries.**

Each Unit consists of a parcel of land. The vertical (perimetric) boundaries of

each Unit are depicted on the Site Plan. The Units have no upper or lower boundaries except as may be imposed by law other than the Act.

**Section 4.03. Use of Units.**

(a) Each Unit for Residential Use or Residential Occupancy shall be used solely for Residential Occupancy and no trade or business of any kind may be carried on therein, except (subject to applicable law) customary home occupations lawfully undertaken; so long as such use does not unreasonably interfere with the use or enjoyment of other Units or the Common Elements (including unreasonable vehicular or pedestrian traffic at the Property) and is not inconsistent with the Declaration, and the written approval of the Board of Directors is obtained in writing.

The lease or the rental of any Unit for residential occupancy purposes shall not be considered to be carrying on of a trade or business.

(b) Each Commercial Unit shall be used for Commercial Use or Commercial Occupancy and no Residential Occupancy or Residential Use shall be made thereof. Subject to the foregoing, a Unit used for Commercial Use or Commercial Occupancy may be used for any use allowed as a permitted use under the zoning regulations of the Town of Hinesburg, as in effect from time to time.

(c) The Declarant reserves the right to rent or lease unsold Units thereof prior to sale.

(d) No Owner shall use any portion of the Property, including a Unit, in a manner which shall interfere with the comfort or convenience of occupants of other Units or in violation of the provisions of this Declaration or any rules or regulations promulgated pursuant hereto.

**Section 4.04. Maintenance, Repair and Replacement.**

(a) Except as set forth in subsection (b), each Owner shall keep his or her Unit and its betterments and improvements in good order, condition and repair and in a clean and sanitary condition, and shall maintain the good appearance and condition of the Unit. Each Owner shall be responsible for all damage to any other Unit or to the Common Elements resulting from his or her failure to make any of the required repairs. Each Unit Owner shall perform his or her responsibility in such manner as shall not unreasonably disturb or interfere with the other Unit Owners.

(b) The Association shall provide grounds maintenance, including mowing, for all grassed areas within Units.

(c) If any portion of a Unit shall be damaged or destroyed, the damaged portion shall be promptly repaired or replaced by its Owner, unless repair or replacement would be illegal under any State or local health or safety statute or ordinance; or the

Planned Community is terminated.

**Section 4.05. Alteration of Units.**

No improvements or alterations to any Unit may be made which would lessen the support of any portion of the Property or another Unit.

**Section 4.06. Subdivision or Combination of Units.**

Subject to applicable law,

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(a) a Unit may be subdivided into two or more Units only in the manner described in the Act, but the Allocated Interests appurtenant to the resulting Units shall be the same as the Unit or Units prior to the subdivision.

(b) Subject to the prior consent of the Board of Directors, two Units may be combined into one Unit, and any Unit which was formerly combined may be redivided into two Units according to the Floor Plans without the consent of the Association or the Board of Directors.

**Section 4.07. Restrictions on Alienation of Units; Resale.**

No restrictions are made in this Declaration on alienation of Units (except that an Owner may not sell, convey, hypothecate or encumber his or her membership in the Association separate from the Unit to which it is appurtenant or the Common Expense liability appurtenant to the Unit), nor are any restrictions made on the amount for which a Unit may be sold or the amount that may be received on sale of the Unit, condemnation of the Unit, casualty loss to the Unit or the Planned Community, or termination of the Planned Community.

**Section 4.08. Design Review.**

(a) In order to preserve and ensure the values and appearance of the Property, a Review Committee shall administer and perform the design review and control functions described in this Section. The Review Committee shall have three members. Until expiration of the Declarant Control Period, the Declarant shall appoint the members; thereafter, the Association shall elect the members of the Review Committee; at least one member shall be an owner of a Unit used for Commercial Use or Commercial Occupancy.

(b) No exterior construction, alteration, addition or erection of any nature whatsoever, including (without limitation) excavations and alterations to grade, shall be commenced or placed on any Unit used or occupied for other than as a dwelling, except as is approved pursuant to this Section. No exterior construction, addition, erection or alteration shall be made unless and until the plans and specifications showing the nature, kind, shape, height, materials, appearance shall have been submitted in writing to and

approved by the Review Committee or its designee. The foregoing shall also be subject to applicable law. The Review Committee or its designee may promulgate written guidelines for use in the exercise of its review.

(c) The Review Committee or its designee shall be the sole arbiter of such plans and specifications and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction, addition, erection or alteration in violation of this Section. The Review Committee may, in passing upon plans and specifications, consider the compatibility of a proposed construction, addition, erection or alteration with adjacent or neighboring structures and the materials of which it is to be constructed.

(d) In the event that the Review Committee or its designee fails to approve or disapprove such design or location within 60 days after complete plans and specifications therefor have been submitted to it, approval shall not be required and this Section shall be deemed to have been complied with.

(e) Any member of the Review Committee or its representatives shall have the right, during reasonable times, to enter on any Unit to inspect any Unit and improvements thereon for the purpose of ascertaining whether or not this Declaration has been or is being complied with, such individuals and persons shall not be deemed guilty of trespass by reason of any such entry.

## **ARTICLE V**

### **Common Elements**

#### **Section 5.01. Limited Common Elements.**

There are no Limited Common Elements appurtenant to the Units.

#### **Section 5.02. Common Elements.**

(a) The Common Elements are all the Property depicted on Site Plan except the Units. The Common Elements include, without limitation, the following:

- (i) the benefit of, and subject to, all rights, easements, restrictions and agreements recorded in the Land Records of the Town of Hinesburg;
- (ii) all improvements located in any of the Common Elements.

(b) The Common Elements shall remain undivided and shall be devoted to the common use and enjoyment of all Owners. No Owner or any other person shall maintain any action for partition or division thereof, unless the Property has been removed from the provisions of this Declaration pursuant to the Act.

**Section 5.03. Rights of Enjoyment in Common Elements.**

Subject to the provisions of this Declaration, the Rules and any fees or charge established by the Association, every Owner and every guest and lessee of the Owner shall have a right of enjoyment in and to the Common Elements and such right shall be appurtenant to and shall pass with the title to every Unit.

**Section 5.04. Use of Common Elements.**

(a) Each Owner may use the Common Elements in accordance with the purposes for which they were intended without hindering or encroaching upon the lawful rights of other Owners.

(b) No person shall obstruct any of the Common Elements nor shall any person store anything upon any of the Common Elements (except in those areas designated for such storage by the Board of Directors) without the approval of the Board of Directors. Nothing shall be altered or constructed in or removed from the Common Elements except upon the prior written consent of the Board of Directors.

(c) No awning, screen, antenna, sign, light fixture, banner or other device, decoration or feature shall be placed outside a Unit in the Common Elements, except by the Association. The exterior surface of any window of a Unit used and occupied for a dwelling shall not be altered or covered, and no decal or other decoration, temporary or permanent shall be made to the exterior surface of a window. No door or its hardware of a Unit used and occupied for a dwelling shall be altered or changed except, insofar as practical, with identical type, quality and appearance.

(d) No alcoholic beverage shall be served in or from the Common Elements, except incidental to restaurant use of a Unit. No pornographic materials shall be sold, displayed or otherwise distributed in or from the Common Elements.

**Section 5.05. Manner of Repair and Replacement.**

~~(a)~~ (a) The Association shall manage the portions of the Common Elements identified as Open Spaces A through G as depicted on a plan entitled

Hinesburg Center II  
Back Parcel Trails & Amenities

dated June 29, 2015, last revised June 29, 2015, prepared by T.J. Boyle Associates, LLC, recorded in Map Slide \_\_\_\_\_ of the Land Records of the Town of Hinesburg.

(b) Any portion of the Common Elements which is damaged or destroyed shall be promptly repaired or replaced by the Association unless repair or replacement would be illegal under any State or local health or safety statute or ordinance, or the Planned Community is terminated.

(c) All repairs and replacements shall be substantially similar to the original construction and installation and shall be of first-class quality.

**ARTICLE VI**  
**Easements**

**Section 6.01. Easement for Access.**

Each Owner is hereby granted a non-exclusive easement, in common with each other Owner, in all Common Elements for ingress and egress, utility service for, and support, maintenance and repair of his or her Unit, subject to the Rules.

**Section 6.02. Easement for Encroachment.**

To the extent that any Unit or Common Element unintentionally and non-negligently encroaches on any other Unit or Common element, an easement for the encroachment shall exist.

**Section 6.03. Easement for Support.**

Each Unit and the Common Elements shall have an easement for lateral and subadjacent support from every other Unit and the Common Elements.

**Section 6.04. Easement for Entry.**

The Board of Directors and its representatives may enter any Unit

- (a) from time to time at any time in the event of emergency or in order to accomplish emergency repairs; and
- (b) to determine compliance with this Declaration and Rules, to enforce such compliance and for any other lawful purpose.

**ARTICLE VII**  
**Governance; Allocated Interests; Assessments**

**Section 7.01. Authority.**

Except as otherwise provided in the Act, the affairs and management of the Association shall be managed by the Board of Directors.

**Section 7.02. Membership.**

Every Owner is a Member of the Association. If a Unit is owned by more than one person, all of the co-Owners shall have the benefits of membership in the

Association, subject to such Rules as the Board of Directors shall determine from time to time. The Membership rights of an Owner which is not a natural person may be exercised by any authorized officer, director, partner, trustee, member or manager. An Owner's membership shall terminate upon the transfer of the Owner's interest in the Unit.

**Section 7.03. Delegation.**

Each Unit Owner irrevocably appoints the Association and its authorized agents as his or her attorney-in-fact to represent the Owner in any civil action, administrative proceeding, negotiation, settlement or agreements with respect to any loss, or proceeds from condemnation, destruction, liquidation or termination of all or part of the Planned Community. This appointment shall be deemed a power coupled with an interest and shall survive an Owner's disability or death.

**Section 7.04. Borrowing.**

In addition to the powers given to associations in the Act, the Association may make a collateral assignment of its future income, including the right to receive periodic and Special Assessments for Common Expenses, but only by affirmative vote at a meeting called for that purpose (or by written consent) of Owners of Units to which at least 51 percent of the votes in the Association are allocated.

**Section 7.05. Rules.**

The Board of Directors shall adopt, from time to times, Rules, including Rules requiring disputes between Owners and the Board of Directors, and between two or more Owners regarding the Planned Community, be submitted to non-binding alternative dispute resolution in the manner described in the Rules as a prerequisite to commencement of a judicial proceeding.

**Section 7.06. Allocation of Interests.**

(a) Votes in the Association shall be calculated as follows:

(i) Each Residential Unit shall have one vote.

(ii) Each Commercial Unit shall have one vote.

(b) The liability for Common Expenses allocated by the Association to each Unit shall be a fraction, the numerator of which shall be its floor area and the denominator of which shall be the floor area of all Units then existing.

(c) Notwithstanding subsection (b), any Limited Common Expense shall be assessed only against the Unit or Units benefitted.

**Section 7.087.**

**Assessments; Procedures.**

(a) Prior to each fiscal year and within sufficient time to satisfy the requirements of the Act, the Board of Directors shall adopt a Budget for the Association containing an estimate of the total amount considered necessary to pay the cost of maintenance, management, operation, repair and replacement of the Common Elements and those parts of the Units and other properties as to which it is the responsibility of the Board of Directors to maintain, repair and replace, and the cost of wages, materials, insurance premiums, services, supplies and other expenses that may be declared to be Common Expenses by the Act, this Declaration or a resolution of the Association and which will be required to be paid during the ensuing fiscal year for the administration, operation, maintenance and repair of the Property and the rendering to the owners of all related services. The Budget shall also include such reasonable amounts as the Board of Directors considers necessary to provide working capital, a general operating reserve and reserves for contingencies and replacements. The Budget shall constitute the basis for determining each Owner's assessment for the Common Expenses of the Association.

(b) The failure or delay of the Board of Directors to prepare or adopt a Budget for any fiscal year shall not constitute a waiver or release in any manner of an Owner's obligation to pay his allocated share of the Common Expenses as herein provided whenever the same shall be determined and, in the absence of any annual Budget or adjusted Budget, the Owners shall continue to pay each monthly installment at the monthly rate established for the previous fiscal year until notice of the monthly payment which is due more than ten days after such new annual or adjusted Budget shall have been delivered.

(c) Following adoption of the Budget, the Board of Directors shall comply with the provisions of the Act regarding preparation and delivery of a summary of the Budget, and shall set a date for a meeting of the members of the Association as required by the Act.

(d) Surplus funds of the Association shall be applied to defray Common Expense liability.

**Section 7.08                      Coordination.**

The Association shall, at least annually, communicate with the Creekside Community Association and the Hinesburg Center Owners Association regarding matters of mutual importance.

**ARTICLE VIII**  
**Declarant Rights; Special Declarant Rights**

**Section 8.01.                      Development Rights.**

The Site Plan depicts Units \_\_\_\_, \_\_\_\_, \_\_\_\_ and \_\_\_\_, each of which is limited

to Residential Occupancy, and Units \_\_\_\_, \_\_\_\_, \_\_\_\_ and \_\_\_\_, each of which is limited to Residential Occupancy and Commercial Use or Commercial Occupancy. No construction has commenced on any Unit. Subject to applicable law, the Declarant reserves the following rights:

(a) To create Units (the total of Units not to exceed the maximum number set forth in Section 4.01) and Common Elements, including Limited Common Elements, substantially in the location so depicted on the Site Plan or elsewhere in the Property in the discretion of the Declarant. This Development Right must be exercised not later than 15 years from the date that the Declaration is recorded in the Land Records of the Town of Hinesburg. This Development Right is independent of, and may be exercised without regard to, any unexercised Development Right.

(b) To withdraw all or any part of the Property, as depicted on the Site Plan, from the Planned Community which has not then been made into a Unit. This Development Right must be exercised within five years from the expiration of the last date on which the right to create Units, Common Elements and Limited Common Elements expires pursuant to subsection (a). This Development Right is independent of, and may be exercised without regard to, any unexercised Development Right.

(c) To subdivide one or more Units. This Development Right must be exercised within five years from the expiration of the last date on which the right to create Units, Common Elements and Limited Common Elements expires pursuant to subsection (a). This Development Right is independent of, and may be exercised without regard to, any unexercised Development Right.

#### **Section 8.02. Special Declarant Rights.**

The following Special Declarant Rights are reserved in this Declaration; if not exercised (in compliance with applicable law) prior to the 12<sup>th</sup> anniversary of the recording of this Declaration in the Land Records of the Town of Hinesburg, these Special Declarant Rights shall terminate:

(a) To complete improvements shown on the Site Plan and Floor Plans or described in any Public Offering Statement required to be delivered pursuant to the Act;

(b) To maintain, anywhere within the Property, sales offices, management offices and models in any Unit or on the Common Elements and to remove any of the foregoing located on the Common Elements;

(c) To maintain advertising signs on the Common Elements as permitted by the Act;

(d) To use easements through the Common Elements for the purposes of making improvements within the Property for the benefit of the Property or real estate outside the Property (such reservation not to be construed as a limitation on the rights

granted to the Declarant in Section 2-116(c) of the Act);

(e) To use, grant and reserve easements and rights of way through, under, over and across the Property for the benefit of the Property or real estate outside the Property for the installation, maintenance, inspection, repair and replacement of lines and appurtenances for public or private sewer, water, drainage, gas, electricity, telephone and other utilities such as, but not limited to, a master television antenna system, cable television system, or security system. If damage is inflicted by the Declarant in the exercise of the easement and rights granted by this Section, it shall promptly repair such damage to the condition existing prior thereto;

(f) To appoint or remove any officer of the Association or any member of the Executive Board during the period of Declarant control referred to in Section 8.03; and

(g) merge or consolidate the Planned Community with another common interest community pursuant to the authority and procedure set forth in Section 2-121 of the Act.

**Section 8.03. Declarant Control.**

There shall be a period of Declarant control of the Association during which the Declarant, or persons designated by the Declarant, may appoint and remove the officers and members of the Board of Directors. The period of Declarant control shall terminate on the earliest of the dates and events specified in Section 3-103(d) of the Act.

**ARTICLE IX**  
**General Restrictions**

**Section 9.01. Animals, etc.**

No animals, except domesticated common household pets, shall be raised, bred or kept in a Unit or at the Property. No household pet shall be kept, bred, or maintained for any commercial purposes. The Owner of a Unit shall be responsible for the proper behavior of pets (in particular barking shall be kept to a minimum) and shall be liable for any damage caused by same.

**Section 9.02. Vehicles.**

No junk or derelict vehicle or other vehicle on which current registration plates are not displayed shall be kept at the Property. Any trailer camper, camp truck, motor home, house trailer, boat, dune buggy or other similar vehicle shall be parked and stored in a garage or in areas designated at the Property for such purpose by the Association.

**ARTICLE X**  
**Insurance**

**Section 10.01. Coverage.**

To the extent reasonably available, the Association shall obtain and maintain insurance coverage of the following types and in the following amounts; if such coverage is not reasonably available and the Board of Directors determines that any such coverage will not be maintained, it shall give notice thereof to all Owners; the Board of Directors and its members and any managing agent shall not be liable for failure to obtain any coverage required by this Article or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverage from reputable insurers or if such coverage is available only at unreasonable cost:

- (a) property insurance
  - (i) in an amount equal to not less than 80 percent of the actual cash value at the time of purchase of the insurance and at each renewal (including deductibles);
  - (ii) covering the entire Property excluding (A) the Units and the betterments, improvements and contents therein; (B) land, excavations, portions of foundations below the undersurface of the lowest basement floor and (C) underground pilings, piers, pipes, flues and drains and other items normally excluded from property policies;
  - (iii) affording protection against “all risks” of direct physical loss commonly insured against; and
  - (iv) providing, among other provisions, that (A) the insurer waives its right to subrogation under the policy against any Owner or member of his immediate family; (B) no act or omission by an Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; (C) if, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association’s policy provides primary insurance; (D) any loss shall be adjusted with the Association; (E) insurance proceeds shall be paid to any insurance trustee designated in the policy for that purpose and, in the absence of such designation, to the Association, in either case to be held in trust for each Owner and his mortgagee, to the extent that any Unit is affected by the loss and provided that no other insurance coverage is available for same; (F) the insurer will not cancel or refuse to renew the policy until 30 days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Owner and each mortgagee to whom a certificate or memorandum of insurance has been issued; and (G)

the name of the insured shall be substantially as follows:  
“Hinesburg Center Phase II Owners Association.”

- (b) commercial general liability insurance, including medical payments insurance,
  - (i) as to the liability insurance, in an amount to be determined by the Board of Directors but in no event less than \$1,000,000 aggregate covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements; and as to the medical payments insurance, in amount not less than \$5,000 per occurrence;
  - (ii) providing, among other provisions, that (A) each Owner is an insured person under the policy to the extent of liability, if arising out of his or her interest in the Association or its ownership of the Common Elements; (B) the insurer waives its right to subrogation under the policy against any Owner or member of his immediate family; (C) no act or omission by an Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; (D) if, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association’s policy provides primary insurance; and (E) the insurer will not cancel or refuse to renew the policy until 30 days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Owner and each mortgagee to whom a certificate or memorandum of insurance has been issued.
- (c) workers’ compensation insurance, to the extent deemed appropriate by the Board of Directors to meet the requirements of the laws of the State of Vermont.
- (d) directors’ and officers’ liability insurance, to the extent deemed appropriate by the Board of Directors and in such amounts as the Board of Directors determines.
- (e) such other insurance which the Board of Directors considers appropriate to protect the Association, the Owners, including casualty insurance on Units if the Board of Directors determines at any time to do so, and fidelity insurance for the Directors, officers, employees and others.

**Section 10.02. Premiums.**

Insurance premiums shall be a Common Expense of the Association.

**Section 10.03. Payment of Deductible Amounts.**

In the event that an insured loss occurs and is attributable to the act or omission of an Owner (or an Owner's family, tenants, lessees, agents, invitees or licensees), then the deductible shall be paid by the Owner and, if not paid, shall be treated as if a Limited Common Expense payable by that Owner.

**Section 10.04. Insurance Obtained by Owners.**

Each Owner shall, at the Owner's expense, obtain and maintain such other insurance as the Owner determines.

**ARTICLE XI**  
**Compliance and Default**

**Section 11.01. Compliance.**

Every person having an interest in the Planned Community shall be governed by and shall comply with all of the provisions of the Governing Documents. In addition to the remedies provided by the Act and this Declaration, a default by an Owner, a tenant or a lessee shall entitle the Association to the appropriate relief, after appropriate notice.

**Section 11.02. Liability.**

An Owner, tenant or lessee shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness or by that of any member of his or family or his or her guests, employees, agents, lessees or other invitees. No Owner, tenant or lessee shall conduct any activity which may result in an increase in insurance rates occasioned by use, misuse, occupancy or abandonment of a Unit or its appurtenances, or of the Common Elements.

**Section 11.03. Fines.**

The Board of Directors shall have the right to impose, after notice and an opportunity for hearing, a reasonable fine, commensurate with the severity of the violation of any of the provisions of the Act or the Governing Documents, which fine shall become a continuing lien against the Unit of the defaulting Unit Owner enforceable in the manner provided by the Act and the Rules.

**Section 11.04. Suspension of Rights and Privileges.**

If an Owner breaches the Governing Documents, including but not limited to the failure to pay any Assessment attributable to, or incurred in connection with, a Unit on or before the due date therefor, or for the failure of a successor-in-title of a Unit to promptly cure any past due Assessments or other amounts due and owing to the Association, whether or not the obligation to pay for such Assessments or other amounts due arose

prior to the time such successor-in-title obtained the Unit, the Association may suspend such Owner's rights and privileges arising from the ownership of the Unit, including, but not limited to, the right to participate in any vote or other determination provided for herein, and may assess monetary penalties as may be provided in the Bylaws of the Association.

**Section 11.05. Abatement.**

The Board of Directors shall have the right to remove, at the expense of the defaulting person, any structure, alteration, improvement or condition placed on the Common Elements by that person in violation of the provisions of the Act or the Governing Documents. Neither the Association, the Board of Directors nor any manager shall be deemed guilty of trespass in accomplishing such abatement.

**Section 11.05. Injunctions.**

The Association shall have the right to abate, enjoin or remedy by appropriate legal proceedings, either in law or in equity, the continuance of any violation of the provisions of the Act or the Governing Documents including, without limitation, an action to recover any sums due for money damages, injunctive relief, foreclosure of the lien for payment of all assessments, any combination thereof and any other relief afforded by a court or competent jurisdiction.

There shall be, and there is hereby created and declared to be, a conclusive presumption that any violation or breach, or any attempted violation or breach, of any of the covenants and restrictions of this Declaration or a Rule shall so damage the community and its property values that it cannot be adequately remedied by action at law or exclusively by recovery of damages.

**Section 11.06. Legal Fees and Costs.**

In any proceeding arising because of an alleged failure of a person to comply with the terms of the Act or the Governing Documents, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorney's fees as may be awarded by the court.

**ARTICLE XII**

**Amendments; Termination of Planned Community**

**Section 12.01. Amendment by the Declarant.**

(a) This Declaration may be amended by the Declarant at any time prior to the transfer of a Unit and the recording of the deed thereto in the Land Records of the Town of Hinesburg, provided that the amendment is recorded in the Land Records of the Town of Hinesburg.

(b) Notwithstanding any provision in this Declaration to the contrary, this Declaration may be amended by the Declarant, without the consent of any other Owner (i) to exercise a Development Right, (ii) prior to the sale by the Declarant of 75 percent of the maximum number of Units that may be built, (iii) in order to comply with any provision of law or (iv) to correct manifest errors herein; and any such amendment, upon execution and certification by the Declarant and recording by the Town Clerk of the Town of Hinesburg, shall be effective upon recording.

**Section 12.02. Amendment by the Association.**

After the transfer of a Unit and the recording of the deed thereto in the Land Records of the Town of Hinesburg, but except in cases for which the Act or this Declaration provide different methods of amendment or require a larger percentage of votes, this Declaration may be amended only by the vote or agreement of Owners of Unit to which 67 percent of the votes in the Association are allocated and the consent of First Mortgagees pursuant to Section 13.06. Every amendment shall be prepared, executed, recorded and certified by the Association and shall be effective only when recorded in the Land Records of the Town of Hinesburg.

However, no amendment which

- (a) changes the boundaries of any Unit or which alters the Allocated Interests of a Unit shall be valid unless the same has been signed or consented to by the Owner so affected;
- (b) changes the powers or authority of the Declarant shall be valid unless the same has been signed or consented to by the Declarant; and
- (c) limits or restricts the use or operation of a Unit used for Commercial Use or Commercial Occupancy shall be valid unless approved in writing by the owner of the Commercial Unit.

**Section 12.03. Amendment by the Board of Directors.**

Upon the affirmative vote of a majority of the Board of Directors (and the Declarant, if during the period of Declarant control) without further action of the Owners or Mortgagees, the Board of Directors may amend the Declaration if amendment is necessary in order to comply with the requirements of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or private mortgage insurers. Each of the Owners and Mortgagees hereby irrevocably appoints the Association and its authorized agents as his, her or its attorney-in-fact to act on behalf of the Owners and Mortgagees to adopt such amendments.

**Section 12.04. Procedure; Nature.**

(a) Except for amendments made by the Declarant, every amendment shall be prepared, executed, recorded and certified by the Association and shall be effective when recorded in the Land Records of the Town of Hinesburg.

(b) No amendment which alters this Declaration in any manner which would render it contrary to or inconsistent with any requirements or provisions of the Act shall be valid.

(c) Any amendment pursuant to this Article shall be binding upon each Owner and each Unit whether the burdens thereon are increased or decreased.

**Section 12.05. Termination.**

In the event of termination, the Owners of the Units shall own the entire Property in fee simple as tenants in common in proportion to their Common Expense liability.

**ARTICLE XIII**  
**Protection of Mortgagees**

**Section 13.01. Conflict.**

The provisions and requirements of this Article and any other provisions and requirements of this Declaration relating to the rights of First Mortgagees (a) shall prevail over any conflicting provisions of the Governing Documents and (b) are in addition to any other provisions of this Declaration.

**Section 13.02. Application of Assessments.**

No First Mortgagee shall be liable for the payment of Assessments against a Unit, except those which became delinquent prior to the recording of the Mortgage in the Land Records of the Town of Hinesburg and except those accruing after such First Mortgagee obtains title to such Unit.

**Section 13.03. Limitation of Enforcement Against Mortgagees.**

No violation of this Declaration by an Owner or enforcement of this Declaration against an Owner shall impair, defeat or render invalid the lien of any First Mortgage against the Owner's property, but this Declaration shall be enforceable against any Owner whose title is acquired by foreclosure, trustee's sale, voluntary conveyance, or otherwise.

**Section 13.04. Notice by First Mortgagees.**

A First Mortgagee shall give written notice to the Association of the nature of its interest in the Planned Community, a description of the Unit or other property

encumbered by the First Mortgage, the recording information pertaining to the First Mortgage, and the amount of indebtedness secured by the First Mortgage. Any person who has not given the notice required by this Section shall not be entitled to the rights of a First Mortgagee accorded by this Declaration.

**Section 13.05. Notices to First Mortgagees.**

A First Mortgagee is entitled, upon written request and after furnishing his addresses in writing to the Association, to receive written notice from the Association of each of the following:

- (a) any default by an Owner under this Declaration which is not cured within 30 days;
- (b) Any condemnation loss or any casualty loss which affect any material portion of the Property or any Unit on which there is a First Mortgage held, insured or guaranteed by the First Mortgagee;
- (c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
- (d) Any proposed action which would require the consent of a specified percentage of First Mortgagees as specified in Section 12.01.

**Section 13.06. Special Voting Rights.**

(a) Any action with respect to the Planned Community including, but not limited to, amendment of the Declaration, restoration or repair after partial or total condemnation or casualty loss, or termination of the legal status of the Planned Community requiring the votes of the Owners shall also require the consent of First Mortgagees holding Mortgages on Units which represent at least 51 percent of the Mortgages of First Mortgagees; provided, however, that in the case of termination not made as a result of destruction, damage or condemnation, the applicable percentage shall be 67 percent.

(b) For the purposes of this Section, a First Mortgagee who receives a written request to approve action of the Owners in accordance with this Section shall be deemed to have consented to such action unless the First Mortgagee provides a negative response to the Association within 30 days of the date of receipt by the First Mortgagee of the written request.

**ARTICLE XIV**  
**Miscellaneous Provisions**

**Section 14.01. Invalidity.**

If any provision of this Declaration is held invalid, the invalidity thereof shall not affect other provisions of this Declaration which can be given effect without the invalid provisions, and to this end the provisions of this Declaration are severable.

**Section 14.02. Headings.**

The headings in this Declaration are for purposes of reference only and shall not limit or otherwise affect the meaning hereof.

**Section 14.03. Incorporation by Reference.**

Any Exhibits and Schedules hereto are a part of this Declaration and the contents thereof are incorporated herein by reference.

**Section 14.04. Notices.**

Any notice required to be sent under the provisions of this Declaration shall be deemed to have been properly sent and notice thereby given,

(a) if to an Owner, when if by United States mail, with the proper postage affixed, to the mailing address of the Owner as provided to the Association, or if by electronic mail to the electronic mail address of the Owner as provided to the Association; but if no mailing or electronic mailing addresses has been provided to the Association, by hand delivery, U.S. mail postage prepaid or commercially reasonable delivery service to the mailing address of the Owner's Lot; and,

(b) if to the Association, when mailed by United States mail, with the proper postage affixed, at the Association's principal office at such other address as shall be designated in writing to the Owners pursuant to this Section.

**Section 14.05. Successors.**

The provisions of this Declaration shall be binding upon all parties having or acquiring any right, title or interest in the Property or any part thereof and shall be for the benefit of each Owner and his or her heirs, successors and assigns.

**Section 14.06. Waiver.**

All rights and remedies given in this Declaration or by law or in equity are separate, distant and cumulative, and no one of them, whether exercised or not, shall be deemed to be in exclusion of any of the others. No failure to exercise any power given hereunder, or to insist upon strict compliance with an obligation hereunder, and no custom or practice of the parties at variance with the terms hereto shall constitute a waiver of rights to demand exact compliance with the terms hereof.

**Section 14.07. Remedies.**

The remedies provided in the Act and this Declaration shall be deemed cumulative.

**Section 14.08. Occupants Bound.**

All provisions of the Declaration and of any use restrictions and rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants of any Unit.

**IN WITNESS WHEREOF**, the Declarant has signed this Declaration.

**HINESBURG CENTER, LLC**

By: \_\_\_\_\_  
Managing Member

STATE OF VERMONT  
COUNTY OF \_\_\_\_\_, SS.

At \_\_\_\_\_, in said County and State, this \_\_\_\_ day of \_\_\_\_\_, 2015, personally appeared Brett Grabowski, Managing Member of **Hinesburg Center, LLC**, and he acknowledged this instrument by him signed and sealed to be his free act and deed and the free act and deed of **Hinesburg Center, LLC**.

Before me \_\_\_\_\_  
Notary Public

Print Name \_\_\_\_\_

My Commission Expires: 2/10/2019