

**WINDHAM MOUNTAIN SPORTING CLUB
COMMUNITY**

**MASTER DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS**

DRAFT

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EXHIBITS

- A. Legal Description of Property

MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This Master Declaration of Covenants, Conditions and Restrictions (hereinafter as amended by any Supplemental Covenants, the "**Covenants**") shall be effective upon recording and is made by Tuck Eastside Partners, L.P., a Delaware limited liability company ("**Declarant**"). These Covenants regulate and control the use and development of certain real property owned by Declarant, located in the Town of Windham, Town of Windham, New York, and more particularly described on Exhibit A attached hereto (the "**Property**").

ARTICLE 1. PURPOSE

The purpose of these Covenants (also referred to herein as the "Declaration") is to:

1.1 Create a plan of development for the Property pursuant to the Master Plan for Windham Mountain Sporting Club Community (the "Community") and the Final Plats for Windham Mountain Sporting Club recorded in the office of the Town of Windham Clerk (the "**Master Plan**" and the "**Windham Mountain Sporting Club Plan**"), which will provide maximum freedom of enjoyment of the Property (and any additional real property subjected to these Covenants) to individual Owners and occupants consistent with consideration for, and non-interference with, the enjoyment of the Property by all residents and guests.

1.2 Insure and protect the character and quality of the Property and any improvements located on the Property.

1.3 Preserve and enhance the wildlife habitats, the open space, and in all ways insure a mutual respect for the environment, its conservation, its protection and its harmonious development. These Covenants shall be construed so as to be consistent with and in furtherance of these purposes.

ARTICLE 2. DECLARATION AND SUBMISSION

Declarant hereby declares that the Property, and any part thereof, shall be owned, sold, conveyed, encumbered, leased, used, occupied and developed subject to these Covenants. These Covenants shall run with the Property and any part thereof, shall be binding upon all parties having or acquiring any legal or equitable interest in or title to the Property or any part thereof, and shall inure to the benefit of every owner of any part of the Property.

ARTICLE 3. DEFINITIONS

As used in these Covenants the following terms and phrases have the following definitions:

3.1 "**Articles of Incorporation**" means the Articles of Incorporation of Windham Mountain Sporting Club Owners Association, Inc., as amended, as filed with the New York Secretary of State.

3.2 "**Assessments**" means the Common, Special and Default Assessments levied pursuant to these Covenants.

3.3 "**Assessment Units**" means the sum of: two (2) for each Residence Lot, townhome or duplex, plus one (1) for each Lodge Residence (condominium).

3.4 "**Association**" means Windham Mountain Sporting Club Owners Association, Inc., a New York, New York nonprofit corporation, established to administer and enforce the provisions of these Covenants.

3.5 "**Board**" means the Board of Directors of the Association.

3.6 "**Building**" means any building, annex building, outbuilding, garage, or shed, including any part thereof, such as roof overhangs, foundations, porches, or balconies.

3.7 "**Building Envelope**" means that portion of a Lot identified for site development, as shown on the Final Plats and as may be amended or shown on any subsequent plat recorded at the Clerk and Recorder's Office of Town of Windham, New York New York.

3.8 "**Bylaws**" means any instruments, however denominated, adopted by the Association for the regulation and management of the Association, including any amendments thereto.

3.9 "**Club**" means Windham Mountain Sporting Club, Inc., or its successors, assigns or affiliates, doing business as Windham Mountain Sporting Club, which shall operate the Club Property on a club membership basis, or otherwise, in its sole discretion.

3.10 "**Club Property**" means all of the real property owned by the Club or its successors or assigns, plus all of the recreational and social facilities constructed thereon, which will be operated by the Club or its successors or assigns and commonly known as Windham Mountain Sporting Club, including, Wellness Center facilities, health and fitness facilities, general store, sales cabin/ Environmental Learning Center, and Members Lodge. The Club Property is not "Common Area".

3.11 "**Commercial Space**" means any separate portion of the improvements constructed or to be constructed upon the Property that is permitted to be used for commercial purposes.

3.12 "**Common Area**" or "**Common Areas**" means any Real Estate or improvements thereon owned, leased or maintained by the Association, other than a Lot, for the common use and enjoyment of all of the Owners on a non-exclusive basis (except for Limited Common Areas, which have more limited application). The Common Areas shall include:

(a) The Roads (even if platted as Lots);

(b) The Community Water and Sewer System, and any maintenance buildings, pumps, tanks, motors, fans, storm drainage structures, compressors, ducts, utility lines, and other infrastructure, apparatus, installations, and equipment use in connection therewith; and

(c) All other parts of the Property designated by Declarant as Common Areas pursuant to rights reserved under these Covenants, or any Project Declaration.

3.13 "**Common Expense Liability**" means the liability for Common Expenses allocated to each Lot pursuant to these Covenants.

3.14 "**Common Expenses**" means expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves.

3.15 "**Common Services**" means services generally beneficial to multiple Owners including: (a) administration, insurance, operation, and management, of the Common Areas; (b) maintenance and repair of the Common Areas, such as roadway maintenance and snow removal, winter and summer grooming of trails, maintenance of the Community Water and Sewer System, wildfire hazard reduction, noxious weed control along roads and trails, maintenance of fencing along Common Area boundaries, and maintenance and stocking of fish ponds; and (c) any other services that the Board determines appropriate.

3.16 "**Community Water and Sewer System**" means a community wastewater collection and disposal system, and a community water supply and distribution system, including associated underground water or wastewater lines serving multiple Lots and installed by Declarant in the Roads and in designated easement areas, but specifically excluding connecting lines from a Principal Residence to such common lines. The Community Water and Sewer System is a part of the Common Areas, and maintenance and repair of said system shall be a Common Expense, subject to Assessment.

3.17 "**Design Guidelines**" means guidelines established by the Declarant or the Design Review Committee and intended to protect the property values of Owners by insuring the installation of high quality Structures, and landscaping on the Property, and by preventing Development incompatible with the purpose and intent of these Covenants and the initial Development of the Lots.

3.18 "**Design Review Committee**" means the committee, which also may be known as the Architectural Review Board, designated by and serving under the authority and at the discretion of the Declarant and the Association, with the responsibility of implementing architectural and design standards set forth in these Covenants or the Design Guidelines.

3.19 "**Development**" means any alteration of the natural land surface or vegetation on a Lot or construction or placement of any Structure or other improvement on a Lot as well as associated work on Common Areas or Club Property as defined herein.

3.20 "**Development Rights**" means the "Expansion Rights" and "Development Rights" set forth in Article 12 of these Covenants.

3.21 "**Expansion Property**" means any property located in Town of Windham, New York which in accordance with Section 12.2, Declarant may subject to these Covenants by recording one or more sets of Supplemental Covenants and, if necessary, Supplemental Plats.

3.22 "**Limited Common Area**" or "**Limited Common Areas**" means those parts of the Common Areas limited to and reserved for the use of one or more, but fewer than all, of the Lots, such as Roads providing access to a particular Lot or Lots.

3.23 "**Lodge**" mean one or more Buildings, together with the Real Estate on which such Buildings are located, that are subdivided into Units and submitted to condominium or planned community ownership by a Project Declaration.

3.24 "**Lodge Lot**" means any parcel of real property located on the Property and identified in a Project Declaration as subject to subdivision for purposes of constructing thereon a Lodge.

3.25 "**Lodge Residence**" means a condominium unit within a Lodge that is intended for separate ownership or occupancy, together with all appurtenances and improvements.

3.26 "**Lot**" means any separately numbered lot or parcel of real estate, except for roads platted as lots, including without limitation any Lodge Residence, together with all appurtenances and improvements, shown upon any recorded Plat, described on the attached Exhibit A, designated as the Property, or such other real property as may hereafter be brought within the jurisdiction of the Association, with the exception of the Common Areas.

3.27 "**Manager**" means a person or entity engaged by the Association to perform such duties, powers, or functions of the Association as the board may authorize from time to time.

3.28 "**Management Agreement**" means any contract or arrangement entered into for purposes of discharging the responsibilities of the Board relative to the operation, maintenance, and management of the Property.

3.29 "**Member**" means any person or entity subject to membership in the Association pursuant to Article 8.

3.30 "**Owner**" means the Declarant or any other person or entity owning record title to a Lot, including a contract purchaser, but excluding anyone having an interest in a Lot as security for the performance of an obligation, unless such secured person has acquired record title to the Lot pursuant to foreclosure or any proceedings in lieu of foreclosure.

3.31 "**Period of Declarant Control**" means the maximum period of time defined and limited by Section 8.5 of these Covenants during which Declarant may, at its option, control the Association.

3.32 "**Person**" means a natural person, a corporation, a trustee or any other legal entity.

3.33 "**Plat**", including any Supplemental Plat, means a survey plat or map prepared in connection with these Covenants, depicting all or any portion of the Property or any Project located thereon in two or three dimensions, executed by Declarant, and recorded in the Public Records of the Town of Windham Clerk and Recorder's Office of Town of Windham.

3.34 "**Principal Residence**" means the single-family residential building, constructed on any Residence Lot, which is the principal use of such Residence Lot and to which other authorized Structures on such Residence Lot are accessory.

3.35 "**Project**" or "**Projects**" means one or more Buildings, together with the real property on which such Building(s) are located, on any portion of the Property submitted to condominium or planned community ownership by a Project Declaration and associated Plat.

3.36 "**Project Association**" or "**Project Associations**" means any association(s) formed pursuant to one or more Project Declarations for the purpose of representing Owners within a particular Property. Any such Project Association would have concurrent jurisdiction with the Association over such Property, subordinate to the Association.

3.37 "**Project Declaration**" means a recorded declaration creating a Project within the Property. In the event of a conflict between this Declaration and a Project Declaration, if any, the more stringent requirements shall govern. Project Declarations may, among other things, create Project Association Common Areas, Limited Common Areas, Common Expenses and Assessments and may authorize a Project Association to collect Assessments for payment to the Association.

3.38 "**Property**" means the real property described in the attached Exhibit A, including without limitation, the Common Areas and the Lots, which shall initially not exceed one hundred thirty-five (135) townhomes, seventy-two (72) Lodge Residences, and one hundred fifty-nine (159) Windham Mountain Sporting Club Lots, and any Expansion Property..

3.39 "**Real Estate**" means any leasehold or other estate or interest in, over, or under land, including Structures, fixtures, and other improvements and interests that, by custom, usage or law, pass with the conveyance of land though not described in the contract of sale or instrument of conveyance.

3.40 "**Records**" means the office of the Town of Windham Clerk in every Town of Windham in which any portion of the Property is located.

3.41 "**Residence Lot**" means any Windham Mountain Sporting Club Lot, together with all appurtenances and improvements.

3.42 "**Roads**" means all roads within the Property as shown on the Plat, providing access to the Property and to individual Lots, as well as those roads falling adjacent to, but outside of Platted areas that provide required access, through the use of easements, to the subject property.

3.43 "**Rules and Regulations**" means the rules and regulations promulgated by the Board for the management, preservation, safety, control, and orderly operation of the Property in order to effectuate the intent and to enforce the obligations set forth in these Covenants, the Bylaws, and Articles of Incorporation, as amended and supplemented from time to time. Separate Rules and Regulations may be promulgated to apply only to the Lodges, Lodge Residences, Townhomes, Commercial Space or any combination thereof.

3.44 "**Structure**" means any improvement including, but not limited to, Buildings, roads, walls, retaining walls, decks, patios, bridges, lights, satellite dishes, fences, swing sets, pools, and dog runs; but not including underground utilities (and any above ground appurtenances associated

therewith), underground electronic dog fences, landscaping, street number/Owner signs, and foot paths.

3.45 **"Supplemental Covenants"** means an instrument which subjects any part of the Expansion Property to these Covenants, as more fully provided in Article 12 below.

"Supplemental Plat" means a subdivision plat which may depict all or part of the Expansion Property becoming subject to these Covenants through Supplemental Covenants, as more fully provided in Article 12, below.

3.46 **"Townhouse Lot"** means a Lot subject to these Covenants, designated on a recorded Plat as a "Townhouse Lot" and for townhouse residential use by construction thereon of a series of interconnected units with common, party walls as Residence, together with all appurtenances and improvements.

3.47 **"Unit"** means a physical portion of any Property that is designated for separate ownership or occupancy, whether created by subsequent re-subdivision of the Property or addition of Expansion Property, and the boundaries of which are described in or determined by a Project Declaration.

3.48 **"Wellness Center"** means a part of the Club Property known as the "Windham Mountain Sporting Club Wellness Center," which may be located on the Wellness Center Lot and may provide improvements and facilities for recreational, commercial and related purposes on a membership basis. Any Wellness Center will be privately owned and operated by the Club and shall include a Wellness Center and swimming pool.

3.49 **"Wellness Center Lot"** means that portion of the Club Property identified on the Plat for the Club Property.

3.50 **"Windham Mountain Sporting Club Lot"** means a Lot subject to these Covenants, designated on a recorded Plat as a "Windham Mountain Sporting Club Lot" and for single-family residential use by construction thereon of a Principal Residence, together with all appurtenances and improvements.

Wherever used in these Covenants the terms "include" and "including" shall be without limitation.

ARTICLE 4. DIVISION OF PROPERTY INTO LOT AND LODGE RESIDENCES

4.1 NUMBER OF LOTS.

Declarant plans to develop Lots on the Property, which shall initially not exceed _____ (___) townhomes, _____ (___) Lodge Residences, and _____ (___) Windham Mountain Sporting Club Lots. Expansion Property subjected to these covenants in accordance with Article 12, below, may contain additional Residence Lots, Townhomes, Lodge Lots and Lodge Residences.

4.2 INSEPARABILITY OF LOT.

Each Lot may be developed for residential or commercial purposes in accordance with applicable restrictions contained in the Plat, these Covenants, the Master Plan, the Windham Mountain Sporting Club Site Plan or any of the final Development plans. No Lot shall be further subdivided by an Owner other than Declarant. Notwithstanding the foregoing, Declarant, and Declarant's successors and assigns to which Declarant has expressly assigned Development Rights, may further subdivide any Lodge Lot, Townhome Lot, Windham Mountain Sporting Club Lot, Common Area Lot, or Open Space Lot, all as more particularly described in the Plat and recorded Project Declaration, subject to approval by Town of Windham.

4.3 TITLE.

Title to a Lot may be held individually or in any form of concurrent ownership recognized in the State of New York. In case of any such concurrent ownership, each co-owner shall be jointly and severally liable for performance and observance of all the duties and responsibilities of an Owner with respect to the Lot in which he or she owns an interest. For all purposes herein, there shall be deemed to be only one Owner for each Lot. The parties, if more than one, having the ownership of a Lot shall agree between themselves how to share the rights and obligations of such ownership, but all such parties shall be jointly and severally liable for performance and observance of all of the duties and obligations of an Owner hereunder with respect to the Lot in which they own an interest.

4.4 NO PARTITION.

No Owner of a Lot shall be entitled to bring any action for partition or division of the Common Areas.

4.5 TAXATION.

Each Lot shall be considered a separate parcel of real property and shall be separately assessed and taxed. The Association shall pay as a Common Expense all real estate taxes, special improvement and other assessments, personal property taxes and all other taxes, duties, charges, fees

and payments that are imposed, assessed or levied upon the Common Areas by any governmental or public authority, or arise in connection with their use and management.

4.6 LODGE RESIDENCES AND COMMERCIAL SPACE.

Declarant intends to develop Lodge Residences and Commercial Space on the Lodge Lot(s). Declarant contemplates that such Lodge Residences and Commercial Space will be subject to, and governed by a Project Association or Project Associations created with respect to the Development of the Lodge Lot(s).

ARTICLE 5. USE RESTRICTIONS

5.1 GENERAL APPLICATION/APPLICATION OF TOWN OF WINDHAM LAND DEVELOPMENT REGULATIONS.

All Development and use of the Property shall conform to the requirements of this Article 5, which requirements are in addition to any requirements placed upon Development by applicable land use regulations of Town of Windham, New York. In case of any conflict between this Article and those regulations, the more stringent requirements shall govern.

5.2 COMPLIANCE WITH DESIGN GUIDELINES.

All Lot use and Development shall conform to applicable Design Guidelines. Any Lot submitted to these Covenants by the recording of Supplemental Covenants in accordance with Section 12.2, below, shall also be subject to architectural or design rules, regulations, or limitations contained or provided for in a Project Declaration governing such Lot, as well as any requirements placed upon Development by applicable land use regulations of Town of Windham, New York for these additional Lots.

5.3 DEVELOPMENT PERMIT REQUIRED.

No Structure of any kind shall be erected, placed, altered, added to, reconstructed or permitted to remain on any Lot, and no construction activities, grading, or removal of trees or other vegetation shall be commenced until the Design Review Committee approves such Structure, construction activities, grading or removal of trees by issuing a Development permit therefore. Development permits shall be consistent with the Design Guidelines. The builder, general contractor, architect and plans and specifications for all construction and landscaping on any Lot shall be approved by the Design Review Committee prior to commencing construction activities, and the Design Review Committee may charge a fee for its services, including any construction services fee.

5.4 USE OF COMMON AREAS.

Common Areas shall be used subject to limitations placed on these areas by Town of Windham Regulations and approvals for the Property and for the furnishing of the services and facilities for which the same are reasonably suited and which are incident to the use and occupancy of

the Lots. There shall be no obstruction of the Common Areas, nor shall anything be kept or stored on any part of the Common Areas by any Owner without the prior written approval of the Association. Nothing shall be altered on, constructed in, or removed from the Common Areas by any Owner without the prior written approval of the Design Review Committee.

5.5 USE OF LOTS.

Except for uses reserved to Declarant or permitted to be reserved in a Project Declaration pursuant to Article 12, below, and except for the Club Property and any Commercial Wellness Centers, all Lots shall be used for single-family dwelling and lodging purposes only and no commercial, industrial or other such use shall be permitted on any Lot. Notwithstanding the foregoing, these Covenants permit:

(a) The rental of Lots, including Lodge Residences, duplexes and townhomes , subject to applicable law, for a term of less than 30 days by or through the Club.

(b) Home occupations, as defined, regulated and permitted by applicable codes, statutes, or ordinances of Town of Windham, New York, existing from time to time that do not cause unreasonable disturbance to other Owners. Home occupations are reasonable so long as: (i) the existence or operation of the home occupation is not apparent or detectable by sight, sound, or smell from outside the Lot; (ii) the home occupation does not involve regular visitation to the Lot by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the Property; and (iii) the home occupation is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board.

(c) Operation of a sales center for the sale, resale and rental of Lots within the Property by Declarant. Declarant may assign, in whole or in part, its rights under this Section 5.5 (c).

5.6 USE OF PARKING FACILITIES AND ROADS.

Designated parking spaces on the Lots or Common Areas shall be used only for short term parking of motor vehicles. Designated parking area requirements are further defined in the Design Guidelines and must be clearly shown on the submitted site plans for review and approval by the Design Review Committee prior to permitting for construction. The Board shall have full power and authority to regulate the use of the Roads by imposing and enforcing speed limits and other restrictions, together with fines (by Special Assessments hereunder or otherwise) and other penalties for violations of such restrictions.

5.7 STORAGE OF VEHICLES AND EQUIPMENT.

No cars, motorcycles, trucks, tractors, trailers, campers whether or not on a truck, motor homes, recreational vehicles, vehicles other than automobiles, boats, snow removal equipment, garden or maintenance equipment, or similar vehicles and equipment, shall be stored on any Lot except in an enclosed Structure. The Board may impose additional restrictions on the parking of vehicles and storage of such equipment in the Rules and Regulations.

5.8 SNOWMOBILES AND MOTORCYCLES AND OFF-ROAD VEHICLES.

No snowmobile, motorcycle, all-terrain vehicle or other similar device shall be operated on any Lot for recreational purposes. Snowmobiles, motorcycles, all-terrain vehicles or similar vehicles may be used for access to and from residential Structures with the prior written approval of the Design Review Committee. The approval of the Design Review Committee for access use may be terminated if such vehicles are not strictly limited to access use.

5.9 LIVESTOCK, PETS, AND WILDLIFE.

No livestock or pets shall be kept or maintained on any Lot except in accordance with the following guidelines:

(a) **Domestic Pets.** Owners may keep domestic pets, such as cats, dogs, or other domestic animals normally kept and maintained indoors on any Lots subject to the restrictions contained in this subsection 5.9 (b). Not more than two (2) dogs may be kept on any Lot, provided, however, that a litter of puppies born to a dog owned by a Lot Owner may be kept or maintained upon any Lot for a period not to exceed four (4) months if said puppies are otherwise maintained in accordance with these Covenants. So that the presence or activity of domestic pets does not harass or endanger wildlife and does not cause a nuisance to neighboring Owners, any such animals kept on a Lot shall be restrained on a leash and controlled at all times (including during construction) and shall not be allowed to run at large on any portion of any Lot except within an effective electronic fence.

(b) **Enforcement of Pet Policy.** If any permitted pets are caught or identified chasing or otherwise harassing livestock, wildlife or people, or become nuisance pets (constantly barking or howling), the Board shall have the authority to have such animal or animals impounded at any available location, and shall assess a penalty against the owner of such animal or animals of not more than One Hundred Dollars (\$100.00) per animal plus all costs of impoundment. If any such animal or animals are caught or identified chasing or harassing wildlife, livestock or people, or constantly howling or barking on a second occasion within two (2) years, the Board shall have the authority to have such animal or animals impounded and the Board shall assess a penalty of not more than Two Hundred Dollars (\$200.00) per animal, plus costs of impoundment. If any such animal or animals are caught or identified chasing or harassing wildlife, livestock or people, or constantly barking or howling on a third or subsequent occasion within three (3) years of the previous two (2) occasions, such animal or animals shall be permanently removed from the Property. No owner of any animal or animals impounded or permanently removed for chasing or harassing livestock, wildlife or people, or constantly barking or howling shall have the right of action against the Board or any member thereof, for the impoundment or removal of any such animal or animals.

(c) **Wildlife Protection.** Many wildlife species live on or migrate through the Property during various times of year. The following limitations on use and Development are intended, in addition to all the other requirements of these Covenants, to protect, preserve and maintain existing wildlife habitat on the Property and to minimize the adverse effects of Development on wildlife habitat.

- (i) No Owner of any Lot shall remove or alter or allow others to remove or alter any of the existing vegetation thereon, except as is absolutely necessary for the clearing and preparation of the Building Envelope for the purposes of constructing authorized Structures thereon and except as otherwise approved by the Design Review Committee;
- (ii) Prior to receiving a Building permit from the Design Review Committee, Owners shall identify and receive permission to remove any tree as a part of their submission for a Building permit;
- (iii) Woody debris shall be retained in streams and undeveloped forested areas; and firewood collection shall not be permitted on the Property;
- (iv) Dogs and other domestic animals shall be controlled and physically restrained at all times in accordance with subsection 5.10 (b), above;
- (v) No hunting or shooting of guns shall be allowed on any Lot. If any indigenous animals cause damages, these events should be reported to the Manager who may control them in accordance with New York State Game and Fish regulations;
- (vi) No artificial feeding of deer, bears or waterfowl shall be allowed on any Lot;
- (vii) No non-native animal species shall be released to roam at large on any Lot;
- (viii) Every owner by acceptance of a deed to his or her Lot or any subdivided portion thereof and the Club releases the New York Department of Environmental Conservation from any and all claims for wildlife damage.

5.10 NOXIOUS OR OFFENSIVE ACTIVITIES.

No noxious or offensive activity shall be permitted on any Lot. No light that is unreasonably bright or causes unreasonable glare shall be emitted from any Lot. Exterior lighting shall be of low intensity, low profile and shielded, or as further restricted by the Design Guidelines. No unreasonably loud or annoying noises or noxious or offensive odors shall be emitted beyond the boundaries of any Lot.

5.11 MINERAL ACTIVITIES PROHIBITED.

No mining or other mineral extraction or development activities shall be permitted on any Lot, including the removal of gravel; provided that excavation for landscape purposes may be permitted with the prior written approval of the Design Review Committee.

5.12 BUILDING ENVELOPE.

All Structures shall be constructed wholly within any Building Envelope, except for access driveways, utilities extensions and associated retaining walls. Any exceptions to this must be submitted to and approved by the Design Review Committee prior to any submission to Town of Windham for building permits. Modifications to any previously approved Building Envelope must conform to the approvals granted by Town of Windham and to any applicable conditions placed within the approvals of WMSC by Town of Windham Planning Board, or other agencies. Building Envelopes are site-specific and are defined on the plats recorded at the Clerk and Recorder's Office of Town of Windham.

5.13 TEMPORARY STRUCTURES PROHIBITED.

No temporary Structures, such as trailers, tents, shacks or other similar Buildings shall be permitted on any Lot, except during construction as authorized by the Design Review Committee.

5.14 AUTHORIZED STRUCTURES ON RESIDENCE LOTS.

Separate guesthouses are not allowed on any Windham Mountain Sporting Club Lots, although the Design Review Committee may approve minor Structures appurtenant to the Principal Residence. Outdoor hot tubs shall be permitted on all Residence Lots, subject to the approval of the Design Review Committee as to the actual location of such hot tub to minimize disturbance for adjoining Owners. All Principal Residences and other Structures located on a Residence Lot shall comply with the following:

(a) **Consent of Declarant.** In addition to the Development permit and approval of the Design Review Committee required by Section 5.3, above, until January 1, 2022, any modification to the exterior of a Structure on a Lot shall require the written consent of the Declarant or its successors or assigns.

(b) **Construction.** All construction shall be completed within eighteen (18) months from the commencement date of construction, unless the Design Review Committee approves an extension for good cause, not to exceed six (6) months in length. Exterior construction may only occur during weekdays between the hours of 7 a.m. to 6 p.m., or otherwise in accordance with the Design Guidelines. The Design Review Committee, at its discretion, shall be authorized to grant variances to this limitation in the early stages of development of the project when impacts to residents may be minimal.

(c) **Height Limitations.** No single-family, townhouse, or duplex residential structure shall exceed thirty (30) feet above finished grade, as measured at any point on the lot, from existing grade straight up to the top ridge line, or unless further restricted by individual Lot limitations contained within the Design Guidelines. No townhouse structure shall exceed forty-three (43) feet above finished grade, as measured at any point on the lot, from existing grade straight up to the top ridge line.

(d) **Floor Area Limitations.** The total floor area of habitable space (as defined in the Uniform Building Code) of all Buildings constructed on a particular Residence Lot shall not exceed those representations made by Declarant and made a part of approvals for the Property. Specifically, gross-square footage limitations and impervious surface limitations are restricted for individual Lots within approvals granted by Town of Windham and those limitations contained within the Design Guidelines. Declarant does not warrant, or guarantee, that any residential lot owner shall be able to fully develop their lot to the maximum allowable floor area.

(e) **Prohibited Fences.** No boundary fences around the exterior Lot lines of any Residence Lot or around the perimeter of any Building Envelope shall be permitted, except underground electronic fences to restrain and control dogs.

5.15 GENERAL APPEARANCE OF LOT.

Refuse, garbage, trash and other odorous materials shall be kept at all times in a covered container, and any such container shall be kept within an enclosed Structure or, if outside, appropriately screened from view and kept in a container that will not be accessible to or attract bears or other wildlife. Service areas, storage piles and compost piles shall be appropriately screened from view. No clotheslines will be permitted. No lumber, grass, shrub or tree clippings or plant waste (except in screened compost piles), metals, bulk materials, scraps, refuse, or trash shall be kept, stored or allowed to accumulate on any Lot. There shall be no dumping of leaves or other debris, rubbish, trash or garbage, petroleum products, fertilizers or other potentially hazardous or toxic substances in any drainage ditch or body of water, except that fertilizers may be applied to landscaping on Lots provided care is taken to minimize runoff. Owners shall keep their Lots, whether vacant and undeveloped or developed, in an orderly manner so as not to present an unattractive or unkempt appearance, a nuisance, health hazard or danger to other Owners or their guests or invitees. The Association shall have the authority to enter upon any Lot and remove any nuisance, growth or trash and do any and all things necessary to correct any condition which violates these restrictions without liability of any kind. The Association may, at its option, require that all trash collection companies serving the Lots be approved by the Association. In addition, the Association may contract with one or more trash collection companies exclusively to serve the Lots, and the cost thereof shall be Common Expenses. All Lots located at street intersections shall be landscaped and improved so as to permit safe sight across such areas. No fence, wall, tree, hedge or shrub shall be placed or permitted to remain where it would cause a traffic or sight problem. No waste will be permitted in the Common Areas.

5.16 ANTENNAS.

Except as otherwise required by law, placement of antennas, satellite dishes, or other apparatus for the transmission, reception, or communication of television, radio, satellite, or other signals are prohibited on the Property if a central satellite distribution system, or other similar system, is provided to the homeowners. If a central system is not provided, one small receiver may be located in the side or rear yard of each Lot, installed adjacent to the residence thereon, and integrated with the residential structure and landscaping. Unless otherwise provided by law, dishes shall not exceed thirty-six (36) inches in diameter. Any such devices shall be screened or landscaped from view from the Roads and adjacent Lots and otherwise in accordance with the Design Guidelines. The Design

Review Committee shall have the right to adopt and to modify specifications and requirements for satellite dishes or other communication devices installed on the outside of permitted Structures as technological advances occur in the communications industry.

5.17 SIGNS.

No signs or advertising devices shall be erected or maintained on any Residence Lot or Common Area, except one sign on the Residence Lot, not greater than 2 square feet in area that identifies the street number or the street number and the Owner. The restrictions contained in this Section 5.18 shall not apply to the Declarant during the construction or sales period or to traffic signs, Lot designations, Project designations or similar signs displayed by the Design Review Committee or the Declarant. Additionally, notwithstanding the foregoing, the Design Review Committee may approve: (a) additional signage for the Club, the Wellness Center or Lodge; and (b) no trespassing and private property signs for the perimeter of the Property. Any signs permitted shall be placed outside clear view of intersecting streets/ roads. In addition, no night lighting of signs within the Property is allowed.

5.18 CONNECTION TO ELECTRIC, GAS, CABLE, SATELLITE TV AND WIRE UTILITIES.

Electrical and wire utility lines have been, or will be, installed underground in utility easements and in the Roads and other Common Areas. Connections from those lines to Development on a Lot shall be completed at each Owner's expense and shall also be underground. Separate underground propane tanks will be required for each residential Lot at the sole cost of the Owner.

If a central satellite TV system is supplied, separate TV dishes will be prohibited. If allowed, Satellite dishes shall be reviewed and approved pursuant to the Design Guidelines.

A local provider will supply telephone service to all Owners through a distribution system provided by Declarant.

5.19 COMMUNITY WATER AND SEWER SYSTEM.

There will be a central water system supplied by two reservoirs, a 300,000 gallon "upper" reservoir and a second, 50,000 gallon "lower" reservoir on the Property, which is fed from the Town of Windham. Each Owner shall be responsible for connecting up to a community sewage system. Connections from a Structure to the Water and Sewer System shall conform to all applicable standards and regulations of Town of Windham, New York Regulations, or other applicable regulatory agency. No outdoor toilets shall be permitted, except during construction.

5.20 COMPLIANCE WITH MASTER PLAN AND THE SITE PLANS AND WITH RULES AND REGULATIONS.

Owners and Project Associations shall comply with the terms and conditions of these Covenants, any Rules and Regulations adopted by the Design Review Committee and furnished in writing to the Owners, the Master Plan, and the Site Plans, and with any Town of Windham

regulations or other applicable laws, orders, regulations and requirements of any governmental agency having jurisdiction. Fines and other penalties may be imposed and enforced (by Special Assessment or otherwise) by the Design Review Committee for violations of such documents, and it is expressly understood that Owners and Project Associations may be held responsible for acts of their tenants, and invitees, or managers/employees.

5.21 LIMIT ON FRACTIONAL OWNERSHIP.

No Owner, excluding Declarant (or Declarant's successors and assigns to which Declarant has expressly assigned Development Rights), shall offer or sell any interest in the Property as a fractional ownership interest, time-share, interval ownership or any similar plan without the specific prior written approval of the Declarant during the Period of Declarant Control, and thereafter by the Association.

5.22 INSURANCE

Nothing shall be done or kept on any Lot or in the Common Areas which will increase the rate of insurance for the Association without the prior written consent of the Board. No Owner shall permit anything to be done or kept on its Lot or in its Limited Common Areas which will result in the cancellation of insurance maintained by the Association or which would be in violation of any applicable law, order, regulation or requirement.

5.23 OCCUPANTS BOUND.

All provisions of these Covenants and any Rules and Regulations or Design Guidelines governing the conduct of Owners and establishing sanctions against Owners shall also apply to all occupants even though occupants may not be specifically mentioned.

5.24 GATES.

Declarant may, at its sole discretion, cause any road within the Property to be gated.

ARTICLE 6. PROPERTY RIGHTS AND EASEMENTS

6.1 OWNERS' PROPERTY RIGHTS IN COMMON AREAS.

Every Owner shall have perpetual rights and easements of use and access over, across, and upon the Common Areas for the purpose of access to and from their Lot from public ways for both pedestrian and vehicular travel, water and wastewater supply and disposal, and such other rights as Declarant or the Board may grant in the future, which rights and easements shall be appurtenant to and pass with the transfer of title to such Lot; provided, however, that such rights and easements shall be subject to the following:

(a) the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions contained in these Covenants, and the Plat;

(b) the right of the Association from time to time to assign on an equitable basis portions of the Common Areas such as parking spaces or storage spaces for the exclusive use of the Owner of a particular Lot by an appropriate instrument in writing;

(c) the right of the Association to adopt, from time to time any and all rules and regulations concerning vehicular traffic and travel upon, in, under, and across the Property; and

(d) the right of the Association to adopt, from time to time, such Rules and Regulations concerning the Property as the Association may determine is necessary or prudent for the management, preservation, safety, control, and orderly operation of the Property for the benefit of all Owners, and for facilitating the greatest and most convenient availability and use of the Lots and Common Areas.

6.2 LIMITED COMMON AREAS.

Subject to the provisions of these Covenants, every Owner shall have the right to use and enjoy the Limited Common Areas, if any, appurtenant to his or her Lot.

6.3 USE OF CLUB AND WELLNESS CENTER.

The Association will not own the Club, Club Property, Wellness Center or Wellness Center Lot, and Owners shall not gain the right to enter into or use the Club, Club Property, Wellness Center or Wellness Center facilities by virtue of membership in the Association. Access to the Club, Club Property and Wellness Center or Wellness Center facilities will be separate from ownership of a Lot or Unit and will only be available to members of the Club, and such other Persons designated by the Club, in its sole discretion.

6.4 RECORDED EASEMENTS OR EASEMENTS CREATED BY FINAL DEVELOPMENT PLANS.

The Property and any Expansion Property shall be subject to any and all easements: (a) shown on the recorded plans; (b) shown on any recorded Plat or Supplemental Plat, or (c) reserved or granted under these Covenants, Supplemental Covenants, or a Project Declaration. Declarant anticipates that, in addition to the Master Plan and Site Plans, appropriate governmental officials of Town of Windham, New York will approve plats to be recorded governing the Property and any Expansion Property. Such recorded plats may reserve or create additional easements to accommodate improvements such as, but not limited to, cable utilities, water and wastewater utility systems, access rights-of-way, trails and paths. Related above ground appurtenances shall be installed and maintained in such a manner as not to significantly interfere with other uses of the easements. All construction disturbances shall be reclaimed and revegetated by Declarant in a timely and attractive manner.

6.5 ACCESS AND ADDITIONAL IMPROVEMENTS.

The Association, its Manager or designees shall have the irrevocable right of access to each Lot from time to time during reasonable hours for the maintenance, repair, or replacement of the

Common Areas and any improvements located thereon, including, without limitation, activities referred to in Article 11, below, and for making emergency repairs necessary to prevent damage to the Common Areas. During the Period of Declarant Control, Declarant shall have the right to access Lots as necessary to effect repairs, maintenance and improvements as well as to conduct landscaping activities on the Property and to implement additional improvements (including without limitation, pathways, sign and outdoor lighting) on the Property, all as contemplated by these Covenants, the Master Plan, the Site Plans and any final Development plans issued in accordance with Section 6.4, above, without the requirement of obtaining the consent or other authorization of any Owner.

6.6 EASEMENTS FOR SKI OPERATIONS.

Common Areas are burdened with an easement permitting skiers unintentionally to come upon such areas, and, unless restricted by the Association, for skiers at reasonable times and in a reasonable manner to come upon the Common Areas. The existence of this easement shall not relieve skiers of liability for damage caused by errant skiing. Under no circumstances shall any of the following Persons be held liable for any damage or injury resulting from errant skiers or the exercise of this easement: the Declarant, the Association or its Members (in their capacities as such); Windham Mountain Sporting Club, Inc., its successors, successors-in-title to the ski areas, or assigns; any builder, or a contractor (in their capacities as such); any officer, director or partner of any of the foregoing, or any officer or director of any partner.

Any portion of the Property immediately adjacent to ski runs is hereby burdened with a non-exclusive easement in favor of the adjacent ski area for overspray of water and snow from the snowmaking system serving such ski area. Under no circumstances shall the Association or the owner of such ski area be held liable for any damage or injury resulting from such over spray or the exercise of this easement.

6.7 EASEMENTS FOR CLUB OPERATIONS.

Declarant reserves, creates, establishes, promulgates and declares for the Club the following easements:

(a) A perpetual right and non-exclusive easement of access and use over those portions of the Common Areas reasonably necessary to the operation, maintenance and repair of the Club. This easement shall include the right of the Club to maintain portions of the Common Areas to a higher standard of care than that performed by the Association; provided that the Club shall not have the right to seek reimbursement from the Association or any Owner for maintenance performed pursuant to this subsection.

(b) For the benefit of the Club and its members (regardless of whether such members are Owners, guests, invitees, employees, agents, contractors and designees) a perpetual right and non-exclusive easement of access and use over all roadways located within the Community reasonably necessary to travel between the entrance to the Community and the Club and over those portions of the Community (whether Common Areas or otherwise) reasonably necessary to the operation, maintenance, use, repair and replacement of the Club. Without limiting the generality of the foregoing, members of the Club and guests and invitees of the Club shall have the right to park

their permitted vehicles on the roadways located within the Community at reasonable times before, during and after special events, tournaments and other similar functions held by or at the Club to the extent that the Club has insufficient parking to accommodate such vehicles.

(c) Perpetual, exclusive easements for erecting a reasonable number of temporary and permanent direction signs (the "Club Signs") on the Common Areas to provide guidance to the Club. Declarant shall be entitled from time to time to require that the Club relocate one (1) or more of the Club Signs.

(d) The Club may include an extensive system of paths for use by pedestrians, skiers, hikers, mountain bikes and maintenance vehicles. To the extent such paths are not located on Club property, Declarant hereby reserves perpetual, non-exclusive easements appurtenant to the Club on, over, under and across the Community as reasonably necessary for the installation, maintenance, repair, replacement, reconstruction, use and enjoyment of such paths; provided however, no path may encroach onto any Lot more than three (3) feet. The Club shall be solely responsible for maintaining such paths at the Club's sole cost and expense, including those portions which are located on a private street, a Lot or Common Areas. The aforesaid easements are reserved for the benefit of the members and owner(s) of the Club and their respective employees, contractors, members, agents, vendors, licensees, invitees, successors, assigns and grantees, and shall be appurtenant to the Club.

6.8 SALES OFFICE, ETC.

Declarant reserves for itself and its duly authorized agents, representatives, employees, successors and assigns (i) the right to maintain sales offices and/or management offices and/or models on any Lot owned or leased by Declarant or any of its affiliates that may now or hereafter be part of the Community and the right to relocate the same from time to time to any other Lot owned or leased by Declarant or any of its affiliates that may now or hereafter be part of the Community; (ii) an easement over and upon the Common Areas for the purpose of developing and constructing improvements to the Property including without limitation provision of utility service and pedestrian and vehicular access thereto and (iii) an easement for the purposes of discharging Declarant's obligations or exercising rights reserved in the Declaration and easements for utilities and drainage across that portion of the Common Areas on which no buildings are constructed (including all phases of the Community) for the benefit of the Property.

6.9 SUPPORT AND ACCESS.

Each Lot shall have an easement for subjacent and lateral support vis a vis the other Lots and Common Areas. The Association shall have a right of access through any Lot in order to gain access to the Common Areas and any other Lot.

6.10 ASSESSMENTS.

The Association may assess as part of Common Expenses the cost of any utility, trash, telecommunication or other service supplied to all Lots.

6.11 NO OBLIGATION TO CONSTRUCT.

Nothing contained herein or in the Articles of Incorporation or Bylaws (together, with the Rules and Regulations, the "Community Instruments") shall be deemed to impose upon Declarant any obligation of any nature to build, construct or provide any improvements except to the extent expressly required therein.

6.12 UTILITY EASEMENTS.

In addition to all other easements as Declarant may reserve herein, Declarant reserves perpetual easements, rights and privileges to install, maintain, repair, replace and remove poles, wires, cables, conduits, pipes, mains, pumping stations, siltation basins, tanks and other facilities, systems and equipment for the conveyance and use of electricity, telephone service, security service, sanitary and storm sewer, water, gas, cable television, telecommunications and other technological advances that may or may not now be in general use, irrigation, drainage and other public conveniences or utilities, upon, in, under or over those portions of the Community (including Lots and Common Areas) as Declarant may consider to be necessary, together with a perpetual right of ingress and egress to and from such easements (the "Utility Easements"). However, no Utility Easements shall be placed on the portion of a Lot on which is already located a building which was approved in writing by the Design Review Committee or on which a building is to be located pursuant to plans already approved in writing by the Design Review Committee. The Utility Easements shall include the right to cut trees, bushes or shrubbery and such other rights as Declarant or the governmental authority or utility company providing the utility service may require. The utility lines and equipment installed pursuant to the Utility Easements may be installed above or below ground. If an Owner receives permission to construct an improvement within a Utility Easement, neither the Declarant nor the Design Review Committee shall have any liability to repair or replace any such improvement following damage thereto as the consequence of the exercise of easement rights under this Section. Declarant shall have the right to convey Utility Easements to other Owners, to governmental authorities or utility companies, to the Association and to any other Person. **DECLARANT AND THE ASSOCIATION DO NOT WARRANT THE OPERATION OR EFFECTIVENESS OF ANY SYSTEM DESCRIBED ABOVE AND SHALL NOT BE LIABLE FOR ANY FAILURE THEREOF TO PERFORM AS EXPECTED.**

6.13 EROSION CONTROL.

Declarant reserves a perpetual easement, right and privilege to enter upon any Lot or Common Areas, and the Association is granted a perpetual easement, right and privilege to enter upon any Lot or Common Areas, either before or after a building has been constructed thereon or during construction, for the purpose of taking such erosion control measures as Declarant or the Association deems necessary to prevent or correct soil erosion or siltation thereon; provided however, except in the case of an emergency threatening property or giving rise to a violation of law (for which no notice or opportunity to cure is required), Declarant or the Association shall not exercise such right as to any Lot unless it has given the Owner at least ten (10) days' prior notice thereof and the Owner has failed to take appropriate action to correct or prevent the erosion or siltation problem. The cost incurred by the Association in undertaking such erosion control measures on any Lot shall become an assessment upon the Lot and shall constitute a lien against the Lot and shall be collectible in the manner provided herein for the payment of assessments.

6.14 LANDSCAPING.

Declarant reserves the perpetual easement, right and privilege, and the Association is granted the perpetual easement, right and privilege, to enter upon any Lot, after at least ten (10) days' notice to the Owner thereof, for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds or other unsightly growth, and fertilizer and grass seed, removing trash and taking such other action as the Declarant or the Association may consider necessary to correct any condition which detracts from the overall beauty of the Community, fails to conform to Community-wide standards or which may constitute a hazard or nuisance. The cost incurred by the Association in taking such action shall constitute an assessment and lien upon the Lot and shall be collectible in the manner provided herein for the payment of assessments.

6.15 DRAINAGE AND RETENTION EASEMENTS.

Declarant reserves for itself and the Association a perpetual easement, right and privilege to enter upon any Lot or Common Areas for the purpose of storm water collection, retention, detention and drainage over and upon those portions of the Community as Declarant or the Association may from time to time consider necessary, together with an easement and license to enter upon such areas for the purposes of constructing, improving, installing, inspecting, maintaining, repairing and replacing any and all storm water drainage and retention/detention systems, improvements and facilities from time to time located therein or thereon. Additionally, Declarant reserves for itself and the Association the perpetual easement, right and privilege to enter upon any Lot or Common Areas as Declarant or the Association may consider necessary to provide storm water drainage to all or any portions of any adjacent real property presently or hereafter owned by the Declarant which it may hereafter develop for the purpose of integrating the storm water collection, retention/detention and drainage of said adjacent property; provided, however, that any such additional drainage easements shall not unreasonably interfere with the use and enjoyment by any Owners of any improvements from time to time constructed or located on a Lot.

6.16 ENCROACHMENT.

Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between adjacent Lots, between each Lot and any adjacent Common Areas, between Common Areas and the Club, and between each Lot and the Club due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed or altered thereon (in accordance with the terms of the Declaration) to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

6.17 EASEMENTS FOR EMERGENCY, MAINTENANCE AND ENFORCEMENT.

(a) Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal easements for the Association and itself to enter: all portions of the

Community, including each Lot (i) in case of emergency; (ii) to perform its maintenance responsibilities, and (iii) to make inspections to ensure compliance with the Community Instruments. Except in emergencies, entry onto a Lot shall be only during reasonable hours. This easement shall be exercised with a minimum of interference to the quiet enjoyment of the Lot, and any damage caused by such entry shall be repaired by the Association at its expense. Entry under this Section shall not constitute a trespass.

(b) Declarant or the Association also may enter a Lot to abate or remove, using such measures as may be reasonably necessary, any structure, thing or condition which violates the Community Instruments. All costs incurred, including reasonable attorneys fees, may be assessed against the violator and shall be a charge upon the violator's Lot.

6.18 EASEMENT FOR SPECIAL EVENTS.

Declarant reserves for itself and the Association, a perpetual, non-exclusive reciprocal, appurtenant easement over the Common Areas for the purpose of conducting educational, cultural, entertaining and sporting events, and other activities of general community interest, at such locations and times as Declarant or the Association, in its sole discretion, deems appropriate. Each Owner, by accepting a deed or other instrument conveying any interest in a Lot, acknowledges and agrees that the exercise of this easement may result in a temporary increase in traffic, noise, gathering of crowds and related inconveniences, and each Owner agrees on behalf of himself and the occupants of his Lot to take no action, legal or otherwise, which would interfere with the exercise of such easement or to seek damages for or as the result of any such activities.

6.19 REPURCHASE OPTION.

(a) Declarant shall have a right of first refusal on the sale of any Lot on the terms and conditions set forth below. This Section shall not restrict the Owner's right to enter into a binding contract for the sale of a Lot; provided that the contract is made subject to Declarant's right of first refusal. The right of first refusal shall not apply to any transfer or conveyance in connection with foreclosure or deed in lieu of foreclosure of a deed of trust but shall apply to any transfer or conveyance occurring after a foreclosure or deed in lieu of foreclosure.

(b) If any Owner receives an offer to purchase his Lot which is acceptable to the Owner, such Owner shall promptly submit the terms of the offer in writing to Declarant. Declarant shall have a period of thirty (30) days from and after the receipt of such terms in which to exercise its right of first refusal as to the Lot, on the same terms and conditions as the third party offer (except that the date of settlement shall be as set forth below), by giving the Owner written notice of such exercise. If Declarant fails or declines to exercise the right of first refusal, upon request, Declarant shall execute a release of the right to repurchase the Lot. The release shall only apply to the offer submitted to Declarant and shall not extinguish Declarant's rights of first refusal as to any future conveyances of the Lot, by the current or any future Owner. If Declarant elects to purchase the Lot, the transaction shall be consummated within sixty (60) days following delivery of written notice of exercise of the right of first refusal by Declarant to the Owner.

(c) Declarant's rights under this Section shall terminate twenty-one (21) years after the death of the descendants of Joseph Kennedy (father of the late U.S. President John F. Kennedy) living on the date of this Declaration.

6.20 USE OF THE WORDS "WINDHAM MOUNTAIN SPORTING CLUB".

The words "Windham Mountain Sporting Club" and all images and likenesses of the Community, the Club and all improvements thereon, are the property of Declarant or the Club. Except as otherwise provided below, no Person shall use the words "Windham Mountain Sporting Club" or any derivative thereof in any printed or promotional material without the prior written consent of Declarant and the Club. Owners may use the words "Windham Mountain Sporting Club" in printed or promotional material where such terms are used solely to specify that the Owner's Lot is located within the Community. The Association shall be entitled to use the words "Windham Mountain Sporting Club" in its name. No Person shall use a photograph, drawing or other likeness of any portion of the Community or the Club, or any improvements thereon, excluding a photo or likeness of a single Lot, for purposes of marketing said Lot, without the Declarant's prior written consent.

6.21 CONVEYANCES OF LOTS.

All conveyances of Lots hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve the easements retained in this Article, even though no specific reference to such easements or to this Article appears in the instrument for such conveyance. All such easements shall benefit the named holders of the easements and their respective successors, assigns and designees.

ARTICLE 7. THE CLUB AND THE CLUB PROPERTY

7.1 THE CLUB AND THE CLUB PROPERTY.

The Club Property is privately owned and operated by the Club and is not a part of the Common Areas hereunder. The Club has the exclusive right to determine from time to time, in its sole discretion and without notice or approval of any change, how and by whom the Club Property shall be used. By way of example, but not limitation, the Club has the right to approve users and determine eligibility for use, to reserve use rights for future purchasers of Lots within the Property, to terminate any or all use rights, to change, eliminate or cease operation of any or all of the Club Property, to transfer any or all of its rights to the Club Property or the operation thereof to anyone and on any terms which it deems appropriate, to limit the availability of use privileges, and to require the payment of a purchase price, initiation fee, membership deposit, dues and other charges for use privileges. OWNERSHIP OF A LOT OR ANY PORTION OF THE PROPERTY OR MEMBERSHIP IN THE ASSOCIATION DOES NOT GIVE ANY VESTED RIGHT OR EASEMENT, PRESCRIPTIVE OR OTHERWISE, TO USE THE CLUB PROPERTY, OR TO ACQUIRE A MEMBERSHIP IN THE CLUB AND DOES NOT GRANT ANY OWNERSHIP OR MEMBERSHIP INTEREST IN THE CLUB OR THE CLUB PROPERTY. Each Owner, by acceptance of a deed or recorded contract of sale to a Lot acknowledges:

(a) That privileges to use the Club Property shall be subject to the terms and conditions of the membership documents for the Club, as the same may be amended from time to time (the "Membership Plan Documents"). Acquisition of a membership in the Club requires the payment of a membership purchase price called a membership contribution or membership deposit, and membership dues, fees and charges. These amounts shall be determined by the Declarant and/or the Club as set forth in the Membership Plan Documents for the Club. Notwithstanding the fact that the Club Property is open space or a recreation area for purposes of applicable zoning ordinances and regulations, each Owner by acquisition of title to a Lot releases and discharges forever the Declarant, the Association, the Club and their members, shareholders, partners, officers, directors, employees, agents and affiliates and their successors and assigns from: (1) any claim that the Club Property is, or must be, owned and/or operated by the Association or the Owners, and/or (2) any claim that the Owners are entitled to use the Club Property by virtue of their ownership of a Lot without acquiring a membership in the Club, paying the applicable membership contribution or membership deposit, and dues, fees and charges established by the Club from time to time, and complying with the terms and conditions of the Membership Plan Documents for the Club.

Each Owner and the Association shall jointly and severally indemnify, defend, and hold harmless the Declarant and the Club, and their members, partners, employees, agents, directors, shareholders, officers and affiliates and their successors and assigns, against and in respect of, and to reimburse the Declarant and the Club, and their members, partners, employees, agents, directors, shareholders, officers and affiliates and their successors and assigns on demand for, any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including, but not limited to, interest, penalties, attorney and paralegal fees and disbursements (even if incident to any appeals), that the Declarant and the Club, and their members, partners, employees, agents, directors, shareholders, officers and affiliates and their successors and assigns shall incur or suffer, which arise out of, result from, or relate to any claim that because the Club Property is deemed to be open space or a recreation area for purposes of applicable zoning ordinances and regulations, the Club Property must be owned and/or operated by the Association or the Owners and/or that Owners may use the Club Property without acquiring a membership in the Club pursuant to the Club's Membership Plan Documents and paying the membership contribution or membership deposit, and dues, fees and charges established by the Club from time to time;

(b) That any entry upon the Club Property without permission of the Club may be deemed a trespass, and each Owner shall refrain from, and shall cause all occupants of such Owner's Lot, their guests and invitees to refrain from, any unauthorized entry upon the Club Property;

(c) That the proximity of Lots and Common Area to the Club Property results in certain foreseeable risks, including the risk of damage or injury from errant skiers, and that each Owner's use and enjoyment of his or her Lot and the Common Area may be limited as a result and that neither the Declarant, the Association nor the Club shall have any obligation to take steps to remove or alleviate such risks, nor shall they have any liability to any Owner or occupant of any Lot, their guests or invitees, for damage or injury resulting from errant skiers upon any Lots or Common Area;

(d) That the Club and its designees may add to, remove or otherwise modify the landscaping, trees, and other features of the Club Property, and that neither the Declarant, the Association, nor the Club shall have any liability to Owner as a result of such modifications to the Club Property;

(e) That there are no expressed or implied easements over the Club Property for view purposes, and no guaranty or representation is made by Declarant or any other Person that any view over and across the Club Property will be preserved without impairment, and that neither the Declarant, the Association, nor the Club shall have any obligation to prune or thin trees or other landscaping to preserve views over the Club Property. The Club shall have no obligation to prune or thin trees or other landscaping and shall have the right, in its sole and absolute discretion, to add trees and other landscaping and to install improvements or barriers (both natural and artificial) to the Club from time to time. Any such additions or changes may diminish or obstruct any view from the Lots or other portions of the Community and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed. Each Owner, by acceptance of a deed, acknowledges that any view of the Club which the Lot or other portions of the Community may enjoy as of the date of the purchase of the Lot may be impaired or obstructed by the natural growth of existing landscaping, or the installation of additional trees, other landscaping or other types of improvements or barriers (both natural and artificial) on the Club;

(f) That no representations or warranties which are inconsistent with this Article, either verbal or written, have been made or are made by Declarant, the Association nor the Club or by any person acting on behalf of any of the foregoing; and

That Club may own one or more ponds or waterways on the Property. Notwithstanding the ownership of such ponds or waterways, the Club may use any and all ponds or waterways on the Property for the purpose of irrigating and maintaining the Club Property with the result that the water level in such ponds or waterways may vary from time to time. Each Owner of a Lot acknowledges such right on the part of the Club and agrees not to commence any cause of action or other proceeding involving the Club based on the exercise of such right or otherwise interfere therewith.

In the event there are insufficient water levels to provide the necessary irrigation needs of the Club Property and all other areas of the Property, subject to applicable governmental permits and requirements, the Club Property shall utilize the potable Community Water System and have first priority of irrigation, followed by the Common Areas;

(g) The Association may enter into a contractual arrangement or cost sharing agreement with the Club or any other entity obligating the Association to contribute funds for, among other things, shared property or services and/or a higher level of Common Areas maintenance.

(h) Upon request of the Club, the Association shall enforce its use restrictions and rules against any Owner or occupant violating such regulations within the Club, including but not limited to the exercise of the Association's self-help rights for violation of sign and pet restrictions.

(i) In recognition of the fact that the provisions of this Article are for the benefit of the Club, no amendment to this Article, and no amendment in derogation of any other provisions of

this Declaration or any other Community Instrument benefiting the Club, may be made without the written approval of the Club. The foregoing shall not apply, however, to amendments made by Declarant.

(j) It is Declarant's intention that the Association and the Club shall cooperate to the maximum extent possible in the operation of the Community and the Club. Each shall reasonably assist the other in upholding Community-wide standards as they pertain to maintenance and the Design Guidelines. The Association shall have no power to promulgate use restrictions or rules affecting activities on or use of the Club without the prior written consent of the Club.

7.2 RIGHTS OF ACCESS AND PARKING.

Declarant hereby grants the Club and members of the Club (regardless of whether such Persons are Members hereunder), their guests and invitees and the employees, agents, contractors, and designees of the Club a non-exclusive easement of access and use over all Roads located within the Property reasonably necessary to travel to and from the entrance to the Property from and to the Club Property, respectively, and, further, over those portions of the Property (whether Common Area or otherwise) reasonably necessary to the operation, maintenance, repair, and replacement of the Club Property. Without limiting the generality of the foregoing, members of the Club and permitted members of the public shall have the right to park their vehicles on the Roads located within the Property at reasonable times before, during, and after Community and Club Member Events and other similar functions held at the Club Property.

7.3 ASSUMPTION OF RISK AND INDEMNIFICATION

Each Owner by its purchase of a Lot expressly assumes the risks associated with the Club Property (regardless of whether the Owner is using the Club Property) and agrees that neither Declarant, the Association, the Club, nor any of their affiliates or agents nor any other entity designing, constructing, owning or managing the Club Property or planning or constructing upon the Owner's Lot shall be liable to Owner or any other person claiming any loss or damage, including, without limitation, indirect, special or consequential loss or damage arising from personal injury, destruction of property, loss of view, noise pollution, or other visual or audible offenses, or trespass or any other alleged wrong or entitlement to remedy based upon, due to, arising from or otherwise related to the proximity of the Owner's Lot or Common Area to the Club Property, including, without limitation, to the maximum extent permitted by applicable law, any claim arising, in whole or in part, from the negligence of Declarant and the Club, or any other entity designing, constructing, owning or managing the Club Property or planning or constructing upon the Owner's Lot. Owner hereby agrees to indemnify and hold harmless Declarant and the Club, and any other entity owning or managing the Club Property against any and all claims by Owner's guests and invitees to the maximum extent permitted by applicable law.

7.4 ARCHITECTURAL CONTROL

Neither Declarant, the Association, nor any committee shall approve any construction, addition, alteration, change, or installation on to any portion of the Property (including Common

Areas) which is adjacent to, or otherwise in the direct line of sight of, any Club Property without giving the Club at least fifteen (15) days prior written notice of its intent to approve the same together with copies of the request and all other documents and information finally submitted in such regard. The Club shall then have fifteen (15) days to respond in writing approving or disapproving the proposal, stating in detail the reasons for any disapproval. The failure of the Club to respond to the notice within the fifteen (15) day period shall constitute a waiver of the Club's right to object to the matter.

ARTICLE 8. MEMBERSHIP AND VOTING RIGHTS

8.1 MEMBERSHIP.

The Articles of Incorporation shall be filed no later than the date the first interest in a Lot is conveyed to a purchaser. Every Owner shall be a member of the Association and shall remain a member for the period of the Owner's ownership of a Lot. No Owner, whether one or more persons or entity, shall have more than one membership per Lot owned, but all of the persons or entities owning a Lot shall be entitled to rights of membership and of use and enjoyment appurtenant to ownership of a Lot. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Lot.

8.2 CLASSES OF MEMBERSHIP AND VOTING.

There shall be three classes of membership in the Association as follows:

(a) Class "A" Membership. Each Owner of a Lodge Residence, other than Declarant, shall be a Class "A" Member. Each Class "A" Member shall be entitled to one (1) vote for each Lot owned by such Member.

(b) Class "B" Membership. Each Owner of a Residence Lot, other than Declarant, shall be a Class "B" Member. Each Class "B" Member shall be entitled to two (2) votes for each Residence Lot owned by such Member.

(c) Class "C" Membership. Declarant shall be a Class "C" Member until the termination of the Period of Declarant Control, after which time Declarant shall be a Class "A" Member for each Lodge Residence owned by Declarant and a Class "B" Member for each Residence Lot owned by Declarant. The Class "C" Member shall be entitled to ten (10) votes for each Residence Lot owned by Declarant and five (5) votes for each Lodge Residence owned by Declarant. After Declarant is converted to a Class "A" or "B" Member, it shall be entitled to one (1) vote for each Lodge Residence that it owns and two (2) votes for each Residence Lot that it owns. The Class "C" Member shall be entitled to appoint all of the members of the Board during the Period of Declarant Control, as specified in the Bylaws.

Each Lot shall have the votes provided herein above; however, no vote allocated to a Lot owned by the Association may be cast. At any annual or special meeting of the members, votes may be cast in person or by proxy executed in writing by the Owner or a duly authorized attorney in fact. Proxies shall be filed with the secretary of the Board prior to or at the

time of the meeting. If title to a Lot is held by more than one individual, by a firm, corporation, partnership, association or other legal entity or any combination thereof, such individuals, entity or entities shall appoint and authorize one person or alternate persons to represent the Owners of the Lot. Such representative shall be a natural person who is an Owner, or a designated Board member or officer of a corporate Owner, or a general partner of a partnership Owner, or a comparable representative of any other entity, and such representative shall have the power to cast votes on behalf of the Owners as a member of the Association, and serve on the Board if elected, subject to the provisions of the Bylaws. Notwithstanding the foregoing, (a) if only one of the multiple Owners of a Lot is present at a meeting of the Association, such Owner is entitled to cast the vote allocated to that Lot, and (b) if more than one of the multiple Owners of such Lot are present and there is no written designation of an authorized representative, the vote allocated to that Lot may be cast only in accordance with the agreement of a majority in interest of the Owners, which majority agreement may be assumed for all purposes if any one of the multiple Owners casts the vote allocated to that Lot without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Lot.

8.3 QUORUM.

At any annual or special meeting of the Association the presence in person or by proxy of holders of ten (10 percent) of the votes shall constitute a quorum. In the event that a quorum is not present the meeting may be adjourned by any member of the Board presiding at the meeting. Thereafter, upon not less than fifteen (15) days written notice, such meeting may be reconvened.

8.4 COMPOSITION OF BOARD.

The Articles of Incorporation and Bylaws constitute part of the Community Instruments and are incorporated herein by reference to the same extent as if set forth herein in full. The Articles of Incorporation and Bylaws have been or will be filed with the appropriate authorities. The Articles of Incorporation provide for an increase in the size of the Board of Directors from four (4) to six (6) directors at the first meeting following the date when eighty (80) Lots (i.e. 50% of the Lots that may be created in the Community) are owned by Owners other than Declarant. Any amendments to the Articles of Incorporation and Bylaws will likewise be filed with the appropriate authorities. Article IX of the Articles of Incorporation provides in relevant part:

A. Until the first to occur of (i) the expiration of the Period of Declarant Control or (ii) sixty days after the date when forty (40) Lots are owned by Owners other than Declarant (i.e., 25% of the Lots that may be created in the Community), the Board of Directors shall consist of four (4) Persons designated by the Declarant. Declarant shall have the right in its sole discretion to remove directors during this period and to designate their successors.

B. Not later than sixty (60) days after forty (40) Lots are owned by Owners other than Declarant (i.e., 25% of the Lots that may be created in the Community), a meeting of the members shall be held at which one (1) of the four (4) directors shall be elected by the members other than Declarant. The remaining three

(3) directors shall be appointed by the Declarant, who shall have the sole right to remove directors appointed by it and to designate their successors.

C. Not later than sixty (60) days after eighty (80) Lots are owned by Owners other than Declarant (i.e., 50% of the Lots that may be created in the Community), a meeting of the members shall be held at which two (2) of the six (6) directors shall be elected by the members other than Declarant. The remaining four (4) directors shall be appointed by the Declarant, who shall have the sole right to remove directors appointed by it and to designate their successors.

D. Promptly after the termination of the Period of Declarant Control, a meeting of the members shall be held at which all directors shall be elected by the members of the Association (including Declarant), and a majority of the directors shall be Owners.

8.5 ELECTION OF BOARD AND DECLARANT CONTROL OF THE ASSOCIATION.

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. The Period of Declarant Control shall mean that period beginning on the date of recordation of this Declaration and expiring on the first to occur of (i) sixty (60) days after the date upon which 100% of the Lots which may be created have been conveyed to Owners other than Declarant, or (ii) two (2) years after Declarant has ceased to offer Lots for sale in the ordinary course of business,, or (iii) whenever Declarant shall voluntarily surrender the right to appoint directors.

ARTICLE 9. ASSOCIATION DUTIES AND POWERS

9.1 AUTHORITY OF BOARD.

Except as specifically otherwise provided in these Covenants, the Bylaws or the Articles of Incorporation, the Board shall have full power and authority to act on behalf, and manage the business and affairs, of the Association and to enforce the provisions of these Covenants.

9.2 ASSOCIATION MANAGEMENT DUTIES.

Subject to the rights and obligations of Declarant and other Owners as set forth in these Covenants, pursuant to the powers and authority vested in it by New York statute and by its Articles of Incorporation and Bylaws, the Association (acting through the Board) shall enforce and administer the requirements of these Covenants. Such enforcement and administration shall include: (a) the exclusive management, control, maintenance, repair, replacement and improvement of the Common Areas and Limited Common Areas and the keeping of the same in good, clean, attractive, and sanitary condition, order, and repair; (b) issuance of Development permits; (c) contracting for, and

supervision of the provision of, Common Services; and (d) and taking all other actions necessary to administer and enforce these Covenants and the use restrictions contained herein.

9.3 WILDFIRE HAZARD REDUCTION.

Due to its forested nature, the Property is subject to both natural and man caused wildfires. To reduce the likelihood and intensity of wildfires, the Association may establish an internal fire control and fuel reduction plan. Such Wildfire Hazard Reduction measures shall be included and contained within the Community Design Guidelines. The Association shall have the right to contract for fuel reduction and other appropriate measures on a regular or emergency basis. Any company so contracted shall have the right to enter upon all Lots to perform all necessary work without any liability for trespass.

9.4 MAINTENANCE OF RESERVES AND FINANCIAL RECORDS.

The Association may establish and maintain, out of the installments of the Common Assessments, a reserve account for maintenance, repair, or replacement of those Common Areas that must be maintained, repaired or replaced on a periodic basis. The Association (acting through the Board) shall adopt and amend budgets for revenues, expenditures, and reserves. The Association shall keep financial records sufficiently detailed to enable it to comply with the requirement that it provide statements of the status of Assessments. All financial and other records of the Association shall be made reasonably available for examination by any Owner and such Owner's authorized agents.

9.5 CONTRACTING WITH PROJECT ASSOCIATIONS.

The Association shall assist the Project Associations in the performance of their duties and obligations under their respective Project Declarations and other documents governing the applicable Property, and the Association shall cooperate with each Project Association so that each of those entities may most efficiently and economically provide their respective services to Owners. It is contemplated that from time to time the Association and the various Project Associations may use each other's services in the furtherance of their respective obligations. The Association may contract with any Project Association as convenient or necessary to provide such services and to fairly allocate the costs thereof. If a Project Association fails, neglects or is unable to perform a duty or obligation required by its Project Declaration or other Property documents, then the Association may, after reasonable notice and an opportunity to cure given to the Project Association, perform such duties or obligations until such time as the Project Association is able to resume such functions, and the Association may charge the Project Association a reasonable fee for the performance of such functions.

9.6 ASSOCIATION POWERS.

The Association shall have, subject to the limitations contained in these Covenants, all powers necessary to perform the duties set forth in these Covenants, including, without limitation, the authority to:

- (a) adopt Design Guidelines, establish Rules and Regulations enforcing such Design Guidelines, and establish policies and procedures for, and appoint the members of, the Design Review Committee;
- (b) adopt and amend Bylaws and Rules and Regulations;
- (c) adopt and amend budgets for revenues, expenditures and reserves;
- (d) collect assessments for Common Expenses from Owners, including reasonable charges for late payments, fines for violations of these Covenants, and the costs of administering and enforcing these Covenants;
- (e) hire and discharge Managers and other employees or independent contractors; institute, defend or intervene in litigation or administrative proceedings or seek injunctive relief for violation of the Covenants, Bylaws or Rules and Regulations in the Association's name on behalf of the Association or two or more Owners on matters affecting the Lots and any Project constructed thereon;
- (f) receive notices, join in any litigation or administrative proceedings, and execute any and all documents, in the Association's name, on behalf of the Association or two or more Owners, in connection with any change in zoning, annexation, subdivision approval, building permit, or other type of governmental approvals required to accomplish the purposes of these Covenants;
- (g) make contracts (including, without limitation, Management Agreements) and incur liabilities;
- (h) regulate the provision of Common Services, such as the carrying of property and liability insurance for, and the use, maintenance, repair, replacement and modification of, the Common Areas;
- (i) cause additional improvements to be made as part of the Common Areas;
- (j) acquire, hold, encumber, and convey in the Association's name any right, title or interest to real property or personal property;
- (k) grant easements, including permanent easements, leases, licenses and concessions, through or over the Common Areas;
- (l) accept the benefit of any easement appurtenant to the Property, which easement will become part of the Common Areas;
- (m) impose a reasonable charge for the preparation and recordation of amendments to these Covenants or for preparation of statements of unpaid Assessments;
- (n) provide for the indemnification of the Association's officers and Board and maintain directors' and officers' liability insurance;

(o) assign the Association's right to future income, including the right to receive Assessments;

(p) by resolution, establish committees of the Board or Owners, permanent and standing, to perform any of the above functions under specifically delegated administrative standards, as designated in the resolution establishing the committee;

(q) establish policies and procedures for entry into Lots under authority granted to the Association in these or any Project Declaration for the purpose of cleaning, maintenance and repair including emergency repair and for the purpose of abating a nuisance, or a known or suspected dangerous or unlawful activity;

(r) exercise any other powers conferred by these Covenants or the Bylaws;

(s) exercise any other power that may be exercised in New York by legal entities of the same type as the Association; and

(t) exercise any other power necessary and proper for the governance and operation of the Association.

9.7 LIMITATION OF LIABILITY.

No Board member shall be liable to any party for any action or inaction with respect to any provision of these Covenants, provided that such director has acted in good faith. No member of the Board shall have any personal liability in contract to an Owner or any other person or entity under any agreement or transaction entered into by the Board on behalf of the Association.

Neither the Design Review Committee, any member thereof, its agents and employees, nor the Declarant, shall be liable to the Association or to any Owner, any contractor, or other Person for any loss or damage claimed on account of any of the following, provided the party acted in good faith:

- the approval or disapproval of any plans, drawings and specifications, whether or not defective or in compliance;
- the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications and whether or not defective;
- the development, or manner of development, of any Lot within the Property;
- the processing and enforcement of the governing documents, including the Design Guidelines.

Every Owner or other Person, by submittal of plans and specifications to the Design Review Committee for approval, agrees not to bring any action or suit against the Design Review

Committee, any of its Members, agents, the Association, the Board of Directors of the Association, or the Declarant, regarding any action taken by or on behalf of the Design Review Committee or the Board of Directors.

Approval by the Design Review Committee of plans and specifications, or of the construction of any improvement within the Property, refers only to the Design Guidelines, and in no way implies, and shall not be deemed to be a representation or warranty that, the submitted plans or specifications for the improvement comply with applicable governmental ordinances or regulations including, but not limited to, zoning ordinances and building codes.

ARTICLE 10. ASSESSMENTS

10.1 BUDGET.

At least sixty (60) days before the beginning of each full fiscal year, the Board shall prepare and furnish to each Owner, or cause to be prepared and furnished to each Owner, an operating budget, itemizing for the upcoming fiscal year estimated Common Expenses, anticipated receipts (if any), and any deficit or surplus from the prior operating period. The budget shall serve as the basis for Assessments for such fiscal year, and as the guideline under which the Community shall be operated during such annual period.

10.2 COMMON ASSESSMENTS.

The Association shall levy "Common Assessments" to pay for Common Expenses allocated to each Lot pursuant to these Covenants. Assessments for Common Expenses shall commence from and after the recording of the Plat of the Lots in the Records, or such later date as the Declarant may determine, after which Common Assessments shall be made no less frequently than annually. However, Assessments for Common Expenses attributable to Lodge Residences shall commence upon issuance of a certificate of occupancy for such Lodge Residences. Declarant shall have no obligation to pay Assessments on Lots owned by Declarant until the termination of the Period of Declarant Control, so long as Declarant pays to the Association a sum equal to the difference between the cost of operating and maintaining the Common Area, exclusive of reserves, and the amount of the Assessments payable by other Owners. Declarant shall, however, have the right at any time to elect to pay the Assessments levied on Lots owned by Declarant in lieu of paying such difference. Any surplus funds of the Association remaining after payment of or provision for Common Expenses and any prepayment of or provision for reserves shall be kept in the Association's bank account as a reserve and be used to reduce the next budget estimate accordingly.

10.3 COMPUTATION OF COMMON ASSESSMENTS.

The Common Assessment levied against each Lot shall be computed by dividing the total Common Expenses by the Assessment Units and multiplying by a multiplier equal to two (2) for each Residence Lot; and one (1) for each Lodge Residence, subject to: (a) Common Expenses separately metered or assessed to a Lot by third parties; (b) Common Expenses associated with the maintenance, repair or replacement of Limited Common Areas, which shall be assessed equally or on

such other equitable basis as the Board shall determine to the Lots to which the specific Limited Common Areas are appurtenant; (c) Common Expenses or portions thereof benefiting fewer than all of the Lots, which shall be assessed exclusively against the Lots benefited; (d) any increased cost of insurance based upon increased risk attributable to certain Lots, which shall be assessed to Lots in proportion to the risk; (e) any Common Expense caused by the misconduct of any Lot Owner(s) or Project Association, which may be assessed exclusively or on such other equitable basis as the Board shall determine against such Lot Owner(s) or all Owners of Units within the relevant Project; and (f) any expenses that are charged equally to all Lots.

10.4 SPECIAL ASSESSMENTS.

(a) **Common Areas.** In addition to the Common Assessments authorized above, the Board may at any time and from time to time determine, levy, and assess in any fiscal year a "Special Assessment" applicable to that particular fiscal year (and for any such longer period as the Board may determine) for the purpose of defraying, in whole or in part, the unbudgeted costs, fees, and expenses of any construction, reconstruction, repair, demolishing, replacement, renovation or maintenance of the Common Areas, specifically including any fixtures and personal property related to such areas. Any amounts determined, levied, and assessed pursuant to this paragraph shall be assessed to the Lots pursuant to the provisions of Section 10.3, above.

(b) **Non-Common Areas.** A traffic study has been prepared and approved by the Town of Windham Planning Board indicating that the Roads are sufficient to accommodate the anticipated use of the Property and the Club.

10.5 ASSESSMENT FOR SERVICES PROVIDED TO PROJECT ASSOCIATIONS.

The payment for services contracted by the Association to be performed on behalf of a Project Association may be reflected in an increased Assessment by the Association for the Owners of Lots in the particular Project or by an item in the Project Association's budget which shall be collected through the Assessments of such Project Association and remitted to the Association.

10.6 DUE DATES FOR ASSESSMENT PAYMENTS.

Unless otherwise determined by the Board, the Assessments shall be paid on or before January 1 of each fiscal year for that fiscal year and shall be due and payable upon notice, to the Association at its office or as the Board may otherwise direct in any Management Agreement. If any such Assessment shall not be paid within thirty (30) days after it shall have become due and payable, then the Board may assess a late charge, default interest charge (not to exceed the rate from time to time allowed by applicable law), fee, or such other charge as the Board may fix by rule from time to time to cover the extra expenses involved in handling such delinquent Assessment installment. An Owner's Assessment shall be prorated if the ownership of a Lot commences or terminates on a day other than the first day or last day, respectively, of a fiscal year or other applicable payment period. If the Common Expense Liability is re-allocated, any installment(s) of an assessment not yet due shall be recalculated in accordance with the re-allocated Common Expense Liability.

10.7 DEFAULT ASSESSMENTS.

All costs, fees, fines, interest, and other charges, including receiver's and appraiser's fees, collection agency fees and reasonable attorneys' fees and disbursements, including legal assistants' fees, incurred by the Association in connection with enforcing the terms of these Covenants, or any expense of the Association that is the obligation of an Owner pursuant to these Covenants shall become a "Default Assessment" assessed against the Owner's Lot. Notice of the amount and demand for payment of such Default Assessment shall be sent to the Owner prior to the Association enforcing any remedies for non-payment hereunder.

10.8 COVENANT OF PERSONAL OBLIGATION FOR ASSESSMENTS.

By acceptance of the deed or other instrument of transfer of title to a Lot or any portion thereof (whether or not it shall be so expressed in such deed or other instrument of transfer), each Owner is deemed to personally covenant and agree, jointly and severally, with all other Owners and with the Association, and hereby covenants and agrees to pay to the Association the (a) Common Assessments, (b) Special Assessments, and (c) Default Assessments applicable to the Owner's Lot. No Owner may waive or otherwise escape personal liability for the payment of the Assessments provided for in these Covenants by not using the Common Areas or the facilities contained in the Common Areas or by abandoning or leasing his or her Lot or interest therein.

10.9 LIEN FOR ASSESSMENTS.

The Common, Special, and Default Assessments (including installments of the Assessments) arising under the provisions of these Covenants shall be a perpetual debt to the Association of the Owners to whom the Assessments apply. The amount of any such Assessments, together with interest in such amounts as the Association sets in the Rules and Regulations from time to time, shall become a burden running with, and a perpetual lien in favor of the Association on, the specific Lot to which such Assessments apply, upon recordation in the Records of a written notice of assessment setting forth: (a) the description of the Lot, (b) the amount of Assessments on the Lot unpaid as of the date of such lien notice, (c) the rate of default interest as set by the Rules and Regulations, (d) the name of the Owner or Owners of the Lot, and (e) any and all other information that the Association may deem proper. The lien notice shall be signed by a member of the Board, an officer of the Association, or the Manager.

10.10 REMEDIES FOR NONPAYMENT OF ASSESSMENTS.

If any Common, Special, or Default Assessment (or any installment of the Assessment) is not fully paid within thirty (30) days after the same becomes due and payable, then as often as the same may happen: (a) interest shall accrue at the default rate set by the Rules and Regulations on any amount of the Assessment in default, accruing from the due date until date of payment; (b) the Association may declare due and payable all unpaid installments of the Common Assessment or any Special Assessment otherwise due during the fiscal year during which such default occurred; (c) the Association may thereafter bring an action at law or in equity, or both, against any Owner personally obligated to pay the same; (d) the Association may proceed to foreclose its lien against the particular Lot pursuant to the power of sale granted to the Association by these Covenants or in the manner and

form provided by New York law for foreclosure of real estate mortgages; and (e) the Association may suspend the rights of the Owner to vote in Association matters until the Assessment is paid. An action at law or in equity by the Association (or counterclaims or cross-claims for such relief in any action) against an Owner to recover a money judgment for unpaid Assessments (or any installment thereof) may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien for the Assessments. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to stop or otherwise preclude the Association from again foreclosing or attempting to foreclose its lien for any subsequent Assessments (or installments thereof) which are not fully paid when due or for any subsequent Default Assessments. The Association shall have the power and right to bid in or purchase any Lot at foreclosure or other legal sale and to acquire and hold, lease, mortgage, and to convey, or otherwise deal with the Lot acquired in such proceedings.

10.11 PURCHASER'S LIABILITY FOR ASSESSMENTS.

Notwithstanding the personal obligation of each Owner to pay all Assessments on a Lot, and notwithstanding the Association's perpetual lien upon a Lot for such Assessments, all purchasers shall be jointly and severally liable with the prior Owner(s) for any and all unpaid Assessments against such Lot, without prejudice to any such purchaser's right to recover from any prior Owner any amounts paid thereon by such purchaser. A purchaser's obligation to pay Assessments shall commence upon the date the purchaser becomes the Owner of a Lot. For Assessment purposes, the date a purchaser becomes the Owner shall be determined as follows: (a) in the event of a conveyance or transfer by foreclosure, the date a purchaser becomes the Owner shall be deemed to be upon the expiration of all applicable redemption periods; (b) in the event of a conveyance or transfer by deed in lieu of foreclosure a purchaser shall be deemed to become the Owner of a Lot upon the execution and delivery of the deed or other instruments conveying or transferring title to the Lot, irrespective of the date the deed is recorded; and (c) in the event of conveyance or transfer by deed, a purchaser shall be deemed to become the Owner upon the execution and delivery of the deed or other instruments conveying or transferring title of the Lot, irrespective of the date the deed is recorded. However, such purchaser shall be entitled to rely upon the existence and status of unpaid Assessments as shown upon any certificate issued by or on behalf of the Association to such named purchaser pursuant to the provisions of these Covenants.

10.12 WAIVER OF HOMESTEAD EXEMPTION; SUBORDINATION OF ASSOCIATION'S LIEN FOR ASSESSMENTS.

By acceptance of the deed or other instrument of transfer of a Lot, each Owner irrevocably waives any homestead exemption provided under New York law with respect to Assessments and other obligations under this Declaration. The Association's perpetual lien on a Lot for Assessments shall be superior to all other liens and encumbrances except the following:

(a) real property ad valorem taxes and special assessment liens duly imposed by a New York governmental or political subdivision or special taxing district, or any other liens made superior by statute;

(b) liens recorded prior to these Covenants unless otherwise agreed by the parties thereto; and

(c) the lien of any holder of a security interest in a Lot that has priority over all other security interests in a Lot ("First Mortgagee") except to the extent any applicable law may grant priority for Assessments to the Association.

Any First Mortgagee who acquires title to a Lot by virtue of foreclosing a first mortgage or by virtue of a deed or assignment in lieu of such a foreclosure, or any purchaser at a foreclosure sale of the first mortgage, will take the Lot free of any claims for unpaid Assessments against the Lot that accrue prior to the time such First Mortgagee acquires title to the Lot except to the extent the amount of the extinguished lien may be re-allocated and assessed to all Lots as a Common Expense and except to the extent any applicable law may grant lien priority for Assessments to the Association. All other persons not holding liens described in this Section and obtaining a lien or encumbrance on any Lot after the recording of these Covenants shall be deemed to consent that any such lien or encumbrance shall be subordinate and inferior to the Association's lien for Assessments as provided in this Article, whether or not such consent is specifically set forth in the instrument creating any such lien or encumbrance.

Sale or other transfer of any Lot, (a) except as provided above with respect to First Mortgagees, (b) except in the case of foreclosure of any lien enumerated in this Section, and (c) except as provided in the next Section, shall not affect the Association's lien on such Lot for Assessments due and owing prior to the time such purchaser acquired title and shall not affect the personal liability of each Owner who shall have been responsible for the payment thereof. Further, no such sale or transfer shall relieve the purchaser of a Lot from liability for, or the Lot from the lien of, any Assessments made after the sale or transfer.

10.13 STATEMENT OF STATUS OF ASSESSMENTS.

On or before fourteen (14) calendar days after receipt of written notice to the Manager or, in the absence of a Manager, to the Board and payment of a reasonable fee set from time to time by the Board, any Owner, holder of a security interest, prospective purchaser of a Lot or their designees shall be furnished a statement of the Owner's account setting forth:

(a) the amount of any unpaid Assessments then existing against a particular Lot;

(b) the amount of the current installments of the Common Assessment and the date that the next installment is due and payable;

(c) the date(s) for payment of any installments of any Special Assessments outstanding against the Lot; and

(d) any other information, deemed proper by the Association, including the amount of any delinquent Assessments created or imposed under the terms of these Covenants.

Upon the issuance of such a certificate signed by a member of the Board, by an officer of the Association, or by a Manager, the information contained therein shall be conclusive upon the Association as to the person or persons to whom such certificate is addressed and who rely on the certificate in good faith.

ARTICLE 11. MAINTENANCE RESPONSIBILITY

11.1 RESPONSIBILITY OF OWNER.

(a) **General.** Each Owner shall perform, at such Owner's expense, all maintenance, repair and replacement necessary to maintain his, her, or its Lot(s) or Project and all improvements thereon in a clean, safe and attractive condition, and in accordance with reasonable specifications of the Association established in the Rules and Regulations and the Design Guidelines (e.g. requirements as to color, type, quality and timing of exterior paint, lighting, landscaping and landscaping maintenance). Such obligations shall also include the maintenance of utility, water, and wastewater lines located on a Lot or Project for the purpose of connecting to public or private utility services and to the Community Water and Sewer System, and not otherwise maintained by an applicable utility company.

(b) **Control of Noxious Weeds.** Owners shall take all actions necessary to manage the expansion of noxious weeds as may be defined by Catskill Regional Invasive Species Program, the Declarant, the Club, or the Association. Limitations to increased use of potential invasive species are supported by the approved plant list contained within the Design Guidelines for the project. Because the timing for effective control of noxious weeds is very critical, if an Owner fails to respond immediately to a written request for weed control from the Board, the Board shall have the right, but not the obligation, to immediately contract for such control services at such defaulting Owner's expense in accordance with Section 11.2, below. The company so contracted with shall have the right to enter upon any such Owner's Lot or Project to control noxious weeds, by applying herbicides or by other means, without any liability for trespass.

11.2 RIGHT OF THE ASSOCIATION TO PERFORM OWNER RESPONSIBILITIES.

If an Owner fails to maintain or perform any landscaping, to control noxious weeds, or to maintain the exterior of any Structures located on the Property or Project in accordance with the terms of these Covenants and any specifications adopted by the Association in applicable Design Guidelines or Rules and Regulations, the Association has the right, but not the obligation, to, perform such landscaping or maintenance on behalf of said Owner. Prior to any such performance, however, the Association shall provide the subject Owner with written notice of the deficiency that the Association plans to correct, and a period of not less than thirty (30) days during the season (non-winter conditions) when such activities can be reasonably completed in Windham, New York, to cure such deficiency. If the Owner fails to correct such deficiency within such thirty (30) day period, the Association, to ensure efficient and relatively uniform work, and to preserve an attractive appearance for the Project, may then perform such correction, and the expense of such performance shall be imposed as a Special Assessment against the defaulting Owner and such Owner's Lot or Project. Any

such Special Assessment or charge shall be paid in the same manner and shall have the same weight and effect as any other Assessment made pursuant to these Covenants.

11.3 OWNER'S NEGLIGENCE.

If the need for maintenance, repair, or replacement of all or any portion of the Common Areas is caused through or by the negligent or willful act or omission of an Owner, then the expenses incurred by the Association for such maintenance, repair, or replacement shall be a personal obligation of such Owner (or, if the defaulting Owner is a Project Association, a personal obligation of all the members of such association); and, if the Owner fails to repay the expenses incurred by the Association within seven (7) days after notice to the Owner of the amount owed, then the failure to so repay shall be a default by the Owner, and such expenses shall automatically become a Default Assessment determined and levied against such Owner's Lot or Project, and enforceable by the Association in accordance with these Covenants.

11.4 RESPONSIBILITY OF THE ASSOCIATION.

The Association, without the requirement of approval of the Owners, shall maintain and keep in good repair, replace, and improve, as a Common Expense, all of the Property and Common Areas not required in these Covenants to be maintained and kept in good repair by an Owner or by Declarant, including, without limitation, the Roads, and the Community Water and Sewer System and all common lines of such system.

ARTICLE 12. RESERVED DEVELOPMENT AND EXPANSION RIGHTS

12.1 RESERVATION OF RIGHTS.

Declarant reserves the right for itself and any successor or assign to which Declarant has expressly conveyed rights under this Section 12.1 ("Successor Declarant"), at any time and from time to time, and without the consent or approval of the Owners or the Association, to: (a) subject all or any part of the Expansion Property to the provisions of these Covenants, and thereby expand the Property to include additional Lots; (b) expand the Common Areas or create Commercial Space; (c) subject any portion of the Property to a Project Declaration containing additional covenants, conditions, and restrictions, and/or creating Lodges or Units; (d) modify any Lot subject to these Covenants prior to conveying such Lot; (e) modify any other Property, including Common Areas and Limited Common Areas and (f) withdraw portions of the Property from the Community, except for Lots already conveyed .

12.2 SUPPLEMENTAL COVENANTS AND SUPPLEMENTAL PLATS.

The addition of any Expansion Property shall be accomplished by the filing by Declarant in the Records of one or more Supplemental Covenants and, if the real property being subject to these Covenants by such Supplemental Covenants has not previously appeared on a Plat, a Supplemental Plat depicting such Expansion Property. The Supplemental Covenants and any Supplemental Plats shall set forth the Lots and other real property, if any, to be included in the expansion, together with any covenants, conditions, restrictions and easements particular to such property and not contained within a Project Declaration. The expansion may be accomplished in

stages by successive supplements or in one supplemental expansion. Declarant may exercise its rights of expansion on all or any portion of the Expansion Property in whatever order of Development Declarant in its sole discretion determines. Neither Declarant nor any Successor Declarant shall have any affirmative obligation to construct any improvements on the Expansion Property except such obligations as may be expressly assumed in any Supplemental Covenants or Project Declaration. The expansion rights of Declarant and any Successor Declarant, as described herein, shall apply to all Lots that are added to these Covenants in accordance with this Article 12. Upon the recording of any Supplemental Covenants and, if necessary, Supplemental Plat, the Expansion Property described therein shall be deemed to be governed in all respects by the provisions of these Covenants and shall be deemed part of the Property for all purposes of these Covenants.

12.3 EXPANSION OF DEFINITIONS.

In the event of expansion, the definitions used in these Covenants shall be expanded automatically to encompass and refer to the real property subject to these Covenants as so expanded. For example, "Lot" shall mean the Lots as shown on the Plat plus any additional Lots added by Supplemental Covenants and, if necessary, Supplemental Plat and reference to these Covenants shall mean these Covenants as so supplemented. All conveyances of Lots shall be effective to transfer rights in the Property as expanded.

12.4 EFFECT OF EXPANSION.

Upon the inclusion of additional Lots under these Covenants by the filing of a Supplemental Covenants(s) and, if necessary, Supplemental Plat(s), the total Assessment Units shall be adjusted accordingly. Notwithstanding any inclusion of additional Lots under these Covenants, each Owner shall remain fully liable with respect to his or her obligation for the payment of the Common Expenses of the Association, including the expenses for new Common Areas, costs and fees, if any, not paid for by a Project Association.

12.5 TERMINATION OF EXPANSION AND DEVELOPMENT RIGHTS.

The rights reserved to the Declarant for itself and for Successor Declarant, for the expansion and development of the Expansion Property ("Expansion and Development Rights") shall expire thirty-five (35) years from the date of recording these Covenants, unless terminated earlier pursuant to New York statute, or unless the Expansion and Development Rights are (i) extended as allowed by law or (ii) reinstated or extended by the Association, subject to whatever terms, conditions and limitations the Board may impose on the subsequent exercise of the Expansion and Development Rights by Declarant.

ARTICLE 13. DAMAGE OR DESTRUCTION; EMINENT DOMAIN

13.1 DAMAGE OR DESTRUCTION.

Each Owner of a Lot is solely responsible for any damage, destruction, obsolescence, condemnation or abandonment of any improvements thereon, and for repair and reconstruction of all

improvements thereon. The Association shall repair or reconstruct any damage to or destruction of Common Areas.

13.2 EMINENT DOMAIN.

Whenever any proceeding is instituted that could result in the temporary or permanent taking, injury or destruction of all or part of the Common Areas by the exercise of the power in the nature of eminent domain or by an action or deed in lieu of condemnation, the Association shall be entitled to timely written notice thereof and the Association shall participate in the proceedings incident thereto and shall be entitled to receive on behalf of the Owners any award issued therein.

Whenever all or any part of the Common Area shall be taken by any authority having the power of condemnation or eminent domain, or conveyed under threat of condemnation by the Board, each Member shall be entitled to notice thereof. The award made for such taking shall be payable to the Association as trustee for all Members to be disbursed as follows:

(a) If the taking involves a portion of the Common Areas on which improvements have been constructed, then, unless within sixty (60) days after such taking Declarant (as long as Declarant owns any portion of the Property) and at least sixty seven percent (67%) of the total votes eligible to be cast by the Members of the Association (or, if the taking involves a portion of the Project Association Common Areas, at least sixty seven percent (67%) of the total votes eligible to be cast by the Members of a Project Association) shall otherwise agree, the Association shall restore or reconstruct such improvements so taken on the remaining land included in the Common Areas to the extent lands are available therefore, in accordance with plans approved by the Board.

(b) If the taking does not involve any improvements on the Common Areas, or if there is a decision made not to repair or restore, then such award or net funds shall be disbursed to the Association and used for such capital improvements as the Board shall determine.

ARTICLE 14. INSURANCE AND CASUALTY LOSSES

14.1 INSURANCE.

The Association acting through its Board, or its duly authorized agent, shall obtain and continue in effect blanket all-risk casualty insurance, if reasonably available, for all insurable improvements on the Common Areas. If blanket all-risk coverage is not reasonably available, then at a minimum an insurance policy providing fire and extended coverage shall be obtained. This insurance shall be in an amount sufficient to cover one hundred percent (100%) of the replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard.

All such insurance shall be for the full replacement cost. All such policies shall provide for a certificate of insurance to be furnished to the Association.

The Association shall also obtain a public liability policy covering the Common Areas, the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents. The public liability policy shall have the liability limits established by the Board from time to time.

Premiums for all insurance on the Common Areas shall be Common Services of the Association and shall be included in the Common Expenses; premiums for insurance provided to Project Associations, if any, shall be included in the assessments for such Project. The policies may contain a reasonable deductible, and, in the case of casualty insurance, the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement costs. The deductible shall be paid by the party who would be liable for the loss or repair in the absence of insurance and in the event of multiple parties shall be allocated in relation to the amount each party's loss bears to the total.

All insurance coverage obtained by the Association shall be written in the name of the Association as trustee for the respective benefited parties, as further identified in subsection (b) below. Such insurance shall be governed by the provisions hereinafter set forth:

(a) All policies shall be written with a company authorized to do business in the State of New York.

(b) All policies on the Common Areas shall be for the benefit of the Association, its Members and their First Mortgagee, if any, as their interests may appear; all policies secured at the request of a Project shall be for the benefit of the Project Association, if any, the Owners of Lots within the Project, and their First Mortgagee, if any, as their interests may appear.

(c) Exclusive authority to adjust losses under policies obtained by the Association on the Property shall be vested in the Board.

(d) In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with insurance purchased by individual Members, occupants, or their First Mortgagee, if any.

(e) All casualty insurance policies shall have an inflation guard endorsement, if reasonably available, and an agreed amount endorsement with an annual review by one or more qualified Persons.

(f) The Board shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

- (i) a waiver of subrogation by the insurer as to any claims against the Board, the Association's manager, Members, and their respective tenants, servants, agents, and guests;
- (ii) a waiver by the insurer of its rights to repair and reconstruct, instead of paying cash;
- (iii) a statement that no policy may be canceled, invalidated, suspended, or subject to non-renewal on account of any one or more individual Members;

- (iv) a statement that no policy may be canceled, invalidated, suspended, or subject to non-renewal on account of the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand, in writing, delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, or any Member;
- (v) that any "other insurance" clause in any policy exclude individual Members' policies from consideration; and
- (vi) that the Association will be given at least thirty (30) days' prior written notice of any cancellation, substantial modification, or non-renewal.

In addition to the other insurance required by this section, the Board shall obtain, as a Common Expense, worker's compensation insurance, if and to the extent required by law, directors' and officers' liability coverage, if reasonably available, a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds, if reasonably available and such other insurance as the Board, in its business judgment determines advisable to obtain. The amount of fidelity coverage shall be determined in the Board's best business judgment but, if reasonably available, may not be less than three (3) months' Assessments on all Lots, plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall require at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal.

14.2 DISBURSEMENT OF PROCEEDS.

If the damage or destruction for which the proceeds of insurance policies are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repair or reconstruction to the Common Area shall be retained by and for the benefit of the Association and placed in a capital improvements account. In the event no repair or reconstruction is made, any proceeds remaining after making such settlement as is necessary and appropriate with the affected Members and First Mortgagee, if any, as their interests may appear, shall be retained by and for the benefit of the Association and placed in a capital improvements account.

14.3 REPAIR AND RECONSTRUCTION.

If the damage or destruction to the Common Area for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to cover the cost thereof, the Board shall, without the necessity of a vote of the Members, levy a Special Assessment against all Members on the same basis as provided for Common Assessments. Additional Assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

ARTICLE 15. MISCELLANEOUS

15.1 ENFORCEMENT.

The limitations and requirements for land use and development set forth in these Covenants shall be enforceable by the Declarant, or by the Association, a Project Association, or any Owner. In addition, the Town of Windham, New York shall have the authority to enforce those portions of these Covenants governed by specific Conditions of Approval granted by the Town of Windham Planning Board for the Windham Mountain Sporting Club. Every Owner hereby consents to the entry of an injunction against him or her or his or her tenants or guests to terminate and restrain any violation of these Covenants. Any Owner who uses or allows his or her Lot to be used or developed in violation of these Covenants further agrees to pay all costs incurred by the Association or other Owner or the Declarant in enforcing these Covenants, including reasonable attorneys' fees, which costs and fees constitute Default Assessments pursuant to Section 10.7 above. The Association shall have a lien against each Lot and the improvements thereon in accordance with Section 10.9, above to secure the payment of any billing or penalty due to the Association from the Owner of such Lot.

15.2 WAIVER.

The failure of the Declarant or Association or any other party authorized to enforce the provisions of these Covenants or to insist upon the strict performance of any of the terms, provisions or conditions hereof, shall not be construed to be a waiver of the right to insist upon the performance or such term, provision or condition in the event of a future default or a continuation of the default for which performance was not required. The acceptance by the Association of an Assessment payment from an Owner who is in breach of other provisions of these Covenants shall not constitute a waiver of such breach. No waiver by Declarant or the Association of any provision hereof shall be deemed to have been made unless such waiver is set forth in writing and duly signed by an officer of Declarant or an authorized member of the Board, respectively.

15.3 AMENDMENT EXEMPTION.

During the Period of Declarant Control, amendment of these Covenants, or exemption from the terms and conditions of these Covenants, requires the written consent of Declarant or any Successor Declarant. These Covenants may otherwise be amended, or exemptions granted, as follows:

(a) **Reserved Amendment Rights.** Until the termination of the Period of Declarant Control, Declarant may unilaterally amend these Covenants or grant exemptions from their requirements in its sole and absolute discretion. After the termination of the Period of Declarant Control, Declarant may amend this Declaration in its sole and absolute discretion at any time and from time to time if such amendment is (i) necessary to bring any provision hereof into compliance with any applicable government statute, rule or regulation, or judicial determination; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage on a Lot; (iii) required by an institutional lender or a government mortgage agency or purchaser of mortgage loans, to enable the same to make, insure or purchase mortgage loans on a Lot; (iv) necessary to enable any

governmental agency or reputable private insurance company to insure mortgage loans on a Lot subject to this Declaration; or (v) correct any stenographic, scrivener's or surveyor's error or any error of a like nature; provided, however, any such amendment shall not adversely affect the title of a Lot unless the Owner thereof shall consent thereto in writing. After the termination of the Period of Declarant Control, and so long as it still owns any part of the Property or the Expansion Property for development, Declarant may amend this Declaration in its sole and absolute discretion for any other purpose, provided the amendment has no materially adverse effect upon the rights of any Owner of a Lot. Notwithstanding the foregoing, any amendment of, or exemption from specific approvals granted by the Town of Windham Planning Board shall first, and foremost, require the written consent of the Planning Board of Town of Windham, New York.

(b) **Amendment in Connection With Subdivision, Combination, Modification, Withdrawal, or Expansion.** If Declarant subdivides, combines, modifies, withdraws, or converts any Lots, Units, or Common Areas, then, when such subdivision, combination, modification, withdrawal, or conversion is substantially complete, the total Assessment Units shall be adjusted accordingly. The amendment to these Covenants shall contain at a minimum the legal description of the subdivided, combined, modified, withdrawn, or converted Real Estate or the Real Estate on which the subdivided, combined, modified, withdrawn, or converted improvements are located. If Declarant submits any part of the Expansion Property to these Covenants pursuant to Article 12, the Supplemental Covenants shall contain the information otherwise required to be recorded by separate amendment under this Section 15.3.

(c) **General Amendments.** Except as otherwise allowed or restricted by this Section 15, these Covenants may be amended, or a exemption from their terms granted, by a vote or agreement of Owners to which more than sixty-seven percent (67%) of the votes in the Association are allocated; provided, however, that any amendment of, or exemption from specific approvals granted by the Town of Windham Planning Board shall first, and foremost, require the written consent of the Planning Board of Town of Windham, New York.

In addition to the foregoing, there shall be no amendment of these Covenants affecting Declarant's rights with respect to the Period of Declarant Control or under this Section 15.3 or under any other provision hereof without Declarant's prior written consent.

15.4 DURATION OF COVENANTS.

All of the covenants, conditions and restrictions set forth herein shall continue and remain in full force and effect at all times against the Property and the Owners and purchasers of any portion thereof, subject to the rights of amendment set forth in Section 15.3, above. If required by law, these Covenants shall be deemed to remain in full force and effect for twenty (20) year periods, and shall be automatically renewed for additional consecutive twenty (20) year periods unless all of the Owners subject to these Covenants otherwise agree in writing.

15.5 SEVERABILITY.

Any decision by a court of competent jurisdiction invalidating any part or paragraph of these Covenants shall be limited to the part or paragraph affected by the decision of the court, and

the remaining paragraphs and the covenants, conditions and restrictions therein shall remain in full force and effect.

15.6 BINDING EFFECT.

The provisions hereof shall be binding upon and inure to the benefit of Declarant and the Owners and the Association and the Club (to the extent provided) and their respective heirs, legal representatives, successors and assigns, and, in the event of the failure of any Owner to comply with the provisions of the Community Instruments, the same shall give rise to a cause of action in the Declarant, the Association or any other aggrieved Owner and the Club (to the extent provided) for the recovery of damages or for injunctive relief, or both.

15.7 CONSTRUCTIVE NOTICE AND INSPECTION.

Every Person who or which shall hereafter have, claim, own or acquire right, title, interest or estate in or to any Lot or portion thereof shall be conclusively deemed to have consented and agreed to each and every term, provision, covenant, condition, restriction, easement and reservation contained in or by reference incorporated herein, whether or not any reference to this Declaration is contained in the document or instrument pursuant to which said Person shall have acquired such right, title, interest or estate in the Lot or any portion thereof.

15.8 NO WARRANTIES.

This Declaration is made for the objects and purposes set forth in this Declaration and Declarant makes no warranties or representations, expressed or implied, as to the binding effect or enforceability of all or any portion of the terms and provisions hereof or the covenants, conditions, restrictions, easements and reservations set forth in this Declaration, or as to the compliance of any of the same with public laws, ordinances and regulations applicable thereto.

IN WITNESS WHEREOF, Declarant has executed these Covenants effective on recordation hereof with the Clerk of Town of Windham, New York.

TUCK EASTSIDE PARTNERS, L.P.

By:

By: _____

Printed Name:

Title:

State of New York)
) ss.
Town of Windham, County of Greene)

The foregoing instrument was acknowledged before me by _____, as President of _____, who acknowledges that he executed the foregoing in the name of and on behalf of said company, this _____ day of _____, 2009

Witness my hand and official seal.

Notary Public

My commission expires: _____

DRAFT

EXHIBIT A- LEGAL DESCRIPTION OF THE PROPERTY

DRAFT