

Section 8.6. That the Condominium is not subject to a proposal or plan for additions thereto or expansion thereof beyond the 133 Units described in this Declaration.

Section 8.7. The Declarant intends that the provisions of this Article comply with the requirements of the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association with respect to condominium mortgage loans and, except as otherwise required by the provisions of the Act, all questions with respect thereto shall be resolved consistent with that intention.

ARTICLE 9

INSURANCE

Section 9.1. Types and Amounts. The Executive Board on behalf of the Association shall obtain the following types and amounts of insurance:

(a) Standard "all risks of loss" coverage, so-called, including sewer back-up and collapse, or such other fire and casualty insurance as the Executive Board may determine provides equal or greater protection for the Unit Owners and their Mortgagees, if any, and including Agreed Amount, Inflation Guard and Construction Code Endorsements, if obtainable, in each case complying with the applicable requirements of Section 9.3 hereof. The insurance maintained by the Association shall cover the Property (including the Units and all fixtures and equipment contained within the Unit as of the date of the Closing of the Unit from the Declarant (or the value thereof) but excluding any fixtures and equipment subsequently added by a Unit Owner and all other personal property of the Unit Owner. The amount of any such hazard insurance obtained pursuant to this paragraph shall be equal to the full insurable replacement value of the insured property, without deduction for depreciation, (i.e. 100% of current "replacement cost" exclusive of land, foundations, excavation and other items normally excluded from coverage). Such hazard insurance policy may, at the option of the Executive Board, contain a "deductible" provision in an amount to be determined by the Executive Board. The proceeds of such policy shall be payable to Executive Board or one or more of the members of the Executive Board designated by them as Insurance Trustees or otherwise to the Association. Such hazard insurance policy shall include a separate "loss payable endorsement" in favor of the Mortgagees, if any, modified to make the loss payable provision in favor of the Mortgagees, subject and subordinate to the loss payable provisions

in favor of the Executive Board or one or more of the members of the Executive Board designated by them, as Insurance Trustees or to the Association. If the Executive Board fails within sixty days after the date of an insured loss to initiate a claim for damages recoverable under the policy or policies obtained pursuant to this sub-paragraph, any Mortgagee may initiate such a claim on behalf of the Association.

(b) Comprehensive Liability Insurance policies, complying with the requirements of Section 9.3 hereof, insuring the Unit Owners, in their capacity as Unit Owners and Association members and any managing agent retained by the Association, against any liability to the public or to other Unit Owners, their tenants or invitees, relating in any way to the ownership and/or use of the common areas, public ways, areas under supervision of the Condominium Association and commercial spaces owned by the Association, if any. Such insurance policy shall contain a "severability of interest endorsement" or equivalent coverage which precludes the insurer from denying the claim of a Unit Owner because of the negligent acts of the Association or another Unit Owner. Limits of liability shall be at least One Million (\$1,000,000.00) Dollars covering all claims for personal injury and/or property damage arising out of a single occurrence. Such insurance shall include protection against water damage liability, liability for non-owned and hired automobiles, liability for property of others, coverage for agents, servants, employees and contractors of the Association for claims arising from the operation, maintenance and use of the Common Elements and such other risks as are customarily covered in similar projects.

(c) A fidelity bond or insurance coverage against dishonest acts on the part of such persons (including, by way of illustration and not limitation, Association members, officers, directors, trustees, agents, employees and volunteers) responsible for handling funds belonging to or administered by the Association. Such fidelity bond or insurance shall name the Association as the named insured and shall be written in an amount sufficient to provide protection which is in no event less than one and one-half (1½) times the Association's estimated annual operating expenses including reserves. Notwithstanding the foregoing, in the event that the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation reduces the required amount of the fidelity bond or insurance which the Association must maintain to less than the amount set forth in preceding sentence, the Association may decrease the amount of the fidelity bond or insurance to the minimum amount required by such entities.

In connection with such coverage, an appropriate endorsement to such policy or bond in order to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.

(d) Such worker's compensation insurance as applicable laws may require.

(e) Insurance to satisfy the indemnification obligation of the Association and all Unit Owners set out in Section 10.2 hereof, if and to the extent available.

Section 9.2. Insurance Proceeds and Insurance Trustees.
The Executive Board or the members thereof hereunder designated as Insurance Trustee or Trustees as aforesaid, shall collect and receive all casualty loss insurance proceeds and shall hold, use, apply and disburse the same in accordance with applicable provisions of this Article 9. With respect to losses which affect portions or elements covered by such insurance of a Unit, or of more than one Unit to substantially the same or to different extents, the proceeds relating thereto shall be used, applied and disbursed by the Executive Board in a fair and equitable manner.

Section 9.3. Required Provisions. Insurance obtained by the Association shall be in accordance with the following provisions:

(a) All policies shall be written with a company licensed to do business in the State of Rhode Island and, for the hazard insurance policy described in Section 9.1(a) hereof, such company must hold a rating of Class VI or better by Best's Insurance Reports (or a rating of Class V, provided it has a general policy holder's rating of at least "A"), or by an equivalent rating bureau should Best's Insurance Reports cease to be issued.

(b) Exclusive authority to adjust losses under policies hereafter in force on the Property shall be vested in the Executive Board or its authorized representative, including but not by way of limitation, Insurance Trustees, if any.

(c) Each Unit Owner may obtain additional insurance at his own expense; provided, however, that: (1) such policies shall not be invalidated by the waivers of subrogation required to be contained in policies required by this Declaration; and (2) no Unit Owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount which

the Association may realize under any insurance policy which the Association may have in force on the Property at any particular time.

(d) Any Unit Owner who obtains individual insurance policies covering any portion of the Property other than personal property belonging to such Owner shall be required to file a copy of such individual policy or policies with the Association within 30 days after purchase of such insurance.

(e) With respect to the insurance policies issued to the Association and covering all or any part of the Property, the Association shall cause such policies to provide that:

(1) The enforceability of such policies is not affected by any waiver of subrogation as to any and all claims against the Association, any managing agent, the Unit Owners and their respective tenants, employees, agents, customers and guests, such subrogation being hereby waived;

(2) Such policies cannot be cancelled, invalidated or suspended by means of the conduct of any one or more Unit Owners, all defenses based upon co-insurance or acts of the insured being waived by the insurer, and in no event can cancellation, material modification, invalidation or suspension for any reason be effected without at least 60 days prior written notice to each Unit Owner and all holders of mortgages whose names and addresses are on file with the insurer;

(3) Such policies cannot be cancelled, invalidated or suspended on account of the conduct of any officer or employee of the Association or any managing agent employed by the Association without a prior demand in writing that the Association or such managing agent, as the case may be, cure the defect and without providing a reasonable period of time thereafter in which to cure same;

(4) Any "no other insurance" clause in such policies shall not prohibit Unit Owners from obtaining insurance on their individual Unit provided such insurance policy conforms with the requirements of this Article 9; and

(5) Such policies shall contain a standard mortgagee clause in favor of each Mortgagee, its successors and assigns, who is registered with the Association.

(f) The Executive Board shall review annually the adequacy of the insurance coverage and report the results of such review at each annual meeting and, if necessary, increase such coverage.

(g) The name of the insured under each policy required pursuant to this Article 9 shall be stated in form and substance similar to the following:

Whitehall Farm Condominium
Association, Inc. for the use and benefit
of the individual owners, or their
authorized representatives, of the
Condominium Units contained in
Whitehall Farm Condominium.

(h) Coverage may not be prejudiced by: (1) any act or negligence of one or more Owners of Units when such act or neglect is not within the control of the Association; or (2) any failure of the Association to comply with any warranty or condition regarding any portion of the Property over which the Association has no control.

(i) All policies of property insurance shall provide that, despite any provisions giving the insurer the right to elect to restore damage in lieu of a cash settlement, such options shall not be exercisable (1) without the prior written approval of the Executive Board (or any Insurance Trustee), or (2) when in conflict with the provisions of any Insurance Trust Agreement to which the Association may be a party or with any requirement of law.

(j) Insurance coverage obtained and maintained pursuant to the requirements of this Article 9 shall provide the primary insurance in the event there is other insurance in the name of the Unit Owner covering the same loss.

Section 9.4. Rebuilding and Restoration, Improvements.

A. In the event of any casualty loss to the Common Areas and facilities, the Executive Board shall determine in its reasonable discretion whether or not the insurance proceeds collected or collectible in relation to such loss are sufficient to repair or reconstruct the Condominium Property to its condition and value existing immediately prior to the casualty, and shall notify all Unit Owners of such determination. If such proceeds are so sufficient, the Executive Board shall proceed with the

necessary repairs, rebuilding or restoration as provided in Section 36.1-3.13 of said Title 34 of the Act. If such proceeds as so determined are not sufficient, or, in any event, if three-fourths (3/4) or more of any building containing Condominium Units is destroyed or substantially damaged, the Executive Board shall forthwith submit to all Unit Owners located within such building:

1. a form of Agreement (which may be in several counterparts whereby the Unit Owners authorized the Board of Directors to proceed with the necessary repair, rebuilding or restoration, and agree to pay their proportionate share of the costs thereof in excess of insurance proceeds, and

2. a copy of the provisions of Section 36.1-3.13 of the Act; and the Executive Board shall thereafter proceed in accordance with and subject to the rights of the mortgagees or individual Units, and take such further action as they may in their discretion deem advisable in order to:

- (1) implement the provisions of said Section 36.1-3.13 if three-fourths (3/4) or more of the Unit Owners shall not sign such Agreement within one hundred (100) days after such destruction or damage, or

- (11) repair, restore or rebuild said building if three-fourths (3/4) or more of the Unit Owners shall sign such Agreement within such one hundred (100) day period.

B. If, and whenever, the Executive Board shall propose to make any improvement to the Common Areas and facilities of the Condominium, or shall be requested in writing by the Unit Owners holding twenty-five per cent (25%) or more of the beneficial interest in the Condominium to make any such improvement, the Board of Directors shall submit to all Unit Owners a form of Agreement (which may be in several counterparts) specifying the improvement or improvements proposed to be made and the estimated cost thereof, and authorizing the Executive Board to proceed to make the same. Upon the receipt by the Executive Board of such Agreement signed by Unit Owners holding two thirds (2/3) or more of the undivided interest in the Common Areas and facilities within one hundred (100) days after such Agreement was first sub-

mitted to the Unit Owners, the Executive Board shall proceed to make the improvement or improvements specified in such Agreement, but not otherwise except as provided in the following Paragraph C.

C. Notwithstanding anything contained in the preceding Paragraphs A and B, the Executive Board shall not in any event be obliged to proceed with any repair, rebuilding or restoration, or any improvement, unless it has received funds in an amount equal to the estimate of all costs thereof.

Section 9.5. Repair of Damage or Destruction to Condominium. The repair or replacement of any damaged or destroyed portion of the Condominium shall be done in accordance with and governed by Section 36.1-3.13 of the Act.

ARTICLE 10

LIMITATION OF LIABILITY

Section 10.1. Limited Liability of the Executive Board.
The Executive Board, and its members in their capacity as members, officers and employees:

(a) Shall not be liable for the failure of any service to be obtained by the Executive Board and paid for by the Association, or for injury or damage to persons or property caused by the elements or by another Unit Owner or person on the Property, or resulting from electricity, gas, water, rain, dust or sand which may leak or flow from the outside or from any part of the Building, or from any of its pipes, drains, conduits, appliances, or equipment, or from any other place unless in each such instance such injury or damage has been caused by the willful misconduct or gross negligence of the Association or the Executive Board;

(b) Shall not be liable to the Unit Owners as a result of the performance of the Executive Board members' duties for any mistake of judgment, negligence or otherwise, except for the Executive Board members' own willful misconduct or gross negligence;

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

(d) Shall not be liable to a Unit Owner, or such Unit Owner's tenants, employees, agents, customers or guests, for loss or damage caused by theft of or damage to personal property left by such Unit Owner or his tenants, employees, agents, customers or guests in a Unit; or in or on the Common Elements or Limited Common Elements, except for the Executive Board members' own willful misconduct or gross negligence;

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

(f) Shall have no personal liability arising out of the use, misuse or condition of the Buildings, or which might in any other way be assessed against or imputed to the Executive Board members as a result of or by virtue of their performance of their duties, except for the Executive Board's members' own willful misconduct or gross negligence.

Section 10.2. Indemnification. Each member of the Executive Board in his capacity as an Executive Board member, officer or both, shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon him in connection with any proceeding in which he may become involved by reason of his being or having been a member and/or officer of the Executive Board, or any settlement of any such proceeding, whether or not he is an Executive Board member, officer or both at the time such expenses are incurred, except in such cases wherein such Executive Board member and/or officer is adjudged guilty of willful misconduct or gross negligence in the performance of his duties or any other standard imposed by the Act; provided that, in the event of a settlement, this indemnification shall apply only if and when the Executive Board (with the affected member abstaining if he is then an Executive Board member) approves such settlement and reimbursement as being in the best interests of the Association. The indemnification by the Unit Owners set forth in this Section 10.2 shall be paid by the Association on behalf of the Unit Owners and shall constitute a Common Expense and shall be assessed and collectible as such. Such right of indemnification shall not be deemed exclusive of any other rights to which such Executive Board member and/or officer may be entitled as a matter of law or agreement or by vote of the Unit Owners or otherwise.

Section 10.3. Joint and Several Liability of Unit Owners and Lessees. Each Unit Owner shall be jointly and severally liable with any tenants of the Unit owned by such Unit Owner for all liabilities arising out of the ownership, occupancy, use, misuse or condition of such Unit or any portion of the Common Elements or Limited Common Elements.

Section 10.4. Defense of Claims. Complaints brought against the Association, the Executive Board or the officers, employees or agents thereof in their respective capacities as such, or the Condominium as a whole, shall be directed to the Executive Board of the Association, which shall promptly give written notice thereof to the Unit Owners and the holders of any mortgages and such complaints shall be defended by the

Association. The Unit Owners and the holders of mortgages shall have no right to participate other than through the Association in such defense. Complaints of a nature specified in Section 10.3 hereof against one or more but less than all Unit Owners of Units shall be defended by such Unit Owners who are defendants themselves and such Unit Owners shall promptly give written notice of the institution of any such suit to the Association and to the holders of any mortgages encumbering such Units.

Section 10.5. Storage; Disclaimer of Bailee Liability. Neither the Executive Board, the Association nor any Unit Owner or the Declarant shall be considered a bailee of any personal property stored on the Common Elements (including property located in storage areas on the Common Elements, including the Limited Common Elements), whether or not exclusive possession of the particular area is given to a Unit Owner for storage purposes, and shall not be responsible for the security of such personal property or for any loss or damage thereto, whether or not due to negligence, except to the extent covered by insurance in excess of any applicable deductible.

ARTICLE 11

CONDEMNATION

Section 11.1. General. In the event that all or any part of the Property shall be taken by any authority having the power of condemnation or eminent domain, each Unit Owner shall be entitled to notice thereof and to participate in the proceedings incident thereto unless otherwise prohibited by law. The award made for such taking shall be payable to the Association, as trustees, for the benefit of the Unit Owners and all mortgagees of any Unit, as their interest may appear. Unless otherwise provided by law at the time of such taking, any award made therefor shall be disbursed by the Association as hereinafter provided in this Article 11.

Section 11.2. Common Area. If such taking is confined to the Property on which improvements shall have been constructed and shall not materially affect any Unit, such improvements or any part thereof, on the remaining land included in the Common Area shall be replaced with the approval of the Unit Owners (by a vote of not less than seventy-five per cent (75%) of the Unit Owners entitled to vote), within ninety (90) days of the award for such taking in accordance with the plans therefor approved by the Association. The Association shall arrange for such replacement and shall disburse the proceeds of such award in the manner as it

is required to disburse insurance proceeds as provided for in Article 9 hereof; subject, however, to the right hereby reserved to the Unit Owners and to be exercised by a similar vote thereof to provide for the disbursement by the Association of the remaining proceeds held by it (after payment of all costs incident to such replacement) to the Unit Owners or any one or more of them in amounts disproportionate to their percentage of undivided interest in the Common Area as established herein, which disproportionate amounts shall correspond with this disproportionate damages sustained by the Unit Owners or any one or more of them as may be determined by a majority of the total vote thereof. If such replacement shall not have received said approval of the Unit Owners as provided in this Section 11.2 or if the taking is confined to the Common Area on which no improvements shall have been constructed, then the Association shall disburse the proceeds of the award in the manner hereinabove provided for the disbursement of the remaining proceeds of an award after payment of all costs incident to replacement of improvements taken, including the right reserved to the Unit Owners to provide for disbursement in disproportionate amounts.

Section 11.3. Units in Condominium Project. If the taking includes one or more Units in the Condominium Project, or any portion thereof, whether or not there is included in the taking any part of the Common Area, then the award shall be disbursed in accordance with the provision of the Act, and all related matters, including without limitation, alteration of the percentages of undivided interest of the Unit Owners in the Common Area in such Condominium Project, shall be determined pursuant to and in accordance with the consent of all Unit Owners in such Condominium Project (or such lesser number of owners as may then be prescribed by the Act for the purpose of altering the percentages of undivided interest of the Unit Owners in the Common Area) expressed in a duly recorded amendment to this Declaration. In the event that such an amendment shall not be recorded within one hundred (100) days after such taking, then such taking shall be deemed to be and shall be treated as damage or destruction which shall not be repaired or reconstructed as provided in Article 9.

ARTICLE 12

EXECUTIVE BOARD OF THE ASSOCIATION

Section 12.1. Members. (a) The Executive Board shall consist of five members. The members of the initial Executive Board shall be appointed, removed and replaced from time to time by

the Declarant without the necessity of obtaining resignations. The Declarant appointed members of the Executive Board shall be replaced with Unit Owners in accordance with the provisions of paragraphs (b), (c) and (d) of this Section 12.1.

(b) Until the 60th day after the conveyance of 25 percent of the Units which may be created, i.e. 133, to Unit Owners other than the Declarant, the Declarant shall have the right to appoint and remove any and all officers and members of the Executive Board.

(c) Not later than 60 days after conveyance of 25 percent of the Units which may be created, i.e. 133, to Unit Owners other than the Declarant, one of the five members of the Executive Board shall be elected by Unit Owners other than the Declarant.

(d) Not later than the earlier of (1) five years after the date of the first conveyance of a Unit in the Condominium; (2) four months after conveyance of 75 percent of the Units which may be created, i.e. 133, to Unit Owners other than the Declarant; (3) two years after the Declarant has ceased to offer Units for sale in the ordinary course of business or (4) two years after any Development Right to add new Units was last exercised, members of the Executive Board appointed by the Declarant shall resign and the Unit Owners (including the Declarant to the extent of Units owned by the Declarant) shall elect new members of the Executive Board.

(e) The Executive Board shall possess all of the duties and powers granted to the Executive Board by the Act, the Declaration and the By-Laws.

Section 12.2. Disputes. In the event of any dispute or disagreement between any Unit Owners relating to the Property, or any questions of interpretation or application of the provisions of the Condominium Documents, including but not limited to decisions of the Association: (1) The Executive Board shall have the authority to seek a declaratory judgment or other appropriate judicial relief in order to assist it in carrying out its responsibilities under this Section 12.2. and (2) any Unit owner shall have the right to seek a declaratory judgment or other appropriate judicial relief in order to enforce such Unit owners rights against the Association. All costs of obtaining such a judgment shall be borne by the disputants, or in the absence of disputants, by the Association as a Common Expense.

Section 12.3. Abating and Enjoining Violations by Unit Owners. The violation of any Rules and Regulations adopted by the Executive Board, the breach of any provision contained in the By-Laws or the breach of any provision in this Declaration or the Condominium Act by any Unit Owner or any tenant of such Unit Owner, shall give the Executive Board the right, in addition to any other rights to which it may be entitled, to enjoin, abate or remedy by the institution of appropriate legal proceedings, either by law or in equity, the continuance of any such breach. All costs of such proceedings shall be borne by the non-prevailing party or parties to such proceedings.

ARTICLE 13

MANAGEMENT

The Declarant and or the Association may enter into a professional management contract. If the Declarant enters into such a professional management contract before turning over control of the Association, such contract cannot bind the Association unless the contract includes the right of termination without cause that the Association can exercise at any time after transfer of control with no penalty for such exercise of termination upon giving not more than ninety (90) days advance notice. The managing agent, if any, shall have a fidelity bond with coverage in excess of one and one-half (1½) times the estimated annual operating expenses naming the Association as obligee.

ARTICLE 14

ASSESSMENTS; LIABILITY OF UNIT OWNERS

Section 14.1. Power to Assess. The Association, acting through the Executive Board in accordance with the By-Laws, shall have the power to fix and determine, from time to time, the sums necessary and adequate to provide for the Common Expenses, including, but not limited to, such amounts as are necessary for uncollectable assessments, as may be determined in the sole discretion of the Executive Board, budget deficits, such reserves as are hereinafter described and such additional reserves as the Executive Board shall deem necessary or prudent, and such other expenses as are specifically provided for in the Act, this Declaration or the By-Laws.

Section 14.2. Reserve Fund. The Association shall establish an adequate reserve fund ("Reserve Fund") for maintenance, repair

and replacement of those Common Elements and Limited Common Elements which are anticipated to require replacement, repair or maintenance on a periodic basis. The Reserve Fund shall be funded by monthly payments as a part of the Common Expenses and shall be deposited into a segregated fund under the control of the Association.

Section 14.3. Special Assessments. If the cash requirements estimated at the beginning of any fiscal year shall prove to be insufficient to cover the actual Common Expenses for such fiscal year for any reason (including, by way of illustration and not limitation, any Unit Owner's non-payment of his assessment or municipal assessments not yet assessed), the Executive Board shall have the power, at any time (and from time to time) it deems necessary and proper, to levy one or more Special Assessments against each Unit Owner. Special Assessments shall be due and payable in the manner and on the date set forth in the notice thereof.

Section 14.4. Liability for Assessments. A Unit Owner, regardless of how title is acquired, including a purchaser at a judicial sale, shall be liable for all Assessments, Special Assessments or fees coming due while he is the Unit Owner, except an eligible mortgage holder, as otherwise provided for herein.

Section 14.5. Payment of Assessments. Each Owner shall pay all assessments levied by the Association. Such assessments shall be due and payable on a monthly basis as designated by the Executive Board. Assessments that are unpaid for over fifteen (15) days after the due date shall bear interest at the rate of twenty-one percent (21%) per annum from the due date until paid. In the sole discretion of the Executive Board, a late charge of Twenty-five and 00/100 Dollars (\$25.00) per assessment not paid when due may be assessed against the delinquent Unit Owner. The Association has a lien on each Unit, together with the undivided share in the Common Element which is appurtenant to the Unit, for any unpaid Assessments and/or fees as to same, with interest and for reasonable attorneys' fees and costs incurred by the Association incident to the collection of the Assessment and/or fees or enforcement of the lien. The lien is effective from and after recording a claim of lien in the Land Evidence Records of the Town of Middletown, Rhode Island, stating the description of the Unit, together with the undivided share of the Common Element which is appurtenant to the Unit, the name of the Record Owner, the amount due and the due dates. Liens are in effect until all sums secured by it have been fully paid or until barred by law.

The claim of lien shall include only Assessments and/or fees which are due when the claim is recorded. A claim of lien shall be signed and acknowledged by an officer or agent of the Association. Upon payment, the person making the payment is entitled to an endorsement which shall be in recordable form in full satisfaction of the lien. The Association may bring an action in its name to foreclose the lien for unpaid Assessments and/or fees in the manner of a mortgage foreclosure of real property and may also bring an action to recover a money judgment for the unpaid Assessments and/or fees without waiving any claim of lien.

Section 14.6. Notice of Intention to Foreclose Lien. No foreclosure suit may be filed until at least thirty (30) days after the Association gives written notice to the Unit Owner or his eligible mortgage holder of its intention to foreclose its lien to collect the unpaid Assessments and/or fees. If this notice is not given at least thirty (30) days before the foreclosure action is filed, and if the unpaid Assessments and/or fees, including those coming due after the claim of lien is recorded, are paid before the entry of a final judgment of foreclosure, the Association shall not recover attorneys' fees or costs. The notice must be given by delivery of a copy of it to the Unit Owner in person or by certified mail, return receipt requested, addressed to the Unit Owner, and a copy to all eligible mortgage holders. If after diligent search and inquiry the Association cannot find the Unit Owner or a mailing address at which the Unit Owner will receive the notice, the court may proceed with the foreclosure action and may award attorneys' fees and costs as permitted by law. The notice requirements shall be deemed sufficient if the Unit Owner records a Notice of Contest of Lien as provided in the Act.

Section 14.7. Appointment of Receiver to Collect Rental. If the Unit Owner remains in possession of the Unit and the claim of lien is foreclosed, the court in its discretion may require the Unit Owner to pay a reasonable rental for the Unit and the Association is entitled to the appointment of a receiver to collect the rent during the period of foreclosure.

Section 14.8. Eligible Mortgagee. In the event an Eligible Mortgagee shall obtain title to the Unit as a result of foreclosure of its mortgage, or as a result of a deed or conveyance in lieu of foreclosure, such Eligible Mortgagee, its successors and assigns, shall not be liable for the share of Common Expenses or Assessments, fees or other charges imposed by the Association

pertaining to such Unit or chargeable to the former Unit Owner which became due prior to its acquisition of title as a result of the foreclosure or the acceptance of such deed or conveyance in lieu, unless such share is secured by a claim of lien that is recorded prior to the recording of the mortgage.

Section 14.9. Developer's Liability for Assessments. The Developer shall be excused from the payment of the share of the Common Expenses and Assessments relating to Units it is offering for sale, for a period beginning with the recording of this Declaration and ending no later than the sixty-first day after the sale of the first unit occurs. However, the Developer may pay that portion of Common Expenses incurred during that period which exceeds the amount assessed against other Unit Owners.

Section 14.10. Certificate of Unpaid Assessments. Any Unit Owner has the right to require the Association to furnish him/her with a Certificate showing the amount of unpaid Assessments or fees against him/her with respect to his/her Unit.

Section 14.11. Failure to Fix New Assessments. If the Executive Board shall fail to fix new Monthly Assessments for Common Expenses for the subsequent fiscal year before the expiration of any fiscal year, the Unit Owners shall continue to pay the same sums they were paying for such Monthly Assessments during the fiscal year just ended and such sum shall be deemed to be the new Monthly Assessments for the succeeding fiscal year. If the Executive Board shall change the Monthly Assessment at a later date, the difference between the new Monthly Assessment, if greater, and the previous year's Monthly Assessment up to the effective date of the new Monthly Assessment shall be treated as if it were a Special Assessment under Section 14.2 hereof; thereafter each Unit Owner shall pay the new Monthly Assessment. In the event the New Monthly Assessment is less than the previous year's Monthly Assessment, in the sole discretion of the Executive Board, the excess either shall be refunded to the Unit Owners, in equal shares, credited against future Monthly Assessments or retained by the Association for reserves.

Section 14.12. No Exemption by Waiver. No Unit Owner may exempt himself from liability for the Common Expenses by waiver of the enjoyment of the right to use any of the Common Elements or Limited Common Elements or by the abandonment of his Unit or otherwise.

Section 14.13. Personal Liability of Unit Owners. All sums assessed by the Association as a Monthly or Special Assessment

shall constitute the personal liability of the Owner of the Unit so assessed and also, until fully paid, shall constitute a lien against such Unit pursuant to Section 36.1-3.16 of the Act. The Association may take action for failure to pay any assessment or other charges pursuant to Section 36.1-3.16 of the Act. The delinquent owner shall be obligated to pay (a) all expenses of the Executive Board, including reasonable attorneys' fees, incurred in the collection of the delinquent assessment by legal proceedings or otherwise, and (b) any amounts paid by the Executive Board for taxes or on account of superior liens or otherwise to protect its lien, which expenses and amounts together with accrued interest, shall be deemed to constitute part of the delinquent assessment and shall be collectible as such.

Section 14.14. Liability of Purchaser of Unit for Unpaid Assessments. Subject to the provisions of Section 36.1-4.09 of the Act, upon the voluntary sale, conveyance or any other voluntary transfer of a Unit or any interest therein, the grantee thereof shall not be jointly and severally liable with the grantor thereof for all unpaid assessments for Common Expenses which are a charge against the Unit as of the date of consummation of the sale, conveyance or transfer, unless the Grantee agrees to be jointly and severally liable for such unpaid assessments.

Section 14.15. Subordination of Certain Charges. Any fees, charges, late charges, fines and interest that may be levied by the Association pursuant to Section 36.1-3.02(a)(10), (11) and (12) of the Act shall be subordinate to any first mortgage lien.

Section 14.16. Working Capital Fund & Working Capital Reserve Fund. The Association shall maintain a Working Capital Fund at a level deemed by the Executive Board to be sufficient to meet the annual budget, which budget shall include, among other things, an estimate of the payment needed during the fiscal year for contingencies and replacements which may arise out of the usual and ordinary operations of the Association and which are not covered by the Reserve Fund. The Working Capital Fund shall be funded by monthly payments as a part of the Common Expenses, including, but not limited to, Limited Common Expenses and Special Assessments. The Association shall maintain a Working Capital Reserve Fund which shall be a segregated fund and shall be funded by a non-refundable payment to the Association by the Purchaser of a Unit from Declarant, of an amount equal to a minimum of two (2) months of Declarant's initially estimated monthly assessment for Common Expenses and which shall not be included in the Annual Budget. No Unit Owner is entitled to a refund of any

monies in the Working Capital Reserve Fund upon the subsequent conveyance of his Unit or otherwise.

Section 14.17. Surplus. Any amounts accumulated from assessments for Common Expenses in excess of the amount required to fund the Working Capital Fund and the Reserve Fund, unless otherwise directed by the Executive Board of the Association, in its sole discretion, shall be credited to each Unit Owner in equal amounts, such credit to be applied to the next Monthly Assessments of Common Expenses due from said Unit Owners under the current fiscal year's budget, and thereafter, until exhausted or retained by the Association for reserves.

ARTICLE 15

DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS

Section 15.1. Reservation of Rights. The Declarant reserves to itself and for the benefit of its successors and assigns, pursuant to the provisions of the Act, the right to add real estate to the Condominium, to create Units, Common Elements or Limited Common Elements within the Condominium, to subdivide or convert Units into Common Elements, to withdraw real estate from the Condominium and any and all other Development rights as are now allowed or in the future may be allowed by the Act. The Declarant also reserves to itself and for the benefit of its successors and assigns, pursuant to the provisions of the Act, the right to complete all improvements shown on the Plats and the Plans, to exercise the Development Rights set forth above, to maintain models and sales offices and to exercise the easements as set forth in Article 6 hereof, to make the Condominium part of a larger Condominium, to make the Condominium subject to a master association, to appoint or remove any officer or executive board member during any period of Declarant control of the Association and any and all other Special Declarant Rights as are now allowed or in the future may be allowed by the Act. The real estate subject to the Development Rights and Special Declarant's Rights is described on Exhibit D attached hereto and the Withdrawable Real Estate is described on Exhibit G. Development Rights and Special Declarant Rights must be exercised within seven (7) years from the date this Declaration was recorded or such earlier time as the right to do so expires pursuant to the terms hereof or the Act, as applicable, or is terminated by the Declarant. Development Rights may be exercised at different times with respect to different parcels of real estate. The Project has been designed for development in six (6) Phases as shown on the Plats and Plans, designated

as Exhibit C attached hereto. Phase 1 is being declared in this Declaration and contains thirteen (13) Units. The timing of the development, if any, of Phases 2 through 6 will depend on sales in Phase 1. Phase 2 is intended to include thirteen (13) Units; Phase 3 is intended to include twenty-eight (28) Units; Phase 4 is intended to include twenty-nine (29) Units; Phase 5 is intended to include twenty-five (25) Units; and Phase 6 is intended to include twenty-five (25) Units. The proposed plans and specification for the one hundred twenty (120) Units in Phases 2 through 6 are set forth in the Plats and Plans attached hereto as Exhibit C. The Declarant intends but is not bound to subject the real estate to Development Rights in the sequence shown on the plats and plans, designated as Exhibit C attached hereto; however, the number of units added to the Condominium will depend upon sales of Units in Phase 1. If a Development Right is exercised in any portion of the real estate that Development Right need not be exercised in all or any portion of the remainder of the real estate. In any event, the Declarant shall be under no obligation to declare any one or more of Phases 2, 3, 4, 5 or 6 as part of the Condominium.

Section 15.2. Exercise of Rights. The exercise of the Development Rights and/or Special Declarant Rights reserved herein shall be in accordance with and governed by the provisions of the Act including without limitation Section 36.1-2.10.

Section 15.3. Declaration and Development of Phases 2, 3, 4, 5 and/or 6. Any provision contained in this Declaration to the contrary notwithstanding, and without the consent of any Unit Owner, the Declarant or its successors in title to all or any portion of Phases 2, 3, 4, 5 and/or 6 as shown on the plats and plans, designated as Exhibit C attached hereto may, and has reserved the right to, at any time prior to seven (7) years from the date of the recording of this Declaration, amend this Declaration so as to submit to the provisions of the Act and incorporate into the Property and Condominium all or any one or more of Phases 2, 3, 4, 5 and/or 6 as shown on the plats and plans, designated as Exhibit C attached hereto. The aggregate number of Units in Phases 2, 3, 4, 5 and 6 will not exceed one hundred twenty (120) Units. The Declarant reserves the right to declare and develop Phases 2, 3, 4, 5 and/or 6 in whatever sequence it may elect. Any such amendment shall be recorded in the Middletown Land Evidence Records and contain with respect to Phases 2, 3, 4, 5 and/or 6 or any one or more thereof referred to herein, all of the particulars required by the Act and from and after the recording of such amendment the Condominium shall

include any Phase as has been so recorded. The effective date for making assessments for Common Area charges or other charges and for granting voting rights to the Owners of such additional Units added to the Condominium shall be the date of recording the Amendment applicable to such added Units. Any such amendment shall be in the form and manner as the Proposed First Amendment to Declaration attached hereto as Exhibit I. Any such amendment submitting additional Units and Common Area to the Declaration shall include surveys and floor plans or other documents sufficient to identify each and every additional Unit, including, but not limited to the following:

(a) The Unit boundaries of the additional Units with respect to the floors, ceilings, walls, doors and windows shall be determined as described in Article 3 of this Declaration.

(b) All Common Areas included.

(c) Reference shall be made to the Survey and Floor Plans, as amended, for a description of the Limited Common Areas and facilities in Phases 2, 3, 4, 5 and/or 6 or any portion thereof and a statement of the Unit or Units to which their use is reserved.

(d) A statement of the percentage of individual interests in the Common Areas and facilities appurtenant to each Unit in Phases 2, 3, 4, 5 and/or 6 or any portion thereof and its Owner.

Section 15.4. Restrictions on Liens. No person who shall perform labor or furnish labor or materials with respect to the construction of the buildings and improvements or site preparation, grading, clearing or excavation of the land on any Phase for or on behalf of the Declarant, or any such successor in title to the Property of Declarant, shall have a lien against the Units and appurtenant Common Areas and facilities situated in any other Phase.

Section 15.5. Changes. The Declarant, or any such successor in title, shall have the right, prior to the execution and recording of such amendment, to change the number, size, layout, location and percentage interest in the Common Areas or Units on Phases 2, 3, 4, 5 and/or 6 or any portion thereof provided that (a) any single such change or all such changes in the aggregate shall not be substantial, (b) such change or changes shall be of comparable style, floor plan, size and quality of buildings constructed in Phase 1, (c) such change or changes shall not

affect at all any percentage or percentages of interest in common areas set out in this Declaration or any amendment thereto implementing any Phase which has been previously submitted to the provisions of the Act, and (d) the aggregate number of Units for all Phases, 1 through 6, cannot exceed 133.

ARTICLE 16
ASSIGNABILITY OF DECLARANT'S RIGHTS

The Declarant may assign any or all of its rights or privileges reserved or established by this Declaration or the Condominium Act in accordance with the provisions of the Act.

ARTICLE 17
METHOD OF AMENDMENT OF DECLARATION

Section 17.1. Except as elsewhere provided herein, this Declaration may be amended by an instrument in writing that is:

- a. signed by one or more owners of Units entitled to seventy-five per cent (75%) of the undivided interest in the common areas and facilities.
- b. signed and acknowledged by a majority of the Board of Directors of the Whitehall Farm Condominium Association; and
- c. duly recorded with the Land Evidence Records of the Town of Middletown, Rhode Island,
- d. PROVIDED, HOWEVER, that:
 - i. The date on which any instrument of amendment is first signed by a Unit Owner shall be indicated thereon as the date thereof, and no such instrument shall be of force or effect unless the same has been recorded within six (6) months after such date;
 - ii. No instrument of amendment which alters the dimensions of any Unit shall be of any force or effect unless the same has been signed by the owner(s) of the Unit(s) so altered;
 - iii. No instrument of amendment affecting any Unit in any manner which impairs the security of a

holder of a first mortgage of record shall be of any force or effect unless the same have been assented to by the holder of such mortgage;

- iv. No instrument of amendment which alters the percentage of the undivided interest to which any Unit is entitled in the Common Areas and facilities shall be of any force or effect unless the same has been signed by all Unit Owners and said instrument is recorded as an Amended Declaration of Condominium;
- v. No instrument of amendment which alters this Declaration of Condominium in any manner which would render it contrary to or inconsistent with any requirements or provisions of the Act shall be of any force or effect;
- vi. No instrument of amendment which purports to affect any rights reserved to or granted to the Unit Owners executing this instrument of amendment shall be of any force or effect before said Unit Owners have conveyed all interests owned by them in the Condominium, or have executed the instrument of amendment;
- vii. No instrument of amendment of a material nature affecting, establishing, providing for, governing or regulating any of the below-listed items of the sub-paragraph shall be of any force or effect unless the same has been assented to by fifty-one per cent (51%) of the eligible holders of mortgages of record on the Units;
 - a. voting;
 - b. assessments, assessment liens or subordination of such liens;
 - c. reserves for maintenance, repair and replacement of the Common Areas (or Units, if applicable);
 - d. insurance or fidelity bonds;

- e. rights to use Common Areas;
 - f. responsibility for maintenance and repair of the several portions of the Condominium;
 - g. expansion or contraction of the Condominium or the addition, annexation or withdrawal of property to or from the project;
 - h. boundaries of any Unit;
 - i. the interests in the Common Areas;
 - j. convertability of Units to Common Areas or of Common Areas into Units;
 - k. leasing of any Unit estate;
 - l. imposition of any right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer or otherwise convey his or her Unit;
 - m. any provisions which are for the express benefit of mortgage holders, eligible mortgage holders or eligible insurers or guarantors of first mortgages on Units.
 - n. a decision by the Owners' Association to establish self-management when professional management had been required previously by an eligible mortgage holder.
 - o. restoration and repair of the Project after hazard damage or partial condemnation in a manner other than that specified in the documents.
- viii. No instrument of amendment which disqualifies mortgages of Units in the Condominium for sale to the Federal Home Loan Mortgage Corporation (FHLMC) or the Federal National Mortgage Association (FNMA), or any successor agency thereof, shall be of any force or effect.

In any instance where the consent or assent of an eligible mortgage holder is required for any act pursuant to this

Declaration of Condominium or the By-Laws hereto, and a request has been made for such consent, any first mortgage holder that does not mail or deliver a negative response to the Management Committee of the Condominium Association within thirty (30) days of a written request shall be deemed to have consented to the addition or change set forth in such request. An affidavit by the Executive Board making reference to this Declaration of Condominium, and stating that no such response was received, shall be conclusive as to the facts therein set forth as to all parties, and may be relied upon as evidence of compliance with any provisions herein and in the By-Laws relating to mortgagees' consent.

By this Declaration, it is intended that the provisions hereof relating to protection of mortgagees and mortgagees' consent shall comply with the requirements of FHLMC and FNMA, and with respect thereto shall be resolved consistent with that intention. All provisions of this Declaration of Condominium and the By-Laws hereto shall be construed so as to qualify any such mortgages for sale to FHLMC and FNMA.

Notwithstanding anything contained herein to the contrary, Declarant hereof reserves the right and power to record a special amendment ("Special Amendment") to this Declaration of Condominium or the By-Laws hereto at any time or from time to time, so as to amend this Declaration of Condominium or By-Laws:

1. to comply with the requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Administration, or any other public or quasi-public or private entity which performs (or which may in the future perform) functions similar to those currently performed by such entities;
2. to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages on Units;
3. to bring this Declaration of Condominium or By-Laws into compliance with Title 34, Chapter 36.1 of the General Laws of Rhode Island; or
4. to correct clerical or typographical errors in this Declaration of Condominium, any Exhibit hereto or any supplemental amendment hereto, or the By-Laws.

In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant executing this instrument to vote in favor of, make or consent to any such Special Amendment on behalf of each Unit Owner of the Condominium. Each deed, mortgage or other evidence of obligation, or other instrument affecting a Unit and the acceptance and/or recording thereof, shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power of the Declarant to vote in favor of, make, execute and record Special Amendments on behalf of the Unit Owners until such time as the Declarant, or its assigns, no longer hold or control title to any Units of the Condominium or until the expiration of the rights reserved to the Declarant under Article 15 herein, whichever shall occur last.

The beneficial interest of each Unit of the Condominium shall be held and exercised as a Unit and shall not be divided among several owners of a single Unit. To that end, whenever any Unit is owned of record by more than one person, the several owners of such Unit shall determine and designate which of their number shall be authorized to cast votes, execute instruments and otherwise exercise the rights appertaining to the Unit hereunder, and shall notify the Board of Directors of such designation by notice in writing signed by all the record owners of the Unit. Such designation shall take effect upon receipt of the notice by the Board of Directors, and may be changed at any time and from time to time by notice as aforesaid. In the absence of any such notice of designation, the Board of Directors may designate one such owner for such purposes. Nothing contained herein shall be construed to limit any liability hereunder or under the By-Laws or Rules and Regulations of any person or entity who is a Unit Owner of record, and all such liability shall be joint and several as among the several owners of a single unit.

ARTICLE 18

TERMINATION

The Condominium may be terminated only by agreement of the Unit Owners of Units to which eighty percent (80%) of the votes in the Association are allocated. Termination of the Condominium will be governed by the provisions of Section 36.1-2.18 of the Act.