

**VERMONT**  
 ACT 250 District Commission # 4, 6, 9  
 Application #: [4C1065-18](#)  
 Exhibit #: 054  
 Date Received: 1/25/17

**STATE OF VERMONT  
 DISTRICT COMMISSION # 4**

**IN RE: WINOOSKI HOTEL GROUP, LLC                     )       Application # 4C1065-18**  
   )  
   )

**MOTION TO STAY**

Winooski Downtown Redevelopment Association, Inc. (the "Association"), by and through their attorneys, Lisman Leckerling, P.C., hereby moves for a stay of the above-captioned proceedings pending final adjudication of the Association’s Complaint for declaratory judgment in the Vermont Superior Court, Chittenden Unit, on issues fundamental to these proceedings. In support of this Motion, the Association submits the following Memorandum of Law.

**MEMORANDUM OF LAW**

**Introduction**

The Association is a Vermont nonprofit corporation comprised of the owners of Lots in the Winooski Downtown Redevelopment Project (the "Community"). It is responsible for, among other matters, the maintenance of shared private improvements and portions of certain public improvements in the Community. It has petitioned to participate in these proceedings.

The Association’s interest arises primarily from two components of the Application: (a) the proposed expansion of Lot 9 in the Community into park space described in the Winooski Downtown Development Master Plan as “Mill Park” and designated as Lot 2, and (b) the proposal to construct a circular driveway on Lot 2 to serve a hotel building on the expanded Lot 9. The Applicant proposes to reduce the size of Mill Park from 1.57 acres to 1.25 acres and to construct improvements other than landscaping on the portion of Lot 2 it proposes to add to Lot 9.

On January 24, 2017, the Association filed a Complaint in the Chittenden Unit of the Vermont Superior Court seeking declarations that the proposed alteration of Lot 2 violates the governing documents of the Community (the “Complaint”). A copy of the Complaint, as filed, is attached as Exhibit A.

### **Legal Principles**

The District Commission lacks authority to adjudicate private property rights: such jurisdiction lies in the superior court. *Okemo Mountain, Inc.*, Land Use Permit #2S035 1-25M (Rev’d)-EB, Mem. of Dec. and Dismissal Order at 4 (Dec. 24, 1998).

The District Commission has authority to “make such preliminary rulings as to matters of . . . scheduling . . . and other procedural matters . . . as are necessary to expedite and facilitate the hearing process.” Act 250 Rule 16(B).

### **The District Commission Should Stay Proceedings on the Application Pending Adjudication of the Association’s Declaratory Judgment Action Challenging the Applicant’s Authority to Modify Lot 2 As Proposed In It**

As set forth in detail in the Complaint, the lands involved in the Application are encumbered by the Declaration of Covenants, Easements, Conditions and Restrictions for the Winooski Downtown Redevelopment Project (the “Declaration”),<sup>1</sup> which established the Association and imposed responsibilities on it, including maintaining elements of Lot 2. By statute, the Association has authority to enforce the provisions of the Declaration. 27A V.S.A. § 3-102(a)(15).

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<sup>1</sup> A copy of the Declaration is attached as Exhibit 1 to the Complaint.

Under the Declaration, “the City owned parks and open spaces within the [Community] located on Lot 2 . . . shall be used in a manner consistent with the adjacent residential uses . . . and no buildings or other improvements (other than landscaping elements) shall be constructed on Lot 2 without the approval of not less than a majority of votes in the Association.”

Declaration Sec. 3.1. That approval has been refused.

The Application proposes substantial construction on Lot 2. It contemplates expansion of Lot 9 into Lot 2, reducing the size of Lot 2 so that a hotel can be constructed on the portion of Lot 2 added to Lot 9, and construction and operation of a driveway across the remainder of Lot 2 between Lot 9 and Winooski Falls Way. The Association has voted overwhelmingly to reject it. Under the plain language of the Declaration, therefore, the Applicant is prohibited from modifying Lot 2 as provided in the Application. As a result, no prejudice to the Applicant can flow from a stay of these proceedings.

By contrast, staying these proceedings pending adjudication of the Complaint is critical to the Association and its members because the Declaration purports to limit their rights to participate in these proceedings. Under it,

Each Lot Owner, for itself, its agents, employees, officers, directors, shareholders, members, partners, tenants and their respective successors and assigns, agrees not to contest, appear as an adverse party, or in any other manner oppose or appeal, any application made by any other Lot Owner, or its designated agents or employees (“Affiliates”) to any regulatory governmental or municipal entity, board, commission or officer for Improvements, alterations or expansion of or to the Property that are made in furtherance of the Project in accordance with the Project Permits, provided however that this provision shall not apply in the event that the Master Plan as approved by the Project Permits existing on the date hereof is proposed to be amended.

Declaration at § 3.8.

Without a judicial determination of the Association's members' rights to participate in these proceedings, the Commission risks having to duplicate them in the not unlikely event the Superior Court determines that they are entitled to participate. The Declaration's failure to provide for development of Lot 2 makes such a result particularly foreseeable.

Therefore, the Commission's interest in the efficiency and fairness and the Association's interest in obtaining a determination of the Application's conformity with the Declaration and its entitlement to participate in these proceedings greatly outweigh the possibility of any prejudice to the Applicant of granting a stay to permit the Superior Court to make the private property determinations requested in the Complaint.

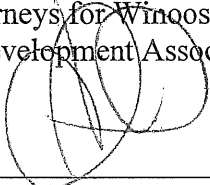
### Conclusion

For the reasons set forth above, the Association requests that the District Commission stay these proceedings pending final determination of the Association's declaratory judgment action against the Applicant.

DATED at Burlington, Vermont this 25 day of January, 2017.

LISMAN LECKERLING, P.C.  
Attorneys for Winooski Downtown  
Redevelopment Association, Inc.

By:

  
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# EXHIBIT

A

STATE OF VERMONT  
SUPERIOR COURT

WINOOSKI DOWNTOWN )  
REDEVELOPMENT ASSOCIATION, INC. )  
Plaintiff, )

v. )

WINOOSKI HOTEL GROUP, LLC and )  
CITY OF WINOOSKI )  
Defendants. )

CHITTENDEN UNIT  
CIVIL DIVISION  
DOCKET No. \_\_\_\_-16-Cncv

VERMONT SUPERIOR COURT

JAN 24 2017

COMPLAINT

*Introduction*

Chittenden Unit

In this action, the plaintiff, an incorporated association of owners of properties in the Winooski Downtown Development area, seeks declarations from the Court that it has the right to participate in Act 250 and other administrative proceedings, that a proposed development is not permitted pursuant to applicable recorded covenants, and that lands dedicated for park and recreational uses may not be subverted to other uses without its approval.

*Jurisdiction, Venue and Parties*

1. The plaintiff (the "Association") is a Vermont nonprofit corporation incorporated in 2008 in connection with the efforts of the City of Winooski to redevelop its downtown area.
2. Defendant Winooski Hotel Group, LLC (the "Hotel Developer") is a Vermont limited liability company.
3. Defendant City of Winooski (the "City") is a Vermont municipality.
4. Jurisdiction lies in this Court pursuant to 4 V.S.A. § 31 and 12 V.S.A. § 4711.
5. Venue is in this Court pursuant to 12 V.S.A. § 402(a).

### *The Downtown Redevelopment*

6. In May, 2004, the City and others executed the Declaration of Covenants, Easements, Conditions and Restrictions for the Winooski Downtown Redevelopment Project (the "Declaration"). The Declaration is recorded in Volume 154, Page 496- of the Land Records of the City. A true, accurate and complete copy of the Declaration is attached as **Exhibit 1**.

7. The Declaration established a common interest community pursuant to the Vermont Common Interest Ownership Act, 27A. V.S.A.

8. The Declaration governs 11 lots; among the 11 are Lot 2 and Lot 9, each owned by the City when the Declaration was recorded.

9. The Declaration provides, in *Background Recital 7*, that:

[T]he City will retain Lot 2 (Mill Park and Riverwalk West) ... for parks and open spaces.

10. The Declaration provides, in *Background Recital 10*, that:

"The Project is designed for each Lot to be separately owned or leased with frontage on a City street and direct access to all necessary public utilities without or at the boundary of such City streets. The Lots within the Project will not have any shared infrastructure or common areas other than as shown on the Lot Plan, the Project Plans or as described herein."

11. The Declaration provides, in *Definition of "Development Lots" (Section 1.2)*, that:

"'Development Lots' means Lot 3, Lot 4, Lot 5, Lot 6, Lot 7, Lot 8, Lot 9 and Lot 10 as shown on the Lot Plan, and any lot subsequently created by the subdivision, combination or adjustment of the boundaries of one or more such lots, together with any new lot incorporated into the Project and designated for the development of a Single Lot Project."

12. The Declaration provides, in *Definition of "Public Infrastructure Improvements" (Section 1.2)*, that:

"Public Infrastructure Improvements" means all public infrastructure improvements for the Project as depicted on the Project Plans including, without limitation, ... the Riverwalk, ... City parks...."

13. The Declaration provides, in *Construction of Public Infrastructure Improvements (Section 3.1)*, that:

“The City owned parks and open spaces within the Project located on Lot 2 (Mill Park and Riverwalk West) shall be used in a manner consistent with the adjacent residential uses within the Project and no buildings or other improvements (other than landscaping elements) shall be constructed on Lot 2 without the approval of not less than a majority of the votes in the Association.”

14. The Declaration provides, in *Use of Development Lots (Section 3.4)*, that:

“Each Development Lot may be used for the development of a Single Lot Project in accordance with the Project Plans, as the same may be amended from time to time.”

15. The Declaration provides, in *Consent to Improvements, Alterations, or Expansion (Section 3.8)*, that:

“Each Lot Owner, for itself, its agents, employees, officers, directors, shareholders, members, partners, tenants and their respective successors and assigns, agrees not to contest, appear as an adverse party, or in any other manner oppose or appeal, any application made by any other Lot Owner, or its designated agents or employees (“Affiliates”) to any regulatory governmental or municipal entity, board, commission or officer for Improvements, alterations or expansion of or to the Property that are made in furtherance of the Project in accordance with the Project Permits, provided however that this provision shall not apply in the event that the Master Plan as approved by the Project Permits existing on the date hereof is proposed to be amended.”

16. The Declaration provides, in *Maintenance of Public Infrastructure Improvements (Section 4.1(b))*, that:

“The Association shall be responsible for the maintenance of the following portions of the Public Infrastructure Improvements within the Project area: ... routine maintenance of landscaping and seasonal plantings within the city owned parks that are part of the Property....”

17. The Declaration provides, in *Use of Property Subject to Permits and Project Plans (Section 7.1)*, that:

“Each original Development Lot, and any Development new lots resulting from a subdivision of an original Development Lot, or a reconfiguration of more than one original Lot, shall be served by its own infrastructure, except as otherwise depicted on the Project Plans or as is otherwise approved in the Project Permits. No Lot Owner shall have the right



to use any other Lot or any improvements thereon to satisfy coverage, density, open space, access, parking, landscape or other requirements for development of the Lots, except as provided in the Project Permits or as otherwise agreed by the affected Lot Owner(s).”

18. The City owns Lot 2. Lot 2 is an irregular shaped parcel of land (akin to a dogleg to the left on a golf course), approximately 1.57 acres in area, that has frontage on Winooski Falls Way, a public street.

19. The Association is responsible for the routine maintenance of landscaping and seasonal plantings on Lot 2.

20. The Hotel Developer owns Lot 9. Lot 9 is 90' x 90'.

21. Lots 2 and 9 share a common boundary.

22. The City and the Hotel Developer have agreed (a) to expand Lot 9 into Lot 2 by reducing the size of Lot 2 and its area to approximately 1.25 acres and (b) to construct and operate a driveway access across the remainder of Lot 2 between the Hotel Developer's project and Winooski Falls Way (together, the "Lot 2 Proposal").

23. At a meeting held on December 12, 2016, owners having more than a majority of the votes in the Association voted, pursuant to Section 3.1 of the Declaration, to reject the Lot 2 Proposal.

24. Notwithstanding the vote of the Association, the City and the Hotel Developer have applied to amend Land Use Permit 4C1065, which governs the Downtown Development area, to authorize expansion and development of Lot 9 consistent with the Lot 2 Proposal.

25. The Association is a person interested under the Declaration and whose rights, status or other legal relation may be affected by the Declaration.

26. The Association's interests will be adversely affected by the Lot 2 Proposal.

*Causes of Action*

**Count I**  
**Regarding the Association's Authority**

27. The Association incorporates Paragraphs 1 through 26 and 31 through 34 herein by reference.

28. The Declaration, including Section 3.8, does not restrict the right of the Association or any of its members to participate in judicial or administrative actions relating to development of Lots 2 and 9, including the pending Act 250 proceedings on the Lot 2 Proposal designated as Application for Permit 4C1065-18.

29. To the extent any provision of the Declaration, including Section 3.8, restricts the right of the Association or any of its members to participate in judicial or administrative actions relating to development of Lots 2 and 9, including the pending Act 250 proceedings on the Lot 2 Proposal designated as Application for Permit 4C1065-18, it is contrary to public policy and void.

**Count II**  
**Regarding the Lot 2 Proposal**

30. The Association incorporates Paragraphs 1 through 29 herein by reference.

31. The Declaration does not provide for adjustment of lot boundaries.

32. Section 3.4 of the Declaration prohibits development of Lot 2.

33. No part of Lot 2 may developed for use other than as parks and open space.

34. Construction and use of a building or a driveway access on Lot 2 is not permitted by the Declaration.

35. The vote by the Association to reject the Lot 2 Proposal prohibits expansion of Lot 9 into Lot 2 by reducing the size of Lot 2.

36. The vote by the Association to reject the Lot 2 Proposal prohibits constructing and operating a driveway access across the remainder of Lot 2 between the Hotel Developer's project and Winooski Falls Way.

37. The designation of Lot 2 as a municipal park on the Winooski Downtown Development Master Plan and in the Declaration prohibit a change of that use without the prior consent of all Lot Owners.

*Relief Requested*

The Association requests that the Court

(a) declare that the Declaration does not restrict the entitlement of the Association or its members to participate in the pending Act 250 proceeding or in other judicial or administrative actions relating to the development of Lot 9 and Lot 2, including the Lot 2 Proposal;

(b) declare that Section 3.8 of the Declaration is void and unenforceable to the extent it would restrict the Association or its members to participate in the pending Act 250 proceeding or in other judicial or administrative actions relating to the development of Lot 9 and Lot 2, including the Lot 2 Proposal;

(c) declare the Declaration does not provide for adjustment of lot boundaries without approval of the Association;

(d) declare that Section 3.4 of the Declaration prohibits development of Lot 2;

(e) declare that no part of Lot 2 may be developed for use other than as parks and open space without approval of the Association;

(f) declare that construction and use of a building or a driveway access on Lot 2 is not permitted by the Declaration;

(g) declare that the rejection by more than a majority of the votes in the Association prohibits expansion of Lot 9 into Lot 2 and the reduction in size of Lot 2;

(h) declare that the vote by the Association to reject the Lot 2 Proposal prohibits constructing and operating a driveway access across the remainder of Lot 2 between the Hotel Developer's project and Winooski Falls Way;

(i) declare that the designation of Lot 2 as a municipal park on the Winooski Downtown Development Master Plan and in the Declaration prohibit a change of that use without the prior consent of all Lot Owners;

(j) award to the Association its legal fees and costs of this action; and

(k) grant such other relief as the Court deems just and appropriate.

DATED at Burlington, Vermont this 24 day of January, 2017.

LISMAN LECKERLING, P.C.  
Attorneys for Plaintiff

By: \_\_\_\_\_

Carl H. Lisman, Esq.  
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# EXHIBIT

1

**DECLARATION OF COVENANTS, EASEMENTS, CONDITIONS AND RESTRICTIONS  
FOR THE WINOOSKI DOWNTOWN REDEVELOPMENT PROJECT**

This Declaration of Covenants, Easements, Conditions and Restrictions for the Winooski Downtown Redevelopment Project (the "Declaration") is made by and between the **CITY OF WINOOSKI**, a Vermont municipality (the "City"), **WINOOSKI COMMUNITY DEVELOPMENT CORPORATION**, a Vermont non-profit corporation ("CDC"), **RAYMOND PECOR III and STACEY PECOR** ("Pecor"), **HKW LLC**, a Massachusetts limited liability company ("HKW"), and **VERMONT STUDENT ASSISTANCE CORPORATION**, a Vermont non-profit public corporation established and existing as an instrumentality of the State of Vermont pursuant to 16 V.S.A. § 2821 et seq. ("VSAC").

Background

- 1). The City is the record owner of parcels of land and improvements thereon located in the downtown section of the City of Winooski and depicted as Lots 1-9 & 11 on a two sheet survey entitled "ALTA/ASCM Title Survey, Property of City of Winooski" by Krebs & Lansing Consulting Engineers, Inc. dated May 24, 2004 and recorded on May 26, 2004 in Map Slide 58 of the City of Winooski Land Records (the "Lot Plan").
- 2). Pecor is the record owner of a parcel of improved real estate depicted as Lot 10 on the Lot Plan, commonly known as the Winooski Mill (the "Mill Lot"). Lots 1-11 as shown on the Lot Plan and described in Exhibit "A" are hereinafter referred to as the "Property."
- 3). The City has entered into a purchase and sale agreement with VSAC to sell VSAC the parcel of real estate depicted as Lot 3 on the Lot Plan (the "VSAC Lot").
- 4). The City has entered into a First Amended and Restated Development and Disposition Agreement dated May 21, 2004 (the "DDA") with HKW for HKW to acquire a ground lease for Lot 5 (the Center Block Housing), for its affiliate HKW Retail LLC to acquire a ground lease for Lot 6 (the West Block Housing), to acquire fee title to Lot 7 (the Riverfront and East Street Condos) and to acquire an option to purchase Lot 8 (the East Pad Site) as depicted on the Lot Plan.
- 5). Under the terms of the DDA, the City will convey Lot 8 (the East Pad Site) as depicted on the Lot Plan to CDC for future development, with Lot 8 being subject to HKW's option to purchase described above in Paragraph 4.
- 6). HKW has entered into a purchase and sale agreement with Pecor to acquire fee title to Lot 10 (the Mill Lot) as depicted on the Lot Plan.
- 7). Under the terms of the DDA, the City will retain title to Lot 1 (Open Space), Lot 2 (Mill Park and Riverwalk West) and Lot 11 (Riverwalk East) for roadways, parks and open

space. In addition, the City will deed Lot 4 (West Block Parking Garage) to a City controlled non-profit parking corporation or authority as a municipal parking garage.

8). The City, along with the CDC, obtained the Project Permits for the construction of a mixed-use development project on the Property, such multiple uses including residential, retail, office space, and other commercial uses (the "Project").

9). The Project is depicted on the sets of plans approved by and referenced in the Project Permits (the "Project Plans").

10). The Project is designed for each Lot to be separately owned or leased with frontage on a City street and direct access to all necessary public utilities within or at the boundary of such City streets. The Lots within the Project will not have any shared infrastructure or common areas other than as shown on the Lot Plan, the Project Plans or as described herein.

11). In connection with the Project, a master association will be established to be known as the Winooski Downtown Redevelopment Association, Inc., a Vermont non-profit corporation (the "Association"), the control of which is described in further detail in this Declaration. The Association will be responsible for maintaining the shared private improvements of the Project and for maintaining certain portions of the public infrastructure improvements for the Project, all as further described in this Declaration.

#### NOW THEREFORE

The parties hereby make and execute this Declaration for the purposes stated herein and upon the following terms and conditions.

#### ARTICLE 1

##### Submission; Defined Terms

Section 1.1. Submission. The parties hereby submit the Property described in Exhibit "A" and as depicted on the Lot Plan and Project Plans to the terms and conditions of this Declaration, thereby encumbering the Property by the reservations, covenants, conditions, and restrictions hereinafter set forth which are for the purpose of protecting the value and desirability of the Property, and which shall run with the title to such lands and premises, and which shall be binding on all parties having any right, title, or interest in or to the lands and premises comprising the Project or any part thereof, and their respective heirs, legal representatives, successors, and assigns, and shall inure to the benefit of each and every owner of all or any portion of the Lots depicted on the Lot Plan and Project Plans.

Section 1.2. **Definitions.** Each capitalized term used herein without definition shall have the meaning specified in this Declaration or the Bylaws of Winooski Downtown Redevelopment Association, Inc. (the "Bylaws"):

"Allocated Interests" means the votes in the Association and the liability for Shared Expenses.

"Assessment" means the amount assessed against the owners of each Lot from time to time by the Association described below in the manner provided herein.

"Association" means the Winooski Downtown Redevelopment Association, Inc., a Vermont non-profit corporation.

"Board of Directors" means the board of directors of the Association charged with the management and operation of the Association.

"Bylaws" means the Bylaws of the Association, as amended from time to time.

"Declaration" means this Declaration of Covenants, Easements, Conditions and Restrictions for the Winooski Downtown Redevelopment Project, as it may be amended from time to time, and includes all of the Exhibits hereto.

"Development Lots" means Lot 3, Lot 4, Lot 5, Lot 6, Lot 7, Lot 8, Lot 9 and Lot 10 as shown on the Lot Plan, and any lot subsequently created by the subdivision, combination or adjustment of the boundaries of one or more of such lots, together with any new lot incorporated into the Project and designated for the development of a Single Lot Project.

"Ground Lease" means a transfer or assignment of the exclusive right to use and develop any Lot for a term of at least thirty (30) years.

"Lot" means a portion of the Property intended for individual ownership and use as permitted in this Declaration and as numbered and depicted on the Lot Plan. Each Lot shall be developed and used in accordance with this Declaration and the Project Plans, as the same may be amended from time to time. The ownership of each Lot shall include, and there shall pass with each Lot as an appurtenance thereto, a membership in the Association.

"Lot Owner" means a Person who owns a Lot or controls a Lot as the tenant under a Ground Lease, but does not include a person having an interest in a Lot solely as security for an obligation.



"Person" means an individual, corporation, limited liability company, limited liability partnership, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

"PILOT" means Payments In Lieu of Taxes, a payment due the City from those Lot Owners who are statutorily exempt from paying real property taxes due to their status as qualifying non-profit organizations, governmental organizations, quasi-governmental organizations or otherwise.

"Property" means the real property, together with any improvements located thereon, which is declared and subjected to this Declaration by incorporation in the description set forth in Exhibit "A," and as depicted on the Lot Plan and Project Plans, as amended from time to time.

"Project" means the mixed-use development project depicted on the Project Plans, as the same may be amended from time to time.

"Project Permits" means Vermont Land Use Permit (Act 250) 4C1065 dated February 26, 2001 and recorded on February 27, 2001 in Volume 118 at Page 783 of the Winooski Land Records, as amended by Land Use Permit (Act 250) 4C1065 (Revised) dated July 6, 2001 and recorded on July 9, 2001 in Volume 121 at Page 683 of the Winooski Land Records; Land Use Permit (Act 250) 4C1065-1 dated September 25, 2002 and recorded on September 27, 2002 in Volume 132 at Page 734 of the Winooski Land Records; Land Use Permit (Act 250) 4C1065-1 (Corrected) dated November 1, 2002 and recorded on November 4, 2002 in Volume 134 at Page 250 of the Winooski Land Records; Land Use Permit (Act 250) 4C1065-2 dated May 22, 2003 and recorded on May 23, 2003 in Volume 142 at Page 272 of the Winooski Land Records; Land Use Permit (Act 250) 4C1065-3 dated February 27, 2004 and recorded on \_\_\_\_\_, 2004 in Volume \_\_\_\_\_ at Page \_\_\_\_\_ of the Winooski Land Records; and Land Use Permit (Act 250) 4C1065-4 dated April 1, 2004 and recorded on \_\_\_\_\_, 2004 in Volume \_\_\_\_\_ at Page \_\_\_\_\_ of the Winooski Land Records and the permits and approvals referenced therein, which have been issued for the development of the Project on the Property, as all of the foregoing may be amended from time to time.

"Project Plans" means the sets of plans approved by and referenced in the Project Permits.

"Lot Plan" means a two sheet survey entitled "ALTA/ASCM Title Survey, Property of City of Winooski" by Krebs & Lansing Consulting Engineers, Inc. dated May 24, 2004 and recorded on May 26, 2004 in Map Slide 58 of the City of Winooski Land Records.

"Public Infrastructure Improvements" means all public infrastructure improvements for the Project as depicted on the Project Plans including, without limitation, all roadways, sidewalks, utilities (including water, sewer, electricity, gas, cable television and stormwater lines and the stormwater detention pond and related inflow and outflow devices), the Riverwalk, the public garage on Lot 4, City parks and other public infrastructure shown on the Project Plans.

"Shared Expenses" means the expenditures made by or financial liabilities of the Association and any allocations to reserves.

"Single Lot Project" means a project constructed on one or more of the Development Lots including, without limitation, the projects depicted on the Project Plans or any other housing and/or mixed-use commercial development projects.

"Single Lot Unit Owners Association" means an association or associations of unit owners which may be formed in connection with the establishment of a condominium regime or other form of common interest community for one or more Single Lot Projects.

"Rules and Regulations" means the provisions and limitations promulgated from time to time by the Board of Directors governing the use of the Property, the Shared Expense Improvements and the Lots.

## ARTICLE 2

### Allocated Interests

Section 2.1. Allocated Interests. Each Lot will be assigned an Allocated Interest based on the gross square footage of the building(s) located on each Lot in relation to the total gross square footage of all of the buildings located on all of the Lots located within the Project; provided however that Lot 4 shall be deemed to have no building located thereon for determination of its Allocated Interest. The issuance of a Certificate of Occupancy for the constructed building(s) on each Development Lot shall establish each Lot's Allocated Interest. Allocated interests will be redetermined annually based on the lawfully existing square foot size of the building(s) on the Lots as of January 1<sup>st</sup> of each year. A schedule of anticipated initial Allocated Interests is attached hereto as Exhibit "D". If a building on a Lot shall be wholly or partially destroyed by casualty, in the absence of an amendment to this Declaration, such event shall not alter that Lot's Allocated Interest.

In the event that one or more of the Lots are subdivided, then the above-described Allocated Interests shall be reallocated among all resulting Lots based on the same formula set forth above.

Each Lot's Allocated Interest shall be determinative of all matters under this Declaration and the Bylaws which are properly determined by reference to the Allocated Interest, including, but not limited to the weight of each Lot Owner's vote for Association purposes and the allocation of Shared Expenses. In the event that a Single Lot Project is developed as a common interest community, the unit owners within such common interest community shall designate a representative to cast the vote assigned to the Lot in all matters in which members of the Association are entitled to vote. Each such common interest community shall notify the Association of the name, address and telephone number of its designated representative, who shall be the appropriate person to receive notice for all Association matters.

### ARTICLE 3

#### Construction, Occupancy and Use

Section 3.1. **Construction of Public Infrastructure Improvements.** The City will be responsible for obtaining all required permits, and performing all necessary work, for the construction of all Public Infrastructure Improvements for the Project as depicted on the Project Plans including, without limitation, all roadways, sidewalks, utilities (including water, sewer, electricity, gas, cable television and stormwater lines and the stormwater detention pond and related inflow and outflow devices), the Riverwalk, the public garage on Lot 4, City parks and other public infrastructure shown on the Project Plans (the "Public Infrastructure") and shall provide utility stubs and conduit to the boundary of each Development Lot.

The City owned parks and open spaces within the Project located on Lot 2 (Mill Park and Riverwalk West) shall be used in a manner consistent with the adjacent residential uses within the Project and no buildings or other improvements (other than landscape elements) shall be constructed on Lot 2 without the approval of not less than a majority of the votes in the Association.

The use of the City owned parks and open spaces within the Project located on Lot 1 shall be limited as follows: during the first ten years following the recording in the Winooski Land Records of a declaration of condominium or common interest community for the final phase of the development to be constructed on Lot 7, Lot 1 shall be used solely for public recreational purposes with no structure greater than 5,000 square feet; thereafter, the City may use Lot 1 in any manner it chooses with the exception that no structure may be built within 500 feet of its westerly boundary.

Section 3.2. **Construction of Development Lots.** The owners of each of the Development Lots will be responsible for obtaining all required permits and for performing all required construction, maintenance, repair and replacement of all of the improvements and appurtenances located within their Development Lot and all improvements and appurtenances outside their Development Lot which serve only their Development Lot at

their own expense and in compliance with all applicable permits, including without limitation, the Project Permits.

Section 3.3. **Cooperation During Permitting and Construction.** Each Lot Owner agrees to cooperate with the other Lot Owners in obtaining permits and approvals as may be required for the Project.

Section 3.4. **Use of Development Lots.** Each Development Lot may be used for the development of a Single Lot Project in accordance with the Project Plans, as the same may be amended from time to time; provided, however, that no amendments shall be sought or filed to the existing Act 250 Permits for the Project without the written consent of the City, unless a ruling can be obtained that a permit amendment is not required for the new plans, or that if a permit amendment is required, that the permit amendment would be treated as an administrative amendment under Rule 34(D) of the Environmental Board Rules. In all cases, no amendments shall be sought or filed to the existing Act 250 Permits for the Project without providing the City with prior written notice that includes a copy of the plans for which approval is being sought. The occupancy of each Lot is subject to and benefited by all easements, restrictions and permits of record, and as depicted on the Lot Plan, Project Plans, and described in Article 8 and Exhibit "A."

Section 3.5. **Compliance with Design Guidelines.** A Development Lot Owner may only construct a Single Lot Project upon a Development Lot in compliance with the Design Guidelines set forth in Exhibit 29 of the Vermont Land Use Permit No. 4C1065-1, as the same may be amended from time to time, and in conformance with the vertical and horizontal building envelopes incorporated into the Project Permits.

Section 3.6. **Subdivision of Lots.** Any Lot may be subdivided provided that the subdivision complies with all applicable permits, codes, laws, ordinances, rules, and regulations of the State of Vermont and City of Winooski.

Section 3.7. **State and Municipal Laws.** Each Lot Owner shall comply with all applicable permits, codes, laws, ordinances, rules, and regulations of the United States of America, State of Vermont and City of Winooski affecting the use of the Lots.

Section 3.8. **Consent to Improvements, Alterations, or Expansion.** Each Lot Owner, for itself, its agents, employees, officers, directors, shareholders, members, partners, tenants and their respective successors and assigns, agrees not to contest, appear as an adverse party, or in any other manner oppose or appeal, any application made by any other Lot Owner, or its designated agents or employees ("Affiliates") to any regulatory governmental or municipal entity, board, commission or officer for improvements, alterations or expansion of or to the Property that are made in furtherance of the Project in accordance with the Project Permits, provided however that this provision shall not apply in the event that the Master Plan as approved by the Project Permits existing as of the date hereof is proposed to be amended.

Each Lot Owner shall include a provision that mirrors this provision in every lease for space within any building to be constructed on a Lot. In the event that a Single Lot Project is developed as a common interest community, the declaration of such common interest community shall include a provision that mirrors this provision and that applies to each unit owner within such common interest community. No Lot Owner shall be liable hereunder for breach of this Section 3.8 by a tenant, occupant or other party that is not an affiliate of such Lot Owner.

#### ARTICLE 4

##### Maintenance

##### Section 4.1. Maintenance of Public Infrastructure Improvements.

(a) The City shall provide normal municipal services for the maintenance and repair of the Public Infrastructure Improvements including, without limitation, plowing and sweeping City streets, providing emergency services and fire and police protection for the Project, and maintaining and repairing City streets, sidewalks, the Riverwalk, the City garage on Lot 4 and all municipal utilities. The City shall also be responsible for the maintenance and replacement of any street trees, major landscape elements and any trees or major landscape elements in the City parks. The maintenance shall be performed in a good and workmanlike manner and in accordance with generally applicable City standards.

(b) The Association shall be responsible for the maintenance of the following portions of the Public Infrastructure Improvements within the Project area: sidewalk sweeping and snow and ice removal from sidewalks, trash clean-up and depositing of trash in designated City owned receptacles, routine maintenance of landscaping and seasonal plantings within the City owned parks that are part of the Property (excluding Lot 1) and maintenance and repair of the stormwater detention pond and related inflow and outflow devices. The maintenance shall be performed in a good and workmanlike manner and in accordance with generally applicable City standards.

(c) In addition, at its option, at its expense, in coordination with the City and with the City's prior written consent, the Association may maintain those portions of the Public Infrastructure Improvements to be maintained by the City to a higher standard than those to which the City normally provides municipal maintenance services. By way of explanation and not by limitation, the Association may opt to plow and sweep the roads more frequently than the City normally plows and sweeps City roads, and the Association may opt to plant and/or construct additional and/or different trees and landscape elements within the City owned parks that are part of the Property (excluding Lot 1). Unless it agrees otherwise in writing in advance, the City will not pay any portion of the expenses incurred by the Association pursuant to this subsection.

Section 4.2.. Maintenance of Shared Private Improvements. To the extent that any private improvements within the Project serve more than one Lot (a "Shared Private Improvement"), each of the affected Lots shall share in the maintenance of their Shared Private Improvements on a pro rata basis in accordance with their respective Allocated Interests. To the extent that any Shared Private Improvements serve all of the Lots within the Project, then the Association shall be responsible for maintaining such Shared Private Improvements and the Lot Owners shall be responsible for the costs of maintenance in accordance with their Allocated Interests.

Section 4.3. Maintenance of Lots.

(a) Each Lot Owner shall maintain, repair and replace, at its own expense, all portions of its Lot and with regard to Development Lots, the Single Lot Project, buildings and improvements located thereon, in good repair, including sidewalk sweeping, trash removal, cleaning and snow and ice removal, plowing, maintenance of landscaping within any portion of such Lot which is not part of the Shared Private Improvements or the Public Infrastructure Improvements. Such maintenance shall be consistent with this Declaration. Each Lot Owner shall be responsible for paying either the real estate taxes assessed against the Lot or the PILOT due thereon, as the case may be, and for insuring the Lot against casualty in commercial reasonable amounts to be established by the Board of Directors and against property damage for the full replacement value of all improvements thereon. Any damage from casualty losses shall be promptly repaired by each Lot Owner. Each Lot Owner shall also be responsible for maintaining and repairing all improvements which serve only the Lot (whether located within or outside the boundaries of the Lot), including all electricity, telephone, cable television, gas, water, sewer, or stormwater pipes, lines, ducts, conduits, or other apparatus which serve only the Lot. However, the Board of Directors may, by rule, decide to maintain any portion of the Lots.

(b) In the event that a Lot Owner should fail to perform any obligation required in subsection (a) hereof as may be determined by the Board of Directors, then the Board of Directors may provide for the performance of any such neglected obligation by whatever reasonable means it may determine in its sole discretion. In case of emergency as determined by the Board of Directors, it may act immediately; and in all other cases the Board of Directors may act hereunder following thirty (30) days written notice to the Lot Owner specifying the nature of the default and the actions required to cure the default. All expenses incurred by the Association as a result of taking action under this section shall be chargeable to the Lot Owner as provided for under Sections 5.5 and 6.3 hereof.

## ARTICLE 5

The Association

Section 5.1. Bylaws. The business affairs of the Association shall be governed by the Bylaws, a copy of which is attached hereto as Exhibit "B," as they may be amended from time to time.

Section 5.2. Membership.

(a) Each Lot shall be assigned one appurtenant and indivisible membership in the Association which may not be assigned, hypothecated, pledged or transferred in any manner except as an indivisible appurtenance to the Lot upon the sale or ground lease of any Lot. Multiple or joint Owners of a single Lot shall be treated for all purposes as jointly owning and holding the one membership appurtenant to that particular Lot, and the multiple or joint owners shall act unanimously when exercising their voting rights in the Association. In the event that a Single Lot Project is developed as a common interest community, the unit owners within such common interest community shall designate a representative to cast the vote assigned to the Lot in all matters in which members of the Association are entitled to vote.

(b) A membership appurtenant to a Lot shall be initiated by the recording of this Declaration in the City of Winooski Land Records. Once a membership is initiated for a Lot, liability for Shared Expenses shall automatically commence based on each such Lot's Allocated Interest.

(c) The number of memberships in the Association shall automatically increase if additional Lots are declared and subjected to this Declaration by the subdivision of existing Development Lots or by the contribution of additional real property to this Declaration and the amendment of the Lot Plan.

(d) Liability for Shared Expenses shall be assessed among the Lot Owners in accordance with their Allocated Interest, unless altered as hereinafter set forth in Section 5.5.

Section 5.3. Voting Rights. All memberships in the Association held by Lot Owners shall automatically become voting memberships upon the recording of this Declaration in the Land Records. Except as otherwise provided in Section 5.6, each Lot Owner, or one of the Lot Owners if record title in a Lot is held by more than one person, shall be entitled to vote in any meeting of the membership, in accordance with their respective Allocated Interest. There shall be a total of 100 votes available to the members of the Association, and they shall be held in accordance with each member's Allocated Interest.

Section 5.4. Board of Directors. The initial Board of Directors shall be three (3) in number. One (1) member of the initial board shall be designated by HKW, one (1) member

of the initial board shall be designated by VSAC, and one (1) member of the initial board shall be designated by the City. The Board of Directors shall be elected each year in accordance with the terms of the Bylaws; provided, however, that in no event shall the City's designee be removed as a member of the Board of Directors and, for so long as HKW is a Lot Owner, HKW's designee shall not be removed as a member of the Board of Directors, and for so long as VSAC is a Lot Owner, VSAC's designee shall not be removed as a member of the Board of Directors. The rules governing the appointment or election of Directors and the maximum total number of Directors shall be established by the Bylaws of the Association.

Section 5.5. Miscellaneous. In addition to any other powers and authority given the Association or its Board of Directors in the Bylaws or in this Declaration:

(a) Shared Expenses of the Association shall be borne among the Lots in accordance with their Allocated Interest, except that the Board of Directors may allocate expenses among the Development Lots on a different basis if the basis is reasonably related to the benefits of the services provided.

(b) The Association shall maintain current copies of its Declaration, Bylaws, and any Rules and Regulations concerning the Project, as well as its own books, records and financial statements. These will be available for inspection by Lot Owners or by holders of first mortgages on any Lots.

## ARTICLE 6

### Assessment and Collection of Shared Expenses

Section 6.1. Definition of Shared Expenses. Shared Expenses shall include:

(a) Expenses of administration, maintenance, and repair or replacement of the Shared Private Improvements, if any, and expenses for the maintenance of the portions of the Public Infrastructure Improvements the Association is obligated or opts to maintain under the terms of this Declaration.

(b) Expenses declared to be Shared Expenses by the Board of Directors.

(c) Expenses agreed upon as Shared Expenses by the Association.

(d) Such reserves as may be established by the Association, whether held in trust by a third party trustee or escrow agent or by the Association, for repair, replacement or addition to any Shared Private Improvements or any other real or personal property maintained by the Association.



Section 6.2. Assessment and Apportionment of Shared Expenses. Except as provided in Sections 5.5 and 6.3, all Shared Expenses shall be assessed against all Lots in accordance with their Allocated Interest as set forth in this Declaration. If a Lot Owner's liability for Shared Expenses is modified due to a redetermination of the Allocated Interests, any Assessments for Shared Expenses not yet due shall be recalculated in accordance with the modified Shared Expense liability. The Lot Owners' responsibility for Shared Expenses shall commence upon the completion of those elements of the Public Infrastructure Improvements necessary for the Project to function.

Section 6.3. Shared Expenses Attributable to Fewer than all Lots. The Shared Expenses shall be assessed against each Lot, according to each Lot's Allocated Interest, except the following expenses may be assessed against less than all of the Lots:

(a) Any Shared Expenses for services provided by the Association to an individual Lot at the request of the Lot Owner shall be assessed against the Lot which benefits from such service.

(b) Any Shared Expenses for services provided by the Association to more than one but less than all of the Lots at the request of the Owners of such Lots shall be assessed against the Lots that benefit from such service.

(c) Any Shared Expenses arising from the misconduct of a Lot Owner.

(d) Fees, charges, late charges, fines and interest charged against a Lot Owner pursuant to the Declaration, the Bylaws and the Rules and Regulation of the Association are enforceable as Shared Expense assessments.

(e) Any expense incurred by the Board of Directors and/or the Association on behalf of a Lot Owner or as a result of a Lot Owner's failure to perform any of the obligations under Section 4.3 hereof is a Shared Expense.

Section 6.4. Lien/Enforcement. The Association has a lien on a Lot for any Assessment imposed against a Lot Owner. To the extent permitted by law, the nature, extent and enforcement of such lien shall be construed with reference to 27A V.S.A. § 3-116. In any action to enforce such lien or the terms, conditions and protective covenants of this Declaration, the Association shall be entitled to receive its court costs and reasonable attorneys' fees.

Section 6.5. Budget Adoption and Ratification. Within thirty (30) days after adoption of any proposed budget, the Board of Directors shall provide a summary of the budget to all the Development Lot Owners. The Board of Directors shall set a date, not less than fourteen (14) nor more than thirty (30) days after the date the budget summary is sent to the Development Lot Owners, for a meeting of the Development Lot Owners to ratify the budget.

The budget shall be ratified, unless a majority of the Development Lot Owners rejects the budget, whether or not a quorum is present. If the budget is rejected, the budget last ratified by the Development Lot Owners shall be in effect until the Development Lot Owners ratify a budget proposed by the Board of Directors. If the Board of Directors votes to levy an Assessment not included in the current budget in an amount greater than fifteen percent (15%) of the current annual operating budget, the Board of Directors shall submit such additional Assessment to the Development Lot Owners for notice and ratification in the same manner as a budget under this Section.

Section 6.6. **Payment of Shared Expenses.** All Shared Expenses assessed under Sections 6.2 and 6.3 shall be due and payable as determined by the Board of Directors. Any past due payments shall accrue interest at the legal rate which on the date of this Declaration is twelve percent (12%) per annum.

## ARTICLE 7

### **Covenants and Environmental Restrictions**

Section 7.1. **Use of Property Subject to Permits and Project Plans.** The Property may be used and conveyed only in accordance with the conditions of the Project Permits, all zoning and subdivision regulations duly adopted by the City of Winooski, and all protective covenants and easements and rights of way for utilities of record and as set forth on Exhibit "A" and all Project Plans, not meaning to reinstate any claims barred by operation of the Vermont Marketable Record Title Act, 27 V.S.A. §601-611, both inclusive; and as all of the foregoing may be amended from time to time.

Each original Development Lot, and any Development new Lots resulting from a subdivision of an original Development Lot, or a reconfiguration of more than one original Lot, shall be served by its own infrastructure, except as is otherwise depicted on the Project Plans or as is otherwise approved in the Project Permits. No Lot Owner will have the right to use any other Lot or any improvements thereon to satisfy coverage, density, open space, access, parking, landscape or other requirements for development of the Lot, except as provided in the Project Permits or as otherwise agreed by the affected Lot Owner(s).

Section 7.2. **Promulgation of Rules and Regulations.** The Board of Directors may, from time to time, without consent of the Association members; upon a unanimous vote in favor of the proposed Rules and Regulations, promulgate, modify, or delete use restrictions and Rules and Regulations applicable to the Lots and the Shared Private Improvements and the Public Infrastructure Improvements. Such Rules and Regulations and use restrictions shall be binding upon all Lot Owners, occupants and other users of the Property until and unless overruled, canceled, or modified in a regular or special meeting by the vote of the members holding a majority of the total votes in the Association. Such Rules and Regulations and use restrictions may impose stricter standards than those contained in this Declaration. The

Association, acting through its Board of Directors, shall have standing and the power to enforce such standards. Such Rules and Regulations shall at a minimum include those items included on Exhibit "C" hereto and made a part hereof.

Section 7.3. Occupants Bound. All provisions of the Declaration and any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Lot Owners and which provide for sanctions against Lot Owners shall also apply to all occupants and other users of the Property.

Section 7.4. Energy Conservation Measures.

(a) As required by the Project Permits, without the prior written consent of the Vermont District #4 Environmental Commission, or its successor, no alteration may be made to any structure on the Property which would reduce the effect of the water-conserving plumbing fixtures or insulation, including low-flush toilets, low-flow showerheads, and aerator or flow-restricted faucets. All leases shall require maintenance of the same and shall prohibit their replacement with non-water conserving fixtures.

(b) As required by the Project Permits, all heated structures on the Property shall be constructed to meet Energy Conservation Recommendations of the Vermont Department of Public Service, and shall incorporate any additional energy efficiency measures that are determined by custom analysis to be cost effective for the Project on a life-cycle-cost-basis. The installation and/or use of electric resistance space heating in any structure on the Property is specifically prohibited.

Section 7.5. Special Covenants. The following special covenants shall apply to the use and operation of the Lots:

(a) No exterior signs (including without limitation banners, flags and other advertising displays, excepting temporary real estate marketing signs) shall be installed without first obtaining approval from the District #4 Environmental Commission and without first complying with the duly adopted zoning regulations of the City of Winooski. In addition, all signage at the Project shall comply with the Master Signage Policy to be submitted to and approved by the District #4 Environmental Commission.

(b) All exterior lighting shall be installed or shielded in such a manner as to conceal light sources and reflector surfaces from view beyond the perimeter of the area to be illuminated. As long as they are not inconsistent with the standards set forth in the 1996 Outdoor Lighting Manual for Vermont Municipalities (with which the Project is required to comply per the terms of the Project Permits), all outdoor lighting at the Property shall comply with the then current guidelines and recommendations of the Illumination Engineering Society of North America (IESNA), and shall comply with the Master Lighting Policy to be

submitted to and approved by the District #4 Environmental Commission. If there is any inconsistency, then the conditions of the Project Permits shall apply.

(c) No further subdivision, alteration and/or development of a Development Lot (except as otherwise shown on the Project Plans) may be permitted without the prior written approval of the District #4 Environmental Commission and in compliance with the duly adopted zoning and subdivision regulations of the City of Winooski.

Section 7.6. Amendments. No amendment of Section 7.4, and 7.5 of this Article shall be effective without the prior written consent of the Vermont District #4 Environmental Commission and/or in conformance with the terms of the Project Permits.

## ARTICLE 8

### Easements

Section 8.1. Easement for Access, etc. Each Lot Owner hereby grants to the other Lot Owners an easement in common with others for ingress and egress, over all roadways and sidewalks shown on the Lot Plan and Project Plans until the same are accepted by the City of Winooski as public roadways and sidewalks; for utility service, and support, maintenance and repair of each Lot, subject to the Rules and Regulations of the Association; over all driveways shown on the Lot Plan and Project Plans; and for each breezeway shown on the Lot Plan and Project Plans. Each Lot is hereby benefited by an easement in common with others for ingress and egress through and over all Shared Expense Improvements by Persons lawfully using or entitled to the same.

Section 8.2. Easement for Completion; Utilities; Public Areas. Each Lot Owner hereby grants to other Lot Owners easements, rights of ways and licenses to others, over, under, across and through all of the Lots for the purpose of: (i) completing the improvements on the Lots described in this Declaration and the Project Plans, including roads, driveways, sewer, water and other utility lines, stormwater drainage systems, sidewalks, trees, shrubs, landscaping and related improvements; (ii) providing utility service to the Lots; and (iii) compliance with permits, laws, rules, regulations, ordinances and other governmental requirements; provided, however, that such easements and rights of way do not interfere with a Lot Owner's ability to use and improve its Lot.

Section 8.3. Easement for Support. Each Lot shall have an easement for lateral and subadjacent support from every other Lot.

Section 8.4. Easement for Upkeep. Maintenance, repair and replacement of the Shared Private Improvements, the Public Infrastructure Improvements and of the Lots, including without limitation for the purpose of trash removal, shall be as provided for in this Declaration and the Bylaws. Each Lot Owner shall afford to the Association and the other Lot

Owners, and to their agents or employees, access across his, her or its Lot reasonably necessary for those purposes. If damage is inflicted on any Lot through which access is taken, the Lot Owner responsible for the damage, or the Association, if it is responsible, shall promptly repair such damage.

ARTICLE 9

Amendments

Section 9.1. General. This Declaration may be amended by vote or agreement of not less than seventy five percent (75%) of the votes in the Association.

ARTICLE 10

Miscellaneous

Section 10.1. Duration. If any covenant, condition, restriction or obligation of this Declaration, or this Declaration itself, is adjudicated to be illegal and/or of no force and effect because of its perpetual nature, then any covenant, condition, restriction or obligation, or this Declaration itself, shall be deemed to run with and bind the Property for a term of forty (40) years from the date this Declaration is recorded in the City of Winooski Land Records, and shall be deemed to automatically be extended for successive periods of ten (10) years unless terminated by a vote taken in accordance with Section 9.1.

Section 10.2. Invalidity. If any provision of this Declaration is held invalid, the invalidity thereof shall not affect other provisions of this Declaration which can be given effect without the invalid provisions and to this end the provisions of this Declaration are severable.

Section 10.3. Headings. The headings in this Declaration are for purposes of reference only and shall not limit or otherwise affect the meaning thereof.

Section 10.4. Governing Law; Venue. This Declaration shall be governed by and construed in accordance with the laws of the State of Vermont, without giving effect to such jurisdiction's principles of conflicts of laws. With respect to any claim or action arising hereunder, the Lot Owners (a) irrevocably submit to the nonexclusive jurisdiction of the Superior Court of Chittenden County, Vermont, the United States District Court for the District of Vermont, and the appellate courts thereof, (b) irrevocably waive any objection which they may have at any time to the laying on venue of any suit, action or proceeding arising out of or relating to this Declaration brought in any such court, and (c) irrevocably waive any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

IN WITNESS WHEREOF, the parties to this Declaration have executed or caused this Declaration to be executed as of the 25<sup>th</sup> day of May, 2004.

IN PRESENCE OF:

CITY OF WINOOSKI

[Signature]  
Witness

By: Clement G. Bessonneau  
Duly Authorized Agent

[Signature]  
Witness Eric Knudsen

By: [Signature]  
Duly Authorized Agent  
WINOOSKI COMMUNITY DEVELOPMENT CORPORATION

[Signature]  
Witness Eric Knudsen

By: Raymond Pecor III  
Raymond Pecor III  
PECOR

[Signature]  
Witness Eric Knudsen

By: Stacey Pecor by Raymond Pecor III  
Stacey Pecor by Raymond C. Pecor III,  
her attorney-in-fact

HKW LLC

[Signature]  
Witness

By: [Signature]  
Duly Authorized Agent

VERMONT STUDENT ASSISTANCE CORPORATION

[Signature]  
Witness

By: Thomas A. Hill  
Vice President, Duly Authorized Agent

STATE OF VERMONT  
CHITTENDEN COUNTY, SS.

On this 26<sup>th</sup> day of May, 2004, personally appeared Clement Bissanet, Duly Authorized Agent of CITY OF WINOOSKI, to me known to be the person who executed the foregoing instrument, and he/she acknowledged this instrument, by him/her signed, to be his/her free act and deed and the free act and deed of CITY OF WINOOSKI.

Before me, [Signature]  
Notary Public

Notary commission issued in Chittenden County  
My commission expires: 2/10/07

STATE OF VERMONT  
CHITTENDEN COUNTY, SS.

On this 26<sup>th</sup> day of May, 2004, personally appeared William T. Niquette, Duly Authorized Agent of WINOOSKI COMMUNITY DEVELOPMENT CORPORATION, to me known to be the person who executed the foregoing instrument, and he/she acknowledged this instrument, by him/her signed, to be his/her free act and deed and the free act and deed of WINOOSKI COMMUNITY DEVELOPMENT CORPORATION.

Before me, [Signature]  
Notary Public

Notary commission issued in Chittenden County  
My commission expires: 2/10/07

STATE OF VERMONT  
CHITTENDEN COUNTY, SS.

On this 25<sup>th</sup> day of May, 2004, personally appeared Raymond Pecor III, to me known to be the person who executed the foregoing instrument, and he acknowledged this instrument, by him signed, to be his free act and deed.

Before me, *E. L.*  
Notary Public

Notary commission issued in Chittenden County  
My commission expires: 2/10/07

STATE OF VERMONT  
CHITTENDEN COUNTY, SS.

On this 25<sup>th</sup> day of May, 2004, personally appeared Stacey Pecor; to me known to be the person who executed the foregoing instrument, and she acknowledged this instrument, by ~~her~~ signed, to be ~~her~~ free act and deed. *as the attorney-in-fact for Stacey Pecor.*  
<sub>him his</sub>

*Raymond Pecor III,  
attorney-in-fact for*

Before me, *E. L.*  
Notary Public

Notary commission issued in Chittenden County  
My commission expires: 2/10/07



STATE OF VERMONT  
CHITTENDEN COUNTY, SS.

On this 25<sup>th</sup> day of May, 2004, personally appeared Andrew Bivens, Duly Authorized Agent of **HKW LLC**, to me known to be the person who executed the foregoing instrument, and he/she acknowledged this instrument, by him/her signed, to be his/her free act and deed and the free act and deed of **HKW LLC**.

Before me, *[Signature]*  
Notary Public

Notary commission issued in Chittenden County  
My commission expires: 2/10/07

STATE OF VERMONT  
CHITTENDEN COUNTY, SS.

On this 25<sup>th</sup> day of May, 2004, personally appeared Tom Little *[Signature]*, Duly Authorized Agent of **VERMONT STUDENT ASSISTANCE CORPORATION**, to me known to be the person who executed the foregoing instrument, and he/she acknowledged this instrument, by him/her signed, to be his/her free act and deed and the free act and deed of **VERMONT STUDENT ASSISTANCE CORPORATION**.

Before me, *[Signature]*  
Notary Public

Notary commission issued in Chittenden County  
My commission expires: 2/10/07

## Exhibit "A"

Description of Property

Being the parcels of land and improvements thereon located in the downtown section of the City of Winooski and depicted as Lots 1-11 on a two sheet survey entitled "ALTA/ASCM Title Survey, Property of City of Winooski" by Krebs & Lansing Consulting Engineers, Inc. dated May 24, 2004 and recorded on May 26, 2004 in Map Slide 58 of the City of Winooski Land Records (the "Lot Plan").

The Property is subject to the following encumbrances:

1. All those matters depicted on the Lot Plan.
2. Vermont Land Use Permit (Act 250) 4C1065 dated February 26, 2001 and recorded on February 27, 2001 in Volume 118 at Page 783 of the Winooski Land Records, as amended by Land Use Permit (Act 250) 4C1065 (Revised) dated July 6, 2001 and recorded on July 9, 2001 in Volume 121 at Page 683 of the Winooski Land Records; Land Use Permit (Act 250) 4C1065-1 dated September 25, 2002 and recorded on September 27, 2002 in Volume 132 at Page 734 of the Winooski Land Records; Land Use Permit (Act 250) 4C1065-1 (Corrected) dated November 1, 2002 and recorded on November 4, 2002 in Volume 134 at Page 250 of the Winooski Land Records; Land Use Permit (Act 250) 4C1065-2 dated May 22, 2003 and recorded on May 23, 2003 in Volume 142 at Page 272 of the Winooski Land Records; Land Use Permit (Act 250) 4C1065-3 dated February 27, 2004 and recorded on \_\_\_\_\_, 2004 in Volume \_\_\_\_\_ at Page \_\_\_\_\_ of the Winooski Land Records; and Land Use Permit (Act 250) 4C1065-4 dated April 1, 2004 and recorded on \_\_\_\_\_, 2004 in Volume \_\_\_\_\_ at Page \_\_\_\_\_ of the Winooski Land Records, together with the permits and approvals referenced therein (the "Permits").
3. Terms and conditions of State of Vermont Water Supply and Wastewater Permit No. WW-4-1423. dated February 20, 2001 and recorded in Book \_\_, at Page \_\_ of the Winooski Land Records, and State of Vermont Water Supply and Wastewater Permit No. WW-4-1423-1 dated April 30, 2004 and recorded in Book \_\_, at Page \_\_ of the Winooski Land Records.
4. Portions of the Property are subject to the following covenant running with the land contained in the Special Warranty Deed from Winooski Urban Renewal Agency to Joanne Hall and Elizabeth A. Brennen, Trustees of Winooski Real Estate Trust dated November 1, 1977 and recorded in Volume 41 at Pages 102-113 of the Winooski Land Records:

"The Grantee agrees for itself and any successor in interest not to discriminate upon the basis of race, creed, color, or national origin in the sale, lease, or rental or in the use or occupancy of the property hereby conveyed or any part thereof or of any

Improvements erected or to be erected thereon or any part thereof."

9. Portions of the Property may be subject to the Utility Relocation Agreement between Verizon New England Inc. and the City of Winooski dated December 30, 2003 and recorded in Volume 151 at Page 494 of the City of Winooski Land Records
10. To the extent not amended or superseded by Land Use Permit (Act 250) 4C1065 dated February 26, 2001, as amended, the terms and conditions of Land Use Permit (Act 250) 4C0251 dated May 20, 1977 and all amendments thereto, including but not limited to the following: i) Land Use Permit (Act 250) 4C0251-1 dated March 24, 1978; ii) Land Use Permit (Act 250) 4C0251-2 dated November 14, 1979; iii) Land Use Permit (Act 250) 4C0251-3 dated November 9, 1979; iv) Land Use Permit (Act 250) 4C0251-3B dated December 17, 1981; v) Land Use Permit (Act 250) 4C0251-5 dated January 22, 1981; vi) Land Use Permit (Act 250) 4C0251-5A dated February 25, 1981; vii) Land Use Permit (Act 250) 4C0251-6 dated May 7, 1981; viii) Land Use Permit (Act 250) 4C0251-11 dated December 28, 1989; ix) Land Use Permit (Act 250) 4C0251-12 dated August 25, 1999; and x) Land Use Permit (Act 250) 4C0251-13 dated February 10, 2000 and recorded in Volume 113 at Page 598 of the Winooski Land Records.
11. To the extent not amended or superseded by State of Vermont Water Supply and Wastewater Disposal Permit No. WW-4-1423 dated February 20, 2001, as amended, the terms and conditions of Certification of Compliance 4C0251-4 dated November 8, 1979, which approved a five lot subdivision consisting of Parcel A (Parcel 11), Parcel B (Parcel 10), Phase I (Parcel 13), Phase II (Parcel 12) and Phase III (Parcel 12A).
12. Stormwater Discharge Permit No. 1-1425 dated September 14, 2000;
13. Air Pollution Control Permit No. AP-00-018 dated December 22, 2000;
14. Notice of Intent to Discharge Stormwater Runoff from a Construction Site Subject to General Permit 3-9001 filed on October 29, 2003; and
15. Public Water System Permit to Construct No. WSID 5102 dated January 16, 2001 and re-issued on January 30, 2004.
16. Lot 5 is subject to the following:
  - a. Utility Easement from Winooski Community Development Corporation to Green Mountain Power Corporation dated April 8, 2004 and recorded on April 12, 2004 in Volume 153 at Page 1 of the Winooski Land Records;
  - b. Utility Easement from the City of Winooski to Green Mountain Power Corporation dated April 8, 2004 and recorded on April 12, 2004 in Volume 153 at Page 11 of the Winooski Land Records; and

- c. Utility Easement from the City of Winooski to Green Mountain Power Corporation dated April 8, 2004 and recorded on April 12, 2004 in Volume 153 at Page 21 of the Winooski Land Records.
17. Portions of the Property are or may be subject to the terms of a Cooperative Agreement between the State of Vermont Agency of Transportation and City of Winooski for Advancement of Municipal Project Winooski TCSE005, TSCE005-300 Contract No. CA0105 dated February 27, 2004 and recorded on April 2, 2004 in Volume 152 at Page 504 of the City of Winooski Land Records.
- 
18. Portions of the Property are or may be subject to the terms of a Cooperative Agreement between the State of Vermont Agency of Transportation and City of Winooski for Advancement of Municipal Project Winooski STP 5100(11) and AC STP 5100(12) Contract No. CA0106 dated February 27, 2004 and recorded on April 2, 2004 in Volume 152 at Page 529 of the City of Winooski Land Records.

Exhibit "B"

Bylaws of the Association

(Attached)

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## DOWNTOWN DEVELOPMENT ASSOCIATION, INC.

## BYLAWS

## ARTICLE 1

Generally

Section 1.1. Applicability. These Bylaws provide for the governance of the Downtown Development Association, Inc.

Section 1.2. Office. The office of the Association is the City of Winooski c/o City Manager, 27 West Allen Street, Winooski, VT 05404, or at such other place as may be designated from time to time by the Board of Directors.

Section 1.3. Definitions. Each capitalized term used herein without definition shall have the meaning set forth in the Declaration of Covenants, Easements, Conditions and Restrictions for the Winooski Downtown Redevelopment Project, as amended from time to time, and of record in the City of Winooski Land Records (the "Declaration").

## ARTICLE 2

Membership, Meetings

Section 2.1. Membership. Each Lot Owner shall be a member of the Association, and shall be referred to herein as a "Lot Owner".

Section 2.2. Annual Meetings. An annual meeting of the Association shall be held each year at a time to be determined by the Board of Directors. At such annual meetings the Board of Directors for the next year shall be elected.

Section 2.3. Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Lot Owners as may be designated by the Board of Directors.

Section 2.4. Special Meetings. The President shall call a special meeting of the Lot Owners upon a petition signed and presented to the Secretary by Lot Owners owning not less than twenty percent (20%) of the Lots. The notice of any special meeting shall state the time, place and purpose thereof. No business shall be transacted at a special meeting except as stated in the notice; however, if representatives of every Lot Owner are present at a special meeting, they may waive the foregoing restriction.

Section 2.5. Notice of Meetings. The Secretary shall mail to each Lot Owner a notice of the place, date, hour and purpose or purposes of each annual or regularly scheduled meeting of the Lot Owners. The notice shall be mailed not less than ten (10) days nor more than fifty (50) days before the date of such meeting.

Section 2.6. Adjournment of Meetings. If at any meeting of the Association a quorum is not present, Lot Owners having a majority of the votes who are present at such meeting in person or by proxy may adjourn the meeting to a time not less than 48 hours after the time the original meeting was called.

Section 2.7. Voting. Lot Owners shall be entitled to vote on Association matters as provided in the Declaration in accordance with each Lot's Allocated Interest. In the event that a Single Lot Project is developed as a common interest community, the unit owners within such common interest community shall designate a representative to cast the vote assigned to the Lot in all matters in which members of the Association are entitled to vote. Each such common interest community shall notify the Association of the name, address and telephone number of its designated representative, who shall be the appropriate person to receive notice for all Association matters.

Section 2.8. Quorum. Except as otherwise provided herein, the presence in person or by proxy of Lot Owners controlling fifty percent (50%) or more of the votes in the Association shall constitute a quorum at all meetings.

Section 2.9. Conduct of Meetings. The President shall preside over all meetings of the Lot Owners and the Secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted at the meetings as well as a record of all transactions occurring at the meetings.

Section 2.10. Agreements Regarding Voting. To the extent not prohibited by applicable law, the Lot Owners may enter into voting agreements providing that Lot Owners will cast their votes on specified matters as provided in the voting agreement and such agreements shall be binding to the fullest extent permitted by law.

### ARTICLE 3 Board of Directors

Section 3.1. Number and Qualification. The affairs of the Association shall be governed by a Board of Directors. The Board of Directors shall be three (3) in number, or such greater number as may be established by action of the Lot Owners from time to time at a meeting called for such purpose. The initial Board of Directors shall be determined as follows: one (1) member shall be designated by HKW, one (1) member shall be designated by VSAC, and one (1) member shall be designated by the City. The Board of Directors shall be elected each year as set forth below, provided, however, that in no event shall the City's designee be removed as a member of the Board of Directors and, for so long as HKW or an affiliate of HKW is a Lot Owner, HKW's designee shall not be removed as a member of the Board of Directors, and for so long as VSAC is a Lot Owner, VSAC's designee shall not be removed as a member of the Board of Directors. After the Lot Owners elect the replacement Board of Directors, each Director shall hold office for a term of three (3) years and until a successor shall have been elected and qualified. Directors shall be Lot Owners or, if a Lot Owner is a legal entity, an officer, owner or member of the entity that owns the Lot.

Section 3.2. Powers and Duties. The Board of Directors shall have all of the powers and duties necessary for the administration of the affairs of the Association. The Board may do all such acts and things as are not prohibited by these Bylaws or the Declaration, including, but not limited to, the following:

- (a) Prepare an annual budget, including the amount of Assessments and present the budget to the annual meeting of the Lot Owners.

- (b) Establish the means and methods of collecting the Assessments pursuant to the Declaration.
- (c) Provide for the operation, care, upkeep, improvement, and maintenance of the Shared Private Improvements that serve all the Lots in the Project and for the maintenance of those portions of the Public Infrastructure Improvements that the Association is obligated to maintain under the Declaration or which it may choose to maintain pursuant the Declaration.
- (d) Designate, hire and dismiss the personnel necessary for the maintenance, operation, repair and replacement of the Shared Private Improvements that serve all of the Lots within the Project and the maintenance of the portion of the Public Infrastructure Improvements the Association is obligated or opts to maintain under the Declaration, and, where appropriate, provide for the compensation of such personnel and for the purchase of equipment, supplies and materials to be used by such personnel in the performance of their duties.
- (e) Collect the Assessments, deposit the proceeds thereof in bank depositories designated by the Board of Directors and use the proceeds to carry out the administration of the Association.
- (f) Draft rules and regulations for presentation to the Lot Owners for consideration (the "Rules and Regulations").
- (g) Open bank accounts on behalf of the Association and designate the signatories thereon.
- (h) Make, or contract for the making of, repairs, additions and improvements to or alterations of the Shared Private Improvements that serve all the Lots in the Project as provided in the budget approved or as otherwise approved by the Association; and make, or contract for the making of, repairs to and restoration of the Shared Private Improvements that serve all the Lots in the Project or other expenditures for the Association not otherwise provided in the budget, provided that such expenditures, except in the event of an emergency, do not exceed \$5,000.00 per annum.
- (i) Enforce by legal means the provisions of the Declaration, these Bylaws and the Rules and Regulations.
- (j) Obtain and carry insurance against casualties and liabilities, as provided in these Bylaws, pay the premiums therefor and adjust and settle any claims thereunder.
- (k) Pay the cost of all authorized services rendered to the Association and not billed to Lot Owners or otherwise provided for in Article 5 of these Bylaws.
- (l) Keep books with detailed accounts in chronological order of its receipts and expenditures and the administration of the Association specifying the expenses incurred. Such books and vouchers accrediting the entries thereupon shall be



available for examination by the Lot Owners and/or their duly authorized agents or attorneys during general business hours on working days at the times and in the manner set and announced by the Board of Directors for the general knowledge of the Lot Owners. All books and records shall be kept in accordance with good accounting practices.

- (m) Do such other things and acts not inconsistent with the Declaration or these Bylaws which the Board of Directors may be authorized to do by a resolution of the Association.

Section 3.3. Managing Agent. The Board of Directors may employ for the Association a managing agent (the "Managing Agent"). The compensation of such Managing Agent shall be established by the Board of Directors.

Section 3.4. Election and Term of Office. The initial Board of Directors shall be as set forth in Section 3.1 above. All Directors shall thenceforth serve until the next annual meeting of Lot Owners or until their respective successors are appointed and qualified.

Section 3.5. Removal or Resignation of Members of the Board of Directors. At any regular or special meeting of the Lot Owners duly called, any one or more of the members of the Board of Directors may be removed with or without cause by seventy five percent (75%) of the Lot Owners entitled to vote on the matter. Upon the removal of a member of the Board of Directors, his or her replacement shall be appointed by the Lot Owners or, absent such appointment, by remaining Directors to fill the unexpired term. A member of the Board of Directors may resign at any time and, a Director shall be deemed to have resigned without further action upon disposition of the Lot owned by such Director.

Section 3.6. Organization Meeting. The first meeting of the Board of Directors following creation of the Association shall be held within thirty (30) days thereafter at such time and place as shall be fixed by the Lot Owners and no notice shall be necessary to such members of the Board of Directors in order legally to constitute such meeting, providing a majority of the whole Board of Directors shall be present at such meeting.

Section 3.7. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the Directors, but, unless waived by a majority of the voting interests, such meetings shall be held at least once every four months during each fiscal year. Notice of regular meetings of the Board of Directors shall be given to each Director, by mail or by personal delivery to the address on file in the records maintained by the Association at least ten (10) business days prior to the day named for such meeting.

Section 3.8. Special Meetings. Special meetings of the Board of Directors may be called by the President on three (3) business days notice to each Director, given by mail, facsimile or personal delivery to the address on file in the records maintained by the Association, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary on the written request of at least two Directors in like manner but with notice being given not less than three (3) business days prior to such meeting.

Section 3.9. Waiver of Notice. Any Director may at any time, in writing, waive notice of any meeting of the Board of Directors, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board of Directors shall constitute a waiver of notice by such Director of the time, place and purpose of such meeting. If all Directors are present at any meeting of the Board of Directors, no notice shall be required and any business may be transacted at such meeting.

Section 3.10. Quorum. At all meetings of the Board of Directors a majority of the Directors shall constitute a quorum for the transaction of business, and the votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors.

Section 3.11. Compensation. No Director shall receive any compensation from the Association for acting as a Director, unless the Lot Owners amend this provision of the Bylaws to provide for compensation to the Directors.

Section 3.12. Action Without Meeting. Any action by the Board of Directors required or permitted to be taken at any meeting may be taken without a meeting if all of the members of the Board of Directors shall individually or collectively consent in writing to such action. Any such written consent shall be filed with the minutes of the proceedings of the Board of Directors.

Section 3.13. Liability of the Board of Directors, Officers, Lot Owners and Association.

- (a) The Officers and members of the Board of Directors shall not be liable to the Association for any mistake of judgment, negligence or otherwise, except for their own individual willful misconduct or bad faith. The Association shall indemnify and hold harmless each of the Officers and Directors from and against all expenses and liabilities to others arising out of claims made against the Officers or the Board of Directors on account of their status as Officers or Directors to the maximum extent permissible under Vermont law.
- (b) The Association shall not be liable for the failure of any services to be obtained by the Association or paid for as an Assessment, or for injury or damage to person or property caused by the elements or by any Lot Owner or any other person, or resulting from electricity, water, snow or ice which may leak or flow from any portion of the Shared Private Improvements that serve all the Lots in the Project and/or the Public Infrastructure Improvements, or from any pipe, drain, conduit, appliance or equipment. The Association shall not be liable to any Lot Owner for loss or damage, by theft or otherwise, of articles which may be stored upon any of the Property. No diminution or abatement of any Assessments, as herein elsewhere provided, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Property or from any action or with the order or directive of any municipal or other governmental authority.

ARTICLE 4  
Officers

Section 4.1. Designation. The principal Officers of the Association shall be the President, the Secretary and the Treasurer, all of whom shall be elected by the Board of Directors. The Board of Directors may appoint a Vice President, an Assistant Treasurer, an Assistant Secretary and such other Officers as in its judgment may be necessary. Any combination of offices may be held by the same person, except the offices of President and Secretary which may not be held by one person. The President shall be a member of the Board of Directors.

Section 4.2. Election of Officers. The Officers of the Association shall be elected annually by the Board of Directors at the organization meeting of each new Board of Directors and shall hold office at the pleasure of the Board of Directors.

Section 4.3. Removal of Officers. Upon the affirmative vote of two-thirds (2/3) of the Board of Directors any Officer may be removed, either with or without cause, and a successor may be elected at any regular meeting of the Board of Directors or at any special meeting of the Board of Directors called for such purpose.

Section 4.4. President. The President shall be the chief executive officer of the Association; preside at all meetings of the Association and of the Board of Directors; and have all of the general powers and duties incident to the office of president generally including, without limitation, the power to appoint committees from among the Lot Owners from time to time as the President may in his or her discretion decide is appropriate to assist in the conduct of the affairs of the Association.

Section 4.5. Vice President. The Vice President shall be entitled to fulfill the duties of the President, in the President's absence or if the President is unable to act, and such other duties as may be assigned by the Board of Directors.

Section 4.6. Secretary. The Secretary shall keep the minutes of all meetings of the Association and of the Board of Directors; have charge of such books and papers as the Board of Directors may direct; maintain a register setting forth the place to which all notices to Lot Owners and others shall be delivered; and, in general, perform all the duties incident to the office of secretary.

Section 4.7. Treasurer. The Treasurer shall have the responsibility for Association funds and securities. The Treasurer shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, and for the preparation of all required financial data, and shall report annually to the Lot Owners. The Treasurer shall make disbursements on behalf of the Association upon consent of the Board of Directors and shall be responsible for the deposit of all monies and other valuable effects in the name of the Board of Directors. The Association's funds shall be held in such depositories as may from time to time be designated by the Board of Directors. In addition, the Treasurer shall perform all the duties incident to the office of treasurer as may be assigned by the Board of Directors.

Section 4.8. Execution of Documents. All agreements, contracts, deeds, leases, checks and other instruments of the Association for expenditures or obligations may be executed by such person or persons as may be designated by the Board.

Section 4.9. Compensation of Officers. No Officer who is also a Director shall receive any compensation from the Association for acting as such Officer.

**ARTICLE 5**  
**Committees**

Section 5.1. Formation of Committees. The Lot Owners may form and reform Committees of all or less than all of the Lot Owners and delegate to such Committees such powers, duties and obligations as the Lot Owners may from time to time delegate consistent with applicable law. Unless prohibited by applicable law, the Committees formed pursuant to this authorization may form subcommittees to be responsible for any duty or obligation delegated to a Committee. Committees shall meet at least once in each year and may meet more often as determined by the Committees. Committees shall report on their doings to the Lot Owners at the annual meeting of Lot Owners. Decisions by the Committees shall take priority over conflicting decisions by the Board of Directors as to matters delegated to the Committee. Committees may act without a meeting provided the action taken is in written form and signed by all of the members of the Committees.

**ARTICLE 6**  
**Operation of the Association**

Section 6.1. Determination of Annual Charges and Assessments Against Lot Owners.

- (a) Fiscal Year. The fiscal year of the Association shall be the calendar year unless otherwise determined by the Board of Directors.
- (b) Assessment. The Board of Directors may fix the Assessments at an amount determined based on the budget for each fiscal year.
- (c) Preparation and Approval of Budget.
  - (i) On or before the first day of November of each year, the Board of Directors shall adopt a budget and shall provide a summary of the budget to all the Development Lot Owners. The Board of Directors shall set a date, not less than fourteen (14) nor more than thirty (30) days after the date the budget is sent to the Development Lot Owners, for a meeting of the Development Lot Owners to ratify the budget. The budget shall be approved unless a majority of the Allocated Interests reject the budget, whether or not a quorum is present at the meeting. If the budget is rejected, the budget last ratified by the Development Lot Owners shall be in effect until the Development Lot Owners ratify a budget proposed by the Board of Directors. If the Board of Directors votes to levy an Assessment not included in the current budget in an amount greater than fifteen percent (15%) of the current annual operating budget, the Board of Directors shall submit such additional Assessment to the Development Lot Owners for notice and ratification the same manner as a budget under this section.

- (ii) The budget shall contain an estimate of the total amount necessary to pay the cost of maintenance, management, operation, repair and replacement of the Shared Private Improvements that serve all the Lots in the Project and the maintenance of the Public Infrastructure Improvements the Association is obligated and opts to maintain under the Declaration, and costs related thereto which will be required during the ensuing fiscal year. Such budget shall also include such reasonable amounts as the Board of Directors considers necessary to provide working capital, a general operating reserve and reserves for contingencies and replacements. Such budget shall constitute the basis for determining each Lot Owner's Assessment pursuant to the Declaration.
- (d) Assessment and Payment of Assessments. The total amount of the estimated funds required from Assessments (including any special assessments) for the operation of the Association shall be borne among the Lots in accordance with their Allocated Interest as set forth in Section 2.1 of the Declaration.
- (e) Special Assessments. In addition to the annual Assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a Shared Private Improvement.
- (f) Reserves. The Board of Directors shall build up and maintain reasonable reserves for working capital, operations, contingencies, and replacements. The Association may maintain a reserve fund with appropriate balances as determined by the Board of Directors.
- (g) Effect of Failure to Prepare or Adopt Budget. The failure or delay of the Board of Directors to prepare or of the Association to adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of the obligation to pay the Assessments as herein provided whenever the same shall be determined and, in the absence of any annual budget or adjusted budget, each Lot Owner shall continue to pay each Assessment at the rate established for the previous fiscal year until notice of the payment which is due.

Section 6.2. Collection of Assessments. The Board of Directors or the Managing Agent, at the request of the Board of Directors, shall take prompt action to collect any Assessments which remain unpaid for more than thirty (30) days from the due date for payment thereof without limiting any rights or remedies the Association may have for delinquent Assessments. Any Assessment, or installment thereof, not paid within five days after the due date shall accrue a late charge calculated at the legal rate of interest on the overdue assessment or installment.

Section 6.3. Statements to Lot Owners.

- (a) Statement of Assessments. The Board of Directors shall promptly provide any Lot Owner, contract purchaser or mortgagee so requesting the same in writing with a written statement of all unpaid Assessments due as to such Lot. The Board of Directors may impose a reasonable charge for the preparation of such statement to

cover the cost of preparation. Notwithstanding the foregoing, the Board of Directors shall not charge a fee or premium to any mortgagee for the furnishing of such a certificate.

- (b) Statement of Default. The Board of Directors will make a reasonable effort to promptly notify any mortgagee of any Lot of any default by a Lot Owner of any obligation arising under the Declaration, these Bylaws or the Rules and Regulations that is not cured within sixty (60) days, provided the mortgagee has filed a written request for such information with the Association.

**ARTICLE 7**  
**Miscellaneous**

Section 7.1. Amendment. Except as otherwise provided herein, these Bylaws may be amended by vote or agreement of Lot Owners representing at least seventy-five percent (75%) of the votes in the Association; provided, however, that amendments to these Bylaws shall be subject to the same limitations imposed on amendments to the Declaration.

Section 7.2. Notices. All notices, demands, bills, statements or other communications shall be in writing and shall be deemed to have been duly given if delivered personally or if sent postage prepaid: (i) if to a Lot Owner, at the Lot Owner's last known address or at such other address as shall be designated in writing to the Association; or (ii) if to the Association or the Board of Directors, at the principal office of the Association or at such other address as shall be designated in writing to the Lot Owners pursuant to this Section.

Section 7.3. Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of these Bylaws or the intent of any provision hereof.

Section 7.4. Gender. The use of the masculine gender in these Bylaws shall be deemed to include the feminine and neuter genders and the use of the singular shall be deemed to include the plural, and vice versa, whenever the context so requires.

The undersigned hereby certifies that as of \_\_\_\_\_, 2004, this is a true and accurate copy of the Bylaws of the Association adopted by resolution at the organization meeting of the Association held on \_\_\_\_\_, 2004.

\_\_\_\_\_  
Secretary

Date

Exhibit "C"Rules and Regulations

1. To keep and maintain each Lot clean and free from rubbish, trash and garbage, and reasonably free of snow and ice; to store all trash and garbage on each Lot and arrange for regular pick-up thereof; and to maintain each Lot clean and neat in appearance.
2. Not to burn any trash on or near any Lot or cause any offensive odors to be emitted from any Lot.
3. Not to make any use of any Lot which is improper, offensive or illegal; nor to permit any act or thing to be done on any Lot which shall constitute a nuisance or which may make void or voidable any insurance on any other Lot, and to pay any increased or extra premium payable for any such insurance resulting from any act done by any Lot Owner; nor permit the presence, discharge, disposal, release, generation, handling, transportation or storage on, from or affecting any Lot of any Hazardous Materials, except in strict compliance with all applicable laws.
4. To insure and require that no sheets, blankets or similar items may be used as curtains in any windows of the Building, and that no clothes, laundry, flags or signs are hung on or from any balcony railings or walls or from any windows on any Lot. Tenant shall require and insure that the window treatments for each housing unit constructed in a Building on any Lot are consistent. This regulation shall not preclude a Lot Owner from flying state and/or national flags from a flagpole on or near a Building.

Exhibit "D"

Schedule of Initial Estimated Allocated Interests and Voting Rights

	2005 Sq. Feet:	Pro Rata:
West Block (Lot 6):	131,329	23%
Central Block (Lot 5) Phase 1:	165,000	29%
Central Block (Lot 5) Phase 2:	-	-
Champlain Mill (Lot 10):	162,120	28%
Condos (Lot 7):	-	-
VSAC (Lot 3):	115,000	20%
Pad Site A (Lot 8):	-	-
Pad Site B (Lot 9):	-	-
Subtotal:	573,449	100%

CITY OF WINGOSKI, VT  
Received for Record May 20 2004  
at 3:50 o'clock P. M and recorded  
in Winooski Land Records.  
Vol. 154 Page 496-530  
Pauline K. Ahrens  
CITY CLERK