

**DECLARATION OF  
BENEFICIAL AND PROTECTIVE COVENANTS AND EASEMENTS**

**DCF Development, LLC - Wynnridge Subdivision**

WHEREAS, DCF Development, LLC, a Vermont limited liability company with a place of business in Rutland Town, Vermont, (the "Sponsor"), is the owner of 89.2 acres, more or less, of unimproved land located off of the East Pittsford Road, in the Town of Rutland, Vermont (the "Town"), title to which lands and premises became vested in Sponsor by Deed dated March 1, 2002, recorded at Book 114, Page 500, of the Rutland Town Land Records (the "Property").

WHEREAS, Sponsor has established a plan for subdivision of the Property into twenty-five (25) residential building lots, to be known as the "Wynnridge Subdivision", having access by a road and cul-de-sacs leading easterly from East Pittsford Road (said road and cul de sacs, and related utilities and infrastructure, being collectively referred to herein as the "Road") as more particularly shown on a site plan entitled "Wynnridge Subdivision, East Pittsford Road, Rutland, Vermont", consisting of 16 sheets originally dated February 2003, and a separate screening plan originally dated April 23, 2003 (the "Screening Plan"), all prepared by Woods and Co., Civil Engineering, originally dated February 2003, to be filed in the Rutland Town Land Records (collectively, the "Site Plan"), which Site Plan was approved by the Rutland Town Planning Commission in Subdivision Permit No. RT 226, dated January 13, 2003 (said lots being collectively referred to herein as the "Lots"), and;

WHEREAS, it is Sponsor's desire that the Road shall ultimately be accepted by the Town of Rutland, Vermont (the "Town") as a maintained town highway and that maintenance of the storm drain system serving the Road and the Lots as shown on the Site Plan (the "Storm System") likewise be taken over by the Town and further that the Lots shall each be conveyed subject to and benefitted by easements over and upon the Road and the Lots themselves for purposes of constructing, laying, repairing, operating, maintaining and replacing all utilities, lines, pipes, wires, fittings, pumps and fixtures for the benefit of the Lots in accordance with State of Vermont Permit No. WW-1-1003, dated February 25, 2003 (the "Subdivision Permit"), and Act 250 Permit No. 1R0902 dated May 12, 2003 (the "Act 250 Permit") to be recorded in the Town Land Records, it being Sponsor's intention to maintain and repair of the Storm System and the Road until such time as the Town shall take over ownership and/or maintenance of the same, and;

WHEREAS, it is the further desire and intent of the Sponsor to establish and declare beneficial and protective covenants and easements for the use, enjoyment, maintenance, and improvement of the Lots for the benefit of the owners of the Lots, their heirs, successors and assigns (the "Lot Owners").

NOW THEREFORE, Sponsor hereby establishes and declares the following Beneficial and Protective Covenants and Easements of the Wynnridge Subdivision (the "Covenants"), which shall be deemed to run with and pertain to the land comprising the Property and the Lots, and which, upon acceptance of delivery of a deed conveying a Lot, shall be binding upon each Lot Owner and their heirs, successors and assigns, and which shall likewise inure to the benefit of each and every Lot Owner, as hereinafter described.

**1. ROAD/STORM SYSTEM MAINTENANCE**

1.1 The legal description of all of the Lots shall proceed to the paved edge of the Road in such manner that the fee of the Road shall initially be owned by the Sponsor, its successors and assigns. It is hereby established and declared that the Road is and shall be a private road and shall not be declared or accepted as a town highway, except upon the express acceptance and consent of the Town. Upon acceptance of the Road by the Town as a maintained town highway, the rights and easements reserved by Sponsor upon and over the Lots and the Property with respect to construction, maintenance, repair and use of the Road, including those

pertaining to snowplowing and drainage, shall be transferred to and vest in the Town, and any and all conflicting rights or easements granted to the Lot Owners herein shall thereupon automatically terminate.

1.2 Until the Road is accepted by the Town as a maintained town highway, Sponsor shall be responsible for routine maintenance and repair of the Road. A reciprocal right of way and easement over such portion of the Road as may be necessary for vehicular and pedestrian access and the laying, repairing and maintaining of ordinary and necessary utility lines, poles, guys, pipes, wires and fixtures to the Lots served by the Road is hereby granted and reserved in common between and among the Lot Owners and Sponsor, and their heirs, successors and assigns and shall be used and enjoyed by Sponsor and the Lot Owners, and their respective heirs, executors, administrators, assigns, guests, invitees and licensees, including all service or emergency vehicles of any federal, state, local governmental or private agency. The easement reserved with respect to the laying, repairing, replacing and maintaining ordinary and necessary utility lines and related facilities and fixtures shall be 10 feet wide and shall follow the outside edge of the road right of way as depicted on the Site Plan. Sponsor reserves to itself and its successors and assigns an easement and right of entry upon and over such portion of the Lots as may be necessary for ordinary snowplowing and piling of snow, drainage and flowage from the Road and for construction, repair and maintenance of the Road and all other utilities as may be reasonably necessary from time to time.

1.3 It is hereby declared that the Storm System shall be established and maintained for the common use and benefit of the Lots and the Lot Owners. Until such time as the Town assumes responsibility for maintenance of the Storm System, Sponsor shall be responsible for routine repair and maintenance of the same. Sponsor hereby reserves to itself and its successors and assigns an easement and right of entry with respect to portions of the Lots in the immediate area of the Storm System as shown on the Site Plan for purposes of constructing, laying, repairing and maintaining all ditches, lines, pipes and fixtures necessary to establish, serve and maintain the Storm System, together with the right to enter upon the Lots for purposes of repairing and maintaining the Storm System and all fixtures and lines associated therewith and located thereon; provided, however, that all disturbed areas of earth in said easement area shall be graded, seeded and restored to approximately their previous condition following any exercise of the rights reserved herein by the Sponsor, or any repair or maintenance of any portion of the Storm System. The area of said easements shall be deemed to be the area immediately surrounding the Storm System and its attendant fixtures, as actually established on the ground, together with any and all reasonable additional areas which may be necessary for maintenance, repair or replacement of the same. Upon assumption of maintenance of the Storm System by the Town, the rights and easements reserved by Sponsor upon and over the Lots and the Property with respect to construction, maintenance, repair and use of the Storm System shall be transferred to and vest in the Town.

## **2. GENERAL PROTECTIVE COVENANTS**

Sponsor hereby makes the Lots and each of them subject to the following general protective covenants, which covenants shall be deemed to pertain to and run with the land of the Lots, and shall be enforceable by Sponsor and any Lot Owner by an appropriate action at law or in equity. The provisions of this Section 2 shall specifically continue in full force and effect following acceptance of the Road and the assumption of maintenance of the Storm System by the Town:

2.1 Sponsor reserves to itself, its successors and assigns, the perpetual right and easement to enter upon the Road, and the portions of the Lots adjacent to the Road identified in Paragraph 1.2 hereof and in the vicinity of the Storm System for the purpose of installing, maintaining, repairing, and/or replacing, utility and service lines and fixtures, including, but not limited to, electrical, telephone, cable television, DSL, water, sewer, drainage and similar utilities and for the purpose of maintaining slopes, ditch lines, culverts and drainage ways, together with such flowage rights across the Lots as may be required for reasonable collection and diversion of surface waters from the Road and the Storm System. However, nothing in this paragraph shall be construed as an undertaking or commitment by Sponsor to provide any such facilities or services or to contribute to the cost of providing such facilities or service to the Lots and/or Lot Owners. Any work performed in connection

with the rights of way and easements reserved in this paragraph shall be done in a careful and workmanlike manner and upon completion of the work, the terrain of any disturbed areas will be restored as closely as reasonably possible to their condition prior to the commencement of the work.

2.2 Lot Owners shall refrain from any construction of improvements on their Lots which would impair or interfere with the use of the Road, utility or drainage easements or any portion of the Storm System. All construction upon and use of the Lots shall at all times be in compliance with all state, federal and local zoning, land use, environmental and similar permits and approvals applicable to the Property.

2.3 All driveway connections from the Lots to the Road shall be constructed and installed in accordance with specifications, if any, from time to time, published by the Sponsor. Such specifications are hereby deemed to specifically include, but not be limited to, the locations and dimensions of the driveways depicted for each Lot on the Site Plan. Such construction specifications may include, but shall not be limited to, requirements for culverts, water bars, grading and landscaping.

2.4 No buildings shall be erected, altered, placed or permitted upon any Lot except for one single family residence per Lot and appurtenant out buildings, service buildings and garage. Said single family residences shall not be used for any commercial purpose, except customary home occupations as defined by 24 V.S.A. Chapter 117, provided that such customary home occupations shall be conducted and maintained entirely within the residence, and shall not involve retail distribution of products from said residence or appurtenant service buildings or garage, and that no advertising or display signs are placed on a Lot or on a vehicle parked on a Lot.

2.5 Except as provided herein, no structure of a temporary nature, partial structure, basement, trailer or other building or out building or any structure intended by the manufacturer to be readily movable from one location to another shall be used at any time as a residence or dwelling at a Lot, nor shall any temporary structure, trailer, or other movable building or out building be permitted on any Lot.

2.6 All houses on a Lot shall meet FHA standards of construction and have a minimum of seventeen hundred (1700) square feet of living area above ground, not including the garage, and all houses on a Lot shall have at least a two car garage.

2.7 All houses and garages on any Lot shall be site built (stick-built entirely at the Lot), component built (built in components at a factory utilizing the construction methods of "on site stick-built" homes, transported to the Lot and completed on site), or panelized (built in sections or panels at a factory utilizing the construction methods of "on site stick-built" homes, transported to the Lot and completed on site). Modular homes, trailers, mobile homes, double-wides and similar structures are specifically prohibited on the Lots. All house roof structures covering primary living areas and garages shall have a pitch of 5 (five) inches or greater to 12 (twelve) inches.

2.8 All exterior aspects of any building or structure erected upon a Lot shall have a finished appearance within six (6) months from the time construction or renovation begins, and shall be completed and ready for occupancy within one (1) year from commencement of construction.

2.9 No cutting of trees shall be allowed in the wooded areas depicted on the Screening Plan. Provided, however, that each Lot Owner may seek alteration of the Screening Plan as applicable to their respective Lot by requesting amendment of the Screening Plan from the District Environmental Commission. Such alterations shall be subject to the approval of Sponsor until a single family residence is completed on all of the Lots. All surface areas on Lots disturbed by construction shall be promptly returned to their natural terrain and condition except for construction of structures, lawns, gardens, and other improvements.

2.10 Except as hereinafter provided, no signs, other than a single "FOR SALE" sign of not more than six (6) square feet of surface area, may be erected or maintained on any Lot without the express written approval of the Sponsor. Each residence may display a sign, not in excess of one (1) square foot, bearing the name and street address of the resident and, if applicable, the professional title of the resident including, for example, but not limited to Doctor, Attorney, or Dentist, provided that no such sign shall be used or intended for commercial purposes except in accordance with these covenants. The Sponsor may maintain one or more signs in excess of six (6) square feet in connection with construction at the Subdivision or sale of the Lots.

2.11 No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which constitutes an annoyance or nuisance to other Lot Owners.

2.12 No inoperable cars or other vehicles, trash or refuse in uncovered containers, junk, abandoned appliances, or other unsightly or offensive objects shall be maintained on any Lot. No inoperable cars or other vehicles shall be kept or used for commercial purposes or repaired for profit at a Lot.

2.13 Recreational vehicles, camping trailers, boats or boat trailers and other similar items shall be positioned on each Lot so as not to be readily visible from the Road or adjacent Lots. All clotheslines, poles, or similar devices for drying clothes shall be located so as not to be readily visible from the Road.

2.14 No livestock or poultry of any kind shall be bred, kept or raised on any Lot, except that domestic pets may be kept at each Lot so long as they are not bred or maintained for any commercial purpose and do not constitute a nuisance to other Lot Owners.

2.15 No exterior flood lighting except for motion-sensored security lighting or direct illumination fixtures, and no high intensity halogen, mercury vapor or similar area lighting shall be permitted on any Lot.

2.16 Outdoor swimming pools shall be in-ground and permanent except that above ground pools are permitted provided they are substantially shielded from view of adjacent Lots and the Road at all times. A child's wading or play pool of a temporary nature is permitted. Swimming pool equipment shall be substantially shielded from view of adjacent Lots and the Road at all times.

2.17 Lot Owners shall at all times maintain their respective Lots, real estate, and improvements in such a manner as to prevent the Lot and improvements from becoming unsightly. Each Lot Owner shall: (a) mow and otherwise tend to the landscaped areas on the Lot as often as reasonably necessary to prevent the area from becoming unsightly; (b) remove all debris and rubbish and prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Lot; (c) keep the exterior of all structures on their respective Lot sufficiently repaired and maintained so as to avoid their becoming unsightly; and (d) cut open meadows on a Lot at least once per year.

2.18 Sponsor hereby reserves for itself, its successors or assigns, the right and easement to use, occupy or maintain any Lot or portion of the Property until sale of the same for the following purposes:

- (a) Developing, marketing and maintaining the Lots or any part or portion thereof, including but not limited to, establishment of "for sale" or similar signs and conducting open houses.
- (b) Parking, placement, or maintenance of such vehicles, equipment, materials and supplies as are necessary for the construction, development, marketing and maintenance of the Lots, the Road, the Storm System, or any part or portion of the Property.
- (c) The construction of a building or buildings to house the vehicles, equipment, materials and supplies described in subparagraph (b) of this section.

2.19 All utilities serving the Lots shall be underground. It shall be the legal and financial responsibility of each Lot Owner to extend underground utility services from the edge of the Road to the homesite on each Lot. Individual propane tanks and refuse dumpsters shall be located in a manner substantially shielding them from view of the Road and adjacent Lots.

2.20 There shall be no further subdivision of any lot except as provided in this Section 2.20. Further subdivision of a lot may only occur with the Sponsor's express written approval, and only to allow a portion of an existing lot to become part of a neighboring lot. A new lot created by a subdivision as provided herein must become part of a neighboring lot and must be conveyed as part of the neighboring lot in all subsequent conveyances of the neighboring lot. A subdivision as provided herein shall not entitle a lot owner to construct an additional residence or other structure on the subdivided lot except as otherwise allowed under these Covenants. In no event may more than twenty-five (25) single family residences be constructed on the Property. Until the initial sale of all of the Lots by the Sponsor has occurred, no lot owner may alter any lot line without the express written approval of the Sponsor; thereafter, any to adjacent lot owners may alter a lot line provided that no additional lot is created.

2.21 All Conservation Zones depicted on the Site Plan, including wetlands and their associated buffer zones, shall remain in a natural, undisturbed state. There shall be no draining, dredging, tilling, grading, dumping of yard waste or other debris and refuse, alterations to water flow or surface water levels, cutting, clearing or removal of vegetation, use of wheeled vehicles or construction of improvements within the Conservation Zones.

2.22 All residences on each Lot shall be painted or stained earth tone colors. No metal or cement block chimneys shall be permitted; no house shall be constructed with more than two stories and an attic.

2.23 No construction of a house, building, fence, exterior wall or other structure or any utility lines or fixtures shall be commenced, directed, maintained or placed on any Lot or on the Property, nor shall any addition, extension or alteration be made in connection with any such structure, building, utility line or fixture on any Lot, until the plans showing the nature, kind, shape, height, color, materials, location and all other material details of the structure or building are submitted to and approved by Sponsor. The Sponsor shall have the absolute right to refuse to approve any plans which, in its sole opinion, do not conform with the provisions or intent of these Covenants or which would not be consistent with the intended character of the Wynnridge Subdivision. In the event the Sponsor fails to approve or disapprove proposed plans within thirty days after submission, approval will have been deemed granted. Any modification in said plans subsequent to initial approval shall also require such approval by Sponsor.

2.24 All dwellings established on the Lots shall conform with the Vermont Residential Building Energy Standards (21 V.S.A. Section 256-267). All heated structures erected on any Lot shall be insulated with material having an R value of at least R-19 in the exterior walls, at least R-38 in the roof or cap and at least R-10 around the foundation or slab. No electrical resistance heating may be used as a primary heating method in any structure erected on the Lots.

2.25 All homes constructed on the Lots shall have and maintain water conserving plumbing fixtures, including, but not limited to, low flush toilets, low flow shower heads and aerator type or flow restricted faucets.

2.26 Sponsor may at any time unilaterally amend these Covenants to achieve compliance with any land use, environmental or similar permit, approval or order or any order of a court or similar tribunal of competent jurisdiction. In the event that the Lot Owners form an association of owners,

incorporated or unincorporated, anytime in the future, Sponsor may, but shall not be required to, transfer any rights reserved to the Sponsor in this Declaration to such an association.

2.27 Invalidation of any portion of these Covenants by judgment or court order shall in no way affect any of the other provisions hereof, said other provisions to remain in full force and effect. Failure to enforce any provision or term herein contained in any way particular instance or circumstances shall not constitute a waiver of the right to do so as to any other instance or circumstance. In the event that these Covenants are interpreted by a court or any tribunal of competent jurisdiction, the rule of construction which would require any ambiguity herein to be construed against the drafter hereof shall not be applied.

Dated this 17<sup>th</sup> day of June, 2003.

**DCF Development, LLC**, a Vermont  
Limited Liability Company

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Witness

By:  
its duly authorized manager

**STATE OF VERMONT**  
**COUNTY OF RUTLAND, SS:**

At Rutland, Vermont this 17<sup>th</sup> day of June, 2003, personally appeared before me Rodney S. Cioffi, the duly authorized Manager of DCF Development, LLC, and he acknowledged the foregoing instrument by him sealed and subscribed to be his free act and deed and the free act and deed of DCF Development, LLC.

Before me:

Date: \_\_\_\_\_