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DECLARATION OF CONDOMINIUM
FOR
MORNINGSIDE COMMONS

As described in a Lot and Floor Plan
recorded in the office of the Clerk of the
Town of Brattleboro, Windham County, Vermont
pursuant to Title 27, Vermont Statutes Annotated,
Section 1301, et seq. (The Condominium Ownership Act)

Name: MORNINGSIDE COMMONS
Morningside Road
Brattleboro, Vermont 05301

Sponsor: Masiello Real Estate, Inc.,
Cheshire Builders, Inc. and
Brickstone Masons, Inc.
d/b/a MCB Development Associates,
a joint venture.

Date of Declaration: February
1988

Masiello Real Estate, Inc., Cheshire Builders, Inc. and Brickstone Masons, Inc. d/b/a MCB DEVELOPMENT ASSOCIATES, a joint venture (hereinafter referred to as declarant and/or MCB Development Associates) registered to do business in Vermont, with a principal place of business at 69A Island Street, Keene, New Hampshire 03431, being the sole owner of certain real property at Morningside Road, Brattleboro, Windham County, Vermont (described in Exhibit A attached hereto), by duly executing and recording this Declaration of Condominium, does hereby submit said real property and the buildings comprising Phase II (as hereinafter defined) to the provisions of the Vermont Condominium Ownership Act, Title 27, Vermont Statutes Annotated, Sections 1302 et seq., to create a condominium subject thereto, and to that end declares as follows:

1. Name.

The name of the Condominium shall be "MORNINGSIDE COMMONS".

2. Definitions.

2.0. "Additional Phases" Buildings constructed and incorporated into the condominium by the Declarant after the date of the initial filing of this Declaration pursuant to the exercise of the Expansion Rights set forth in Section 3 hereof.

2.1 "Additional Improvements" - Improvements constructed and incorporated into the Condominium by the Declarant and incorporated into the Condominium after the date of the initial filing of this Declaration pursuant to the exercise of the Expansion Rights.

2.2 "Additional Units" - Units built by the Declarant and incorporated into the Condominium after the date of the initial filing of this Declaration pursuant to the exercise of the Expansion Rights.

2.3 "Board" or "Board of Directors" shall mean the Board of Directors of the Association.

- 2.4 "By-Laws" shall mean the By-Laws, including any Amendments thereto, of the Association.
- 2.5 "Common Elements" shall consist of the common areas and facilities as described in Section 7 of this Declaration.
- 2.6 "Common Expenses" shall mean all lawful expenditures made or incurred by or on behalf of the Association, together with all lawful assessments for the creation and maintenance of reserves pursuant to provisions of the Declaration and By-Laws.
- 2.7 "Condominium" shall mean the Land and Phase II, any subsequently annexed Phase or Phases, and all Common Elements, being that portion of the Property which has been submitted to this Declaration.
- 2.8 "Condominium Ownership Act" shall mean the provisions of Title 27, Vermont Statutes Annotated, Section 1301 et seq., and any amendments thereto.
- 2.9 "Declarant" shall refer to MCB DEVELOPMENT ASSOCIATES and its expressly so designated successors and assigns as owner of any portion of the Property.
- 2.10 "Declaration" shall mean this document and all Exhibits thereto, as amended from time to time.
- 2.11 "Eligible Holder" shall mean any holder of a first mortgage on a Unit, which Holder has requested in writing that the Association notify it with respect to Material Amendments.
- 2.12 "Expansion Easement" - The easement in gross reserved by the Declarant, for itself and its successors and assigns, in the Land and in those easement areas shown on the Lot and Site Plan attached to the Declaration as Exhibit F for the purposes set forth in Section 3.2.
- 2.13 "Expansion Rights" - The rights reserved by and for the benefit of the Declarant, and its successors and assigns, pursuant to Section 3 hereof to build, own, sell, lease or occupy Additional Units and Additional Improvements.
- 2.14 (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Federal Credit Union, and any other

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- 2.15 "Land" shall mean the real estate described in Exhibit A, exclusive of improvements erected thereon.
- 2.16 "Limited Common Area" shall mean any area exterior to a Unit which is designated for the exclusive use of owners of one or more, but not all, of the Units.
- 2.17 "Manager", "Management Agent", or "Managing Agent" shall mean a professional management agent employed by the Association to perform such duties and services as the Board of Directors shall authorize in conformance with this Declaration.
- 2.18 "Material Amendment" is defined in Exhibit E hereto.
- 2.19 "Owner" shall mean the record Owner(s), whether one or more persons or entities of the fee simple title to any Unit but, notwithstanding any applicable theory of a mortgage, shall not mean or refer to a mortgage unless and until such mortgagee has acquired title pursuant to foreclosure proceedings or any procedure in lieu of foreclosure. The term "Owner" shall not refer to any Lessee or Tenant of an Owner.
- 2.20 "Phase" shall mean the buildings on a portion of the Property so designated on a plan or plans recorded in the office of the Town Clerk of the Town of Brattleboro and consisting of a number of Units

intended to be developed and/or annexed to the Condominium as an entity.

- 2.21 "Plan" or "Plans" shall refer to lot and floor plans of the Property recorded with the Town Clerk's Office of the Town of Brattleboro and any duly recorded revisions or additions thereto.
- 2.22 "Property" shall mean the real estate described in Exhibit A attached hereto, with all improvements now or hereafter erected thereon.
- 2.23 Restatement" - The incorporating of Additional Buildings, Additional Units and Additional Improvements into the Condominium pursuant to Section 3.2, of this Declaration. A Restatement is not an amendment to the Declaration pursuant to Section 10 of this Declaration.

2.24 "Rules and Regulations" shall mean the provisions and limitations promulgated from time to time by the Board governing use of Common Elements and Units in accordance with the By-Laws.

2.25 "Unit" shall mean a part of the Property intended for independent use as a residence, and shall be construed to be equivalent to the term "Apartment" as used in the Condominium Ownership Act.

3. Description of Condominium and Expansion Rights

3.1 Description of Condominium. The full completed Condominium will consist of five (5) phases, which are designated as Phases I - V on the Plans. Phase II is submitted to this Declaration upon recording, which, together with the entire land, shall comprise the initial condominium ultimately, there is contemplated to be a total of one hundred sixty-six (166) Units. The Phases will be completed one at a time. Declarant reserves the right to develop the phases in any order. As Additional Units are substantially completed in each Additional Phase, those Units will be added to the Condominium by the Declarant executing and filing in the Town of Brattleboro Land Records an appropriate Restatement to this Declaration in the form substantially as set forth in Exhibit D. As Additional Units are added to the Condominium, the percentage interest in the Common areas and Facilities appurtenant to the existing Units will be reallocated as set forth in Exhibit C.

The Declarant intends to build as amenities a swimming pool and tennis courts on the Land, which will be completed as part of Phase I and II. They will be a part of the Common Elements upon substantial completion thereof.

Section 3.2. Reservation of Expansion Rights and Expansion Easements. The Declarant for itself, and its successors and assigns, hereby reserves Expansion Rights and Expansion Easements consisting of the following:

(i) an expansion easement to construct, own and sell up to a total of 166 Additional Units in up to 4 Additional Phases in the locations depicted on Exhibit F.

(ii) an expansion easement to construct Additional Improvements including, but not limited to, driveways, walkways, parking areas, street lighting, utilities, landscaping and any other improvements necessary or convenient, to be constructed or installed in connection with the development of the Additional Units.

(iii) an easement to enter upon and leave so much of the Land as is not directly under an existing Building for persons, vehicles and equipment as is necessary or convenient for construction of the Additional Buildings, Additional Units and Additional Improvements including the right to store equipment, materials and supplies thereon.

(iv) the right to grant, as appurtenant to Additional Units, all of the rights and easements granted by this Declaration, or any amendment thereto, to the existing Units.

(v) the right to grant easements through, under, over and across the Property for utilities servicing the Additional Units including, but not limited to, sewer, water, drainage, gas, electricity, telephone and cable television lines and appurtenances.

(vi) upon the substantial completion of the Additional Units within each Additional Building, the absolute and exclusive right to restate this Declaration to incorporate such Additional Units, the Additional Building in which Additional Units are located, and any Additional Improvements in the Condominium; to revise Exhibits D and F to reflect the "as built" Additional Units, buildings and improvements; and to revise Exhibit C to reflect the reallocated percentage interest of each then existing Unit in the Common Areas and Facilities. Any restatement to this Declaration pursuant to this provision may refer to and incorporate by reference any or all of the provisions of this Declaration. Upon acceptance and recording of a deed to a Unit, the Owner of the Unit hereby irrevocably consents to the filing of restatements pursuant to this provisions, and upon acceptance and recording of a mortgage or other encumbrances on a Unit, the First Mortgage or other lien holder irrevocably consents to the filing of Restatements pursuant to this provision.

Section 3.3. Noninterference. The Expansion Rights and Expansion Easements cannot be utilized in such a fashion as to unreasonably interfere with the existing Units and the ability of the Owners thereof to enjoy all of the rights granted to them under this Declaration. Should any portion of the Property be damaged by the Declarant, or its successors and assigns, in exercising the Expansion Rights and Expansion Easements, such Property shall be promptly restored to its original condition.

Section 3.4. Ownership of Additional Units. Additional Units, and the percentage of interests in the Common Areas and Facilities appurtenant thereto, shall be owned by the Declarant, or his heirs, successors and assigns, in fee simple and may be conveyed, mortgaged or otherwise transferred by the Declarant.

Section 3.5. Ownership of Additional Improvements. The incorporation into the Condominium of Additional Improvements without the simultaneous incorporation into the Condominium of Additional Units shall not result in any reallocation of the percentage interests of the Common Areas and Facilities appurtenant to existing Units.

Section 3.6. Transfer for Expansion Rights and Expansion Easements. Until expiration of the Expansion Rights and Expansion Easements, such rights and easements may be conveyed, assigned, mortgaged, hypothecated or otherwise transferred by the Declarant.

Section 3.7. Termination of Expansion Rights and Expansion Easements. The Expansion Rights and Expansion Easements set forth in this Article shall expire on the first to occur of (i) date on which the total of one hundred sixty-six Units have been incorporated into the Condominium or (i) ten years from the date of this Declaration.

Section 3.8. Declarant's Obligations to Exercise Expansion Rights and Easements. The Declarant shall be under no obligation to exercise any, or all of the Expansion Rights and Easements, reserved by it in this Article.

4. Description of Land.

See Exhibit A attached hereto and incorporated herein by reference.

5. Description of Buildings.

When all Phases are fully constructed, the Property will consist of 166 Units of attached, single-family housing, which will include 36 Units in semi-attached building and 130 town house Units in 14 buildings. All buildings will be two stories high, will contain no basements, and will be constructed of wood on concrete foundations. All buildings will be constructed with an R-value of a least R-38 in the roof or cap, R-10 under the slab perimeter, and R-19 in the exterior walls. Windows will have an R-value of a least R-3.

6. Description of Units.

The designation of each Unit, a statement of its location, approximate area, number of rooms, the immediate common areas to which it has access, and the carport or parking space or spaces and other limited common areas designated for the exclusive use of its Owner, are set forth on Exhibit B attached hereto.

The boundaries of the Units with respect to the floors, ceilings and walls thereof are as follows:

- (a) Floors: The upper surface of the unfinished 11C5,Mg.
- (b) Ceilings: The plane of the lower surface of the ceiling dry wall or plaster.
- (c) Interior Building Walls between Units: The plane of the interior surface of *the dry wall, sheetrock, or plaster.*
- (d) Exterior Building Walls, Doors and Windows: As to exterior builaing walls, the plane of the interior surface of the dry wall, sheetrock, or plaster; as to doors, the exterior surface thereof; as to windows, the exterior surface of the glass, the window sashes and frames.

Each Unit shall have appurtenant thereto the exclusive right and easement, exercisable subject to and in accordance with the provisions of the By-Laws and the rules and regulations promulgated pursuant thereto, to use (a) the carports and parking space or spaces designated on Exhibit B annexed hereto and shown to the Plans, and (b) such other limited Commons Areas as are designated for the use of such Unit on Exhibit B.

7. Description of Common Elements.

The Common Elements consist of the entire Condominium, other than the Units, and include, without limitation, the following:

- (a) The Land;
- (b) All foundations, columns, girders, beams, supports, walls roofs, halls, corridors, lobbies, stairs and stairways, fire escapes, and entrances and exists of the building, except any such elements contained within a Unit;
- (c) All lawns, gardens, walkways, driveways, tennis courts, swimming pools, parking areas, and other improved and unimproved areas not within the Units;
- (d) All sewer and drainage pipes, and all conduits, wires, ducts, flues, plumbing, cables, public utility lines, and other such facilities wherever located which serve the Units, including, without limitation, the following:
 - (i) All sewer lines from Manhole 3 of the Town of Brattleboro through the Condominium, except those solely serving Morningside Emergency Center.
 - (ii) All water lines from South Main Street throughout the Condominium except those solely serving Morningside Emergency Shelter.
 - (iii) All stormwater lines and systems throughout the Condominium to the point of connection with the collector line of the Town of Brattleboro existing prior to construction of the Condominium.
- (e) The common heating, hot water, and air conditioning systems, and all other apparatus and installations existing in the buildings for common use, or necessary or convenient to the existence, maintenance, or safety of the building;

(0 Premises, if any, for the

lodging of janitors or persons in charge of the Property;

(g) All cleaning and maintenance supplies and equipment and other personal property owned by the Association.

Limited common areas are part of the Common Elements for purposes of maintenance, repair and insurance. The limited common areas appurtenant to each unit are set forth in Exhibit B.

8. Lot and Floor Plans.

Simultaneously with the recording hereof there has been recorded a lot plan and a set of the floor plans of the buildings, showing the layout, location, Unit numbers and dimensions of the Units, stating the name of the buildings, bearing the verified statements of a registered architect or

engineer certifying that it is an accurate copy of portions of

the plans of the buildings as filed with and approved by the Town of Brattleboro, Vermont.

9. Use of the Units.

(a) The buildings and each of the Units are intended only for residential purposes. No use may be made of any Unit except as a residence for the Owner thereof or his or her permitted lessees and the members of their immediate families and for a professional office for the Owner incidental to such residential use, subject to applicable zoning and other governmental regulation, provided that the Declarant may until all of such Units have been sold by said Declarant use any Units owned by the Declarant as rental offices, as models for display and for similar purposes related to the sale or leasing of Units.

(b) The architectural and structural integrity of the building and the Units shall be preserved without modification, and to that end, without limiting the

generality of the foregoing, no awning, screen, antenna, sign, banner or other device, and no exterior or structural change, addition, projection, decoration or other feature shall be erected or placed upon or attached to any such Unit or any part thereof; no addition to or change or replacement (except, so far as practicable, with identical kind) of any exterior light, door knocker or other exterior hardware, exterior door, or door frames shall be made, and no painting or other decoration shall be done on any exterior part or surface of any Unit nor on the interior surface of any window, but this subparagraph (b) shall not restrict the right of a Unit Owner to decorate the interior of his or her Unit as such Owner may desire, and to place such furnishings, planters, potted plants, trellises and the like as are appropriate in the limited Common Areas appurtenant to such Owner's Unit.

- (c) No Unit shall be used or maintained in a manner contrary to or inconsistent with the By-Laws. Said restrictions shall be for the benefit of the Owners of all of the Units and the Association and shall be enforceable by the Board and shall, insofar as permitted by law, be perpetual; and to that end may be extended at such time or times and in such manner as permitted or required by law for the continued enforceability thereof. No Unit Owner shall be liable for any breach of the provisions of this paragraph except such as occur during his or her ownership thereof.
- (d) All water-conserving fixtures originally installed in the Units shall be kept in proper working order or replaced as necessary with similar fixtures, which must operate within the following specifications:
 - (i) maximum internal system water pressure of 50 psi;
 - (ii) toilets with a maximum of 3.5 gallons per flush;
 - (iii) showerheads operating with a maximum of 3 gallons per minute; and
 - (iv) faucets on sinks and lavatories operating at a maximum of 3 gallons per minute.

10. Amendments To Declaration And By-Laws

- (a) Proposal of Amendments: Amendments to the Declarations and By-taws may be proposed only by the Board or by petition signed by Unit Owners representing at least

25% of the voting interests. A description of any proposed amendment shall accompany the notice of any regular or special meeting at which such proposed amendment is to be voted upon.

(b) Method of Amendment: Except in cases for which the declaration provides different methods of amendment or requires a larger majority, the Declaration and By-Laws may be amended only by the agreement of Owners representing at least 67% of the voting interests. No Material Amendment shall become effective without written approval of the number of eligible holders required by Section 11 hereof. Notwithstanding the foregoing, no amendment which alters any exterior boundary of any Unit for which a certificate of occupancy has been issued, which permanently revokes a Unit Owner's right of enjoyment of the Common Elements, and/or permanently affects a Unit Owner's right to vote or, obligation to pay Assessments, shall be effective without the written assent of that Unit Owner and any eligible holder of a mortgage or his or her Unit (except in the case of termination of the legal status of the condominium or annexation in accordance with the original Declaration; and no amendment shall become effective which limits the rights granted to the Declarant by this Declaration or by the By-Laws, without the concurrence of the Declarant to such amendment.

(c) Approval of Amendments Required by FNMA, FHLMC, PMIs, VA. The Declaration and By-Laws may be amended by the Declarant for so long as it shall retain control of the Association and thereafter by affirmative vote of a majority of the Board of Directors of the Association at any regular or special meeting without further action of the Unit owners or mortgagees where such amendment is necessary in order to comply with the requirements of the Federal National Mortgage Association (hereinafter "Fannie Mae" or "FNMA"), the Federal Home Loan Mortgage Corporation (hereinafter "Freddie Mac" or "FHLMC"), Private Mortgage Insurers (hereinafter "PMI's"), the Veterans Administration (hereinafter the "VA"), the State of Vermont, the Vermont Condominium Ownership Act or the Town of Brattleboro. The Declarant for so long as it shall maintain control and thereafter by the Board of Directors is hereby designated as attorney-in-fact for all of the Unit owners and mortgagees to adopt such amendments and to authorize one or more of the officers of the Association to execute any and all documents necessary and proper to accomplish such amendment.

PROVIDED, HOWEVER, that where such an amendment in any way reduces the significant rights granted to any Institutional First Mortgagee by the Declaration or By-Laws, the concurrence of all such affected Institutional First Mortgagees to such amendment shall be required.

FURTHER PROVIDED, that where such an amendment in any way reduces the rights granted to the Declarant by the Declaration or the By-Laws, the concurrence of the Declarant to such amendment shall be required.

- (d) Individual's Consent. Subject to the Expansion Rights and Expansion Easements pursuant to Paragraph 3, no amendment which alters the dimensions of any Unit or which alters the percentage of the Common Element Interest to which any Unit is entitled or the Limited Common Elements appurtenant to a Unit shall be valid unless the same has been signed or consented to by the Unit owner so affected.

11. Rights Related to Mortgagees:

- (a) Any holder, insurer, or guarantor of a mortgage on a Unit, upon written request to the Board or the Association identifying its name and address and the Unit number or address, will be entitled to timely written notice of:

i. Any condemnation or casualty loss which affects a material portion of the Condominium or any Unit securing its mortgage;

ii. Any delinquency in the payment of assessments or charges owed by an Owner of a Unit securing its mortgage which remains uncured for a period of sixty (60) days;

iii. Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association:

iv. Any proposed Material Amendment.

- (b) Unless a higher percentage is required elsewhere in this Declaration, the consent of at least sixty-seven percent (67%) of Unit Owners, and the approval of at least fifty-one percent (51%) of eligible holders, shall be required to approve any Material Amendments, except that any termination, by act or omission, of the legal status

of the Association or Condominium in the absence of substantial destruction or a substantial taking in condemnation must be approved by at least seventy-five percent (75%) in interest of the Unit Owners and by at least sixty-seven percent (67%) of eligible holders.

An eligible holder who receives a written request to approve an amendment who does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

- (c) All taxes, assessments, and charges which may become liens prior to a first mortgage on any Unit under local law shall relate only to the individual Unit and the percentage of undivided interest to the Common Elements and facilities appurtenant to the Unit.
- (d) Except as required by Law, no notice or approval hereunder shall be necessary prior to filing any Annexation Amendment annexing Phases II-V in accordance with the original terms of this Declaration.

12. Managing Entity.

(a) The Association has been formed as an unincorporated association of Unit Owners through which the Unit Owners will manage and regulate the Condominium and has enacted By-Laws. The Association, acting through its Board of Directors, shall have such powers and duties as are set forth in the By-Laws, including, without limitation, a reasonable right of entry on any Unit to perform emergency repairs or to do other work reasonably necessary for the proper maintenance of the Condominium, and the right to grant permits, licenses and easements over the Common Elements for utilities, roads, and other purposes necessary to the proper operation of the Condominium.

(b) Notwithstanding anything in this Declaration or the By-Laws to the contrary, Declarant shall have sole and exclusive control over all the affairs and other matters of the Association and shall have the sole and exclusive right to appoint all officers and directors of the Association, until the earliest to occur of the following:

- i. Four months after the Declarant conveys out Units representing at least 75% of the voting interests in the Association, exclusive of conveyances to entities related to or affiliated with the Declarant;
- ii. Five years after the first Unit is conveyed;

or. -14-

iii. Declarant's election to transfer control to the Association. Thereafter, for as long as Declarant has any ownership interest in the Condominium, it shall continue to have the right to appoint one member of the Board of Directors.

(c) The initial members of the Board of Directors shall be: A. Ranger Curran, Jr., James Phippard, and David A. Dubriske, c/o MCB DEVELOPMENT ASSOCIATES, 225 Main Street, Brattleboro, Vermont 05301.

13. Assessments.

The Board of Directors shall have the authority and duty to levy and enforce the collection of general and special Assessments for common expenses, and to pursue remedies for failure of any Unit Owner to pay such Assessments, in accordance with provisions therefor set out in the By-Laws enacted hereunder and as from time to time amended. Within each Phase, assessments payable at the full monthly rate shall commence and become payable for sold Units upon the conveyance of the first Unit to be sold. Full Assessments shall become payable for unsold Units within such Phase 60 days after the first Unit is sold. During the initial 60-day period, any unsold and unoccupied Units shall be assessed at such reasonably reduced rate as the Board shall determine.

14. Liens and Liabilities.

Assessments for Common Expenses or other charges, with interest, costs, and reasonable attorney's fees, shall become a lien of the Association upon the Unit of any Unit Owner who fails to pay such Assessments when due, and shall also be a

personal liability of such Owner to the Association. Any such lien, including any fees, late charges, fines, or interest pertaining thereto, shall be subordinated to any first mortgage on such Unit recorded on or before the date when such Assessment became due.

15. Determination of Percentages in Common Elements. The percentages of interest of the respective Units in the Common Elements have been determined upon the basis of the approximate relation which the fair market value of each Unit will bear to the fair market value of the entire Condominium upon the completion of construction of Phase II. The estimated fair market value of each Unit and the Condominium, and the percentage of undivided interest in the Common Elements appertaining to each Unit and its Owner for all purposes, including voting, is set forth in Exhibit C hereto.

16. Encroachments.

If any portion of the Common Elements now encroaches upon any Unit, or if any Unit now encroaches upon any other Unit or upon any portion of the Common Elements, or if any such encroachment shall occur hereafter as a result of (a) settling of the building, (b) alternation or repair of the Common Elements made by or with the consent of the Board of Directors, (c) repair or restoration of the building or a Unit after damage by fire or other casualty, or (d) condemnation or eminent domain proceedings, a valid easement shall exist for such encroachment and for the maintenance of the same so long as the building stands.

17. Pipes, Wires, Flues, Ducts, Cables, Conduits, Public Utility Lines, and Other Common Elements Located Inside of Units.

Each Unit Owner shall have an easement in common with the flues, cables, conduits, public utility lines and other Common Elements located in such other Units or elsewhere in the Condominium and serving his Unit. Each Unit shall be subject to an easement in favor of the Owner of the other Units to use the pipes, wires, ducts, flues, cables, conduits, public utility lines and other Common Elements serving such other Units and located in such Units, to inspect the same, to remove violations therefrom, and to maintain, repair or replace the Common Elements contained therein or elsewhere in the building.

18. Repair or Reconstruction After Fire or Other Casualty.

(a) In the event of damage to, or destruction of, the Condominium as a result of fire or other casualty, the Board shall promptly adjust the loss and arrange for the repair and restoration of the Units and Common Elements (including limited common areas) damaged or destroyed (but not furniture, furnishings, or other personal property installed by Unit Owners). The Board shall disburse the proceeds of all insurance policies to contractors engaged in such repair and restoration in appropriate progress payments. If the insurance proceeds are not sufficient to cover the cost of repairs to the Common Elements and the Units, the proceeds will be first allocated to the cost of repairs to the Common Elements and the balance, if any, to the cost of repairs to the respective Units as determined by the insurer or by independent appraisal. To the extent the proceeds as aforesaid are insufficient to cover the cost of repairs to the Common Elements, the balance of the cost of such repairs will be assessed against all Unit Owners as a common expense. To the extent the proceeds allocated as aforesaid are insufficient to cover the cost of repairs to the Units, the balance of the cost of such repairs to each Unit will be borne by the respective Unit Owner.

(b) If there shall have been a repair or restoration pursuant to the first paragraph of this Section 18, and the amount of insurance proceeds exceeds the cost of such repair or

restoration, then the excess of such insurance proceeds, if any, shall be added to the Association's reserve funds or, at the option of the Board, be divided among the Unit Owners and their mortgages, as their interests in the Common Elements after first paying out of the share due each Unit Owner such amounts as may be required to reduce unpaid liens on such Unit in the order of priority of such liens. Such distribution to Unit Owners shall include payment directly to a Unit Owner's mortgagee if the mortgagee so requires.

(c) Notwithstanding the foregoing, in the event that seventy-five percent (75%) of the buildings comprising Morningside Commons are destroyed or substantially damaged, and if the insurance proceeds are insufficient to repair, restore, or reconstruct such damage, the Board of Directors, shall, within ninety (90) days after such destruction, take a vote of all Unit Owners on the question of whether such damage should be repaired, restored, or reconstructed. If three-quarters of the Owners vote to repair or restore such damage, the Board of Directors shall direct the repair or restoration of the buildings using the proceeds of insurance for that purpose and all Units Owners shall be liable for assessment of any deficiency. If, within 90 days of the date of damage or destruction to the property, the required vote to repair, restore, or reconstruct the buildings is not obtained, the Board of Directors shall record a notice setting forth such facts, and upon the recording of such notice:

- (i) The Condominium shall be considered to be owned in common by the Unit Owners;
- (ii) The undivided interest in the Condominium which shall appertain to each Unit Owner shall be the percentage of undivided interest previously owned by the Unit Owner in the Common Elements;
- (iii) Any liens affecting any of the Units shall be considered to be transferred in accordance with the existing priorities to the percentage of the undivided interest of the Owner of that Unit in the Condominium as provided herein; and
- (iv) The Condominium shall be subject to an action to partition at the suit of any Unit Owner, in which event the net proceeds of a sale, together with the net proceeds of the insurance on the Condominium and Common Elements, if any, shall be considered as one fund and shall be divided among all the Unit Owners in a percentage equal to the percentage

of undivided interest owned by each Owner in the Condominium, after first paying out of the respective shares of the Unit Owners, to the extent sufficient for the purpose, all liens on the undivided interest in the Condominium owned by each Unit Owner.

19. Termination and Dissolution.

- (a) All of the Unit Owners may remove the Condominium from the provisions of the Condominium Act by an instrument to that effect, duly recorded, if the Holders of all liens affecting any of the Units consent thereto or agree, in either case by instruments duly recorded, that their liens be transferred to the percentage of the undivided interest of the Unit Owner in the Property as herein provided.
- (b) Upon removal of the Condominium from the provisions this Chapter, all of the Property which had been included in the Condominium shall be considered to be owned in common by the Unit Owners. The undivided interest in the said Property which shall appertain to each Unit Owner shall be the percentage of undivided interest previously owned by the Owner in the Common Elements.

20. Units Subject to Declaration, Unit Deed, By-Laws and Rules and Regulations.

All present and future owners, tenants, visitors, and occupants of Units shall be subject to, and shall comply with, the provisions of this Declaration, the applicable Unit Deed, the By-Laws and the rules and regulations thereunder, as they may be amended from time to time. The acceptance of a deed or conveyance or the entering into occupancy of any Unit shall constitute an agreement that (a) the provisions of this Declaration, the applicable Unit Deed, the By-Laws and the rules and regulations, as they may be amended from time to time, are accepted and ratified by such owner, tenant, visitor, or

occupant, and all of such provisions shall be covenants running with the land and shall bind any persona having at any time any interest in such Unit, as though such provisions were recited and stipulated at length in each deed. or other conveyance or lease thereof; and (b) the Unit Owner thereby appoints the Association such Unit Owner's attorney-in-fact for purposes of:

- (i) representation in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of any part of the Common Elements; and
- (ii) purchasing and maintaining (in the name of the Board of Directors as Insurance Trustee) property, liability, and other insurance covering the Common Elements, including the collection and appropriate disposition of the proceeds of such policies, the negotiation of losses and execution of releases of liability, the execution of documents, and the performance of all other acts necessary to accomplish such purpose.. The Board of Directors shall have exclusive authority to negotiate losses under any property or liability insurance policy covering the Common Elements.

21. Reservation of Rights.

In addition and not in limitation to other rights granted or reserved, Declarant, for itself, its successors and assigns, reserves the right to complete the Condominium as specified in this Declaration and the Exhibits hereto as, in the reasonable exercise of its discretion, it deems in the best

interest of the entire Condominium without regard to the relative location of any portion within the overall plan. Declarant shall not be required to follow any predetermined sequence or order of improvement and development. In addition, Declarant reserves the right to grant easements for utility services and such other easements as it shall deem appropriate and reasonably necessary for the successful completion and maintenance of the Condominium. So long as the value of the Condominium and the rights of Owners of Units already sold are not adversely affected, Declarant shall have the right to change the design and materials used in the construction of remaining Units until all Units are substantially completed and sold.

22. Invalidity and Conflicts.

The invalidity of any provision of this Declaration shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this Declaration and in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein. This Declaration is set forth to comply with the requirements of the Condominium Act as in effect upon the date of execution of this Declaration and any future amendments thereto which are specifically made retroactive in application. In case any of the provisions stated above conflict with the provisions of said statute, the provisions of said statute shall control.

23. Waiver.

No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

24. The Agent for Service of Process For the Association.

The agent for service of process for the Association is: MCB DEVELOPMENT ASSOCIATES, 255 Main Street, Brattleboro, Vermont 05301.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed this "7⁵⁴ day of February, 1988.

WITNESS: .

MCB DEVELOPMENT ASSOCIATES

a Joint Venture of
Masiello Real Estate, Inc.
Cheshire Builders, Inc.
Brickstone Ma Inc.

534408

_____ txAta r--8.

MASIELLO REAL ESTATE, INC.

By: 
Duly Authorized Agent

Ellen M. Dobby
Witness

CHESHIRE BUILDERS, INC.

By: Jay
Duly Authorized

Rosa C. Pratt
Witness

Ellen M. Dobby
Witness

BRICKSTONE MASONS, INC.

By: James P. Pratt
Duly Authorized

Rosa C. Pratt
Witness

Lisa D Bloch
Witness to both Huffmans

Albert C Huffman
Albert Huff ~~man~~

J.M. Eddy
Witness to both Huffmans

.(4224t/Amititmq4i

J.M. Eddy
Witness to both Elricks

Se E r cr i **J**attWn-
ROBIN LARICK

Lisa D Bloch
Witness to both Elricks

eE2273 .

William Jackson
Witness

e4L430- EttAr^{1/2}
CHESHIRE COUNTY SAVIN BANK

Ellen M. Dooly
Witness

By: Lee M. Dooly
His duly aut or zed iiiNt

710Jcr N Lt4(DA)Witness

James H. Dooly
Jam aton

STATE OF NEW HAMPSHIRE
CHESHIRE COUNTY, SS.

Then personally
appeared MASIELLO REAL
ESTATE, INC. by Christopher J. Masiello and he acknowledged this
instrument to be his free act and deed and the free act and deed
of MASIELLO REAL ESTATE, INC., this, q5"nday of ./E:ebn4d, 1988.
Before me, alltinaitte Notary
Public

F.ty reirini<TAn notabentst291

STATE OF NEW HAMPSHIRE
CHESHIRE COUNTY, SS.

Then personally appeared CHESHIRE BUILDERS, INC. By Gary W. Phippard and he acknowledged this instrument to be his free act and deed and the free act and deed of CHESHIRE BUILDERS, INC., this 15⁴⁻⁶ day of February, 1988.

Before me, _____
Notary Public

My commission Expires November 12 1991

STATE OF NEW HAMPSHIRE
CHESHIRE COUNTY, SS.

Then ~~personally~~ appeared BRICKSTONE MASONS, INC. by R. Phippard and he acknowledged this instrument to be his free act and deed and the free act and deed of BRICKSTONE MASONS, INC., this 16th day of April, 1988.

Before me, t. J. 7mA:ce.
Notary Public

commission expires hr 12, IS%

STATE OF VERMONT
WINDHAM COUNTY, SS.

Then personally appeared Albert C. Huffman, Jr. and Cynthia A. Huffman and they acknowledged this instrument to be their free act and deed this 12th day of June, 1988.

Before me, _____
Notary Public

Ny " 1.55 (on etr.03
Fejortory 10, Mit

STATE OF VERMONT
WINDHAM COUNTY, SS.

Then personally appeared Stephen A. Elrick and Robin A. Elrick and they acknowledged this instrument to be their free act and deed this 16th day of February, 1988.

Before me, _____
Notary Public

 Ay
Folarw..ry 10, Lill

STATE OF NEW HAMPSHIRE
CHESHIRE COUNTY, SS.

Then personally appeared "j,i:142:41-.9 , duly
Authorized Agent of Cheshire County Savings Bank and he
acknowledged this instrument to be his free act and deed and the
fregg act and deed of Cheshire County Savings Bank this 10¹⁶ day
of , 1988.

Before me, Arv) irmAt
Notary Public

STATE OF VERMONT
WINDHAM COUNTY, SS.

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JoliamoN loritcbq •Kissrowea Art

Then personally appeared Jack Heaton and he ackn6, (led d
this instrument to be his free act and deed this 1r
of .../ , 1988.

Before me, //(e) ---)

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EXHIBIT A
The Land

A certain parcel of land in the Town of Brattleboro, County of Windham and State of Vermont, being all and the same lands premises conveyed to MCB Development Associates by Warranty Deed of Snowfall, Inc., dated July 9, 1987 and recorded July 13, 1987 in the Land Records of the Town of Brattleboro in Book 200 at Page 236 described as follows:

PARCEL ONE: Being all and the same lands and premises conveyed to Snowfall, Inc. by Warranty Deed of Morningside Cemetery of Brattleboro, Inc. dated December 15, 1986 in the Land Records of the Town of Brattleboro in Book 194 at Page 170 and therein described as follows:

"Being a portion of the same land and premises conveyed to the Grantor herein by Quit Claim Deed of Morningside Cemetery Associated, dated 11 February 1977 in Book 151, Page 406 of the Brattleboro Land Records and more particularly described as Parcel 1.

"Being a parcel of land containing 5.46 acres more or less located westerly of Morningside Street and southwesterly of Vernon Street in Brattleboro, Vermont dated April, 1980, prepared by New England Aerial Survey and Mapping, Inc.

"Together with a right-of-way and easement of sufficient width to allow construction, maintenance and repair of a sewer line running from parcel 1 southeasterly to the northerly terminus of the sewer main located on the easterly portion of Parcel 3 shown on the aforementioned plan. The exact location of the sewer line right-of-way and easement shall be established by Grantee with written approval by Morningside Cemetery Association (not to be unreasonably withheld) by survey which shall be provided and paid for by Grantee; provided, however, that the location of the sewer line shall not unreasonably interfere with or impair the future use and development of Parcel 3 and the sewer line, once constructed, shall be available to the owner of Parcel 3 when and if development occurs on Parcel 3. In the event of that the owner

of Parcel 3 utilizes the sewer line constructed by Grantee, the developer of Parcel 3 shall reimburse Grantee pro rata for one-half of the per-foot cost of the sewer line from the point of the Parcel 3 connection to the existing Brattleboro sewer main.

"Together with the right-of-way and easement of sufficient width to allow construction, maintenance and repair of a water line running from South Main Street southeasterly, and then turning northeasterly to parcel 1. The exact location of the water line right-of-way and easement shall be established by Grantee, subject to written approval by Morningside Cemetery Association, which approval shall not be unreasonably withheld; provided, however, that the location of the water line shall not unreasonably interfere with or impair the future use and development of the Parcel 2 and the water line, once constructed, shall be available to the owner of Parcel 1 and 3 when and if development occurs on Parcels 1 and 3. In the event that the owner of Parcel 1 and 3 utilize the water line constructed by Grantee, the developer of the Parcel utilizing the water line shall reimburse Grantee pro rata for one half of per-foot coat of the water line from the point of connection to South Main Street.

"Parcel 1 is subject to an existing sewer line easement and an electric and telephone utility easement as shown on the aforesaid plan.

"The within conveyed premises are SUBJECT TO any right or easements which may exist of record or in fact.

PARCEL TWO: Being all and the same lands and premises conveyed to Snowfall, Inc. by Warranty Deed of Morningside Cemetery of Brattleboro, Inc. dated December 15, 1986 and recorded December 15, 1986 in the Land Records of the Town of Brattleboro in Book 194 at Page 174 and therein described as follows:

"Being a portion of the same land and premises conveyed to the Grantor herein by Quit Claim deed of Morningside Cemetery Association, dated 11 February 1977 and recorded 28 June 1977 in Book 151, Page 406 of the Brattleboro Land Records and more particularly described as Parcel 2.

"Being Parcel 2 as shown on a Plan entitled "Property of Morningside Cemetery of Brattleboro, Inc.: Brattleboro, Vermont dated April, 1980, prepared by New England Aerial Survey and Mapping, Inc., consisting of 4.34 acres lying westerly of Morningside Street and southwesterly of Parcel 1 as shown on the above described plan.

"Together with a right-of-way and easement in common with others over and upon a strip of land fifty feet in width, the center line of which shall be the center of the existing

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private roadway running in a southeasterly direction across the parcel shown on the aforesaid land lying westerly of Parcel 2; thence northerly to the southern most end of the Town Highway known as Morningside Street.

"The purpose of the right-of-way is to provide such access as Grantee may reasonably require for the development and use of Parcel 2, including, without limitation, vehicular, pedestrian and utility access to Parcel 2 via South Main Street. Upon execution of this agreement, Grantee shall, at Grantee's own cost and expense, improve the right-of-way. At the same time, the Grantee shall provide a gate of construction approved by Morningside Cemetery Association (not to be unreasonably withheld) to the Cemetery at the southeastern moat point of the right of way at a location determined by Morningside Cemetery Association. At Grantee's and Morningside Cemetery Association's election, the right of way may be improved to Town Highway standards and dedicated to the Town of Brattleboro as a town highway; in the event of dedication of the right-of-way as a town highway, Morningside Cemetery Association and Grantee shall execute and deliver such documents as may be reasonably required to accomplish the dedication.

Said Parcel 2 is conveyed subject to a right of way and easement, as currently exists and is shown on the attached plan, for access to the "Doolittle" parcel for maintenance and repair of the parcel, and for "memorial" visits, as reserved by Morningside Cemetery Association in its deed to Grantor.

PARCEL THREE: Being all and the same lands and premises conveyed to Snowfall, Inc. by Warranty Deed of Morningside Cemetery of Brattleboro, Inc. dated December 15, 1986 and recorded December 15, 1986 in the Land Records of the Town of Brattleboro in Book 194 at Page 177 and therein described as follows:

"Being a portion of the same land and premises conveyed to the Grantor herein by Quit Claim deed of Morningside Cemetery Association, dated 11 February 1977 and recorded 29 June 1977 in Book 151, Page 406 of the Brattleboro Land Records and more particularly described as Parcel 3.

"Being Parcel 3 as shown on a Plan entitled "Property of Morningside Cemetery of Brattleboro, Inc.: Brattleboro, Vermont dated April, 1980, prepared by New England Aerial Survey and Mapping, Inc., consisting of 15.64 acres lying westerly of Vernon Street, easterly of Morningside Street and northerly of land retained by Morningside Cemetery.

"Together with a right-of-way and easement in common with others over and upon a strip of land fifty feet in width,



the center line of which shall be the center line of the existing private roadway in a southeasterly direction across the parcel shown on the aforesaid land lying westerly of Parcel 2; thence turning easterly across the parcel of land lying southerly of Parcel 2; thence northerly to the southern most end of the Town Highway known as Morningside Street.

'The purpose of the right-of-way is to provide such access as Grantee may reasonably require of the development and use of Parcel 3, including, without limitation, vehicular, pedestrian and utility access to Parcel 3 via South Main Street. Grantee shall improve, at Grantee's expense, the right-of-way and shall provide a gate approved by Morningside Cemetery Association (not to be unreasonably withheld) at the southeastern most point of the right-of-way at a location determined by Morningside Cemetery Association to provide limited access to the remaining property of Seller, Grantee shall also, at its expense, move the two stone gate posts to locations designated by Morningside Cemetery Association. At Grantee's and Morningside Cemetery Association's election, the right-of-way may be improved to Town Highway standards and dedicated to the Town of Brattleboro as a town highway; in the event of dedication of the right-of-way as a town highway, Morningside Cemetery Association and Grantee shall execute and deliver such documents as may be reasonably required to accomplish the dedication.

"Together with a right-of-way and easement of sufficient width to allow construction, maintenance and repair of a water line running from South Main Street southeasterly across Parcel 2 to the southwesterly line of Parcel 3. The exact location of the water line right-of-way and easement shall be established Grantee by survey which shall be provided and paid for by Grantee; provided, however, that the location of the water line shall not unreasonably interfere with or impair the future use and development of Parcel 2 and the water line, once constructed, shall be available to the owner of Parcel 1 and 3 if development occurs on Parcel 1 and 3. In the event that the owner of Parcel 1 and 3 utilize the water line constructed by Grantee, the developer of the Parcel utilizing the water line shall reimburse Grantee pro rata for one-half of the per-foot cost of the water line from the point of the connection to South Main Street.

Said Parcel 3 is conveyed subject to a perpetual right of way and easement, as currently exists and is shown on the attached plan, for access to the "Doolittle" parcel for maintenance and repair of the parcel and for "memorial" visits es reserved by Morningside Cemetery Association in its deed to Grantor.

"The within conveyed premises are SUBJECT TO any rights or easements which may exist of record or in fact.

Said Parcels 1, 2 and 3 are collectively described as follows in a survey entitled "Property of Morningside Cemetery of Brattleboro, Inc., Brattleboro, Vermont" dated April, 1980 and prepared by New England Aerial Survey and Mapping, Inc. as follows:

Commencing at a point on the westerly side of Vernon Street at the southerly boundary of property of Prospect Cemetery; thence South 18 10' 50" East a distance of 174.23 feet along Vernon Street to its intersection with Morningside Street; thence South 28 43' 35" West a distance of 77.87 feet along the westerly side of Morningside Street; thence continuing South 24 44' 15" West a distance of 137.19 feet to a point on the westerly side of Morningside Street; thence turning and running across Morningside Street South 75 43' 25" East a distance of 22 feet; thence continuing South 75 43' 25" East a distance of 53.77 feet to an iron pipe found, marking an angle point; thence continuing North 69 33' 25" East a distance of 50.28 feet to the westerly wall of a structure; thence turning and running south 28 07' 20" East a distance of 51.4 feet along the westerly wall of said structure to an iron pin marking a corner; thence turning North 62 32' 40" East and running a distance of 20 feet along said structure to a point; thence turning and running South 35 55' 30" East a distance of 204.12 feet to a marble marker found; thence continuing North 66 32' 20" East a distance of 2.14 feet to the easterly side of Vernon Street; thence running South 23 27' 40" East a distance of 389.01 feet to a point; thence continuing South 21 57' 30" East a distance of 124.06 feet to a point on the westerly side of Vernon Street; thence continuing on a curve to the right having a radius of 474.91 feet a distance of 225.23 feet to a point; thence continuing South 05 28' 30" West a distance of 186.64 feet to a corner; thence turning and running North 87 17' 45" West a distance of 115.53 feet to a point; thence continuing North 87 17' 45" West a distance of 857.47 feet to a point on the easterly side of Morningside Street; thence continuing North 87 17' 45" West a distance of 22 feet across Morningside Street to a point; thence continuing North 87 17' 45" West a distance of 175.75 feet to a corner; thence turning and running North 9 25' 15" West a distance of 595.17 feet to a marble marker found; thence turning and running North 21 41' 55" East a distance of 70.38 feet to a corner; thence turning and running South 69 08' 15" East a distance of 20.75 feet to a corner; thence turning and running North 17 51' 35" East a distance of 125.40 feet to a point; thence continuing North 22 40' 35" East a distance of 31.72 feet to a point; thence continuing North 4 27' 40" East a distance of 45 feet to a point; thence continuing North 13 3' 50" West a distance of 21.01 feet to a corner; thence turning and running South 54 18' 55" East a distance of 117.16 feet to a corner; thence turning and running North 36 04' 35" East a distance of 169.85 feet to a corner; thence turning and running North

29° 21' 30" West a distance of 13.77 feet to a corner; thence turning and running North 63° 16' 05" East a distance of 72.36 feet to a corner, thence turning and running North 25° 08' 15" West a distance of 21.89 feet to a corner; thence turning and running North 64° 25' 05" East a distance of 259.89 feet to an angle point; thence continuing North 50° 59' 40" East a distance of 148.61 feet to an angle point; thence continuing North 32° 17' 20"- East a distance of 105.60 feet to an angle point; thence continuing North 1° 32' 30" East a distance of 82.5 feet to a corner; thence turning and running North 73° 12' 05" East a distance of 67.44 feet to the point and place of beginning, containing 25.44 acres.

Said parcels are conveyed subject to the rights of the public in and to the right-of-way of Morningside Street.

There is further excepted from Parcel 3 the so-called Doolittle exception as shown on said map and there is excepted from Parcel 2 the .95 Morningside Emergency Shelter exception as shown on said map.

The property is subject to the terms and conditions of an Easement Deed from Snowfall, Inc., to the Morningside Emergency Shelter dated July 9, 1987, recorded July 13, 1987 in the Land Records of the Town of Brattleboro in Book 200 at Page 233.

There is a conflicting claim of title to the following described .82 +/- acre parcel located at the southeastern corner of the above premises. Said parcel is described as follows:

Beginning at the point which marks the southeasterly corner to the subject premises; thence N 5° 28' 30" E to a point; thence along a curve to the left having a radius of 474.91 feet a distance of 225.23 feet to a point; thence turning and going westerly directly to the easterly side of the right of way access to Morningside Cemetery; thence turning and going southerly along the easterly border of said access road to a granite monument located on the eastern side of the access road; thence turning and going South 87° 17' 45" east a distance of 101 feet to the point and place of beginning.

Said parcel is shown on a survey of Emery Feich, entitled 'property of Morningside Cemetery of Brattleboro, Inc.' dated December 1982 and recorded at Book 1-L, Page 4 of the Brattleboro Land Records. The above parcel constitutes steeply sloped unusable land bordering on Vernon Street. It comprises no part of any unit or any amenity.

EXHIBIT BDescription of Units

Phase	Unit Nos.	Approx. Area'	No. of Rooms	Limited Common Areas
II	37-72	1040 sq. ft.	5 rooms	Carports, parking spaces, patios and exclusive entrways

Parking spaces will be assigned to Units by the Board of Directors.

Location of Units and limited common area to which Unit has access are as shown on the Plans.

This Exhibit B will be amended upon the annexation of each additional Phase to include the description of Units in the proposed Phase.

EXHIBIT C

Fair Market Value of Each Unit
and of All Units, and Undivided Interest
in Commons Elements

646

Phase II only.

Each of Units 37 - 72 shall have an estimated fair market value of \$78,000.00, and the estimated fair market value of the entire Condominium as of the same date shall be \$2,808,000.00.

Each of Units 37 - 72 shall have appurtenant thereto a 2.77% undivided interest in the Common Elements.

This Exhibit C shall be amended, and the percentage of undivided interest appertaining to each Unit shall be modified, by each subsequent Annexation Amendment in accordance with Section 3.2 of the Declaration, the consent given in the Unit Deed and the formula set forth below.

The undivided percentage of interest in the Common Elements and facilities appertaining to each Unit are for all purposes, including voting.

Formula for recalculating percentages of
assigned interests for common areas and facilities

As Additional Units are added to the Condominium the percentage of interest in the Common Areas and Facilities assigned to the existing Units will be recalculated according to the following formula and restated by the Declarant by recording in the Town of Brattleboro Land Records a revision of this Exhibit C:

Assigned Unit Value (UV) = Percentage Interest of Unit (PIU)

Total Assigned Values of
all existing Units and
those being added to the
Condominium by a particular
Restatement (TAV)

EXHIBIT D
RESTATEMENT TO DECLARATION
OF CONDOMINIUM
FOR
MORNINGSIDE COMMONS

PHASE ____

This Restatement to the Declaration of Condominium for Morningside Commons is made the date hereinbelow written by Declarant, MCB Development Associates, pursuant to Paragraph 3 of the Declaration of Condominium for Morningside Commons dated February _____, 1988, and of record in Book __, Page _____ of the Town of Brattleboro Land Records.

Declarant hereby states that. Phase _____, consisting of Units, has been substantially completed. Pursuant to the rights reserved by the Declarant, Morningside Commons shall hereafter include such Buildings and the Units contained therein.

The percentage interest in the Common Areas and Facilities appurtenant to the existing Units, including the Units described herein, are reallocated as follows:

UNIT NO.	PERCENTAGE OF ASSIGNED INTEREST IN COMMON AREAS AND FACILITIES	ASSIGNED VALUES
----------	---	--------------------

The "as built" floor plans for Phase , Units are recorded in Map Volume , Page _____ of the aforesaid land records. The layout, location and apartment numbers for Phase _____ are fully and accurately depicted on a Location Plan Entitled "Morningside Commons, a Condominium" last revised , 198 , and of record in Map Book Page _____ of the aforesaid Land Records. '

The Declaration of Morningside Commons, a condominium and all Exhibits thereto dated and recorded as aforesaid, and all Amendments and Restatements to said Declaration are incorporated herein by reference as if they were fully set forth herein.

In Witness Whereof, the Declarant has cause of this Restatement to be executed by its duly authorized agent this ____ day of _____ . 1988.


MASIELLO REAL ESTATE, INC.,
CHESHIRE COUNTY BUILDERS,
INC. AND B KSTONE MASONS,
INC. d/• B DEVELOPMENT
ASSOC ES, joint venture

Witness

Witness

Witness

Witness

MAST INC.
By: 
Duly Authorized Agent

CHESHIRE BUILDERS, INC.

By: _____
Duly Authorized

Witness

BRICKSTONE MASONS, INC.

Witness

By: _____
'Duly Authorized'

STATE OF _____
1988 COUNTY, SS.

At _____, in said county
this ____ day of _____

personally appeared _____, duly authorized agent for Masiello Real Estate, Inc., who acknowledged the foregoing instrument, by himself signed and sealed to be his free act and deed and the free act and deed of Masiello Real Estate, Inc.

Before me, _____
Notary Public

STATE OF _____
1988 COUNTY, SS.

At _____, in said county
this ____ day of _____

personally appeared _____, duly authorized agent for Cheshire County Builders, Inc., who acknowledged the foregoing instrument, by himself signed and sealed to be his free act and deed and the free act and deed of Cheshire County Builders, Inc.

Before me, _____
Notary Public

STATE OF _____
1988 COUNTY, SS.

At _____, in said county
this ____ day of _____

personally appeared _____, duly authorized agent for Brickstone Masons, Inc., who acknowledged the foregoing instrument, by himself signed and sealed to be his free act and deed and the free act and deed of Brickstone Masons, Inc.

Before me, _____
Notary Public

ARCHITECT'S CERTIFICATION

, a registered architect in
the State of Vermont, do hereby certify that the Floor Plan for
Building _____, Units _____ dated _____ and of record
in Map Book _____, Page _____ of the Town of Brattleboro Land
Records fully and accurately depicts the dimensions of such Building
"as built" and that such plan is an accurate copy of **such building** as
filed with and approved by all **municipal or governmental** subdivisions
having jurisdiction over the issuance of permits for the construction
of such building. I further certify that the layout, location, and
apartment numbers for
Building _____ "as built" are fully and accurately depicted on
a _____ entitled "Morningeide Commons, a condominium"
dated _____, 19__, last revised _____, 19__ and of
record in Map Book _____, Page _____ of the Town of Brattleboro
Land Records.

Sworn to before me this
day of _____, 1,11318137:

Notary _____ c

EXHIBIT EMaterial Amendments

A Material Amendment is an addition, deletion, or other change to the Declaration, By-Laws, or Rules and Regulations which would materially affect or alter, or add additional provisions relative to or resulting in, any of the following:

- (a) Voting rights;
- (b) Assessments, assessment liens, or subordination of such liens;
- (c) Reserves for maintenance, repair, and replacement of Common Elements;
- (d) Responsibility for maintenance and repairs;
- (e) Allocation of interests in Common Elements, including limited common areas, or rights to its use;
- (f) Boundaries of any Unit;
- (g) Convertability of Units into Common Elements or of Common Elements into Units;
- (h) Expansion or contraction of the Condominium or the addition, annexation, or withdrawal of property to or from the Condominium other than as provided in the Declaration as originally recorded;
- (i) Insurance of fidelity bonds;
- (j) Leasing of Units;
- (k) The imposition of any restriction on the right of a Unit Owner to sell or transfer his or her Unit;
- (1) Reestablishment of self-management by the Association when professional management had been required previously by an eligible holder;
- (m) Restoration or repair of the Common Elements after a hazard damage or partial condemnation in a manner other than that specified in the Declaration and/or these By-Laws;
 - (n) Any action to terminate the legal status of the Association or the Condominium;
- (o) Any provisions which expressly benefit mortgage holders, insurers, or guarantors.

An addition or amendment to such documents shall not be considered material if it is for the purpose of correcting technical errors, or for clarification.

EXHIBIT F

Site and Lot Plan
entitled "Location Plan" for
Morningside Commons, a Condominium
by
Burnell & Johnson, Architects
Manchester, New Hampshire

Plan Last revised 1/5/88
and recorded at Map Book 1-H
Pages 82-95 of the Brattleboro Land Records

TOWN CLERK'S OFFICE
BRATTLEBORO, VT.
RECEIVED
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Recorded Book PagetJ

