

**FOOTE FARM**  
**DECLARATION OF COVENANTS AND RESTRICTIONS**  
(Revised June, 2011)

This Declaration is made this \_\_\_\_ day of \_\_\_\_\_, 2011, by the Foote Farm Homeowners' Association, Inc. (the Association) of Cornwall, Vermont.

**WHEREAS**, the Association is responsible for development of a certain piece of land depicted on a final approved and recorded Subdivision Plat entitled "Final Plat, Foote Farm Associates, Cornwall, Vermont", prepared by Timothy Short, L.S., dated February 14, 2005, last revised January 9, 2006, and recorded in the Town of Cornwall Land Records;

**WHEREAS**, said Foote Farm subdivision requires certain stormwater drainage and treatment easements and facilities, wastewater collection, treatment, and disposal easements and systems, conservation of agricultural lands and natural areas, maintenance, repair and plowing of the private roads located within the subdivision, construction, maintenance, and repair of other community facilities, beautification on common lands, as well as design review requirements for each Lot Owner;

**WHEREAS**, the Association requires a system whereby the stormwater drainage and treatment easements and facilities, wastewater collection, treatment, and disposal easements and systems, conservation of agricultural lands and natural areas, maintenance, repair and plowing of the private roads located within the subdivision, construction, maintenance, and repair of other community facilities, beautification on common lands, as well as design review requirements for each Lot Owner are implemented, enforced, maintained, operated, or repaired; and

**WHEREAS**, all of the Lot Owners and the Association attended the duly noticed annual meeting (held in June, 2011) of the Association and discussed amending the Foote Farm Declaration of Covenants and Restrictions as outlined herein and the Lot Owners and the Association unanimously approved the amendments reflected herein and appointed and authorized Peter L. McCormick to execute this document as a true and accurate description of the current applicable Covenants and Restrictions.

**NOW THEREFORE**, the Association declares that the real property depicted on the above-referenced survey shall be held, transferred, sold and conveyed subject to the following conditions, easements, restrictions, and covenants.

**ARTICLE I**  
**Definitions**

The following words when used in this Declaration or any supplemental declaration shall have the following meanings:

Section 1.0: “Association” shall mean and refer to the Foote Farm Homeowners’ Association, Inc., a non-profit corporation.

Section 1.1: “Property” shall mean all 22 Lots depicted on the final approved subdivision plat entitled: “Final Plat, Foote Farm Associates, Cornwall, Vermont”, prepared by Timothy Short, L.S., dated February 14, 2005, last revised January 9, 2006.

Section 1.2: “Lot Owner” shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot located within the Property, but, notwithstanding any applicable theory of the mortgage, shall not mean and refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

Section 1.3: “Stormwater Drainage and Treatment Facilities” shall mean: the system designed and created to manage storm water runoff and drainage within the subdivision, including, but not limited to the storm water detention pond and all related pipes, equipment, and facilities related to the proper functioning of said system, including all facilities as may be required under regulation of any applicable local, state, or federal jurisdiction.

Section 1.4: “Wastewater Collection, Treatment and Disposal Systems” shall mean: the systems designed and created to manage the treatment, pumping, and disposal of wastewater on the property, including, but not limited to pump stations, pipes, tanks, equipment, distribution centers, and any and all other equipment or facilities related to the proper functioning of said system, including all facilities as may be required under regulation of any applicable local, state, or federal jurisdiction.

Section 1.5: “Design Review Board” shall be appointed from among Lot Owners by the Association.

Section 1.6: “Member” shall mean and refer to all Lot Owners who are members of the Association,

## **ARTICLE II** **Easements and Maintenance -Surface Drainage**

Section 2.0: The following Lots are encumbered by a surface drainage easement on a portion of the lot: 1, 2, 3, 4, 5, 6, 10, 12, and 13.

Section 2.1: The Lot Owner of each lot encumbered by said drainage easement shall maintain the easement area in a manner that will allow the passage of stormwater and other natural surface drainage. Routine maintenance of the drainage area shall be the responsibility of the encumbered lot owners, including the periodic mowing of vegetation, and the removal of accumulated debris, except for the detention basin on

Lot 10 and swale on Lots 12 and 13. Drainage pipes within any easement area shall not be obstructed or diverted, and stone in stone-lined swales shall not be removed.

Section 2.2: The Association shall have the right to periodically inspect, maintain or repair the drainage facilities within the surface drainage easement areas, including the use of heavy equipment.

Section 2.4: The Association and/or its agents shall be allowed reasonable access to all surface drainage easement areas in order to periodically inspect, maintain or repair the drainage facilities. In addition, upon reasonable notice to the association, the Town of Cornwall and State of Vermont will be allowed reasonable access to all surface drainage easement areas for the purpose of monitoring and inspecting said facilities consistent with applicable permits and regulations.

### **ARTICLE III** **Easements and Maintenance-Wastewater Treatment and Collection**

Section 3.0: All Lots will be encumbered by wastewater treatment and collection easements to ensure proper maintenance of the septic tanks, filtrate systems, and pump stations that connect to the overall Wastewater Treatment, Collection, and Disposal System. Lot owners shall be responsible for construction, maintenance and repair of the septic tank, filtrate system, and pump station serving their Lot. Annual inspection and maintenance of the septic tank, filtrate system, and pump station on each Lot shall be directed and ordered by the Association – with costs of said inspection to be assumed by each respective Lot Owner - so as to ensure proper operation of the overall system. Any necessary repairs shall be at the direction of the Association, but the cost shall be borne by the Lot Owner. Each Lot Owner shall comply with the guidelines of the Association with regard to the disposal and treatment of domestic wastewater so as to ensure the longevity of the overall Wastewater Treatment, Collection, and Disposal System.

Section 3.1: The following Lots are encumbered by a wastewater collection easement on a portion of the lot: 1, 2, 4, 5, 9, 12, 14, 15, 16, and 20. Said easement is for the transfer of wastewater effluent from pump stations on nearby lots to the larger collection system on the land owned by the Association.

Section 3.2: The Lot Owner of each lot encumbered by said wastewater collection and treatment easements shall maintain the easement areas in a manner that will not adversely impact the proper functioning of said systems. Routine maintenance of the area shall be the responsibility of the encumbered lot owners, including the periodic mowing of vegetation, removal of debris and routing of surface water drainage away from such systems.

Section 3.3: The Association shall have the right to periodically maintain or repair the wastewater collection and treatment easements, including the use of heavy equipment.

Section 3.4: The Association and/or its agents shall be allowed reasonable access to all wastewater collection and treatment easement areas in order to periodically maintain or repair the systems as specified above. In addition, upon reasonable notice to the association, the Town of Cornwall and the State of Vermont will be allowed reasonable access to all wastewater collection and treatment easement areas for the purpose of monitoring and inspecting said systems.

**ARTICLE IV**  
**Common Recreation, Agricultural and Storage Facilities**

Section 4.0: The Association may elect to obtain proper state and municipal permits to build, maintain, and repair buildings and structures for common recreational, agricultural or storage purposes on the Common Lands owned by Association as depicted on the Subdivision Plat and as prescribed in Article IX below. Lot Owners may choose whether to participate in such facilities, and participating Lot Owners shall share the cost of constructing, maintaining, and repairing such facilities in a manner established by the Association.

**ARTICLE V**  
**Costs of Maintenance, Repair and Compliance-Roads, Drainage, Storm water, Wastewater, Utilities, Beautification, and Agricultural Land Maintenance**

Section 5.0: The Lot Owners shall share equally the cost of maintaining, repairing, and complying with permits for common private roads, drainage systems, stormwater treatment facilities, wastewater collection, treatment, and disposal facilities, electrical and communications utilities, beautification on common lands, and maintaining agricultural lands free from trees and brush as such costs may be assessed from time to time by the Association.

**ARTICLE VI**  
**Preservation of Woodland and Meadow Areas**

Section 6.0: It is the intention of the Association that the overall property and each lot be maintained in a natural state as much as possible. Removal of trees outside of the building envelope must be approved by the Design Review Board in accordance with Article VIII below, with the exception of undesirable/invasive species or those deemed by the Association or a certified arborist to be dead, dying, diseased, damaged or otherwise dangerous. It is suggested that the meadowland be mowed only after July 15 to protect ground-nesting birds (except for the agricultural

easement area #2A on Lot 15). The Lot Owners may plant wild flowers within the natural meadow area or may allow native trees and woody shrubs to grow, or be planted within the natural meadow area.

Section 6.1: The woodland portions of lots 16, 20, 21, and 22 contain clayplain forest that shall be maintained as a natural community. No tree cutting or planting within the clayplain forest area shall occur except as approved in writing by the Natural Heritage Program at the Vermont Department of Fish and Wildlife. The owner of lot 21 shall continue to allow drainage to flow under his/her driveway to the clayplain forest as shown on the approved site plans. The clayplain forest is delineated on the approved site plans.

Section 6.2: The woodland portions of lots 3, 4, 5, 6, 7, 8, 12, 13, 14, 16, 17, 18, 19, and 22 contain class III wetlands that shall be maintained as wetlands. No altering of the natural drainage shall be allowed.

Section 6.3: Lot 16 contains a shrub, rare in Vermont (American hazelnut, *Corylus Americana*), that shall be maintained. The shrub at the edge of the woodland shall not be cut or otherwise damaged. The location of the rare shrub is shown on the approved site plans.

Section 6.4: Lots 1, 2, 5, 6, 7, 8, 12, 13, 19 and 20 contain prehistoric archaeologically sensitive areas. Lot 9 contains a historic archaeologically significant area (the Rider farmstead). These areas were identified by the University of Vermont Consulting Archaeology Program and are depicted on the plat with buffers. No disturbance of the soils within these areas shall occur without the written approval of the Vermont Division for Historic Preservation as detailed in the Act 250 land use permit.

## **ARTICLE VII** **Parking of Vehicles**

Section 7.0: It is encouraged that all motor vehicles and trailers be garaged or otherwise screened from view. Recreational Vehicles (RVs) cannot be parked on individual lots for longer than two weeks or on any common land without approval of the Association. All inoperable or unregistered vehicles must be garaged or removed from the property.

## **ARTICLE VIII** **Design Review Requirements**

Section 8.0: Each Lot Owner must abide by design review requirements as follows:

1. Architectural plans and landscaping plans must be submitted to the Design Review Board of the Association for approval prior to construction on any lot. The design must demonstrate compliance with the following requirements. Reasonable approval shall not be withheld.

2. All houses, garages, and other buildings must be constructed with an exterior design and finish materials that substantially replicate an authentic 19<sup>th</sup> Century Vermont colonial or farmhouse design, with an emphasis on exterior design detail (i.e. eave returns, window trim, symmetry, etc.). Modern finish materials may be substituted only if it is determined that they realistically resemble authentic period materials. Electric lighting shall be substituted for period lighting methods. Detached or semi-detached garages are encouraged. Materials interior of the finished exterior surface may be of a modern, energy and labor saving design consistent with state energy codes. Substitution of alternative period architectural designs from the early portion of the 20<sup>th</sup> Century, such as Craftsman style or Adirondack style homes, that do not resemble modern tract housing, may be approved subject to the written waiver from each Lot Owner in the affected group of Lots at the time of approval (Group I includes Lots 1-11, Group II includes Lots 16-22, Group III includes Lots 14 and 15, Group IV includes Lots 12 and 13).

3. The owner shall prepare a landscaping plan consistent with visually integrating the structure(s) into the surrounding woodland and/or meadowland areas and screening the structure from adjoining properties.

4. Cutting of trees that are over 6 inches in diameter, breast height, *within the deeded building envelopes*, must be approved at the time the home is approved and shall be so marked on the landscaping plan.

5. Cutting of trees and limbs over one inch diameter may not be cut outside the building envelopes and utility corridors unless dead, diseased or a proven safety concern. The intent is to maintain a naturalized woodland or meadow setting on each lot. Clear-cutting of trees on any lot is strictly prohibited.

Driveway and utility locations must be approved by the Design Review Board. Driveways shall make a winding approach to each house, subject to grades not exceeding 8.0 percent and be suitable for access by large vehicles including fire trucks and fuel delivery trucks.

6. All structures must be sited within the building envelope and shall be designed and oriented to minimize visibility from the access road, from other building envelopes, and from other driveways, consistent with the native vegetation and proposed landscaping during the growing season.

7. Garage doors shall face away from the visual approach to the front of the house, if reasonably feasible.

The color of the exterior of any structure will be limited to natural forest colors, such as browns, greens, or grays. However, the Design Review Board shall have the option to permit the use of other earth tone colors or white on a case by case basis with the written waiver of any adjoining Lot Owner. Other brighter colors and white may be used in limited quantities for trim features as approved by the Design Review Board. It is important that homes blend into the woodland environment given the cluster design of the neighborhood.

8. Landscaping plans should compliment the rural and naturalized woodland or meadow setting. Lawns should be limited to the immediate areas around structures and along driveways as an accent feature, meadowland buffer or as a storm water filter strip so to minimize noisy maintenance (mowers, blowers, etc) and the use of pesticides. Grassed play areas and play structures for children should be located at the rear or side of the residence and appropriately screened. Selection of trees and woody shrubs should be native species or non-native species that compliment the native species found in the Cornwall area. No restrictions will be placed on the selection of annual or perennial flowering plants.

9. Deviation from approved landscape or architectural plan may result in legal action, work stoppage and fines to be determined by the Association. The removal of significant trees of desirable species and good health outside of the building envelope will require replacement as directed by the Association.

### **ARTICLE IX** **Restrictions on the “Common Land”**

Section 9.0: The Lots Owners, through the Association, are owners of certain Common Lands as described on the Subdivision Plat. Said Commons Land is subject to the following restrictions.

1. No structures, including buildings, pools, tennis courts, bathhouses, barns or similar structures, may be constructed on the Common Land ,as shown on the Plat, except that: (a) bon-fide agricultural structures may be constructed within the agricultural easement areas; (b)bona fide drainage and storm water structures mat be constructed within the drainage easements as depicted on the Plat; and (c) bona fide wastewater structures may be constructed within the wastewater disposal and utility easements as depicted on the Plat.

2. Any changes to the drainage and storm water treatment facilities, the wastewater treatment, collection, and disposal facilities, and the private road facilities, shall be subject to the review and approval by the applicable town, state, and federal agencies.

3. The Middlebury Land Trust shall retain all development rights to the Natural Areas and Agricultural Easements as shown on the Plat, subject to a separate Grant of Development Rights and Conservation Easement. The Association shall retain the agricultural rights to the agricultural easement areas and may lease such land to a third-party for bona fide agricultural use as it sees fit, consistent with the Grant of Development Rights. The Association shall also retain ownership of the Natural Areas subject to the Conservation Easement and its members shall have the right to non-motorized recreation on said lands, consistent with the Grant of Development Rights and Conservation Easement.

4. Any structures constructed on the Common Land, including agricultural structures, shall be submitted for design review to the Design Review Board. Such facilities shall be designed to resemble agricultural structures having a 19<sup>th</sup> or early 20<sup>th</sup> Century design and blend with the rural agricultural landscape.

5. Any structure proposed by the Association, a sub-committee, or an agricultural lessee, shall be approved by the Cornwall Planning Commission, the District Environmental Commission, and the Middlebury Area Land Trust, to ensure compliance with all applicable planning and environmental standards and agreements.

6. The Common Land contains prehistoric archaeologically sensitive areas that were identified by the University of Vermont Consulting Archaeology Program and are depicted on the plat with buffers. No disturbance of the soils within these area shall occur, except for continued agricultural operations with no greater impact, without the written approval of the Vermont Division for Historic Preservation as detailed in the Act 250 land use permit.

7. Portions of the Common Land outside of the planned development areas, such as Agricultural Easement Areas #1, 2, and 3, as well as the entire Natural Area to the south and east of lot 14, have not been subject to any archaeological survey. Prior to any further development of agricultural, recreational, or storage facilities, or other soil disturbances on these portions of the Common Land, other than continued agricultural operations with no greater impact, further archaeological survey may be required by the Vermont Division for Historic Preservation. This section does not apply to construction of the fire pond, wastewater disposal systems, and electrical utilities along Route 125, as shown on the development plans.

## **ARTICLE X** **Reservations by the Association**

Section 10.1: The Association expressly reserves the right, indefinitely, to add advanced treatment wastewater to the community wastewater system to serve up to four additional



lots, on or off-site of the approved subdivision. The four additional Lot Owners shall share equally, with the other Lot Owners, the cost of maintaining the community wastewater system. The Association will assume all responsibility for engineering design and amending relevant town and state permits. The Association shall retain all rights to supervise the construction, use, maintenance, and repair of the wastewater system, including the advanced treatment facilities located on each of the four additional Lots.

Section 10.2:

The Association expressly reserves the right, indefinitely, to cross the common land and/or emergency road easement with a force main(s) to serve up to four additional lots off-site from the subdivision, along a route to be mutually determined by the Association and the Middlebury Area Land Trust, subject to any and all required permit amendments. Such additional lots located outside the project boundaries, would not become members of the Association, but would share the cost of the wastewater system as specified in section 10.1.

DATED AT Middlebury, Vermont this \_\_\_\_ day of December, 2011.

FOOTE FARM HOMEOWNERS’  
ASSOCIATION, INC.

By: \_\_\_\_\_  
Peter L. McCormick, President and  
duly authorized agent

STATE OF VERMONT                    )  
COUNTY OF ADDISON, SS.        )

At Middlebury, Vermont this \_\_\_\_ day of December, 2011 personally appeared Peter L. McCormick, President and duly authorized agent of Foote Farm Homeowners’ Association, Inc. and he acknowledged this instrument, by him sealed and subscribed, to be his free act and deed and the free act and deed of Foote Farm Homeowners’ Association, Inc.

Before me, \_\_\_\_\_  
Notary Public  
My commission expires: 2/10/2015