

DECLARATION OF CONDOMINIUM

WEST COVE "D" CONDOMINIUM

CONTROLLED ENVIRONMENT CORPORATION, a corporation organized and existing under the laws of the State of New Hampshire, with a place of business in Grantham, Sullivan County, New Hampshire (hereafter called the "Declarant"), hereby declares:

1. Submission and Declaration. The Declarant submits the Land situated in Grantham, Sullivan County, New Hampshire, including all easements, rights and appurtenances thereto, as described in Exhibit A to this Declaration together with all improvements now existing or hereafter constructed on the Land, all of which are owned in fee simple by the Declarant, to the provisions of the Condominium Act in order to create a plan of condominium ownership in the Property. Each Unit created hereunder may be held in fee simple by each Unit Owner and his heirs and may be retained, occupied, conveyed, transferred, encumbered, inherited or devised independently of the other Units. Each Unit shall include an undivided percentage interest in the Common Area and the Common Area is declared to be held by the Unit Owners as tenants in common.

2. Definitions. Except as defined in this paragraph, in the By-Laws or in the Plans, terms shall have the meanings specified in Section 3 of the Condominium Act.

(a) "By-Laws" means the by-laws of the Unit Owner's Association set out in Exhibit B to this Declaration, attached hereto as a part hereof, as they may be amended from time to time.

(b) "Condominium" means the West Cove "D" Condominium which is established by the recordation of this Declaration, the By-Laws and the Plans.

(c) "Condominium Act" means New Hampshire Revised Statutes Annotated Chapter 356-B (Supp.), as amended from time to time.

(d) "Declarant" means the Controlled Environment Corporation, a New Hampshire business corporation with a place of business in Grantham, New Hampshire.

(e) "Land" means the real property described in Exhibit A to this Declaration, attached hereto as a part hereof, together with all easements, rights and appurtenances but exclusive of all improvements.

(f) "Owner" or "Unit Owner" means any Person who owns a Condominium Unit. No mortgagee shall be deemed to be an Owner or Unit Owner merely because of rights acquired under a mortgage.

(g) "Property" means the Land and all improvements now or hereafter constructed thereon.

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(h) "Site Plan and Floor Plans" or "Plans" means the plans of the Property described herein.

(i) "Unit" means a portion of the Condominium, as shown on the Plans and as described in Paragraph 3(e), below.

3. Statutory Requirements. Provisions required by the Condominium Act:

(a) Name: West Cove "D" Condominium.

(b) Location: Grantham, Sullivan County, New Hampshire.

(c) Address: West Cove "D" Condominium, c/o Controlled Environment Corporation, P.O. Box 1, Grantham, New Hampshire 03753.

(d) Description of Land and Additional Land: Exhibit A contains a legal description by metes and bounds of the Land.

(e) Descriptions of Buildings and of Units:

(i) Buildings. The Condominium consists of twenty-three (23) residential buildings containing a total of fifty-two (52) dwelling Units. These buildings are, or may be, constructed on the Land at the locations, and with the dimensions, shown on the Plans. Each building contains up to five Units and each Unit has two stories. Buildings containing more than one Unit shall have party walls. Each Unit has either a full basement or a crawl area as shown on the Plans and will be of wood frame construction with a poured concrete or cement block foundation.

(ii) Units. Boundaries. The Units have the boundaries shown on the Plans and described below:

Floors: The unfinished interior surface of the basement slab, in Units with basements, or the top of the floor joists, in Units with crawl areas.

Ceilings: The interior surface of the ceiling joists and roof rafters.

Perimeter walls: The interior surface of the studs and, in Units with basements, the unfinished interior surface of the concrete or cement block basement walls.

Windows and entrance doors: The exterior surface of the glass and the unfinished exterior surfaces of the window frames, doors and door frames.

Each Unit includes the portions of the building within the above boundaries and the space enclosed by the boundaries, except any Common Area which may be located therein. The

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finished interior of the basement walls, basement floor slab, perimeter walls and uppermost ceiling of a Unit, consisting of, without limitation, all paint, lath, wallboard, drywall, plasterboard, plaster, paneling, wallpaper, rough flooring, finished flooring, carpeting, tiles, and any other materials constituting any part of the finishing materials and finished surfaces thereof are a part of each Unit. The Owner of a Unit owns the interior walls and partitions which are contained in his Unit, the window and door glass, the entrance doors and window frames (to the unfinished exterior surfaces thereof). A Unit includes the water supply, sewage disposal, electrical and telephone systems serving only that Unit if not owned by the supplier of the utility service. A Unit does not include any pipes, wires, cables, chutes, flues, conduits, utility lines, ventilation or other ducts, bearing walls, bearing columns, or structural portions of the building running through that Unit, which are utilized for or serve more than one Unit or serve any portion of the Common Area and such items are a part of the Common Area. A Unit does not include any balcony, entrance way or deck serving his Unit, which balcony, entrance way or deck shall be Limited Common Area. A Unit does not include any outdoor storage structures or connecting link between buildings, which outdoor storage structures or connecting links shall be Common Area.

(f) Description of Common Area and Limited Common Areas.

(i) Common Area consists of all of the Property other than the Units and includes, without limitation, the following:

the Land together with the benefits and subject to the burdens of all easements and rights pertaining to the Land, as described in Exhibit A, and including all improvements to the Land except the Units and Limited Common Areas;

the water supply, sewage disposal, electrical and telephone systems serving the Condominium to the extent such systems are located within the Property and are not owned by the supplier of the utility service (but not including any portions thereof serving only a single Unit, which portions shall be part of the Unit);

the roofs, foundations (other than the finished interior surfaces), columns and supports of the buildings; the perimeter walls, ceilings and floors of each Unit to the interior surfaces of the joists, rafters and studs; the outdoor storage structures and the connecting links; and

the pipes, ducts, fireplace flues, chutes, conduits, plumbing, wires, meters, meter housings and other facilities for the furnishing of utility services or

waste removal not located within a Unit and such facilities located within a Unit, which serve parts of the Condominium other than the Unit within which they are located.

(ii) Limited Common Areas consist of the decks, balconies, porches and entrance ways, as shown on the Plans.

(g) Additional Assignment of Common Area as Limited Common Area. Additional assignments of Common Areas as Limited Common Areas will not be made.

(h) Allocation of Undivided Interests. The allocation of the undivided interests in the Common Area among the Units is that each Unit includes an equal undivided interest in the Common Area.

(i) Statement of Purposes and Restrictions as to Use. The Condominium and each of the Units are intended for residential use and the following provisions, together with the provisions of the By-Laws and any rules adopted pursuant to the By-Laws are in furtherance of that intent:

(i) Residential Use. Each Unit shall be occupied and used only for residential purposes by the Owner and his family, or by tenants, guests, invitees or licensees of the Owner, except for such limited professional use as the Board of Directors, upon application of the Owner, from time to time may authorize as not being incompatible with the residential character of the Condominium. This restriction shall not be construed to prohibit Owners from leasing their Units so long as the lessees thereof occupy and use the leased premises in accordance with the provisions of this Declaration and the By-Laws.

The Common Area shall be used only by the Owners and tenants in residence and their guests, invitees and licensees. Limited Common Area shall be used only by the Owners and tenants in residence and their guests, invitees and licensees of the Unit to which the Limited Common Area is assigned. The manner of use and the responsibilities for maintenance and repair of the Common Area and the Limited Common Area shall be governed by the By-Laws and by any rules adopted by the Board of Directors.

Common Area includes Limited Common Areas and all Unit Owners own an undivided interest in the Common and Limited Common Areas, although Limited Common Areas are reserved for the exclusive use of Owners of Units to which such Limited Common Areas are assigned.

(ii) Easement to Facilitate Completion and Sales. The Declarant is the Owner of all Units which have been constructed but not sold and its duly authorized agents, representatives and assigns may make such reasonable use of

the Condominium as may facilitate the completion of construction and such sale, including, without limiting the generality of the foregoing, the right to enter all Units and Common Area for construction purposes, and the right to store materials, the maintenance of a sales office and a rental office, the showing of property and the displaying of signs. In addition, the Declarant and its duly authorized agents, representatives and employees shall have the right to use any and all unsold Unit or Units as sales offices and/or model units. Such Units shall be Units within the meaning of this Declaration and the Condominium Act and not parts of the Common Area. The Declarant shall have the absolute right to convey or lease such Units. Further, the Declarant reserves the right to enter into certain agreements with other Unit Owners who may agree to lease their Units to the Declarant for use by the Declarant as model units and/or sales offices.

(iii) Easements for Structural Encroachments. None of the rights and obligations of the Owners created herein or in any deed conveying a Unit from the Declarant to a purchaser shall be altered in any way by encroachments as a result of construction of any structures or due to settling or shifting of structures. There shall be valid easements for the maintenance of such encroachments so long as they shall exist; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful conduct of said Owner or Owners.

(iv) Occupancy Limitation. Without the consent of the Board of Directors, no Unit shall, with the exception of occasional overnight guests, be occupied by more than four (4) persons who are not related by blood, marriage or legal adoption to some other occupant of said Unit.

(v) Pipes, Ducts, Cables, Wires, Conduits, Public Utility Lines, and Other Common Area Located Inside of Units; Support. Each Unit Owner shall have an easement in common with the Owners of all other Units to use all pipes, wires, ducts, cables, conduits, public utility lines and other Common Area located in any of the other Units and serving the Common Area or his Unit. Each Unit shall be subject to an easement in favor of the Owners of all other Units to use the pipes, ducts, cables, wires, conduits, public utility lines and other Common Area serving such other units or the Common Area and located in such Unit. The Board of Directors shall have a right of access to each Unit to inspect the same, to correct violations of the rules or By-Laws and to maintain, repair or replace the Common Area contained therein or elsewhere in the buildings. Every portion of a Unit which contributes to the structural support of a building shall be burdened with an easement of structural support for the benefit of all other Units and the Common Area.

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(vi) Units Subject to Declaration, By-Laws and Rules and Regulations. This Declaration, the By-Laws, any rules and regulations adopted by the Board of Directors, and decisions and resolutions of the Board of Directors or its representatives, as amended from time to time, all contain or will contain certain restrictions as to use of the Units and other parts of the Condominium. Each Owner shall comply therewith and failure to comply with any such provision, decision, or resolution shall be grounds for an action to recover sums due, for damages or for injunctive relief. All such actions in law or at equity shall be authorized by resolution of the Board of Directors and the Condominium Unit Owner's Association shall be entitled to recover all reasonable costs and expenses of such actions, including attorneys' fees.

All present or future Owners, tenants and occupants of Units, or any other person who might use the Property in any manner are subject to the provisions of this Declaration, the By-Laws and the rules. The acceptance or the entering into occupancy of any Unit shall constitute an agreement that the provisions of this Declaration, the By-Laws and the rules, as they may be lawfully amended from time to time, are accepted and ratified by such Owner, tenant or occupant and all of such provisions shall be deemed and taken to be enforceable servitudes and covenants running with the land and shall bind any person having at any time any interest or estate in such Unit as though such provisions were recited and stipulated at length in each and every deed of conveyance or lease thereof.

(vii) Condominium Subject to Easements for Ingress and Egress and Use. Each Unit Owner shall have an easement in common with the Owners of all other Units for ingress and egress through, and use and enjoyment of, all Common Area so long as such use is in accordance with this Declaration and By-Laws. Each Unit shall be subject to an easement for ingress and egress through, and use and enjoyment of, all Common Area so long as such use is in accordance with this Declaration and By-Laws.

(viii) Property Subject to Covenants, Easements and Restrictions of Record. The submission of the Property is subject to all covenants, conditions, easements, and restrictions of record including the Supplementary Declaration of Covenants and Restrictions, recorded in the Sullivan County Registry of Deeds (a copy of which is attached hereto as Exhibit C).

(ix) Easement to Facilitate Development of the Land. The Units and Common Area shall be subject to an easement for ingress and egress through, and use and enjoyment of, all Common Area by persons lawfully using or entitled to same, including, without limitation, employees and other agents of public utility companies in the performance of their duties.

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The Declarant reserves a transferable easement over and on the Common Area for its employees, other agents and its independent contractors for the purpose of doing all things reasonably necessary and proper to make improvements on the Land.

(j) Determination of Action Following Casualty Damage. In the event of damage to any portion of the Condominium by fire or other casualty, the proceeds of the master casualty policy shall, pursuant to Section 43, III, of the Condominium Act, be used to repair, replace or restore the structure or Common Area damaged, unless the Unit Owners vote to terminate the Condominium pursuant to Section 34 of the Condominium Act. The Board of Directors is hereby irrevocably appointed the agent for each Unit Owner, for each mortgagee of a Unit and for each owner of any other interest in the Condominium to adjust all claims resulting from such damage and to deliver releases upon the payment of claims; provided, however, that proceeds of insurance shall be payable and paid, not to the Board of Directors, but to a commercial bank as trustee for the benefit of the Unit Owner's Association, the Unit Owners or any mortgagees, as their interests may appear.

(k) The Board of Directors shall obtain (i) a master casualty policy affording fire and extended coverage in an amount equal to the full replacement value of the structures within the Condominium; (ii) a master liability policy covering the Association, the Board, the Manager and agents or employees of the foregoing with respect to the Condominium, and all Owners and other persons entitled to occupy any portion of the Condominium; and (iii) such other policies as specified hereinbelow, all of which insurance shall be governed by the following provisions to the extent obtainable or possible:

(I) Fire insurance with standard extended coverage endorsement, vandalism and malicious mischief endorsements insuring all the buildings in the Condominium including without limitation all portions of the interior of such buildings as are for insurance purposes normally deemed to constitute part of the building and customarily covered by such insurance, such as heating and air conditioning and other service machinery, interior walls, all finished wall surfaces, ceiling and floor surfaces including any wall to wall floor coverings, bathroom and kitchen cabinets and fixtures, including appliances which are affixed to the buildings, and heating and lighting fixtures, except for improvements made by individual Owners which exceed a total value of One Thousand Dollars (\$1,000.00) and are not reported to the insurer, such insurance to be in an amount at least equal to the replacement value of the buildings and to be payable, not to the Board of Directors, but to a commercial bank as trustee for the benefit of the Association, the Owners and their mortgagees, as their respective interests may appear.

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(II) Public liability insurance in such amounts as the Board may from time to time determine, but in no event shall the limits of liability be less than One Million Dollars (\$1,000,000.00) for bodily injury and property damage per occurrence, insuring the Association and all individuals referred to in Paragraph 3(k)(ii) above, against any liability to anyone, and with cross liability coverage with respect to liability claims of anyone insured thereunder against any other insured thereunder. This insurance, however, shall not insure against individual liability for negligence occurring within a Unit or within the Limited Common Area to which a Unit has exclusive use.

(III) Workmen's compensation insurance as required by law.

(IV) Such other insurance as the Board may determine.

(1) The Declarant shall have no obligation to begin or to complete the improvements shown on the Plans.

4. Amendment of Declaration. Except as otherwise provided in the Condominium Act and herein, this Declaration may be amended by the vote of at least sixty-six and two-thirds percent (66-2/3%) of the Unit Owners, cast in person or by proxy at a meeting held in accordance with the provisions of the By-Laws; provided, however, that (i) no such amendment shall be effective until evidence thereof has been duly recorded at said Registry of Deeds pursuant to Section 34, IV, of the Condominium Act, (ii) so long as the Declarant owns one or more Units, no amendment to the Declaration shall be adopted that could interfere with the construction, sale, lease or disposition of such Unit(s) and (iii) no such amendment shall be contrary to the provisions of the Condominium Act.

5. Termination, Amendment or Partition. The Common Area shall remain undivided and no Unit Owner or any other Person shall bring any action for partition or division thereof, nor shall the Common Area be abandoned by act or omission, unless the Condominium is terminated pursuant to Sections 33 and 34 of the Condominium Act.

If there are no Unit Owners other than the Declarant, the Declarant may unilaterally terminate or amend the Condominium in accordance with Section 33 of the Condominium Act.

6. Consent of First Mortgagees. Notwithstanding any other provision of this Declaration, the By-laws or the rules, unless at least seventy-five percent (75%) of the mortgagees holding mortgages recorded at the Sullivan County Registry of Deeds constituting first liens on the Units subject to such mortgages have given their prior written approval, the Unit Owners' Association and Board of Directors shall not be entitled to:

(a) By act or omission seek to abandon or terminate the Condominium;

(b) Change the pro rata interest or obligations of any Unit (i) for the purposes of levying assessments or charges or

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allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) for determining the undivided percentage interest of each Unit in the Common Area;

(c) Partition or subdivide any Unit;

(d) Seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area. (The granting of easements for utilities or for other public purposes consistent with the intended use of the Common Area by the Condominium shall not be deemed a transfer within the meaning of this clause.); or

(e) Use hazard insurance proceeds for losses to the Property (whether to Units or to Common Area) for other than the repair, replacement, or reconstruction of such improvements, except as provided by statute in case of substantial loss to the Units and/or Common Area.

7. Priority of First Mortgagees. No provision of this Declaration, the By-laws, or the rules shall be construed to grant to any Unit Owner, or to any other party, any priority over any rights of first mortgagees of the Condominium Units pursuant to their first mortgages in the case of the distribution to Unit Owners of insurance proceeds or condemnation awards for losses to, or a taking of, Units and/or the Common Area or any portions thereof.

8. Invalidity. It is the intention of the Declarant that the provisions of this Declaration are severable so that if any provision, condition, covenant, or restriction hereof shall be invalid or void under any applicable federal, state or local law or ordinance, the remainder shall be unaffected thereby. In the event that any provision, condition, covenant or restriction hereof is, at the time of recording this Declaration, void, voidable or unenforceable as being contrary to any applicable law or ordinance, the Declarant, its successors and assigns and all Persons claiming by, through, or under this Declaration covenant and agree that any future amendments or supplements to the said laws having the effect of removing said invalidity, voidability, or unenforceability, shall be deemed to apply retrospectively to this Declaration thereby operating to validate the provisions of this instrument which otherwise might be invalid and it is covenanted and agreed that any such amendments and supplements to the said laws shall have the effect herein declared as fully as if they had been in effect at the time of this instrument.

9. Waiver. No provision contained in this Declaration shall be deemed to have been waived by reason of any failure to enforce the same irrespective of the number of prior violations which may have occurred.

10. Gender and Number. The use of the masculine gender herein shall be deemed to refer to the feminine gender and the use of the singular shall be deemed to refer to the plural and vice versa, whenever the context so requires.

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IN WITNESS WHEREOF, Controlled Environment Corporation has caused this Declaration to be executed by its duly authorized officer this 28 day of November, 1978.

WITNESS:

CONTROLLED ENVIRONMENT CORPORATION

By: Thomas M. Hardiman L.S.

Name:

President

Thomas M. Hardiman

STATE OF New Hampshire.  
COUNTY OF Merrimack

On the 28 day of November, 1978, before me, personally appeared Thomas M. Hardiman who acknowledged himself to be the President of Controlled Environment Corporation and that he, as such President being authorized so to do, executed the foregoing instrument for the purposes therein contained.

Barbara T. McCoo  
Justice of the Peace/Notary Public

BARBARA McCOO, Notary Public  
My Commission Expires February 24, 1983

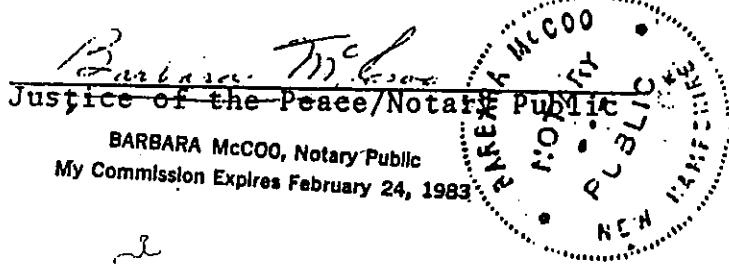


EXHIBIT A TO DECLARATION OF  
WEST COVE "D" CONDOMINIUM:  
LEGAL DESCRIPTION OF THE LAND

A certain tract or parcel of land situated in Grantham, County of Sullivan and State of New Hampshire, bounded and described as follows:

Beginning at a point on the easterly side of West Cove Road where said road crosses the northerly line of Stoney Brook, said point being the southwest corner of the within described premises; thence northerly in an arc having a radius of 180' along said road a distance of eighty (80) feet more or less to a point; thence north  $41^{\circ} 30' 00''$  east along said road a distance of two hundred (200) feet to a point; thence continuing along said road easterly in an arc having a radius of 150' a distance of two hundred thirty-four and thirty-one one-hundredths (234.31) feet to a point; thence south  $49^{\circ} 00' 00''$  east a distance of seventy-five and ninety-two one-hundredths (75.92) feet to a point; thence continuing along said road in an arc having a radius of 200' a distance of ninety-four and eighty-three one-hundredths (94.83) feet to a point; thence south  $21^{\circ} 50' 00''$  east along said road a distance of three hundred one and twenty-nine one-hundredths (301.29) feet to a point; thence continuing along said road in an arc having a radius of 300' a distance of two hundred twenty-eight and sixty-four one-hundredths (228.64) feet to a point; thence continuing along said road in an arc having a radius of 310' a distance of one hundred ten and fifty-two one-hundredths (110.52) feet to a point; thence continuing along said road in an arc having a radius of 165.88' a distance of one hundred thirty (130) feet to a point; thence continuing south  $89^{\circ} 58' 30''$  east a distance of seventy-four and thirty-four one-hundredths (74.34) feet to a point; thence continuing southerly in an arc having a radius of 50' a distance of seventy-six and nineteen one-hundredths (76.19) feet to a point on the westerly side of Road 'Round The Lake; thence south  $2^{\circ} 40' 15''$  east a distance of one hundred forty-two and seventy-three one-hundredths (142.73) feet along Road 'Round The Lake to a point; thence continuing southerly and westerly along said road in an arc having a radius of 125' a distance of two hundred one and seven one-hundredths (201.07) feet to a point; thence continuing south  $89^{\circ} 29' 25''$  west a distance of two hundred forty-five and sixty-two one-hundredths (245.62) feet to a point; thence continuing along said road in an arc having a radius of 480' a distance of one hundred seventy-five (175) feet more or less to a point, said point being the southeasterly corner of the within described premises and at the intersection of Road 'Round The Lake with Eastman Lake; thence continuing in a northerly and westerly direction along said Eastman Lake a distance of one thousand fifty (1,050) feet more or less to the point of beginning.

Meaning and intending to describe Parcel "D" as shown on "Subdivision Plan, Parcels 'B' & 'D', Grantham, N. H. 'Eastman', C.E.C. Land" by Thomas F. Moran, Inc. dated June 27, 1977, recorded in the Sullivan County Registry of Deeds in Pocket 2, Folder 2, #3, Plan File 2.

Also meaning and intending to describe Parcel "D" as shown on  
"West Cove 'D' Site Plan, Grantham, N.H., 'West Cove' Cluster Housing  
Special Place, Declarant: Controlled Environment Corp." dated June  
30, 1978 recorded in the Sullivan County Registry of Deeds.

Together with the benefits, and subject to the burdens, of the  
Eastman Supplementary Declaration of Covenants and Restrictions  
recorded in the Sullivan County Registry of Deeds.

EXHIBIT B TO DECLARATION OF  
WEST COVE "D" CONDOMINIUM:  
BY-LAWS OF WEST COVE "D" CONDOMINIUM

ARTICLE I

PLAN OF UNIT OWNERSHIP

1. Purpose. The administration of the Condominium shall be governed by these By-Laws which are annexed to the Declaration of the West Cove "D" Condominium and are made a part thereof, and all present and future holders of any interest in the Condominium shall hold said interest subject to these By-Laws, as well as to the Declaration and the Rules promulgated hereunder.

2. Definitions. Terms not defined herein or in the Declaration shall have the meanings specified in Section 3 of the Condominium Act.

3. By-Laws' Applicability. The provisions of these By-Laws are applicable to the Property, and the use, occupancy, sale, lease or other transfer thereof. All present and future Owners, tenants, future tenants, their guests, licensees, servants, agents, employees and any other person who shall use the Condominium, shall be subject to these By-Laws and to the Rules of the Condominium. The acceptance of a deed of conveyance or the entering into a lease or the act of occupancy of a Unit or any other portion of the Condominium shall constitute an acknowledgement that such Owner, tenant or occupant has accepted and ratified these By-Laws, the provisions of the Declaration and the Rules and will comply with them.

4. Office. The office of the Condominium and of the Board of Directors shall be located at the Condominium or at such other place as may be designated from time to time by the Board of Directors. The address of the Condominium is: West Cove "D" Condominium, c/o Controlled Environment Corporation, P.O. Box 1, Grantham, New Hampshire 03753.

ARTICLE II

UNIT OWNERS' ASSOCIATION

1. Composition. All of the Unit Owners, acting as a group in accordance with the Condominium Act, the Declaration and these By-Laws, shall constitute the "Unit Owners' Association," which shall have the responsibility of administering the Condominium, establishing the means and methods of collecting the assessments for Common Expenses, arranging for the management of the Condominium, and performing all of the acts that may be required to be performed by the Unit Owners' Association by the Condominium Act. Except as to those matters which the Act specifically requires to be performed by the

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vote of the Unit Owners, the administration of the Condominium shall be performed by the Board of Directors (as more particularly set forth in Article III).

2. Voting. Each Unit shall be entitled to one vote. Since a Unit Owner may be more than one person, if only one of such persons is present at a meeting of the Association that person shall be entitled to cast the votes appertaining to that Unit. But if more than one of such persons is present, the vote appertaining to that Unit shall be cast only in accordance with the agreement of a majority of them, and such consent shall be conclusively presumed if any one of them purports to cast the vote appertaining to that Unit without protest being made forthwith by any of the others to the person presiding over the meeting. As applied to a person which is not a natural person, the word "person" shall be deemed for the purposes of this Section to include, without limitation, any one natural person having authority to execute deeds on behalf of such person which is not a natural person and which is, either alone or in conjunction with another person or persons, a Unit Owner. Except where a greater number is required by the Condominium Act, the Declaration, or these By-Laws, a majority of the votes of Unit Owners present, in good standing and entitled to vote is required to adopt decisions at any meeting of the Unit Owners' Association. If the Declarant owns or holds title to one or more Condominium Units, the Declarant shall have the right at any meeting of the Unit Owners' Association to cast the votes to which such Units are entitled.

3. Place of Meeting. Meetings of the Unit Owners' Association shall be held at the principal office of the Condominium or at such other suitable place as may be designated by the Board of Directors and stated in the notice of the meeting.

4. Annual Meeting. The first annual meeting of the Unit Owners' Association shall be held on a date to be determined by the Declarant, which date shall be within one (1) year after the formation of the Association by the recordation of the Declaration. Notice of such meeting shall be given in accordance with the provisions of Section 6 of this Article II. At such meeting the persons designated by the Declarant shall resign as members of the Board of Directors, and all of the Owners, including the Declarant if the Declarant owns any Unit or Units, shall elect a new Board of Directors. Thereafter, the annual meetings of the Association shall be held on the same date of each succeeding year, or on such other date within a thirty (30) day period prior to such date, as may be designated by the Board of Directors and reflected in the said notice. At such annual meetings the Board of Directors shall be elected by ballot of the Owners in accordance with the requirements of Article III. Provided, however, that until three (3) years after the recordation of the Declaration or until three-fourths (3/4ths) of the Units have been conveyed by the Declarant, whichever occurs later, the Declarant shall be entitled to elect a majority of the members of the Board of Directors which Directors shall serve for the shortest terms. The Association may transact such other business as may properly come before them at such meetings.

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5. Special Meetings. It shall be the duty of the President to call a special meeting of the Unit Owners' Association if so directed by resolution of the Board of Directors or upon a petition signed and presented to the Clerk by Owners having not less than 30% of the votes of all Owners. The notice of any special meeting shall set forth the purpose thereof and business shall be transacted at a special meeting except as stated in the notice.

6. Notice of Meeting. It shall be the duty of the Clerk to mail, by United States mail, return receipt requested, a notice of each annual meeting or special meeting, at least twenty-one (21) days in advance of such meeting, stating the purpose thereof as well as the time and place where it is to be held; to each Owner of record, at the address of their respective Units and at such other address as each Owner may have designated by notice in writing to the Clerk; provided, however, that such notice may be hand delivered by the Clerk or Manager, if the Clerk or Manager obtains a receipt of acceptance of such notice from the Unit Owner or the Clerk may give notice in accordance with Article XI.

7. Voting Requirements. An Owner shall be deemed to be in good standing and entitled to vote at any annual meeting or at any special meeting of the Unit Owners' Association if, and only if, he shall have fully paid all assessments made or levied and due against him and his Condominium Unit by the Board of Directors as hereinafter provided, together with all interest, costs, attorney's fees, penalties and other expenses, if any, properly chargeable to him and against his Condominium Unit, at least three (3) days prior to the date fixed for such annual or special meeting.

8. Proxies. The vote appertaining to any Unit may be cast pursuant to a proxy executed by or on behalf of the Unit owner or, where the Unit owner is more than one person, by or on behalf of all such persons. The validity and revocation of proxies is governed by Section 39, IV, of the Condominium Act.

9. Quorum. A quorum shall be deemed to be present throughout any meeting of the Unit owners, until adjourned, if persons entitled to cast more than 33 1/3 percent of the total votes are present at the beginning of such meeting.

10. Order of Business. The order of business at all meetings of the Unit Owners' Association may be as follows: (a) roll call; (b) recitation of proof of notice of meeting; (c) reading of minutes of preceding meeting; (d) reports of officers; (e) report of Board of Directors; (f) reports of committees; (g) election of directors, if applicable; (h) unfinished business; and (i) new business, any of which may be waived.

11. Conduct of Meeting. The President, or his designated alternative, shall preside over all meetings of the Unit Owners' Association and the Clerk shall keep the minutes of the meeting and shall record all transactions occurring and all resolutions adopted at

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the meeting. Roberts Rules of Order shall govern the conduct of all meetings of the Unit Owners' Association when not in conflict with the Declaration, these By-Laws or the Condominium Act.

### ARTICLE III

#### BOARD OF DIRECTORS

1. Powers and Duties. The affairs and business of the Condominium shall be managed by a Board of Directors (sometimes hereinafter referred to as the "Board") which shall have all of the powers and duties necessary for the administration of the affairs of the Condominium and may do all such acts and things as are not by the Condominium Act or by these By-Laws directed to be exercised and done by the Unit Owners' Association. The Board of Directors shall have the power from time to time to adopt any Rules deemed necessary for the enjoyment of the Condominium provided that such Rules shall not be in conflict with the Condominium Act, the Declaration or these By-Laws. The Board of Directors may delegate to one of its members the authority to act on behalf of the Board of Directors on all matters which might arise between meetings of the Board of Directors. In addition to the general duties imposed by these By-Laws, the Board of Directors shall have the power to, and be responsible for, the following:

(a) Preparation of an annual budget, in which there shall be established the assessment of each Owner for the Common Expenses;

(b) Making assessments against Owners to defray the Common Expenses of the Condominium, establishing the means and methods of collecting such assessments from the Owners, collecting said assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to carry out the administration of the Property. Unless otherwise determined by the Board of Directors, the annual assessments against each Owner for his proportionate share of the Common Expenses shall be payable in equal monthly installments, each such installment to be due and payable in advance on the first day of each month for said month.

(c) Providing for the operation, care, upkeep, replacement and maintenance of all of the Common Area and services of the Condominium.

(d) Designating, hiring and dismissing the personnel necessary for the maintenance, operation, repair and replacement of the Common Area, and providing services for the Property, and, where appropriate, providing for the compensation of such personnel and for the purchase or use of equipment, supplies and material to be used by such personnel in the performance of their duties, which supplies and equipment, if purchased, shall be deemed the common property of the owners.

(e) Making and amending Rules respecting the use of the property and enforcing the provisions of the Declaration, these

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By-Laws and such Rules, and bringing any proceedings which may be instituted on behalf of the Owners.

(f) Making an annual election for taxation pursuant to Section 528 of the Internal Revenue Code, as amended from time to time.

(g) Assigning wood sheds and two parking spaces for each Unit so that the wood sheds and parking spaces are equally convenient to the occupants of each Unit.

(h) Obtaining and maintaining insurance against casualties and liabilities, as provided in Article VI of these By-Laws, and paying the premiums therefor and making, or contracting for the making of, repairs, additions, and improvements to, or alterations of, the Property and repairs to, and restoration of, the Property, in accordance with the other provisions of these By-Laws, after damage or destruction by fire or other casualty.

(i) Maintaining books of account showing the receipts and expenditures of the Unit Owners' Association. The said books shall be available for examination by the Owners, their duly authorized agents or attorneys, during general business hours on business days.

(j) To do such other things and acts not inconsistent with the Condominium Act or with the Declaration which it may be authorized to do by a resolution of the Unit Owners' Association.

2. Managing Agent. The Board of Directors may employ, or contract with, a professional manager or management firm, or with the Eastman Community Association ("Manager") for a fee or compensation established by the Board of Directors, to perform such duties and services as the Board of Directors shall authorize, including, but not limited to, the duties listed in section 1 of this Article III. The Board of Directors may delegate to the Manager all of the powers granted to the Board of Directors by these By-Laws; provided that any actions by the Manager with respect to the powers set forth in paragraph (b) of Section 1 of this Article III shall require the written consent of the Board of Directors. The term of any employment contract for a Manager may not exceed two (2) years, and any such employment contract shall provide, inter alia, that such agreement may be terminated for cause upon no more than ninety (90) days written notice.

3. Number of Directors and Initial Selection of Board. The Board of Directors shall be composed of three (3) persons. Until the election of the Board of Directors takes place at the first annual meeting of the Unit Owners' Association, as provided in Section 4 of Article II, the Board of Directors shall consist of such persons as shall have been designated by the Declarant. Thereafter, anything in these By-Laws to the contrary notwithstanding, until three (3) years after the date of recordation of this Declaration in the Sullivan County Registry of Deeds, or until three-fourths (3/4ths) of the Units have been conveyed by the Declarant, whichever occurs later, a

majority of the members of the Board of Directors shall be selected and designated by the Declarant. The Declarant shall have the right in its sole discretion to replace such Directors as may be so selected and designated by it, and to select and designate their successors. The Declarant may relinquish its rights hereunder at any prior time. Directors shall consist only of Owners, or, where a Person which is an Owner is not a natural person, any natural person having authority to execute deeds in behalf of such Person.

4. Election and Term of Office. At the first annual meeting of the Unit Owners' Association three (3) directors shall be elected. The term in office of one director shall be for three (3) years, the term in office of one director shall be for two (2) years and the term in office of one director shall be for one (1) year. Subject to the provisions of Section 3 above, at the expiration of the initial term of office of each director, his successor shall be elected to serve a term of three (3) years and each director shall hold office until his successor has been elected.

5. Organization Meeting. The first meeting of the members of the Board of Directors following the annual meeting of the Unit Owners' Association shall be held within ten (10) days after the annual meeting at such place as shall be fixed by the directors at the meeting at which such directors were elected, and no notice shall be necessary to the newly elected directors in order legally to constitute such meeting, providing a majority of the whole Board shall be present thereat.

6. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the directors, but at least two (2) such meetings shall be held during each twelve month period after the annual meeting of the Unit Owners' Association. Notice of regular meetings of the Board of Directors shall be given to each director, personally or by mail, telephone or telegraph, at least five (5) business days prior to the day named for such meeting, except that no notice shall be required for a regular meeting held immediately after, and at the same place as, the annual meeting of the Association.

7. Special Meetings. Special meetings of the Board of Directors may be called by the President on five (5) business days' notice to each director. Such notice shall be given personally or by mail, telephone or telegraph, and such notice shall state the time, place and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Clerk in like manner and on like notice on the written request of at least two (2) directors.

No special meetings may be called during the period that the Declarant has the power to select a majority of the Board of Directors as provided in Paragraph 3 above.

8. Waiver of Notice. Before or within ten (10) days after any meeting of the Board of Directors, any director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to

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the giving of such notice. Attendance by a director at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all the directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

9. **Board of Director's Quorum.** At all meetings of the Board of Directors, a majority of the directors shall constitute a quorum for the transaction of business, and the acts of the majority of the directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. If, at any meeting of the Board of Directors, there be less than a quorum present, those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

10. **Vacancies.** Vacancies in the Board of Directors caused by any reason other than removal of a director by a vote of the Unit Owners' Association shall be filled by vote of the majority of the remaining directors, at a special meeting of the Board of Directors held for that purpose promptly after the occurrence of any such vacancy, even though the directors present at such meeting may constitute less than a quorum of the Board; and each person so elected shall be a director for the remainder of the term of the director so replaced; provided, however, that the vacancy of any director designated by the Declarant pursuant to a right of the Declarant to make such designation shall be filled by the Declarant.

11. **Removal of Directors.** A director may be removed with or without cause, and his successor elected, at any duly called regular or special meeting of the Unit Owners' Association at which a quorum is present, by an affirmative vote of a majority of the votes represented and voting. Any director whose removal has been proposed by the Owners shall be given at least ten (10) days' notice of the calling of the meeting and the purpose thereof and an opportunity to be heard at the meeting. Notwithstanding anything in this Section to the contrary, no person selected and designated by the Declarant as a member of the Board of Directors may be removed without the consent of the Declarant and in such event the Declarant shall select and designate his successor.

12. **Compensation.** No director shall receive any compensation from the Condominium for acting as such.

13. **Conduct of Meetings.** The President, or, in his absence, a president pro tem elected by the Board, shall preside over all meetings of the Board of Directors and the Secretary shall keep the minutes of the meetings of the Board of Directors recording therein all resolutions adopted by the Board of Directors and all transactions and proceedings occurring at such meetings, which minutes shall be filed in the Record Book of the Condominium.

14. **Report of Board of Directors.** The Board of Directors shall present at each annual meeting, and when called for by vote of the

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Unit Owners' Association at any special meeting of the Association, a full and clear statement of the business and condition of the Condominium.

15. **Fidelity Bonds.** The Board of Directors may require that all officers, agents (including the Manager) and employees of the Unit Owners' Association handling or responsible for funds furnish adequate fidelity bonds. The premiums on such bonds shall constitute a Common Expense.

16. **Dispensing with Vote.** Any action by the Board of Directors required or permitted to be taken at any meeting may be taken without a meeting if all of the members of the Board of Directors shall individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the Board of Directors.

17. **Liability of the Board of Directors.** The members of the Board of Directors shall not be liable to the Owners for any mistake of judgment, negligence, or otherwise except for their own individual willful misconduct or bad faith. The Owners shall indemnify and hold harmless each of the Directors from and against all contractual liability to others arising out of contracts made by the Board of Directors on behalf of the Owners unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or of these By-Laws. It is intended that the members of the Board of Directors shall have no personal liability (except as Owners) with respect to any contract made by them on behalf of the Owners. It is also intended that the liability of any Owner arising out of any contract made by the Board of Directors or out of the aforesaid indemnity in favor of the members of the Board of Directors shall be limited to such proportion of the total liability thereunder as his Unit's value bears to the total value of all Units. Every written agreement made by the Board of Directors or by the Manager on behalf of the Owners shall, if obtainable, provide that the members of the Board of Directors or the Manager, as the case may be, are acting only as agents for the Owners and shall have no personal liability thereunder (except as Owners), and that each Owner's liability thereunder shall be limited to such proportion of the total liability thereunder as his Unit's value bears to the total value of all Units. The Owners shall indemnify any person who was or is a party or is threatened to be made a party to any action, suit, or proceeding, whether or not based on contract, by reason of the fact that he is or was a Director, or officer, for expenses (including attorneys' fees), judgments, fines and amounts paid in settlement incurred by him in connection with such action, suit or proceeding unless he acted in bad faith or was guilty of willful misconduct.

#### ARTICLE IV

##### OFFICERS

1. **Designation.** The principal officers of the Condominium shall

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be a President, a Clerk, and a Treasurer, all of whom shall be elected by the Board. The Board may appoint assistants or such other officers as in its judgment may be necessary. With the exception of the President, no officer need be a member of the Board. The offices of Treasurer and Clerk may be held by the same person.

2. **Election of Officers.** The officers of the Condominium shall be elected annually by the Board at the organization meeting of each new Board and shall hold office at the pleasure of the Board. Any vacancy in an office shall be filled by the Board at a regular meeting or special meeting called for such purpose.

3. **Removal of Officers.** The officers shall hold office until their respective successors are chosen and qualify in their stead. Any officer elected or appointed by the Board of Directors may be removed at any time by the affirmative vote of a majority of the whole Board, and his successor may be elected at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors called for such purpose.

4. **President.** The President shall be the chief executive officer; he, or his designated alternate, shall preside at meetings of the Unit Owners' Association and, if present, at meetings of the Board of Directors, and shall be an ex officio member of all committees; he shall have general and active management of the business of the Condominium and shall see that all orders and resolutions of the Board are carried into effect. He shall have all of the general powers and duties which are usually vested in or incident to the office of president of a stock corporation organized under the laws of the State of New Hampshire.

5. **Clerk.** The Clerk, or his designated alternate, shall attend all meetings of the Board of Directors and all meetings of the Unit Owners' Association, shall record the minutes of all proceedings in the Record Book of the Condominium and shall perform like duties for committees when required. The Clerk shall keep the Record Book current and in his custody. He shall give, or cause to be given, notice of all meetings of the Unit Owners' Association the Board and committees and shall perform such other duties as may be prescribed by the Board or President. The Clerk shall compile and keep current at the principal office of the Condominium, a complete list of the Owners and their last known post office addresses. This list shall be open to inspection by all Owners and other persons lawfully entitled to inspect the same, at reasonable hours during regular business days.

6. **Treasurer.** The Treasurer shall have the custody of all funds and securities that are not under the control of the Manager, and, with the assistance of the Manager, shall keep full and accurate records of receipts and disbursements, shall prepare all required financial data, and shall deposit all monies and other valuable personal property in such depositories as may be designated by the Board. He shall disburse funds as ordered by the Board, where possible taking proper vouchers for such disbursements, and shall render to the President and directors, at the regular meetings of the

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Board, or whenever they may require it, an account of all of his transactions as Treasurer and of the financial condition of the Condominium.

7. Agreements, Contracts, Deeds, Checks, etc. All agreements, contracts, deeds, leases, checks and other instruments of the Condominium for expenditures or obligations may be executed by any officer of the Condominium or by such other person or persons as may be designated by the Board of Directors.

8. Compensation of Officers. No officer shall receive any compensation from the Condominium for acting as such.

#### ARTICLE V

##### OPERATION OF THE PROPERTY

###### 1. Determination of Common Expenses and Assessments Against Owners.

(a) Fiscal Year. The fiscal year of the Condominium shall consist of the twelve month period commencing on January 1 of each year and terminating on December 31 of the same year, except that the first fiscal year shall begin at the date of organization and terminate on the next following December 31. The fiscal year herein established shall be subject to change by the Board of Directors.

(b) Preparation and Approval of Budget. Each year the Board of Directors shall adopt a budget for the Condominium containing an estimate of the total amount which it considers necessary to pay the cost of maintenance, management, operation, repair and replacement of the Common Area and any parts of the units as to which it is the responsibility of the Board of Directors to maintain, repair and replace, and the cost of wages, materials, insurance premiums, services, supplies and other expenses that may be declared to be Common Expenses by the Condominium Act, the Declaration, these By-Laws or a resolution of the Unit Owners' Association, and which will be required during the ensuing fiscal year for the administration, operation, maintenance and repair of the Property and the rendering to the Owners of all related services. Such budget shall also include such reasonable reserves as the Board of Directors considers necessary to provide a general operating reserve, and reserves for contingencies and replacements. The Board of Directors shall make reasonable efforts to send to each Owner a copy of the budget, in a reasonably itemized form which sets forth the amount of the Common Expenses payable by each Owner, at least fifteen days in advance of the fiscal year to which the budget applies. The said budget shall constitute the basis for determining each Owner's contribution for the Common Expenses of the Condominium.

(c) Assessment and Payment of Common Expenses. One-half of the total amount of the estimated funds required for the operation of the Property set forth in the budget for the fiscal year adopted by

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the Board of Directors shall be assessed against the Owners as of January 1 and one-half shall be assessed as of July 1 in each fiscal year. Assessments shall be made on these dates against each Owner in proportion to the number of votes in the Unit Owners' Association appertaining to his Unit, and shall be a lien against each Owner's Condominium Unit when perfected in accordance with the Condominium Act. On or before the first day of each of the succeeding six (6) months in such fiscal year after each assessment, each Owner shall be obligated to pay to the Association one-sixth (1/6) of the assessment for such fiscal year made pursuant to the foregoing provisions. Within ninety (90) days after the end of each fiscal year, the Board of Directors shall supply to all Owners an itemized income and expense statement. Any amount accumulated in excess of the amount required for actual expense and budgeted reserves shall, in the discretion of the Board of Directors, either be returned to the Owners in accordance with each Owner's votes in the Unit Owner's Association, be credited according to each owner's votes in the Association to the next monthly installment due from Owners under the current fiscal year's budget, until exhausted, or be added to reserves. Any net shortage shall, if the Board of Directors deems it advisable, be added according to each Owner's votes in the Unit Owners' Association to the installments due in the succeeding six (6) months after the rendering of the accounting.

(d) Reserves. Upon the affirmative vote of at least sixty-six and two-thirds percent (66 2/3%) of the Owners, but in no event prior to the expiration of three years after the initial recordation of the Declaration, the Board of Directors may build up and maintain an adequate operating reserve and reserve for replacement of the Common Area, which shall be funded by regular monthly payments, as provided for in subsection (c). At the end of each fiscal year, all funds accumulated during such year for reserves for replacement of Common Area shall be placed in a trustee account, segregated from the general operating funds, useable only for such purposes. If for any reason, including nonpayment of any Owner's assessment, the reserves are inadequate, the Board of Directors may at any time levy a further assessment, which shall be assessed against the Owners according to their respective votes in the Unit Owners' Association, and which may be payable in a lump sum or in installments as the Board of Directors may determine. The Board of Directors shall serve notice of any such further assessment on all Owners by a statement in writing giving the amount and reasons therefor, and such further assessment shall, unless otherwise specified in the notice, become effective with the next monthly payment which is due more than ten (10) days after the delivery or mailing of such notice of further assessment. All Owners shall be obligated to pay the adjusted monthly amount or, if the additional assessment is not payable in installments, the amount of such assessments.

(e) Initial Assessment. When the first Board of Directors takes office, it shall determine the budget, as defined in this section, for the period commencing upon the recordation of the Declaration at the Sullivan County Registry of Deeds and ending on the last day of the fiscal year in which their election occurs. Assess-

ments shall be levied against the Owners during said period as provided in paragraph (c) of this Section. The Board of Directors may establish an initial operating reserve through special assessment of each Owner upon purchase of his Condominium Unit from the Declarant.

(f) Effect of Failure to Prepare or Adopt Budget. The failure or delay of the Board of Directors to prepare or adopt the annual budget for any fiscal year shall not constitute a waiver or release in any manner of an Owner's obligation to pay his allocable share of the Common Expenses as herein provided, whenever the same shall be determined, and in the absence of any annual budget or adjusted budget, each Owner shall continue to pay the monthly charge at the then existing monthly rate established for the previous fiscal period until a new annual or adjusted budget shall have been adopted.

2. Payment of Common Expenses. All Owners shall be obligated to pay the Common Expenses assessed by the Board of Directors pursuant to the provisions of Section 1 of this Article V whether or not such Owner agrees with the purposes for which such costs were incurred. No Owner may exempt himself from liability for his contribution toward Common Expenses by waiver of the use or enjoyment of any of the Common Elements or by abandonment of his Unit. No Owner shall be liable for the payment of any part of the Common Expenses assessed against his Condominium Unit subsequent to a sale, transfer or other conveyance by him of such Condominium Unit. The purchaser of a Condominium Unit or successor, owner by virtue of such transfer or other conveyance shall be jointly and severally liable with the selling Owner for all unpaid assessments against the Unit Expenses up to the time of the conveyance, without prejudice to the purchaser's right to recover from the selling Owner the amounts paid by the purchaser therefor; provided, however, that any such selling Owner or purchaser shall be entitled to a recordable statement from the Board of Directors or the Manager setting forth the amount of the unpaid assessments against the Unit and such purchaser shall not be liable for, nor shall the Condominium Unit conveyed be subject to a lien for, any unpaid assessments in excess of the amount therein set forth; failure to furnish or make available such a statement within seven (7) days from receipt of such request shall extinguish the lien for unpaid assessments. Payment of a fee of Ten Dollars (\$10.00) or the maximum allowable under the Condominium Act, whichever is greater, shall be required as a prerequisite for issuance of such a statement. If a mortgagee of a first mortgage of record or purchaser of a Condominium Unit obtains title to the Condominium Unit as a result of foreclosure of a first mortgage, or through the enforcement of any other remedies provided for in the mortgage, or by virtue of a deed in lieu of foreclosure, such mortgagee or purchaser, its successors and assigns shall not be subject to a lien for, the payment of Common Expenses assessed prior to the acquisition of title to such Unit by such mortgagee or purchaser pursuant to the aforesaid remedies. Such unpaid share of Common Expenses assessed prior to the acquisition of title to such Unit by such mortgagee or purchaser pursuant to the aforesaid remedies shall be collectible from all Owners, including the purchaser or first mortgagee, in proportion to their respective votes in the Unit Owners' Association.

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3. Collection of Assessments. The Board of Directors shall take prompt action to collect any assessments for Common Expenses due from any Owner which remain unpaid for more than sixty (60) days from the due date for payment thereof.

4. Maintenance and Repair.

(a) By the Board of Directors. Except as otherwise provided in Section 4(b) below, the Board of Directors shall be responsible for the maintenance, repair and replacement (unless necessitated by the negligence, misuse or neglect of an Owner, or of a person gaining access with said Owner's actual or implied consent, in which case such expense shall be charged to such Owner), of all of the Common Area, whether located inside or outside of the Units, the cost of which shall be charged to all Owners as a Common Expense.

(b) By the Owner. Except for the portions of his Unit required to be maintained, repaired and replaced by the Board of Directors, each Owner shall be responsible for the maintenance, repair and replacement, at his own expense, of his Unit, and any part thereof, including but not limited to, any interior walls, finished interior surface of ceiling and floors; kitchen and bathroom fixtures and appliances, and those parts of the heating and air conditioning, sewage disposal, plumbing and electrical systems which are wholly contained within his Unit and serve no other. The cost of maintenance and repair of sewer pumps shall be shared equally by the Owners of the Units served by the pumps. If such Owners fail to maintain and repair the pumps, the Board may do so and charge such Owners the cost thereof. Each Owner shall be responsible for performing the normal maintenance for any Limited Common Area which is appurtenant to his Unit, including keeping it in a clean and sanitary condition and free and clear of snow, ice and any accumulation of water, and shall make, at his own expense, all repairs thereto, beyond normal maintenance, caused or necessitated by his negligence, misuse or neglect. Each Owner shall keep the interior of his Unit and its equipment and appurtenances in good order, condition, and shall do all redecorating, painting and varnishing which may at any time be necessary to maintain the good appearance and condition of his Unit. In addition, each Owner shall be responsible for all damage to any and all other Units or to the Common Area resulting from his failure to make any of the repairs required to be made by him by this section. Each Owner shall perform his responsibility in such manner as shall not unreasonably disturb or interfere with the other Owners. Each Owner shall promptly report to the Board of Directors, or the Manager, any defects or need for repairs for which the Board of Directors is responsible.

(c) Manner of Repair and Replacement. All repairs and replacements shall be substantially similar to the original construction and installation, and shall be of first class quality. The method of approving payment vouchers for all repairs and replacement shall be determined by the Board of Directors.

5. Additions, Alterations or Improvements by Board of Directors.

Whenever in the judgment of the Board of Directors the Common Area shall require additions, alterations or improvements costing in excess of Three Thousand Dollars (\$3,000) during any period of twelve (12) consecutive months, and the making of such additions, alterations or improvements shall have been approved by a Majority of the Owners, the Board of Directors shall proceed with such additions, alterations or improvements and shall assess all Owners for the cost thereof as a Common Expense. Any additions, alterations or improvements costing Three Thousand Dollars (\$3,000) or less during any period of twelve (12) consecutive months may be made by the Board of Directors without approval of the Owners and the cost thereof shall constitute part of the Common Expenses. Notwithstanding the foregoing, if, in the opinion of not less than 80% of the members of the Board of Directors such additions, alterations or improvements are exclusively or substantially exclusively for the benefit of a limited number of Owner or Owners requesting the same, such requesting Owners shall be assessed therefor in such proportion as they jointly approve or, if they are unable to agree thereon, in such proportions as may be determined by the Board of Directors.

6. Additions, Alterations or Improvements by Owners. No Owner shall make any structural addition, alteration or improvement in or to his Unit without the prior written consent thereto of the Board of Directors. No Owner shall paint, decorate or otherwise change the external appearance of his Unit, including the doors and windows, or of any fence, or of any exterior surface of the Building, without the prior written consent thereto of the Board of Directors. The Board of Directors shall be obligated to answer any written request by an Owner for approval of such proposed structural addition, alteration or improvement or such external change within thirty (30) days after such request, and its failure to do so within the stipulated time shall constitute a consent by the Board of Directors to the proposed addition, alteration or improvement or change. The provisions of this Section 7 shall not apply to Condominium Units owned by the Declarant until such Units have been initially conveyed by the Declarant.

7. Restrictions on Use of Units. To assist the Condominium in providing for congenial occupancy and the protection of the value of the Units, it is necessary that the Board of Directors have the right and authority to exercise reasonable controls over the use of the Units. Violation of the following enumerated prohibitions shall not be permitted, and the Board of Directors is hereby authorized to take all steps necessary to prevent or discontinue any violations thereof, all at the expense of the violator:

(a) No advertisements or posters of any kind shall be posted on or on the Property except as authorized by the Board. This restriction shall not apply to advertisements, signs or posters utilized by the Declarant, or its agents, in selling the Units.

(b) No clothing, laundry, rugs or wash shall be hung from or spread upon or from any window or exterior portion of a Unit or in or upon any Common Area. All refuse and trash shall be placed in locations specifically designated by the Board, and no garbage or

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trash shall be permitted to remain in public view.

(c) No animal, other than the common household pets of Owners, shall be kept or maintained on the Property, nor shall common household pets be kept, bred or maintained for commercial purposes on the Property. No tenants shall be allowed to keep or maintain any pets. Pets shall not be permitted outside of Units unless they are accompanied by an adult person and carried or leashed. The Board of Directors may make further provisions in the Rules for the control and regulation of household pets in the Condominium. The Owner of a Unit where a pet is kept or maintained shall be responsible and may be assessed by the Board of Directors for all damages to the Property resulting from the maintenance of said pet, and any costs incurred by the Association in enforcing the Rules prescribed or to be prescribed by the Board of Directors for the control and regulation of pets in the Condominium.

(d) Owners, tenants and guests shall exercise extreme care to avoid unnecessary noise or the use of musical instruments, radios, television and amplifiers that may disturb others.

(e) No nuisances shall be allowed on the Property nor shall any use or practice be allowed which is an annoyance or which interferes with the peaceful possession or proper use of the Condominium by others.

(f) No Owner, tenant or guest shall allow the installation of wiring for electrical or telephone use, television antennae, air conditioning unit or other machine or equipment, which protrudes through the walls or the roof of any building or is otherwise visible on the exterior of a building except as presently installed or as authorized by the Board.

(g) No Unit or Common Area of the Condominium may be used for any unlawful, immoral or improper purpose.

(h) Nothing shall be done in any Unit or in, on, or to the Common Area which may impair the structural integrity of the Property, or which would structurally change a building or improvements thereon except as provided in the Declaration or these By-Laws. Nothing shall be altered or constructed in or removed from the Common Area, except upon the written consent of the Board of Directors.

(i) No one shall place or cause to be placed in any hallway, corridor, lobby, stairs or stairway, walkway, driveway, parking area or other Common Area any bicycles, furniture, packages or objects of any kind. These areas shall be used only for normal transit through them (or, where appropriate, vehicular parking in them).

(j) No Owner, tenant or guest shall direct or engage any employee of the Condominium on any private business, nor shall he direct, supervise or in any manner attempt to assert control over any such employee.

(k) No activity shall be done or maintained in any Unit or upon any Common Area which will increase the rate of insurance on any Unit or the Common Area or result in the cancellation of insurance thereon, unless such activity is first approved in writing by the Board of Directors. No waste shall be committed in the Common Area.

In the use of the Units and the Common Area of the Condominium, Owners shall obey and abide by all valid laws, ordinances and zoning and other governmental regulations affecting the same and all applicable Rules adopted by the Board. The Common Area shall be used only for the furnishing of the services and facilities for which they are reasonably suited and which are incident to the use and occupancy of the Units.

8. Right of Access. An Owner shall grant a right of access to his Unit to the Board of Directors and the Manager and to any other person authorized by the Board for the purpose of making inspections or for the purpose of correcting any condition originating in his Unit and threatening another Unit or Common Area, and for the purpose of performing installation, alterations or repairs to the mechanical or electrical services or other Common Area in his Unit or elsewhere in the building, provided that requests for entry are made in advance and that any such entry is at a time reasonably convenient to the Owner. In case of any emergency, such right of entry shall be immediate whether the Owner is present at the time or not.

9. Rules. Rules concerning the operation and use of the Common Area may be promulgated and amended by the Board of Directors, provided that such Rules are not contrary to or inconsistent with the Condominium Act, the Declaration or these By-Laws. Copies of the Rules shall be furnished by the Board of Directors to each Owner prior to the time when the same shall become effective.

10. Each Unit Owner shall be responsible for the sewer and water fees charged by the Eastman Sewer Company, Inc. and the Eastman Water Company, Inc. against his Unit. If such fees are not paid when due from the Unit Owners, the Association shall pay the fees and shall, thereafter, charge the Unit Owners the cost thereof. Reimbursement to the Association by the delinquent Unit Owners for such charges may be enforced by the Association in the same manner as any common expense and such charges, when paid by the Association in the first instance, shall become a lien on the Unit. This paragraph shall not be amended or deleted without the permission of the Eastman Sewer Company, Inc. and the Eastman Water Company, Inc.

## ARTICLE VI

### INSURANCE

1. Insurance Required. Pursuant to Section 43 of the Condominium Act, the Board of Directors shall obtain (i) a master casualty policy affording fire and extended coverage in an amount equal to the full replacement value of the structures within the Condominium; (ii) a

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master liability policy covering the Association, the Board, the Manager and agents or employees of the foregoing with respect to the Condominium, and all Owners and other persons entitled to occupy any portion of the Condominium; and (iii) such other policies as specified hereinbelow, all of which insurance shall be governed by the following provisions to the extent obtainable or possible:

(a) Fire insurance with standard extended coverage endorsement, vandalism and malicious mischief endorsements insuring all the buildings in the Condominium including without limitation all portions of the interior of such buildings as are for insurance purposes normally deemed to constitute part of the building and customarily covered by such insurance, such as heating and air conditioning and other service machinery, interior walls, all finished wall surfaces, ceiling and floor surfaces including any wall to wall floor coverings, bathroom and kitchen cabinets and fixtures, including appliances which are affixed to the buildings, and heating and lighting fixtures, except for improvements made by individual Owners which exceed a total replacement value of One Thousand Dollars (\$1,000.00) and are not reported to the insurer, such insurance to be in an amount at least equal to the replacement value of the buildings and to be payable not to the Board of Directors, but to a commercial bank as trustee for the benefit of the Association, the Owners and their mortgagees as their respective interests may appear. The amount of any deductible shall be paid by the Unit Owner or Owners in the same proportion as their claims made.

(b) Public liability insurance in such amounts as the Board may from time to time determine, but in no event shall the limits of liability be less than One Million Dollars (\$1,000,000) for bodily injury and property damage per occurrence, insuring the Association and all individuals referred to in Section 1(ii) above, against any liability to anyone, and with cross liability coverage with respect to liability claims of anyone insured thereunder against any other insured thereunder. This insurance, however, shall not insure against individual liability for negligence occurring within a Unit or within the Limited Common Area to which a Unit has exclusive use.

(c) Workmen's compensation insurance as required by law.

(d) Such other insurance as the Board may determine.

## 2. General Insurance Provisions.

(a) The Board shall deal with the insurer or insurance agent in connection with the adjusting of all claims under insurance policies provided for under Paragraph 1 above and shall review with the insurer or insurance agent, at least annually, the coverage under said policies, said review to include an appraisal of improvement within the Condominium, and shall make any necessary changes in the policy provided for under Paragraph 1(a) above (prior to the expiration date set forth in any agreed amount endorsement contained in said policy) in order to meet the coverage requirements of such Paragraph.

(b) The Board shall be required to make every effort to see that all policies of physical damage insurance provided for under Paragraph 1 above: (i) shall contain waivers of subrogation by the insurer as to claims against the Association, its employees and agents, members of the Board, the Manager, Owners and members of the family of any Owner who reside with said Owner, except in cases of arson and fraud; (ii) shall contain a waiver of defense of invalidity or prejudice on account of the conduct of any of the Owners over which the Association has "no control"; (iii) shall contain a waiver of defense of invalidity or prejudice by failure of the insured, or Owners collectively, to comply with any warranty or condition with regard to any portion of the Condominium over which the insured, or Owners collectively, have no control; (iv) shall provide that such policies may not be cancelled or substantially modified without at least thirty (30) days written notice to all of the insureds thereunder and all mortgagees of Units in the Condominium; (v) shall provide that in no event shall the insurance under said policies be brought into contribution with insurance purchased individually by Owners or their mortgagees; (vi) shall exclude policies obtained by individual Owners for consideration under any "no other insurance" clause; and (vii) shall provide that until the expiration of thirty (30) days after the insurer gives notice in writing to the mortgagee of any Unit, the mortgagee's insurance coverage will not be affected or jeopardized by any act or conduct of the Owner of such Unit, the other Owners, the Board of Directors, or any of their agents, employees or household members, nor cancelled for non-payment of premiums.

3. Individual Policies. Any Owner and any mortgagee may obtain at his own expense additional insurance (including a "condominium unit-owner's endorsement" for improvements and betterments to a Unit made or acquired at the expense of the Owner). Such insurance should contain the same waiver of subrogation provision as that set forth in Section 2(b) of this Article VI. It is recommended that each Owner obtain, in addition to the insurance hereinabove provided to be obtained by the Board of Directors, a "Tenant's Homeowners Policy", or equivalent, to insure against loss or damage to personal property used or incidental to the occupancy of the Unit, additional living expense, vandalism or malicious mischief, theft, personal liability and the like.

(a) Each Owner may obtain additional insurance for his own benefit and at his own expense. No such policy shall be written so as to decrease the coverage under any of the policies obtained by the Board pursuant to Paragraph 1(a) above, and each Owner hereby assigns to the Board the proceeds of any such policy to the extent that any such policy does in fact result in a decrease in such coverage, said proceeds to be applied pursuant to the terms hereof as if produced by such coverage. Copies of all such policies (except policies covering only personal property, owned or supplied by individual Owners) shall be filed with the Association.

(b) Each Owner should obtain insurance for his own benefit and at his own expense insuring all personal property presently or

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hereafter located in his Unit or Limited Common Area, any floor coverings, appliances and other personal property not covered in the master policy, and all improvements to his Unit which exceed a total value of One Thousand Dollars (\$1,000.00) and which are not reported to the Board.

(c) Each Owner, prior to commencement of construction of such improvements, shall notify the Board of all improvements to his Unit (except personal property other than fixtures) which exceed a total value of One Thousand Dollars (\$1,000.00) and upon receipt of such notice, the Board shall notify the insurer under any policy obtained pursuant to Paragraph 1(a) hereof, of any such improvements.

(d) Each Owner should obtain liability insurance with respect to his ownership and/or use of his Unit.

4. Notice to Unit Owners. When any policy of insurance has been obtained on behalf of the Association, written notice thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each Unit Owner by the Clerk of the Association. Such notice shall be sent by U.S. Mail, return receipt requested, to all Unit Owners of record at the address of their respective Units and to such other addresses as any of them may have designated to the Clerk; or such notice may be hand delivered by the Clerk or Manager, provided the Clerk or Manager obtains a receipt of acceptance of such notice from the Unit Owner; or such notice may be given by publication in the Eastman Community Association Newsletter.

## ARTICLE VII

### REPAIR AND RECONSTRUCTION AFTER FIRE OR OTHER CASUALTY

1. When Repair and Reconstruction are Required. Subject to the provisions of Paragraph 3(j) of the Declaration, in the event of damage to or destruction of all or part of the buildings in the Condominium as a result of fire or other casualty, the Board of Directors shall arrange for and supervise the prompt repair and restoration of the damaged or destroyed portion of the buildings. Notwithstanding the foregoing, each Owner shall have the right to supervise the redecorating work in his own Unit.

#### 2. Procedure for Reconstruction and Repair.

(a) Immediately after a fire or other casualty causing damage to a building, the Board of Directors shall obtain reliable and detailed estimates of the cost of repairing and restoring the damage to a condition as good as that existing before such casualty. Such costs may also include professional fees and premiums for such bonds as the Board of Directors determines to be necessary.

(b) If the proceeds of insurance are not sufficient to defray the said estimated costs of reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of

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the costs thereof are insufficient, assessments in sufficient amounts to provide payment of such costs shall be made against the Owners in proportion to their respective votes in the Unit Owners' Association.

(c) Any such reconstruction or repair shall be substantially in accordance with the original plans and specifications under which the damaged building was originally constructed.

(d) Encroachments upon or in favor of Units which may be created as a result of such reconstruction or repair shall not constitute a claim or basis for any proceeding or action by the Owner upon whose property such encroachment exists, provided that such reconstruction is substantially in accordance with original plans and specifications under which the damaged building was originally constructed. Such encroachments shall be allowed to continue in existence for so long as the building (as reconstructed) shall stand.

### 3. Disbursements of Construction Funds.

(a) The net proceeds of insurance collected on account of a casualty and the funds collected by the Board of Directors from assessments against Owners on account of such casualty shall constitute a construction fund which shall be disbursed in payment of the cost of reconstruction and repair by the Board of Directors.

(b) The construction fund shall be paid by the Board of Directors in appropriate progress payments, to such contractors, suppliers and personnel engaged in performing the work or supplying materials or services for the repair and reconstruction of the building as are designated by the Board of Directors.

(c) It shall be presumed that the first monies disbursed in payment of the cost of reconstruction and repair shall be from insurance proceeds; and if there is a balance in the construction fund after the payment of all of the cost of the reconstruction and repair for which the fund is established, such balance shall be distributed to the Owners.

(d) When the damage is to both Common Area and Units, the insurance proceeds shall, to the extent practical, be applied first to the cost of repairing the Common Area and the balance to the cost of repairing the Units.

## ARTICLE VIII

### SALES, LEASES, AND ALIENATION OF UNITS

1. No Severance of Ownership. No Owner shall execute any deed, lease, mortgage, or instrument conveying or mortgaging the title to his Unit without including therein the undivided interest of such Unit in the Common Area, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, lease, mortgage, or other instrument purporting to affect one or more of such

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interests, without including all such interests, shall be deemed and taken to include the interest or interests so omitted, even though the latter shall not be expressly mentioned or described therein. Except to the extent otherwise expressly provided by the Declaration, these By-Laws or the Condominium Act, the undivided interest in the Common Area allocated to any Unit shall not be altered, and any purported transfer, encumbrance, or other disposition of that interest without the Unit to which it appertains shall be void.

2. **Payment of Assessments.** No Owner shall be permitted to convey, mortgage, sell, lease, give, or devise his Unit unless and until he (or his personal representative) shall have paid in full to the Board of Directors all unpaid Common Expenses theretofore assessed by the Board of Directors with respect to this Unit, except as provided in Section 2 of Article V, and shall have satisfied all unpaid liens with respect to his Unit, except mortgages. The Board of Directors shall promptly furnish to any Owner (or his devisee or personal representative) requesting the same in writing pursuant to this Section, a recordable statement certifying whether or not such Owner is then obligated for any outstanding assessments previously levied against that Owner's Unit and the amount, if any, then outstanding. In the event that the Unit is subject to outstanding expenses previously levied against such Unit, the statement shall certify any waiver of, or failure or refusal to exercise, the right of the Unit Owners' Association to prevent the disposition of such Unit, in all cases where the Association allows such disposition. Failure or refusal to furnish, within seven (7) days of receipt of such request by the Board or Manager, such a statement shall make the above-mentioned prohibition inapplicable to any such disposition of the Unit. Any such statement shall be binding on the Association, the Board of Directors and every Owner. Payment of a fee not exceeding the maximum amount allowable under the Condominium Act shall be required as a prerequisite to the issuance of such a statement.

## ARTICLE IX

### AMENDMENT TO BY-LAWS

1. **Amendments.** Except as otherwise provided in the Condominium Act and herein, these By-Laws may be modified or amended either (i) by a vote of at least sixty-six and two-thirds percent (66 2/3%) of the Owners cast in person or by proxy at a meeting duly held in accordance with the provisions hereof, provided that Notice of the proposed amendment shall have been given to each Owner simultaneously with the notice of such meeting, or (ii) pursuant to a written instrument duly executed by at least sixty-six and two-thirds percent (66 2/3%) of the Owners; provided, however, that (a) Section 4 of Article II, and Section 3 of Article III, insofar as they relate to the selection of members of the Board of Directors by the Declarant, (b) Section 2 of Article II, insofar as it provides that the Declarant, so long as it is the Owner of one or more Units, may vote the votes appurtenant thereto, (c) Section 7(c) of Article V, and (d) this Section 1 of Article IX, may not be amended without the consent in writing of the Declarant, so long as the Declarant shall be an Owner. Furthermore,

notwithstanding the foregoing, so long as the Declarant is the Owner of one or more Units, no amendment to the By-Laws or Rules may be adopted which could interfere with the construction, display, sale, lease, or other disposition of such Unit or Units.

2. Recording. A modification or amendment of these By-Laws shall become effective only when it has been duly evidenced in accordance with the provisions of Section 34 IV of the Condominium Act.

3. Conflicts. No modification or amendment of these By-Laws may be adopted which shall be inconsistent with the provisions of the Condominium Act or with the provisions of the Declaration. A modification or amendment once adopted and recorded as provided for herein shall then constitute part of the official By-Laws of the Condominium and all Owners shall be bound to abide by such modification or amendment.

4. Approval of Mortgagees. These By-Laws contain provisions concerning various rights, priorities, remedies and interests of the mortgagees of Units. Such provisions in these By-Laws are to be construed as covenants for the protection of the mortgagees on which they may rely in making loans secured by mortgages on the Units. Accordingly, all mortgagees shall be given thirty (30) days notice of all proposed amendments, and no amendment or modification of these By-Laws impairing or affecting the rights, priorities, remedies or interests of a mortgagee (including the mortgagee's use of a secondary mortgage market, i.e. the sales of mortgages to the Federal Home Loan Mortgage Corporation, etc.) shall be adopted without the prior written consent of such mortgagee. If there is more than one mortgagee holding mortgages on the Units, it shall be sufficient for this purpose to obtain the written consent of the mortgagee or mortgagees holding mortgages on 75% or more of the Units encumbered by mortgages.

## ARTICLE X

### MORTGAGES

1. Notice to Board. An Owner who mortgages his Condominium Unit shall notify the Board of the name and address of his mortgagee.

2. Notice of Unpaid Assessments for Common Expenses. The Board whenever so requested in writing by a mortgagee of a Condominium Unit, shall promptly report any then unpaid assessments for Common Expenses due from, or any other default by, the Owner of the mortgaged Condominium Unit.

3. Notice of Default. The Board shall give notice to an Owner of any default by the Owner in the performance of any obligation under the Act, Declaration or By-Laws. No suit or other proceeding may be brought to foreclose the lien for any assessment levied pursuant to the Declaration or these By-Laws except after ten (10) days written notice to the holder of the first mortgage of the Unit which is the subject matter of such suit or proceeding.

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4. Examination of Books. Each Owner and each mortgagee shall be permitted to examine the books of account of the Condominium at, reasonable times, on business days, but, with respect to Owners, not more often than once a month.

## ARTICLE XI

### NOTICE

1. Manner of Notice. All notices, demands, bills, statements or other communications provided for or required under these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if published in an edition of the Eastman Community Association Newsletter, which edition shall have been addressed and forwarded to the person to whom notice must be given. In addition, notice may be sent by U.S. Mail, return receipt requested, first class postage prepaid, (i) if to an Owner, at the address of his Unit and at such other address as the Owner may have designated by notice in writing to the Clerk, or (ii) if to the Unit Owners' Association, the Board of Directors or the Manager at the principal office of the Manager or at such other address as shall be designated by notice in writing to the Owners pursuant to this Section.

2. Waiver of Notice. Whenever any notice is required to be given under the provisions of statutes, of the Declaration or of these By-Laws, a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether signed before or after the time stated therein, shall be deemed equivalent thereto, unless such waiver is ineffective under the provisions of the Condominium Act.

## ARTICLE XII

### COMPLIANCE AND DEFAULT

1. Relief. Each Owner shall be governed by, and shall comply with, all of the terms of the Declaration, these By-Laws, and the Rules, and any amendments of the same. A default by an Owner shall entitle the Unit Owners' Association acting through the Board of Directors or the Manager, to the following relief:

(a) Legal Proceedings. Failure to comply with any of the terms of the Declaration, these By-Laws, and the Rules shall be grounds for relief which may include without limiting the same, an action to recover any sums due for money damages, injunctive relief, foreclosure of the lien for payment of all assessments, any other relief provided for in these By-Laws, or any combination thereof, and any other relief afforded by a court of competent jurisdiction, all of which relief may be sought by the Unit Owners' Association, the Board of Directors, the Manager, or, if appropriate, by any aggrieved Owner.

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(b) Additional Liability. Each Owner shall be liable for the expenses of all maintenance, repair or replacement rendered necessary by his acts, neglect or carelessness or the act, neglect or carelessness of any member of his family or his tenants, guests, employees, agents or invitees, but only to the extent that such expense is not covered by the proceeds of insurance carried by the Board of Directors. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy or abandonment of any Unit or its appurtenances. Nothing contained herein, however, shall be construed as modifying any waiver by an insurance company of its rights of subrogation.

(c) Costs and Attorneys' Fees. In any proceeding arising out of any alleged default by an Owner, the prevailing party shall be entitled to recover the costs of the proceeding, and such reasonable attorneys' fees as may be determined by the court.

(d) No Waiver of Rights. The failure of the Unit Owners' Association, the Board of Directors, or of an Owner to enforce any right, provision, covenant, or condition which may be granted by the Declaration, these By-Laws or the Rules shall not constitute a waiver of the right of the Association, the Board of Directors, or any Owner to enforce such right, provision, covenant, or condition in the future. All rights, remedies and privileges granted to the Association, the Board of Directors, or any Owner pursuant to any term, provision, covenant or condition of the Declaration or the Rules shall be deemed to be cumulative and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such privileges as may be granted to such party by the Declaration, these By-Laws or the Rules, or at law or in equity.

(e) Interest. In the event of a default by any Owner against him which continues for a period in excess of thirty (30) days, such Owner shall be obligated to pay interest in the amounts due at the highest rate permitted by law, or at twelve percent (12%), whichever is less, per annum from the due date thereof. In addition, the Board of Directors shall have the authority to impose a late payment charge on such defaulting Owners in an amount not to exceed \$15.00, or six cents (\$.06) per dollar on any amount so overdue, whichever is greater.

(f) Abatement and Enjoinment of Violations by Owners. The violation of any rule or regulation adopted by the Board of Directors, or the breach of any By-Law contained herein, or the breach of any provision of the Declaration, shall give the Board of Directors or the Manager the right, in addition to any other rights set forth in these By-Laws: (a) to enter the Unit in which, or as to which, such violation or breach exists and summarily to abate and remove, at the expense of the defaulting Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of provisions hereof, and the Board of Directors or Manager shall not thereby be deemed guilty in any manner of trespass; (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in

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equity, the continuance of any such breach; or (c) to suspend or limit the right of the Owner committing the violation to use any part of the Common Area during the continuance of such violation.

2. Lien for Assessments.

(a) The total semi-annual assessments of each Owner for the Common Expenses or any special assessment levied pursuant to these By-Laws is hereby declared to be a lien levied against the Unit of such Owner as provided in the Condominium Act, which lien shall, with respect to semi-annual assessments, be effective on January 1 and July 1 of each fiscal year of the Condominium and, as to special assessments, on the first day of the next month which begins more than seven (7) days after delivery to the Owner of notice of such special assessments.

(b) In any case where an assessment against an Owner is payable in installments, upon a default by such Owner in the payment of any single installment, which continues for ten (10) days after written notice of such default has been sent to the Owner, the maturity of the remaining total of the unpaid installments of such assessments may be accelerated, at the option of the Board of Directors, and the then balance owing may be declared due and payable in full by the service of notice to such effect upon the defaulting Owner by the Board of Directors or Manager.

(c) The lien for contribution may be foreclosed in the manner provided by the laws of the State of New Hampshire for the foreclosure of power of sale mortgages or by suit brought in the name of the Board of Directors, acting on behalf of the Unit Owners' Association. During the pendency of such proceedings or suit the Owner shall be required to pay a reasonable rental for the Unit for any period prior to sale pursuant to any judgment or order of any court having jurisdiction over such sale.

(d) Suits to recover a money judgment for unpaid assessments shall be maintainable without foreclosing or waiving the lien securing the same, and foreclosure shall be available without bringing suit to recover a money judgment.

### ARTICLE XIII

#### COMPLIANCE, CONFLICT, AND MISCELLANEOUS PROVISIONS

1. Compliance. These By-Laws are set forth in compliance with the requirements of the Condominium Act.

2. Severability. These By-Laws are set forth to comply with the requirements of the State of New Hampshire. In case any of the By-Laws are in conflict with the provisions of any of its statutes, the provisions of the statutes will apply. If any provisions of these By-Laws or any section, sentence, clause, phrase, or word, or the application thereof in any circumstance is held invalid, the validity

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of the remainder of these By-Laws, shall not be affected thereby and to this end, the provisions hereof are declared to be severable.

3. Waiver. No restriction, condition, obligation or provision of these By-Laws shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

4. Captions. The captions contained in these By-Laws are for convenience only and are not part of these By-Laws and are not intended in any way to limit or enlarge the terms and provisions of these By-Laws.

5. Gender, etc. Whenever in these By-Laws the context so requires, the singular number shall include the plural and the converse; and the use of any gender shall be deemed to include all genders.

IN WITNESS WHEREOF, Declarant has caused these By-Laws to be executed by its duly authorized officer and its corporate seal to be hereunto affixed this 27<sup>th</sup> day of November, 1978.

WITNESS:

CONTROLLED ENVIRONMENT CORPORATION

By Thomas M. Hardiman  
Name: Thomas M. Hardiman  
Title:

EXHIBIT C TO DECLARATION OF  
WEST COVE "D" CONDOMINIUM:  
SUPPLEMENTARY DECLARATION OF COVENANTS  
AND  
RESTRICTIONS

EASTMAN

SUPPLEMENTARY DECLARATION OF COVENANTS AND RESTRICTIONS

KNOW ALL MEN BY THESE PRESENTS THAT:

WHEREAS, a certain Declaration of Covenants and Restrictions made by Controlled Environment Corporation, a New Hampshire corporation having its principal place of business at Grantham, New Hampshire ("CEC"), dated July 27, 1971, and recorded in the Sullivan County Registry of Deeds at Volume 498, Page 121, and in the Grafton County Registry of Deeds at Volume 1200, Page 132, provides, in part, as follows:

"2.2 CEC shall have the right from time to time to subject additional property to this Declaration by recording in the Registry of Deeds of the county in which such additional property is situated, in whole or in part, a Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the Covenants and Restrictions of this Declaration to such property."

"2.3 Any such Supplementary Declaration of Covenants and Restrictions may contain such additions to or modifications of the Covenants and Restrictions set forth in this Declaration as may be deemed by CEC advisable to reflect the different character of the added property or the improvements thereon, provided:

(a) any property to which the Covenants and Restrictions shall be extended and the

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Owners thereof shall become subject to assessment for a just share of Association expenses; and

(b) no such Supplementary Declaration shall revoke, alter or amend the Covenants and Restrictions set forth in this Declaration with respect to the property subject thereto, or revoke, alter or amend the Covenants and Restrictions set forth in any previously recorded Supplementary Declaration with respect to the property made subject thereto."

WHEREAS, CEC desires to extend the Covenants and Restrictions set forth in said Declaration of Covenants and Restrictions dated July 27, 1971, to certain additional lands, and to make certain modifications in the Covenants and Restrictions insofar as they apply to those additional lands;

NOW, THEREFORE, the Covenants and Restrictions dated July 27, 1971 and recorded in the Sullivan County Registry of Deeds at Volume 498, Page 121, and in the Grafton County Registry of Deeds at Volume 1200, Page 132, modified as set forth below, are hereby extended to the following additional lands; and such additional lands shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, assessments, charges and liens set forth in said Declaration of Covenants and Restrictions:

A. A parcel of land in Grantham, County of Sullivan, State of New Hampshire, identified and described as Lot 2 on a plan entitled "West Cove "A" Site Plan, Grantham, N.H. 'West Cove' Cluster Housing Special Place" by Hayes Engineering, Inc., Scale 1" = 50' and dated June 30, 1978, which plan is to be recorded in the Sullivan County Registry of Deeds in conjunction with a

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certain Declaration of Condominium. Said parcel shall include that portion of the parcel labelled "Open Space Easement."

B. A parcel of land in Grantham, County of Sullivan, State of New Hampshire identified and described as Parcel "B" on a plan entitled "West Cove "B" Site Plan, Grantham, N.H., 'West Cove' Cluster Housing Special Place" by Hayes Engineering, Inc., Scale 1" = 50' and dated June 30, 1978, which plan is to be recorded in the Sullivan County Registry of Deeds in conjunction with a certain Declaration of Condominium. Said parcel shall include that portion of the parcel labelled "Open Space Easement."

C. A parcel of land in Grantham, County of Sullivan, State of New Hampshire identified and described as Parcel "D" on a plan entitled "West Cove "D" Site Plan, Grantham, N.H., 'West Cove' Cluster Housing Special Place" by Hayes Engineering, Inc., Scale 1" = 50' and dated June 30, 1978, which plan is to be recorded in the Sullivan County Registry of Deeds in conjunction with a certain Declaration of Condominium. Said parcel shall include that portion of the parcel labelled "Open Space Easement."

Insofar as they relate to the additional lands described above, the Covenants and Restrictions dated July 27, 1971 are modified as follows:

1. Paragraph 14.1 is deleted and the following is substituted:

"14.1 Each Owner, other than CEC, shall, by acceptance of title to a Lot or Living Unit, be deemed to covenant and agree to pay, for each Lot or Living Unit owned by him, a water availability charge of not more than \$5.00 per month and a sewer availability charge of not more than \$8.00 per month. The water and sewer availability charges shall be payable with respect to a Lot or Living Unit each month beginning with the month following that in which water service,

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or sewer service, or both, as the case may be, is first made available to that Lot or Living Unit, whether or not the service is used. The water and sewer availability charges shall not include the charges made by the person or entity owning and operating the water or sewer system for the use of such system."

2. Paragraph 10.1 is deleted and the following is substituted:

"10.1 No structure or other improvement of any kind or description, including without limitation by the specification thereof, any building (including accessory buildings), or excavation for a building, trailer, tennis court, fence, hedge, windbreak, swimming pool, patio, statuary or monument shall be constructed or moved onto any Lot or onto the Association Land or any Special Place Reserved Land without the prior written consent of the Committee, which consent shall not be unreasonably withheld, provided, however, that the construction of any structure or building described in and subject to any Declaration of Condominium recorded, or to be recorded, in the Sullivan County Registry of Deeds shall not require the prior written consent of the Committee."

3. Paragraph 10.13 is deleted and the following is substituted:

"10.13 The exterior of every building whose construction on a Lot is begun, and the grading of the Lot associated with the construction or placement of such building, shall be completed within eight (8) months from the commencement of construction, provided, however, that this provision shall not apply to the construction of any building described in and subject to any Declaration of Condominium recorded in the Sullivan County Registry of Deeds.

4. That portion of the additional lands described above, and shown on a recorded plan as "Open Space Easement" or "Open Space Grant" is subject to the following rights and restrictions, which rights and restrictions may be conveyed to the Eastman Community Association:

a. The right to have and keep the property free of any building, and to have and keep the property free of any filling, excavating, removal of minerals, and other changes in topography, and any cutting of trees, shrubs or other plants.

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- b. The right to pass over the property by foot, in groups of not more than three (3).
- c. The right to conduct forest management practices including thinning, selective cutting, and collection of maple sap for syrup, the Association retaining any proceeds from such practices.

The rights and easements hereby described: (1) shall constitute "Association Land" as that term is defined in the Declaration of Covenants and Restrictions to which the property is subject, and may be exercised by those persons who, from time to time, are entitled to use Association Land, but only in accordance with the Rules and Regulations of the Association; (2) shall not permit the Association or anyone entitled to use Association Land to build any dock, wharf or pier adjacent to any body of water abutting the property; (3) shall not permit the Association or anyone entitled to use Association land to use the property for ingress or egress to such water; (4) shall not prevent the Owner's making any use of the property not inconsistent with the rights and easements granted, including the storage of a boat or canoe on the property, swimming, fishing or boat launching from the property, and the construction and maintenance on the property of a sewage disposal system approved by the Environmental Control Committee described in the Declaration of Covenants and Restrictions to which the property is subject; and (5) shall not prevent the Owner's construction of a dock, wharf or pier adjacent to any body of water abutting the property, provided approval therefor of the Environmental Control Committee is obtained pursuant to the Declaration of Covenants and Restrictions to which the property is subject.

5. That CEC does hereby reserve the right to withdraw

the Covenants and Restrictions as set forth in the Declaration of Covenants and Restrictions dated July 27, 1971, and, as modified herein, from any portions of additional lands if (a) such additional lands are withdrawn from any Declaration of Condominium pursuant to the provision of such Declaration of Condominium, or (b) any Declaration of Condominium is terminated by CEC pursuant to any Declaration of Condominium or RSA 356-B. If this Declaration of Covenants and Restrictions is withdrawn from any additional land, as provided herein, CEC shall file a "Notice of Withdrawal" in the Sullivan County Registry of Deeds specifying that portion of the additional lands from which this Declaration is withdrawn, and the withdrawal shall be effective upon the recording of such notice.

IN WITNESS WHEREOF, Controlled Environment Corporation has caused its corporate name and seal to be hereunto affixed by Thomas M. Hardiman, its President, hereto duly authorized, this 27<sup>th</sup> day of November, 1978.

In the Presence of:

CONTROLLED ENVIRONMENT CORPORATION

By:

*Thomas M. Hardiman*  
Thomas M. Hardiman  
Its President

STATE OF NEW HAMPSHIRE  
MERRIMACK, SS.

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of November, 1978, by Thomas M. Hardiman, President of Controlled Environment Corporation, a New Hampshire corporation, on behalf of the corporation.



Notary Public/Justice of the Peace

BARBARA MCCOO, Notary Public  
My Commission Expires February 24, 1983

Received & Recorded Dec. 1, 1978, 2:53 P.M.

Examined by *Jill Estes* Register.

WEST COVE "D" CONDOMINIUM ASSOCIATIONAMENDMENT TO BY-LAWS

1. Section 4 of Article II is deleted by striking out the phrase "thirty (30)" in the eleventh line thereof and substituting in its place the phrase "ninety (90)".

2. Section 5 of Article II is amended by striking out the last sentence thereof and substituting in its place the following:

"The purpose of any Special Meeting may include any matter that may be properly brought before the Unit Owners for consideration including, without limitation, any matter which may come before the Annual Meeting of Unit Owners if a Special Meeting is held in lieu thereof. The notice of any Special Meeting shall set forth the purpose thereof and, except as otherwise provided in these By-Laws, there may be transacted at such meeting the matters set forth in the notice and any other business which may lawfully come before the Unit Owners."

3. Section 9 of Article II is hereby amended by adding after the word "present" in the third line thereof the phrase "in person or by proxy".

4. Section 1(d) of Article V is hereby amended by striking out said section 1(d) in its entirety and substituting in its place the following New Section 1(d):

"(d) Reserves - Upon the affirmative vote of a majority of a quorum of Owners at a duly constituted meeting of Owners, but in no event prior to the expiration of three years after the initial recordation of the Declaration, the Board of Trustees shall establish and maintain either one or both of two adequate operating reserves, one for the replacement of the Common Area and one for operating expenses, both to be funded by regular monthly payments as provided in subsection (c). At the end of each fiscal year, all funds accumulated during such year for the reserve for replacement of the Common Area shall be placed in a Trustee account, segregated from other funds of the Unit Owners' Association, and usable only for such purpose. If, for any reason, the Association shall incur operating expenses in excess of those provided by the then current fiscal year budget, the Directors shall first utilize funds set aside in the reserve established for operating expenses and, if such reserve shall, for any reason including non-payment of any owner's assessment, be inadequate, the Board of Directors may, at any time, levy a further assessment which shall be assessed against the Owners according to their respective votes in the Unit Owner's Association, and which may be payable in a lump sum or in installments as the Board of Directors may determine. The Board of Directors shall serve notice of any such further assessment on all Owners by a statement in writing giving the amount and reasons therefor, and such further assessment shall, unless otherwise specified in the notice, become effective with the next monthly payment which is due more than ten (10) days after the delivery or mailing of such notice of further assessment. All Owners shall be obligated to pay the adjusted monthly amount or, if the additional assessment is not payable in installments, the entire amount of such assessment."

5. Section 8 of Article V is amended by striking out said Section 8 in its entirety and substituting in its place the following new Section 8:

"8. Right of Access. An Owner shall grant a right of access to his Unit to the Board of Directors and the Manager and to any other person authorized by the Board for the purpose of making inspections or for the purpose of correcting any condition originating in his Unit and threatening another Unit or Common Area, or for the purpose of performing maintenance to a Unit or any part thereof (such as but not limited to the cleaning of wood stoves and chimneys) if such maintenance is generally being performed for all Units, or for the purpose of securing or otherwise providing for the safety of a Unit and for the purpose of performing installation, alterations or repairs to the mechanical or electrical services or other Common Area in his Unit or elsewhere in the building, provided that requests for entry are made in advance and that any such entry is at a time reasonably convenient to the Owner. In case of any emergency, such right of entry shall be immediate whether the Owner is present at the time or not, and in the case of routine maintenance work being performed generally to all Units, such access may be made without the Owner's presence if such maintenance is being performed for the purpose of providing for the safety of the Units and their occupants. In connection with the foregoing, each Unit Owner shall deposit with the Unit Owner's Association a key to his Unit, to be kept by the Association in a secure manner and to be used for access to each Unit solely under the circumstances and for the purposes set forth herein".

IN WITNESS WHEREOF, West Cove "D" Condominium Association has caused this Amendment to By-Laws to be executed by its duly authorized officer, this 14<sup>th</sup> day of December, 1985.

WEST COVE "D" CONDOMINIUM ASSOCIATION

Edwin Hee  
Witness

By: Martin Tanner - Notary

State of New Hampshire  
County of Sullivan

Dated: December 14, 1985.

Personally appeared the above named MARTIN TANNER and acknowledged the foregoing instrument to be his voluntary act and deed, on behalf of West Cove "D" Condominium Association

Before me,

Barbara Briggs  
Notary Public/Justice of the Peace

RECEIVED

1985 DEC 17 PM 1:48

SULLIVAN COUNTY  
REGISTRY OF DEEDS