

**DECLARATION OF PROTECTIVE COVENANTS FOR
THE HERBSTER SUBDIVISION
WATERBURY, VERMONT**

WHEREAS, at the time of execution of this Declaration, **Richard F. Herbster** and **Carol E. Herbster** of Waterbury, Vermont (the Grantors) are the owners of the following described property:

It being all and the same land and premises conveyed to Carol E. Herbster and Richard F. Herbster by Thierry F. Guerlain and Ann S. Guerlain by warranty deed dated September 27, 1993 and recorded in Book 133 Page 554 of the Waterbury land Records.

WHEREAS, there is a need to subject the above-described land and premises (the Property), consisting of three (3) lots (the lots), to certain covenants in order to insure the most beneficial use of same and to prevent any such use as might tend to diminish the value or enjoyment thereof;

NOW THEREFORE, the Grantors hereby declare, covenant and agree that the Property shall be subject to the following:

1. **Residential Use.** The residential lots shall be used for single-family residential purposes only. The use of a portion of a residential structure for a home office is not hereby prohibited. No further subdivision of the lots is permitted.
2. **Prohibited Structures.** No house trailers, mobile homes, construction vehicles or unlicensed motor vehicles shall be allowed to stand outdoors on the Property. No satellite dishes larger than twenty-four (24) inches in diameter and no television or radio antennae shall be allowed to stand outdoors on the property.
3. **Completion of Construction.** Completion of the exterior construction and finish of any building erected on Lot 3 shall be not later than March 15, 2006. The grounds surrounding any such building shall be finally and completely graded and landscaped by June 15, 2006. This restriction shall not preclude the construction of additional outbuildings, such as a barn, in the future.

Completion of exterior construction and finish of any building erected on Lot 2 shall be not later than fifteen (15) months after commencement of construction thereof. The grounds surrounding any such building shall be finally and completely graded and landscaped within six (6) months of completion of the exterior construction and finish of a building. This restriction shall not preclude the construction of additional outbuildings (such as a barn) or additions to the primary dwelling in the future.

4. **Maintenance of Grounds.** Grounds of any lot that are visible from adjacent lots shall be maintained so as not to detract from the rustic, harmonious, rural nature of the development as a whole, and in a manner in keeping with residential homesites. No inoperable vehicles, rubbish or debris shall be kept or allowed to accumulate on the premises outside of structures. Additionally, there shall be no outside burning of organic materials without the prior approval and supervision of the Town of Waterbury Fire Department or the Town Fire Warden.

5. **Exterior lighting.** Exterior lighting shall not be placed so as to detract from the aesthetics of the development or any of the lots. Exterior lighting shall not be placed such that it interferes with the view from any other lot. Further, exterior lighting shall be shielded or screened so that the glare from such lighting shall not be visible from adjoining properties.

6. **Animals.** No animals or fowl, except for animals which are domestic pets (dogs or cats), may be kept on the lots. Any such domestic animals shall be for the personal use and enjoyment of the owner, his/her family members who reside on the lot, or guests. No horses shall be kept on the property except with the written permission of the owner of the adjacent lot, which permission may be denied. No animals or fowl may be kept on any lot for the purpose of breeding, public use, boarding, or other commercial use. Any domestic animals must be contained within an electric fence system sufficient in design to ensure that the animal remains within the bounds of the lot on which the animal lives.

7. **Prohibition on Granting Right of Way.** Except for any right of way conveyed by the Grantors in connection with subdivision of the Property, no right of way or easement may be granted, allowed, permitted or conveyed over or across any lot for any purpose, including but not limited to providing access to adjoining or nearby property unless such right of way or easement has been approved in writing by the Grantors.

8. **Modification, Amendment and Waiver.** The Grantors reserve the right to modify, amend or waive any or all of the above-described covenants, agreements and restrictions for any reason which the Grantors deem, in the Grantors' discretion, to be in the best interests of the lot owners and consistent with the rural residential nature of the development. Any such amendments or modifications shall run with the land. The right to modify, amend or waive may be exercised by the Grantors or the Grantors' specifically designated successors or assigns.

9. **Applicability of State and Local Laws.** The Lots are subject to any and all applicable laws, ordinances and regulations of the State of Vermont and the Town of Waterbury, and is further subject to any and all rights and privileges which the State of Vermont and the Town of Waterbury may acquire through dedication or the filing or recording of maps or plats as authorized by law. To the extent that the covenants set forth in this Declaration are more restrictive than the provision of the Town of Waterbury Zoning Bylaws, these covenants shall be controlling.

10. Enforcement. The burdens and benefits of the above-described protective covenants shall be binding upon and inure to the benefit of the Grantors and the owners of the lots and their respective heirs, successors and assigns. In the event of a breach or violation of any of these covenants, restrictions, obligations, and conditions by the owner or owners of a lot, the Grantors, and/or the owner or owners of the other lots may enforce these protective covenants, restrictions, obligations, and conditions against the violator by initiating appropriate proceedings for monetary damages, injunctive relief or otherwise. Should the Grantors fail, neglect or refuse to enforce any of the covenants after a violation may be said to have existed, such failure, neglect or refusal to enforce within any time period shall not be deemed a waiver so as to permit the continued existence of the violation of these covenants and shall not create any liability on the part of the Grantors.

11. Costs of Enforcement. In the event the Grantors or other lot owners enforce any of the covenants, restrictions, obligations and conditions against the owner or owners of another lot who are in breach or violation thereof, all costs and expenses, including reasonable attorneys' fees incurred in such enforcement shall be the obligation of and paid by the violating owner or owners finally found in breach or in violation. At the time of commencement of any such action, the Grantors shall record a notice of the pendency of the action in the Waterbury Land Records. In the event any such owner or owners fail or refuse to pay such costs and expenses, a lien shall arise against lot, whether or not the violating owner is the owner of the lot at the time the lien arises, and shall continue thereon in favor of the Grantors or other lot owner, upon the recording of a notice of lien in the Waterbury Land Records. Such lien shall be subordinate to any prior recorded mortgages on the lot made by the owner in good faith and for value. Interest shall accrue on the amount of said lien at the rate of twelve percent (12%) per annum until all costs and expenses secured by such lien are paid in full. If payment in full is not received by the Grantors within thirty (30) days of the date of recording of the notice of lien, then said lien may be foreclosed in accordance with the provisions of Vermont law applicable to foreclosure of mortgages on real property. In the event of foreclosure of the lien, the owner or owners in default shall be required to pay all costs and expenses of such proceeding, including reasonable attorneys' fees.

12. Saving Clause. In the event that any court shall invalidate any one or more of the above-listed covenants, such invalidation shall not affect the remaining covenants and restrictions which shall remain in full force and effect.

13. Duration. All of the terms, provisions, restrictions and covenants contained herein shall affect the Property and shall run with and bind the Property for a period of fifty (50) years from the date hereof.

IN WITNESS WHEREOF, we hereunto set our hands this 16th day of December 2004.

In the presence of:

[Signature]
Witness as to both

[Signature]
Richard F. Herbster

[Signature]
Carol E. Herbster

**STATE OF VERMONT
COUNTY OF WASHINGTON, SS.**

On this 16th day of December 2004, **Richard F. Herbster** and **Carol E. Herbster** personally appeared before me and acknowledged this instrument, by them subscribed, to be their free act and deed.

Before me:

[Signature]
Notary Public

My commission expires: 2/10/07