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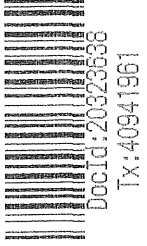
*Cathy Ann Tracy*

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**DECLARATION**

**OF**

**THE RESIDENCES AT FOUNDRY PLACE CONDOMINIUM**



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**ARTICLE 1**

**PURPOSE**

**THIS DECLARATION** is made by **RESIDENCES AT FOUNDRY PLACE, LLC**, a New Hampshire limited liability company, with a principal place of business at 1 Cate Street, Unit 4B, Portsmouth, NH 03801 (as further defined in Section 2.1, below, the “**Declarant**”), for the purpose of submitting the Premises, which includes the Submitted Land described on Exhibit A and building and improvements thereon owned by Declarant and located at 89 and 99 Foundry Place, in Portsmouth, Rockingham County, New Hampshire, to the condominium form of ownership in the manner provided by New Hampshire Revised Statutes Annotated, Chapter 356-B (as further defined in Section 2.1, below, the “**Condominium Act**” or “**Act**”).

**RECITALS**

The Declarant owns the Premises;

The Declarant intends to submit the Premises to the condominium form of ownership pursuant to the Condominium Act;

The Declarant intends to reserve the right to exercise all rights available to it, as Declarant, under the Condominium Act; and

The Declarant intends that the Unit Owners will own and occupy their respective Units as integral parts of the development of the Premises, all pursuant to certain covenants, agreements, and reciprocal easements in order to effectuate the common use and operation of the Premises.

**THEREFORE**, the Declarant declares that the Premises are submitted to the provisions of the Condominium Act and are held and shall be held, conveyed, encumbered, leased, used, occupied, and improved subject to the following restrictions, covenants, conditions, limitations, obligations and easements which are intended to enhance and protect the value and desirability of the Condominium as a whole and to mutually benefit each of the Units and their respective Unit Owners.

## ARTICLE 2

### DEFINITIONS AND RULES OF INTERPRETATION

2.1 **Definitions**. As used in the Condominium Instruments, capitalized terms have the following meanings, unless otherwise provided:

- (a) **Articles** or **Articles of Agreement** mean the Articles of Agreement of the Unit Owners Association.
- (b) **Board** or **Board of Directors** mean the Board of Directors of the Association.
- (c) **Building** means the structure constructed and located on the Premises, as shown on the Site Plans and the Floor Plans.
- (d) **Bylaws** means the Bylaws of the Unit Owners Association. The original Bylaws are attached as Exhibit C.
- (e) **Commercial Unit** means Unit 15 as shown on the Floor Plans, and any New Commercial Unit created by the subdivision thereof under the provisions hereof.
- (f) **Common Amenity Spaces** means a portion of the Common Area shown and labeled on the Floor Plans as "Meeting Space", "Gym", and the rooftop "Terrace" and "Walkway", all to be used by Owners and Occupants in accordance with the Condominium Rules and upon payment of such fees, if any, as may be established from time to time by the Board.
- (g) **Common Area** means all portions of the Condominium, other than Units, including all common entrances, vestibules, walkways, hallways, stairways, elevators, certain loading/unloading and disabled parking spaces located in the garage portion of the Building, and the Common Amenity Spaces. Common Area includes all Limited Common Area.
- (h) **Common Expenses** means all expenditures made or incurred in connection with the construction, maintenance or replacement of Common Area or lawfully made or incurred by or on behalf of the Unit Owners Association, including reserves, expenses or damages incurred or penalties assessed pursuant to the provisions of Articles 10, 11, 12, 15 and Section 16.6.

- (i) **Condominium** means The Residences at Foundry Place Condominium that is created by the recording of this Declaration and the other Condominium Instruments, and the property and interests that have been submitted to the Condominium Act by the recording of the Condominium Instruments. The term includes the Units and the Common Area.
- (j) **Condominium Act** or **Act** means the provisions of New Hampshire Revised Statutes Annotated, Chapter 356-B.
- (k) **Condominium Instruments** means this Declaration, the Articles of Agreement, the Bylaws, the Condominium Rules, the Site Plan and the Floor Plans, as the same may be amended, together with all exhibits, schedules, appendices, plans, or certifications accompanying the same, or incorporated by reference in it.
- (l) **Condominium Rules** or **Rules** means the rules for the use of the Units and Common Area that may be adopted from time to time by the Board.
- (m) **Days** means calendar days unless modified by the word "business," in which case the term shall exclude Saturdays, Sundays, and Federal and State of New Hampshire legal holidays.
- (n) **Declarant** means Residences at Foundry Place, LLC, a New Hampshire limited liability company, and any Persons or entities that come to stand in the same relation to the Condominium as Residences at Foundry Place, LLC, including any successors or assigns.
- (o) **Director** or **Board Member** mean a member of the Board of Directors.
- (p) **Family** means an individual living alone, or any of the following groups living together as a single housekeeping unit and sharing common living, sleeping, cooking and eating facilities: (a) two or more individuals related by blood, marriage, civil union, adoption or guardianship; or (b) two or three individuals not related by blood, marriage, civil union, adoption or guardianship, along with one or more dependents related to any of them by blood, marriage, civil union, adoption or guardianship.
- (q) **Floor Plans** means the floor plans prepared in accordance with Section 20, II of the Condominium Act with respect to the Condominium.

- (r) **Foundry Place Garage Parking Spaces** means the thirty-five (35) parking spaces assigned to the Declarant in that certain Assignment and Assumption of Parking Garage Spaces from Deer Street Associates to the Declarant dated February 26, 2025 and recorded in the Rockingham County Registry of Deeds at Book 6605, Page 0274.
- (s) **Governmental Approvals** means all existing or future permits and approvals issued or required by the City of Portsmouth, the State of New Hampshire, the United States of America, or any of their subdivisions as a precondition of the development of all or any portion of the Premises.
- (t) **Limited Common Area** means portions of the Common Area that are reserved for the use of the Unit Owners and Occupants of less than all of the Units. The Limited Common Areas include: (i) thirteen (13) parking spaces and appurtenant electric vehicle charging stations located in the garage portion of the Building, and three (3) outside parking spaces along Hill Street (ii) seven (7) storage spaces located in the garage portion of the Building, (iii) two (2) office spaces located on the Foundry Place street level of the Building, (iv) Shared Utilities; (v) Separate Utilities located outside of the Unit served; and (vi) canopies, shutters, awnings, window boxes, doorsteps, porches, balconies, patios and any other apparatus designed to serve a single Unit, but located outside the boundaries thereof. Initial assigned Limited Common Areas are identified on Exhibit B and on the Site Plan and Floor Plans. Shared Utilities and Separate Utilities are Limited Common Areas of the Units to which they provide service.
- (u) **Manager** has the meaning given to it in Section 3.3 of the Bylaws.
- (v) **New Commercial Unit** has the meaning given to it in Section 10.8(b) of this Declaration.
- (w) **Notice Address** means the address for a Unit Owner then on file with the Secretary of the Association, pursuant to Section 17.3 of this Declaration.
- (x) **Occupant** means any Unit Owner, as well as any Person, from time to time entitled to the use and occupancy of any portion of a Unit under an ownership right, lease, sublease, license, concession, or other similar agreement, and all officers, directors, employees, agents, contractors, customers, vendors, suppliers, concessionaires, visitors, invitees, and licensees of any of the foregoing.

- (y) **Officer** means any duly elected or appointed officer of the Unit Owners Association.
- (z) **Ownership Interest or Percentage Ownership Interest** means each Unit Owner's undivided interest in the Common Area, which interest is a percent based upon the point values assigned to each of the Units in proportion to the total point values assigned to all Units.
- (aa) **Person** means any natural person, corporation, limited or general partnership, association, trust, limited liability company, limited liability partnership, or other entity capable of holding title to real property.
- (bb) **Premises** means the real property described in the opening paragraph of this Declaration and is more particularly described in Exhibit A, and shall include the Building, future buildings and all other improvements to such real property, and all easements, rights, and appurtenances to such real property, whether or not set forth in this Declaration or subsequently created and placed on record at the Rockingham County Registry of Deeds.
- (cc) **Residential Units** means all Units other than the Commercial Unit.
- (dd) **Separate Utilities** means Utilities that are installed to and provide the applicable Utility service to only one Unit.
- (ee) **Shared Utilities** means Utilities that are installed to and provide the applicable Utility service to more than one Unit, but less than all Units.
- (ff) **Site Plan** means the condominium site plan prepared for the Condominium in accordance with Section 20, I of the Condominium Act.
- (gg) **Submitted Land** means the land submitted to the Condominium Act by this Declaration, and legally described in Exhibit A.
- (hh) **Transition Date** means the earliest of (a) two years after the recording of this Declaration, (b) the date upon which Units holding 75% of the undivided interests in the Common Area have been conveyed by the Declarant, or (c) the date on which the Declarant voluntarily relinquishes the power to appoint and remove the Directors and Officers of the Association.

- (ii) **Unit** means those portions of the Condominium that are designed and intended for individual ownership and use.
- (jj) **Unit Owner** or **Owner** means the Person who owns a Unit. The term "Unit Owner" also includes the Declarant to the extent the Declarant holds an ownership interest in any Unit(s).
- (kk) **Unit Owners Association** or **Association** means The Residences at Foundry Place Condominium Association, a New Hampshire voluntary corporation, and unless the Condominium Instruments expressly provide for action by the Unit Owners, shall mean the Board of Directors or Officers acting on behalf of the Unit Owners Association.
- (ll) **Utilities** means all facilities and systems for the transmission or provision of utility services to or within the Premises, including heating, venting and air conditioning systems and all utility lines.

2.2 **Construction and Interpretation** The following rules of construction shall apply to the interpretation of the Condominium Instruments, unless expressly stated otherwise:

- (a) **Exhibits and Sections** Whenever any Exhibit or Section is referred to in a Condominium Instrument, it shall be deemed to refer to the Exhibit or Section of the Condominium Instrument.
- (b) **Consents and Approvals** Except as otherwise expressly provided in a Condominium Instrument, whenever a party's consent or approval is required under a Condominium Instrument, or whenever a party shall have the right to give an instruction or request another party to act or to refrain from acting under a Condominium Instrument, or whenever a party must act or perform before another party may act or perform under a Condominium Instrument, such consent, approval, or instruction, request, act or performance shall be in writing, shall be reasonably made or done, or shall not be unreasonably withheld, delayed, or conditioned, as the case may be. Unless provision is made for a specific time period, each response to a request for an approval or consent required to be considered pursuant to a Condominium Instrument shall be given by the Person to whom the request was directed within thirty (30) days of receipt. Each disapproval shall be in writing and shall clearly state the reasons for disapproval.
- (c) **Statutes, Ordinances and Regulations** Whenever any statute, ordinance, regulation, or Condominium Instrument is referred to in this Declaration, it shall be deemed to refer to such statute,

ordinance, regulation, or Condominium Instrument as it may be lawfully amended from time to time. If the Condominium Act is amended in a manner that is inconsistent with the terms of a Condominium Instrument, the terms of the Condominium Instrument or the Condominium Act that are most favorable to the Declarant shall control to the maximum extent allowed by law. All provisions of the Condominium Act apply to the Condominium regardless of whether or not they are referred to in a Condominium Instrument.

- (d) **Governmental Approvals** Whenever Governmental Approvals are referred to in this Declaration, it shall be deemed to refer to those Governmental Approvals that have been received by the Declarant or any Owner as of the date of this Declaration, to all future amendments, supplements, or modifications to such existing approvals, and to all future approvals and permits with respect to the development of the Premises. In the event of any inconsistency between a Condominium Instrument and the Governmental Approvals, the Governmental Approvals shall govern and control. In no event shall Declarant or any Owner seek any Governmental Approvals that materially impairs the rights of, or imposes materially greater obligations on, a particular Unit without the consent of the Owner of such Unit.
- (f) **Rules of Interpretation** Whenever required by the context of a Condominium Instrument, (i) the singular shall include the plural, and vice versa, (ii) the masculine shall include the feminine and neuter genders, and vice versa, and (iii) use of the words "including", "such as", or words of similar import, when following any general term, statement or matter shall not be construed to limit such statement, term or matter to specific items, whether or not language of non-limitation, such as "without limitation," or "but not limited to," are used, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest scope of such statement, terms or matter.
- (g) **Captions** The captions preceding the text of each article and Section are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation a Condominium Instrument. Capitalized terms are also selected only for convenience of reference and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of a Condominium Instrument.
- (h) **Severability**. Invalidation of any of the provisions contained in a Condominium Instrument, or severability of the application of such

provision to any person by judgment or court order shall in no way affect any of the other provisions of the Condominium Instrument or the application of the Condominium Instrument to any other Person and the same shall remain in full force and effect.

- (i) **Terms Defined in the Act.** Capitalized terms not defined in this Declaration shall have the meanings specified or used in the Act.

### **ARTICLE 3**

#### **NAME**

The name of the Condominium is "The Residences at Foundry Place Condominium."

### **ARTICLE 4**

#### **LOCATION**

The Condominium is located between Foundry Place and Hill Street in Portsmouth, Rockingham County, New Hampshire. The assigned street address for the Commercial Unit is 89 Foundry Place, and the assigned street address for the Residential Units is 99 Foundry Place.

### **ARTICLE 5**

#### **DESCRIPTION OF SUBMITTED LAND**

A legal description of the Submitted Land is contained in Exhibit A.

### **ARTICLE 6**

#### **DESCRIPTION OF UNITS**

6.1 **Units.** The Units are all located within the Building and are declared to be held in fee simple and may be retained, occupied, conveyed, transferred, leased, mortgaged, encumbered, inherited or devised in the same manner as any other parcel of real property, independent of the other Units. However, each Unit shall, at all times, be subject to the provisions of the Condominium Instruments and all Governmental Approvals.

6.2 **Unit Boundaries.** The boundaries of each Unit are as follows:

- (a) **Horizontal Boundaries.** The upper and lower boundaries of each Unit shall be the following, extended to an intersection with the vertical boundaries:
- (i) The unfinished interior surface of the floor.
  - (ii) The unfinished interior surface of the ceilings.
- (b) **Vertical Boundaries.** The perimeter (vertical) boundaries of each Unit shall be the vertical planes of the unfinished interior surfaces of all perimeter walls extended to intersections with each other and with the upper and lower boundaries, together with the unfinished interior surfaces of the window frames, door frames, glass, and the exterior surface of doors.
- (c) **Exceptions.** Each Unit includes all doors and the space that is enclosed within such boundaries, except any Limited Common Area or Common Area. The Owner of each Unit shall be deemed to own the finished interior surfaces, the interior nonbearing walls and partitions which are contained within the Unit boundaries, the sinks, bathtubs, and other plumbing fixtures, lines and facilities, refrigerator, stove, and all other appliances, and all heating, ventilating, air conditioning, lighting, electrical, and other utility units and components, fixtures, and equipment, and pipes, ducts, conduits, cables, and wires connected to such units, fixtures, and equipment, to the extent any of the foregoing are located in the Unit and serve solely that Unit.

6.3 **Building.** The Condominium contains a single Building as shown on the Site Plan and Floor Plans.

6.4 **No Additional Units.** No additional Units may be created, by subdivision of a Unit or otherwise, except as expressly set forth herein with respect to the Commercial Unit.

## **ARTICLE 7**

### **DESCRIPTION OF COMMON AREA AND LIMITED COMMON AREA**

7.1 **Common Area.** The Common Area shall be as defined in Section 2.1(g) of this Declaration.

7.2 **Ownership.** The Common Area shall be owned in common by all Unit Owners in accordance with their Ownership Interests.

7.3 **Use.** The use of the Common Area is limited to the Unit Owners and their Occupants. The use of each Limited Common Area is further restricted to the Owner or Occupants of the Unit(s) to which it is appurtenant. The use of and the responsibilities for the maintenance and repair, of the Common Area and Limited Common Area shall be governed by the Condominium Instruments.

7.4 **Construction of Improvements to Common Area.** No Common Area improvements shall be constructed without the approval of the Board.

7.5 **Costs of Repairs and Maintenance of the Common Area.** Except as otherwise provided in a Condominium Instrument, each Unit Owner shall be responsible for its allocable share of the costs of the repair, maintenance, and replacement of the Common Area, which costs shall be apportioned among the Unit Owners as provided in the Condominium Instruments.

7.6 **Limited Common Area.** The Limited Common Areas are defined in Section 2.1(t). Certain Limited Common Areas are depicted on the Site Plan and Floor Plans and are described in Exhibit B to this Declaration. Limited Common Area shall be for the exclusive use of the Unit Owner(s) and Occupant(s) of each Unit(s) to which the Limited Common Area is appurtenant, subject to the terms of the Condominium Instruments.

## **ARTICLE 8**

### **UNIT OWNERS ASSOCIATION AND ALLOCATION OF OWNERSHIP INTERESTS**

8.1 **Members of Unit Owners Association.** Upon the acceptance of a deed of a Unit, each Unit Owner shall automatically become a member of the Unit Owners Association and shall be subject to the terms of the Condominium Instruments.

8.2 **Allocation of Interests and Votes.** Each Unit Owner shall have an undivided Ownership Interest in the Common Area and shall have a vote in the Association affairs as set forth in Exhibit B.

## **ARTICLE 9**

### **RESTRICTIONS**

9.1 **Limitations on Use.** The Commercial Unit may only be used for commercial and business purposes. The Residential Units may only be used for residential purposes by a single Family. Residential purposes may include corporate housing provided to natural persons who are employees of the Owners or affiliates of

Owners subject to the following: (i) prior approval of the Board as to such use, (ii) all Persons which will use the Residential Units as corporate housing must be employees of the Owner or the Owner's affiliate and demonstrated as such by documentary support provided to, and reasonably required by, the Board, (iii) no more than five (5) Residential Units shall be approved by the Board for use as corporate housing at any given time, with requests to be considered on a first come first serve basis, and (iv) short or long term occupancy of an approved Residential Unit must meet the definition of a single Family which includes at least one (1) established employee at all times. The approval of any Unit for use as corporate housing shall expire upon the sale of such Unit. Residential Units and Common Area may only be used and occupied by the Unit Owners and their Occupants. Subject to the terms and restrictions of the Condominium Instruments, the Units may be used for all uses permitted under the Zoning Ordinance of the City of Portsmouth, including any use permitted under a special exception or variance granted pursuant to such Zoning Ordinance.

9.2 **Units Subject to Declaration, Bylaws and Rules and Regulations.** All present or future Unit Owners and Occupants are subject to the provisions of the Condominium Instruments. The Condominium Instruments shall be deemed to be enforceable servitudes and covenants running with the land and shall bind any Person who holds any interest in any Unit, whether or not such provisions are recited and stipulated in full in any instrument of conveyance, lease, or other agreement.

9.3 **Condominium Rules.** The Board may adopt, amend or repeal Condominium Rules governing activities at the Premises, provide that, the Condominium Rules are not contrary to any rights of Unit Owners under this Declaration, Bylaws or the Condominium Act.

9.4 **Quiet Enjoyment.** No Unit Owner or Occupant shall by any act or omission unreasonably interfere with the use, occupancy or enjoyment of any Unit, the Common Area, or any Limited Common Area by any other Unit Owner or Occupant.

9.5 **No Smoking.** Smoking is prohibited anywhere in the Condominium.

9.6 **Foundry Place Parking Garage Spaces.** Unit Owners which hold permits to use any of the Foundry Place Parking Garage Spaces shall comply in all respect with the terms and conditions of the permit, and also comply with the terms of the related Parking Agreement recorded at the Registry on May 13, 2023 at Book 6407, Page 1864. Notwithstanding the foregoing, the Foundry Place Parking Garage Spaces shall only be assigned to other Unit Owners, and in accordance with the said Parking Agreement.

9.7 **Right of First Refusal.** The following restrictions shall apply until the date of the initial transfer by the Declarant to the last of the Units initially created by the Declarant at the time of the recording of this Declaration:

(a) **Notice of Offer.** If, at any time a Unit Owner receives a bona fide

offer or agreement to purchase all or any portion of his interest in all or any portion of the Unit Owner's Unit, the Unit Owner shall immediately notify the Declarant. Such notice to the Declarant shall state the terms and conditions of the offer, shall indicate the Unit Owner's willingness to accept the same, and shall include a copy of the written offer or purchase and sale agreement with respect to the proposed sale.

- (b) **Election to Exercise.** The Declarant may elect to exercise this Right of First Refusal and to purchase the Unit Owner's Unit on the same or equivalent terms as those set forth in the notice of offer or agreement by sending written notice of such election to the Unit Owner within thirty (30) days following the Declarant's receipt of the notice of offer or agreement. Such notice of exercise shall be accompanied by a deposit, if required under the terms of the offer. The Unit Owner's notice of offer or agreement and the Declarant's notice of election to exercise shall constitute a firm contract for sale between the parties.
- (c) **Closing.** The closing of the sale to the Declarant shall be held in accordance with the terms of the offer so accepted, but in no event earlier than forty-five (45) days following the expiration of the above thirty (30) day notice period.
- (d) **Failure to Exercise.** In the absence of the Declarant's election to exercise this Right of First Refusal, the Unit Owner shall be free to sell the Unit on the terms set forth in the Unit Owner's notice to the Declarant for a period of sixty (60) days from the date of the notice to the Declarant. The Declarant's failure to elect to exercise this Right of First Refusal with respect to a particular offer or agreement shall in no way be deemed a waiver of the Right of First Refusal with respect to subsequent offers or agreements received by the Unit Owner.
- (e) **Savings Clause.** If necessary to avoid the application of the Rule Against Perpetuities to this instrument, the term of this Right of First Refusal shall be deemed to expire twenty-one (21) years after the date on which this Declaration is recorded.

## **ARTICLE 10**

### **EASEMENTS**

10.1 **Third Party Covenants, Easements and Restrictions.** In addition to the restrictions set out in Article 9, the Premises are subject to and benefited by all

covenants, conditions, easements and restrictions of record, and any conditions of approval for the Condominium placed on the Premises by any Governmental Approval. Each Unit Owner agrees to comply with such covenants, conditions, easements and restrictions and any conditions of approval any Governmental Approval. Without limitation, the Premises are subject to any covenants, conditions, easements and restrictions that may be referred to in Exhibit A.

## 10.2 Utilities.

- (a) **Grant of Easements.** Each Unit and its Limited Common Area are subject to nonexclusive perpetual easements benefiting the other Units, for the installation, operation, flow, passage, use, maintenance, connection, repair, relocation, and removal of Utility lines serving such other Units or Common Area, including sanitary sewers, storm drains, and water (fire and domestic), gas, electrical, telephone, data transmission, cable television, electronic communication, and fire alarm lines; and any such easement shall be assignable by the Board on a nonexclusive basis to any private or public utility company that will provide the service. The initial locations of any new Utilities shall be as installed by Declarant. Both the initial installation and any later installation or relocation of any Utilities shall be subject to the prior written consent of the Board, and must comply with the terms of the Governmental Approvals. The utility easement areas shall be no larger than necessary to reasonably satisfy the requirements of a private or public utility, and to allow a reasonable area for maintenance.
- (b) **Requirements for Installation of Separate or Shared Utilities.** Prior to installing a Separate or Shared Utilities lines, the Unit Owner(s) shall provide the Board (with a copy to any other Unit Owner(s) through whose Unit(s) the proposed line will pass) with a written request for consent to a Separate or Shared Utility line, describing the need for and the proposed location of the Separate or Shared Utility line, the nature of the service to be provided, and the anticipated commencement and completion dates for the work, and including a certificate of insurance showing that its contractor has obtained the minimum insurance coverage required by the Bylaws. The contractor shall not commence installation without the consent of the Board, shall pay all costs and expenses of such installation and shall cause all work (including general clean-up and proper surface and/or subsurface restoration) to be completed as quickly as possible and in a manner so as to minimize interference with the use of the other Units and Common Area. All such work shall comply with all applicable laws and regulations, and with the Governmental Approvals.

10.3 **Easement to Facilitate Completion and Sales.** Declarant and its duly authorized agents, representatives, and assigns may make such reasonable use of the Condominium as may facilitate the completion of construction of or improvements to both Units and Common Area, and sale and conveyance of Units, including, without limiting the generality of the foregoing, the right to enter all Units and Common Area for construction purposes, 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 and unconveyed 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.

10.4 **Easements for Ingress and Egress and Use.** Subject to the provisions of the Condominium Instruments, each Unit Owner and Occupant shall have an easement in common with the Owners and Occupants of all other Units for ingress and egress through, and use and enjoyment of, all Common Area.

10.5 **Easement for Inspections.** The Board of Directors, the Manager, or any other person authorized by the Board, on reasonable notice and at a time reasonably convenient to the Owner shall have an easement to access each Owner's Unit, for the purpose of making inspections, correcting any condition originating in the Unit and threatening another Unit or Common Area, or performing installation, alterations, or repairs to the mechanical or electrical services or other Common Area. In case of any emergency, such right of entry shall be immediate whether the Owner is present at the time or not. Owners of Units accessed under emergency circumstances shall be provided written notice promptly following any such emergency access if an Owner is not present at the time of access.

10.6 **Temporary Construction, Maintenance and Reconstruction Easements.**

- (a) **Construction and Maintenance of Buildings and Improvements.** All activities related to the construction, renovation, maintenance or repair of Units and Separate or Shared Utilities, and shall be conducted, to the greatest extent possible within the boundaries of the Unit and any appurtenant Limited Common Area, and in a manner that causes the least interference with existing Common Area and other Unit Owners and Occupants. If such activities require temporary access to and use of any other Unit, or the Common Area, the Unit Owner may proceed with such activities only in accordance with those procedures for construction of Separate or Shared Utilities set out in Section 10.2(b) and the provisions of the Bylaws, to the extent applicable to the particular

activity being conducted.

- (b) **Easement for Structural Encroachments.** Each Unit Owner shall be deemed to have easements for any encroachments of any Unit or Common Area on any other Unit or Common Area by reason of construction, repair, renovation, restoration, or replacement of any improvement, or by reason of the settling or shifting of any land or improvement; except in cases of willful and intentional misconduct by Unit Owners or their agents or employees.
  
- (c) **Pipes, Ducts, Chimneys, Flues, Conduits, Cables, Wires, and Other Common Area Located inside Units; Support.** Each Unit Owner and Occupant shall have an easement in common with the Owners and Occupants of all other Units to use all heating, ventilating, air conditioning, lighting, electrical, plumbing, and other Utilities, fixtures, and equipment, and any pipes, ducts, chimneys, flues, conduits, cables, wires, conduits, and other Common Area located in any of the other Units and serving that Unit. The Board of Directors shall have a right of access to each Unit to inspect the same, to remove violations therefrom, and to maintain, repair, or replace the Common Area contained therein or elsewhere in the Building. Every portion of a Unit that contributes to the structural support of the Building shall be burdened with an easement of structural support for the benefit of all other Units and the Common Area.

#### 10.7 **Restrictions Related to Construction.**

- (a) **Compliance.** All construction activities within the Premises shall be performed in compliance with the Condominium Instruments, the Governmental Approvals, and all applicable laws, rules, regulations, orders, and ordinances. All construction shall utilize new materials, and shall be performed in a good, safe, and workmanlike manner.
  
- (b) **Prohibited Actions.** Construction activities shall not:
  - (i) unreasonably interfere with construction work being performed on any other part of the Condominium;
  
  - (ii) unreasonably interfere with the use, occupancy or enjoyment of any part of the remainder of the Condominium by any other Unit Owner or Occupant; or

- (iii) cause the Building to be in violation of any Governmental Approval or any applicable law, rule, regulation, order, or ordinance.
- (c) **License for Construction.** Each Unit Owner shall have, for its benefit and the benefit of its respective contractors, materialmen and laborers, a temporary license for access and passage through the other Unit to the extent reasonably necessary to construct and/or maintain the Unit Owner's Unit or Limited Common Area. However, such license shall be in effect only during periods when actual construction and/or maintenance is being performed and the use of such license shall not unreasonably interfere with the use and operation of the Common Area and other Units by others. Prior to exercising the rights granted in this Section, the Unit Owner shall provide Association and any affected Unit Owner(s) with a written statement describing the need for such license, and shall furnish a certificate of insurance showing that it or its contractor has obtained the minimum insurance coverage required by the Bylaws. Any Unit Owner availing itself of this temporary license shall promptly pay all costs and expenses associated with such work, shall diligently complete such work as quickly as possible, and shall promptly clean the work site, and restore and/or repair the affected portion of the Common Area or Units to a condition which is equal to or better than the condition which existed prior to the commencement of such work. Notwithstanding the foregoing, in the event a dispute exists between the contractors, laborers, suppliers and/or others connected with construction activities, the servient Unit Owner shall have the right to prohibit the contractors, laborers, suppliers and/or others working for another Unit Owner from entering its Unit.
- (d) **Liens.** In the event any mechanic's or other lien is filed against any Unit or Common Area as a result of services performed or materials furnished for the use of the Owner or Occupant of a Unit, the Unit Owner permitting or causing such lien to be so filed shall cause such lien to be discharged within thirty (30) days, either by paying the indebtedness which gave rise to such lien or by posting bond or other acceptable security with the court for the release of such lien or its ultimate payment. In the event that a Unit Owner fails to satisfy or discharge such a lien as provided in this Section, the Association or the affected Unit Owner(s) may do so, and the Owner of the affected Unit shall be solely responsible for the costs incurred by the Association or the affected Unit Owner(s).

10.8 **Restrictions to Facilitate Use, Enjoyment and Development.** The Premises and all Units and Common Areas are subject to the following restrictions:

- (a) **No Subdivision or Partition of Common Area.** The Common Area shall remain undivided and no Unit Owner or any other persons shall bring any action for physical partition or division of the Common Area, nor shall the Common Area be abandoned by act or omission, unless the Condominium shall be terminated pursuant to the Condominium Act.
- (b) **Subdivision of Units.** No Residential Unit may be divided or subdivided into a smaller Residential Unit; and no Residential Unit or portion thereof shall be added to or incorporated into another Residential Unit. The Commercial Unit may be subdivided from time to time, at the discretion of the Owner of the Commercial Unit, into two or more Units (each a "**New Commercial Unit**"), provided that any New Commercial Unit may only be used for commercial purposes. Any Commercial Unit may be subdivided upon application of the Commercial Unit Owner to the Association but the consent or approval of the Association shall not be required. Upon receipt of such an application, the Association shall prepare, execute and record an Amendment to the Declaration, including the plats and plans, subdividing that Commercial Unit, provided that the cost to do the same shall be paid by the Owner of the Commercial Unit. The Amendment to the Declaration must be executed by the Owner of the Commercial Unit to be subdivided and shall assign an identifying number to each New Commercial Unit thereby created. The allocated interest formerly allocated to the Commercial Unit shall be re-allocated to the New Commercial Units in a reasonable manner, but in no event shall change the total interest allocated to the total Commercial Unit. All references in this Declaration to Commercial Unit[s] shall include any new Unit created by a subdivision of a Commercial Unit
- (c) **No Harmful or Offensive Uses.** No Owner or Occupant shall make any illegal, harmful or offensive use of any part of the Premises, and nothing shall be done in any part of the Condominium which is or will become, in the judgment of the Board of Directors, an annoyance or nuisance to the other Unit Owners.
- (d) **No Timeshare Interests.** Unit Owners may not convert their ownership interests in a Unit and Common Area to timeshare interests of any size, including half or quarter shares.
- (d) **Compliance With Laws.** The construction, maintenance, use, lease and operation of the Condominium and all buildings, structures, and other improvements that are a part of the Condominium shall comply with all laws, ordinances, rules, and

other requirements of all federal, state, and local governmental entities.

10.9 **General Provisions Relating to Easements.**

- (a) **Unreasonable Use.** The restrictions, conditions and easements set forth in this Declaration shall be exercised in a manner so as to avoid unreasonable interference with the use or occupancy of any Unit by a Unit Owner or Occupant.
- (b) **Disturbance of Common Areas or Other Units.** Except as otherwise provided, no Unit Owner may, in the course of exercising any easement right, disturb the Building, Common Area or any other Unit without the prior consent of the Board and any affected Unit Owner(s). In granting its consent, the Board may place reasonable limitations and conditions on the Unit Owner's exercise of any such easement right which shall be adhered to by the Unit Owner(s).
- (c) **Restoration of Disturbed Areas.** The party responsible for any disturbance of the Common Area or a Unit shall expeditiously restore the portion that has been disturbed by the exercise of any easement rights to the condition that existed prior to such exercise insofar as is practical, which restoration shall include the proper disposal of any and all debris and trash and, as applicable, a thorough cleaning.
- (d) **Damages and Expenses.** Each Unit Owner shall pay any expenses caused by its exercise of any easement rights granted in this Declaration, including any damage resulting from such exercise and a reasonable share of increased routine maintenance and replacement costs that result from the exercise of such rights.
- (e) **Insurance.** Each Unit Owner shall ensure to the maximum extent possible that its individual liability insurance covers claims for injury or damage suffered by anyone exercising any easement rights.

**ARTICLE 11**

**CASUALTY, CONDEMNATION AND TAXES**

11.1 **Action Following Casualty Damage, Condemnation, or Termination.** 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. In the event of such casualty, or of the condemnation of all or any portion of the Condominium, or of termination of the Condominium, the Association is hereby irrevocably appointed attorney-in-fact for each Owner and each mortgagee of every Unit, and for each owner of any other interest in the Condominium, to settle or litigate all claims arising under such policy, or otherwise resulting from such damage, and to execute and deliver releases upon the payment of claims; to settle or litigate all claims arising pursuant to such condemnation, and to execute and deliver releases upon the payment of such claims; and, in the event of termination, to settle or litigate all claims by or against the Association, to liquidate all the assets of the Association, and to distribute the assets to Owners or otherwise as required by the Condominium Act and other applicable law. Proceeds of insurance or condemnation shall be payable and paid to the Association as trustee for the benefit of the Association, the Unit Owners, and any mortgagees as their interests may appear. The procedure for reconstruction and repair is set forth in the Bylaws.

11.2 **Condemnation**. In the event any portion of the Premises shall be condemned, or conveyed under threat of condemnation, the award shall be paid to the Unit Owner(s) in proportion to the values of the Unit(s) and/or Common Area taken.

11.3 **Taxes and Assessments and Other Expenses**. Each Unit Owner shall pay, prior to delinquency, all taxes and assessments with respect to its Unit, and the Building or Buildings and improvements located in its Unit. If the taxes or assessments may be paid in installments, the Unit Owner may, but shall not be required to, pay each such installment as and when the same becomes due and payable. Nothing contained in this Section 11.3 shall prevent any Unit Owner from contesting at its cost and expense any such taxes and assessments with respect to its Unit in any manner such Unit Owner elects, so long as such contest is maintained with reasonable diligence and in good faith. At such time as the contest is concluded (allowing for appeal to the highest appellate court), the contesting Unit Owner shall promptly pay all such taxes and assessments determined to be owing, together with all interest, penalties and costs.

## **ARTICLE 12**

### **COMMON EXPENSES**

12.1 **Budget**. The Board of Directors shall adopt annual budgets for the Association as provided in the Bylaws.

12.2 **Allocation of Common Expenses**. The Common Expenses included in each Budget shall be allocated among the Unit Owners in proportion to their undivided interests in the Common Area, unless and to the extent that (a) any such Common Expense is caused by one or more, but less than all of the Units, in which case the expense shall be allocated according to the proportion of such causation, (b) the Common Expense relates to Limited Common Area, in which case it shall be allocated

to the Unit Owners to which the Limited Common Area is appurtenant in proportion to their respective interests in the Limited Common Area, or (c) as is otherwise provided for in the Condominium Instruments. The cost of repair and replacement of window glass shall be allocated to the respective Unit to the extent that such repair or replacement is necessitated by or the result of the actions of the Unit Owner or an Occupant of the Unit.

12.3 **Payment of Expenses.** Each Unit Owner shall pay when due its share of the Common Expenses and all expenses specially assessed against the Unit.

## ARTICLE 13

### AMENDMENT OF DECLARATION AND CONDOMINIUM INSTRUMENTS

13.1 **General.** This Declaration, the Bylaws, the Site Plan and the Floor Plans may be amended by 2/3 vote of the Unit Owners as provided in the Condominium Act; provided, however, that: (i) no such amendment shall be effective until evidence of it has been duly recorded in the Rockingham County Registry of Deeds pursuant to Sections 11 and 34 of the Condominium Act; (ii) until the Transition Date, no such amendment may be made without the prior written consent of the Declarant; and (iii) no such amendment to this Section 13.1 or which relates to the use or leasing of the Commercial Unit, the Ownership Interest and associated voting rights and liability for Common Expenses assigned to the Commercial Unit, the boundaries of the Commercial Unit, any Limited Common Areas appurtenant only to the Commercial Unit, or any other amendment specifically applicable to the Commercial Unit and not generally applicable to all Units or all Units similarly situated, may be made without prior written approval of all Owners of the Commercial Unit. In addition, no amendment to the Condominium Rules specifically applicable to the Commercial Unit and not generally applicable to all Units or all Units similarly situated, may be made without prior written approval of all Owners of the Commercial Unit.

13.2 **Consent of Mortgagees.** Except as provided in this Declaration, the consent of those parties who hold mortgages on any Unit is expressly not required for the consent or approval of the respective Unit Owner to be effective under any Section or provision of the Condominium Instruments, and any such mortgagee shall be bound by the respective Unit Owners consent or approval.

13.3 **Technical Amendments.** Notwithstanding the foregoing or any other language to the contrary contained in the Condominium Instruments, Declarant for itself and its successors in interest, reserves and shall have the right at any time prior to the Transition Date to amend the Condominium Instruments without the consent of any Unit Owners or Eligible Mortgage Holders, but only to:

- (a) correct typographical errors;

- (b) bring the Condominium Instruments into compliance with the Condominium Act; or
- (c) conform the Condominium Instruments to the requirements of FNMA and FHLMC Loan Guaranty underwriting requirements.

#### **ARTICLE 14**

#### **TERMINATION OF CONDOMINIUM**

This Condominium may be terminated in the manner provided for in Section 34 of the Condominium Act.

#### **ARTICLE 15**

#### **DEFAULT AND ENFORCEMENT**

15.1 **Default.** The occurrence of any one or more of the following events shall constitute an "**Event of Default**" under of this Declaration by a Unit Owner or Occupant (the "**Defaulting Party**"):

- (a) the failure to make the monthly installment payment of Common Expenses by its due date;
- (b) the failure to make any other payment required to be made under any Condominium Instrument within ten (10) days after receipt of the written notice from the Association; or
- (c) the failure to observe or perform any other of the covenants, conditions or obligations of the Condominium Instruments, within thirty (30) days after receipt of written notice from the Association, or, in any proper case, by an aggrieved Unit Owner, specifying the nature of the default claimed.

15.2 **Adjudication of Disputes.**

- (a) **Mediation.** Upon the occurrence of an Event of Default pursuant to 15.1(c) (a "**Nonmonetary Default**"), the Association and all Owners who are involved in the dispute or controversy shall attempt to resolve their differences through non-binding mediation using a third-party trained to conduct mediations. The mediation shall be scheduled and conducted expeditiously within thirty (30) days of the Event of Default.

- (b) **Litigation.** Upon occurrence of an Event of Default, and solely with respect to a Nonmonetary Default in the event that non-binding mediation is unsuccessful, the parties may exercise all rights and remedies that are available to them under applicable law, and the Condominium Instruments, including the right to collect rents from any Occupants of a Unit, to levy against a Unit or to recover damages for any such violation or default including the cost of enforcement. Such proceeding shall include the right to restrain by injunction any violation or threatened violation of any of the terms, covenants, or conditions of this Declaration, or to obtain a decree to compel performance of any such terms, covenants, or conditions, it being agreed that the remedy of damages for a breach of any such term, covenant, or condition (except those, if any, requiring the payment of a liquidated sum) is not adequate. The invocation of any specific right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy. The prevailing party in such an enforcement action shall be entitled to recover costs of collection or defense, including reasonable attorneys' fees.
- (c) **Cure by Association or Other Unit Owner.** In addition, upon occurrence of an Event of Default, and solely with respect to a Nonmonetary Default in the event that non-binding mediation is unsuccessful, the Association or Unit Owner shall have the right, but not the obligation, to cure such Event of Default by the payment of money or the performance of some other action for the account of and at the expense of the Defaulting Party. However, in the event a default or breach shall constitute an emergency condition, the Association, acting in good faith, shall have the right to cure such breach without notice to or mediation with the Defaulting Party, so long as notice is given as soon as practical afterwards. To effectuate any such cure, the Association or Unit Owner shall have the right to enter upon the Unit or Limited Common Area of the Defaulting Party to perform any necessary work or furnish any necessary materials or services to cure the breach of the Defaulting Party. In the event the Association or Unit Owner shall cure a breach, the Defaulting Party shall reimburse the Association or Unit Owner for all costs and expenses incurred in connection with such curative action, plus interest as provided below, within ten (10) days of receipt of demand for reimbursement, which demand shall include reasonable documentation supporting the expenditures made.

15.3 **Interest.** Any time a Unit Owner shall fail to pay any sum due under any Condominium Instrument to the Association or any other Unit Owner within any applicable notice and cure period, such unpaid sum shall accrue interest from the due

date to and including the date such payment is received by the Person entitled to payment, at the lesser of:

- (a) the highest rate permitted by law to be paid on such type of obligation by the Person obligated to make such payment; or
- (b) three percent (3%) per annum in excess of the prime rate from time to time published by the Wall Street Journal or its successor (or comparable rate if such rate is no longer published);

determined as of the due date for such payment.

15.4 **Mitigation of Damages**. In all situations arising out of this Condominium Instrument, all parties shall use reasonable efforts to mitigate its damages or loss resulting from the conduct of any other party. Each Unit Owner shall take all reasonable measures to effectuate the provisions of the Condominium Instruments.

15.5 **Declaration Shall Continue Notwithstanding Breach**. It is expressly agreed that no breach of the Condominium Instruments shall (a) entitle any Unit Owner to cancel, rescind, or otherwise terminate this Declaration, or (b) defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to any part of the Premises. However, such limitation shall not affect in any manner any other rights or remedies which a Unit Owner may have by reason of any such breach.

15.6 **Indemnification**. Each Unit Owner shall indemnify, defend and hold the Unit Owners Association, the other Unit Owners, and every Occupant of the Condominium harmless from and against any actual damages, liabilities, actions, claims, and expenses (including reasonable attorneys' fees) in connection with the loss of life, personal injury and/or damage to property arising from or out of any occurrence in or upon such Owner's Unit, the Common Area or the Limited Common Area appurtenant to such Unit, or occasioned wholly or in part by any actual or alleged act or omission of said Owner or its Occupant, but excluding loss or damage incurred by an indemnified party that results from the tortious acts or omissions of such indemnified party.

15.7 **No Waiver**. The failure of the Association or any Unit Owner to insist upon strict performance of any of the terms, covenants or conditions of the Condominium Instruments shall not be deemed a waiver of any rights or remedies which the Association or Unit Owner may have under the Condominium Instruments, at law or in equity, and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions. No waiver by the Association or a Unit Owner of any default under the Condominium Instruments shall be effective or binding on such party unless made in writing by such party and no such waiver shall be implied from any omission by such party to take action with respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One or

more written waivers or any default under any provision of the Condominium Instruments shall not be deemed to be a waiver of any subsequent default in the performance of the same provision or any other terms or provisions contained in the Condominium Instruments.

15.8 **Owners Liable for Occupants**. Each Unit Owner shall be responsible for any default or breach under the Condominium Instruments that is caused by an act or omission of the Occupant(s) of its Unit.

## **ARTICLE 16**

### **PROVISIONAL RIGHTS OF FIRST MORTGAGE HOLDERS**

Notwithstanding anything to the contrary elsewhere in the Condominium Instruments, the following provisions shall govern and be applicable to the Condominium if, but only so long as, any first mortgage lien on any Unit is held or guaranteed by the Federal Home Loan Mortgage Corporation (FHLMC) or the Federal National Mortgage Association (FNMA).

16.1 **Notice of Certain Events**. Any holder, insurer, or guarantor of a first mortgage of a Unit in the Condominium shall, upon written request stating its name and address, the name of the Unit Owner and the Unit number and address of the Unit, be entitled to timely written notification from the Board of Directors of any of the following (such mortgages are referred to as "**Eligible Mortgages**," and such parties who have submitted such written requests are referred to as "**Eligible Mortgage Holders**"):

- (a) Any condemnation, proposed taking, or casualty loss that affects a material portion of the Premises or the Unit on which such first mortgagee holds a first mortgage lien;
- (b) Any 60-day delinquency in the payment of assessments or charges owed by the Owner of such Unit, or any other default the Owner in the performance of any obligation under Condominium Instruments that has not been cured within 60 days;
- (c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;
- (d) Any proposed action for which the consent of Eligible Mortgage Holders is required pursuant to this Declaration.

16.2 **Priority of Eligible Mortgage Liens**. Except as provided in Section 46 of the Act, any first mortgagee of a Unit in the Condominium who obtains title to the Unit pursuant to the remedies provided in the mortgage, or foreclosure of the mortgage, or deed (or assignment) in lieu of foreclosure, shall take the property free of any claims for

unpaid assessments or charges against the mortgaged Unit which accrue prior to the acquisition of title of such Unit by the mortgagee.

16.3 **Consent to Certain Actions.** All amendments of a material nature to the Declaration or Bylaws must be approved by at least 51 percent of all Eligible Mortgage Holders (based on votes appurtenant to the mortgaged Units). For the purposes of this Section, "amendments of a material nature" shall include those matters listed on Exhibit D.

16.4 **Imputed Consent.** The agreement of and consent of an Eligible Mortgage Holder to any of the above matters shall be conclusively presumed when no written response is received by the Association within 60 days after receipt by the Eligible Mortgage Holder of notice sent to it by certified mail, return receipt requested.

16.5 **Inspection of Records.** The books, records, and financial statements of the Association, as well as current copies of the Condominium Instruments, shall be available for inspection by Unit Owners or holders, insurers, or guarantors of first mortgages on Units during normal business hours or under other reasonable circumstances.

16.6 **Reserves.** The Association shall establish and maintain an adequate operating reserve fund and a reserve fund for maintenance, repairs, and replacements of any Common Area which must be replaced on a periodic basis shall be established by the Association and, except as otherwise set forth in the Bylaws, shall fund these reserves by regular monthly payments rather than by special assessments.

16.7 **Insurance & Condemnation Proceeds.** No provision of the Condominium Instruments 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 mortgages in the case of a 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. The distribution of insurance proceeds to the Association as trustee for the Owners and their mortgagees shall not be deemed to constitute a "distribution to Unit Owners" within the meaning of this subsection.

16.8 **Insurance.**

- (a) The Board of Directors shall be required to obtain and maintain, to the extent obtainable and permitted by applicable law, such insurance other than that which may be required by the Bylaws, in such amounts and containing such terms as may be required from time to time by FNMA or FHLMC.
- (b) Whenever any Unit and/or Common Area is damaged by fire or other hazard the Directors shall give notice to such persons as may be required by FNMA or FHLMC.

16.9 **Financial Statements**. Any holder, insurer, or guarantor of a first mortgage on any Unit shall be entitled to have an audited financial statement of the Association for the immediately preceding year, prepared at its own expense, or at its option to receive a copy of an unaudited statement from the Association. Upon any such request, the Board of Directors must provide the unaudited financial statement, if available, to the requesting party within a reasonable time.

16.10 **Right of First Refusal**. The Declarant's reserved Right of First Refusal shall not be interpreted so as to impair the rights of an Eligible Mortgage Holder to:

- (a) Foreclose or take title to a Unit pursuant to the remedies in the Eligible Mortgage;
- (b) Accept a deed or assignment in lieu of foreclosure in the event of a default by the Unit Owner; or
- (c) Sell or lease the Unit acquired by the Eligible Mortgage Holder or its assignee.

16.11 **Amendments to This Article**. No amendment to the provisions of this Article 16 shall be effective without the consent of 51 percent of the Eligible Mortgage Holders (based upon votes appurtenant to the mortgaged Units). A signed certification of an Officer of the Association shall be sufficient to provide record evidence of the receipt of the necessary consents.

## **ARTICLE 17**

### **GENERAL PROVISIONS**

17.1 **Estoppel Certificate**. Each Unit Owner and/or the Unit Owners Association shall, upon written request of any other Unit Owner, issue to such Unit Owner, or its prospective mortgagee, tenant or successor, an estoppel certificate stating to the best of the issuer's knowledge as of such date:

- (a) whether there exists any default under the Condominium Instruments by the requesting Unit Owner or any other Unit Owner, and specifying the nature of the default; and
- (b) Whether the Condominium Instruments are in full force and effect.

Such estoppel certificate shall be issued within thirty (30) days of receipt of the request, and shall act to estop the issuer from asserting a claim or defense against a bona fide lien holder or purchaser for value to the extent that such claim or defense is based upon facts known to the issuer as of the date of the estoppel certificate which are contrary to

the facts contained in the certificate, and such bona fide purchaser or lien holder has acted in reasonable reliance upon the estoppel certificate without knowledge of facts to the contrary. The issuance of an estoppel certificate shall in no event subject the issuer to any liability for the negligent or inadvertent failure of the issuer to disclose correct and/or relevant information, nor shall such issuance be construed to waive any rights of the issuer against any other parties. Each Unit Owner shall be obligated to provide not more than two (2) such estoppel certificates in any period of twelve (12) consecutive months to the same requesting Owner, unless the requesting Owner pays the costs reasonably incurred by the responding Owner in connection therewith.

17.2 **Reimbursement of Expenses**. Whenever a Condominium Instrument provides that the Association's consent or approval is required before a Unit Owner may act, the Unit Owner shall reimburse the Association for all costs and expenses, including reasonable attorneys' fees, incurred by it in connection with the review of and response to such request.

17.3 **Notices**.

- (a) **Delivery of Notices**. All notices required or provided for under the Condominium Instruments shall be deemed to have been delivered if (a) hand delivered, (b) mailed, Certified or Registered United States Mail, return receipt requested, so long as the notice is actually received within three (3) days following the deadline date, (c) sent and received by receipted or otherwise traceable overnight delivery service, or (d) sent to a Unit Owner by electronic mail, if the Unit Owner's Notice Address is or includes an electronic mail address. Notices shall be sent to the Notice Address if to a Unit Owner and to the business office of the Association if to the Association. The Board shall advise the Unit Owners in writing of any change of the business office address of the Unit Owners Association.
- (b) **Notice Address**. Upon the purchase of a Unit, the Unit Owner purchasing the Unit shall deliver to the Secretary of the Association the Unit Owner's preferred address for notices, which may be an electronic mail address (the "**Notice Address**") and such address shall be the address to which all notices under the Condominium Instruments shall be delivered to such Unit Owner until the Unit Owner provides the Secretary with written notice of a new Notice Address. If a Unit Owner does not provide a Notice Address, then the Unit Owner's Notice Address shall be deemed to be the mailing address of the Unit Owners Unit.
- (c) **Multiple Owners**. If a Unit is owned by more than one Person, any Person who has authority to exercise the vote with respect to the Unit may designate in writing the Notice Address for such Unit. A notice to the Notice Address so designated shall be full and effective notice to all co-Owners under the Condominium Instruments.

- (d) **Alternate Notice, Consent or Actions.** To take advantage of new technologies and corresponding changes in business practices, and to the extent permitted by existing or future changes in the law: (1) any notice required to be sent or received; (2) any signature, vote, consent, or approval required to be obtained; or (3) any payment required to be made, pursuant to the Association documents may be effected using any advanced technology available at that time, if the use of such technology has been approved in advance by the Board of Directors, it is a generally accepted business practice and the Unit Owner or the Association have agreed in writing to accept notices or to provide consents or approvals by such alternative means. In this regard, any requirement for a signature consent or approval under the Condominium Instruments may be satisfied by a digital or electronic signature that is valid under applicable law.
- (e) **Waiver of Notice.** Whenever any notice is required to be given under the provisions of the Condominium Act, the Condominium Instruments, a written waiver, signed by the Person entitled to such notice, whether signed before or after the time of the applicable event, shall be deemed equivalent to notice properly given, unless such waiver is ineffective under the provisions of the Condominium Act.

17.4 **Transfer and Lease of Unit.** Each Unit Owner shall notify the Association of the following information with respect to any transfer of any portion of the Unit Owners interest in a Unit including leases and any other occupancy agreement:

- (i) the name and address of the new Unit Owner or interest holder;
- (ii) the description of the Unit and/or interest transferred; and
- (iii) In the case of the lease or other occupancy agreement, a copy of the lease or other occupancy agreement, and the identity of all Persons to occupy the Unit if not otherwise set forth therein.

No lease or other occupancy agreement with respect to a Unit shall have a term less than three (3) consecutive months, other than any occupancy agreement for Units approved for use as corporate housing pursuant to Section 9.1 of this Declaration.

17.5 **Approval of Unattended Guests.** Without the prior written approval of the Board, no natural person, may spend the night at a Unit without the presence of at least one member of the Family residing therein for longer than: (a) fifteen (15) consecutive nights, or (b) a total of forty-five (45) nights over the course of a rolling twelve (12) month period. Units which are approved for use as corporate housing pursuant to Section 9.1 of this Declaration shall not be permitted to have any overnight guests that are not accompanied by an established employee, unless otherwise approved by the Board.

17.6 **No Third-Party Beneficiary.** Except as specifically provided in the Condominium Instruments, no right, privileges or immunities of the Declarant or any Unit Owner under the Condominium Instruments shall inure to the benefit of any third-party person, nor shall any third-party person be deemed to be a beneficiary of any of the provisions contained in the Condominium Instruments.

17.7 **Time.** Time is of the essence in the Condominium Instruments.

17.8 **Choice of Law.** The Condominium Instruments shall be governed under the laws of the State of New Hampshire.

17.9 **Invalidity.** It is the intention of the Declarant that the provisions of the Condominium Instruments be 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 the Condominium Instruments, 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 the Condominium Instruments 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 the Condominium Instruments, 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 therein declared as fully as if they had been in effect at the time of recording of this instrument.

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The Declarant has caused this Declaration to be executed by its duly authorized representative as of the 4<sup>th</sup> day of March, 2025.

**RESIDENCES OF FOUNDRY PLACE, LLC**

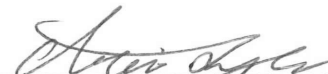
by its Manager,

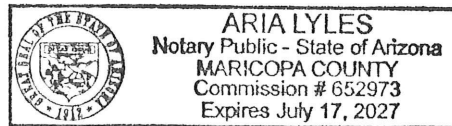
GL Rogers and Company, Inc.

By:   
Name: Kim S. Rogers  
Title: President

STATE OF ARIZONA  
COUNTY OF MARICOPA

The foregoing instrument was acknowledged before me this 4 day of March, 2025 by Kim S. Rogers, as President of GL ROGERS AND COMPANY, INC., a New Hampshire corporation and the manager of RESIDENCES OF FOUNDRY PLACE, LLC, a New Hampshire limited liability company, on behalf of said corporation and limited liability company.

  
Justice of the Peace/Notary Public  
My commission expires: 7-17-2027  
*Affix Seal*



**EXHIBIT A TO DECLARATION OF THE RESIDENCES AT FOUNDRY PLACE  
CONDOMINIUM**

**DESCRIPTION OF SUBMITTED LAND**

A certain tract or parcel of land located in the City of Portsmouth, County of Rockingham and State of New Hampshire, depicted as Lot 6 on a certain plan entitled "Consolidation & Subdivision Plan – Tax Map 125, Lot 17 & Tax Map 138, Lot 62 – Deer Street Associates – Bridge, Deer & Hill Streets – City of Portsmouth, County of Rockingham, State of New Hampshire – Scale 1" = 50' " dated July, 2015 and last revised 5/18/16 recorded in the Rockingham County Registry of Deeds as Plan D-39699, said tract being more particularly bounded and described as follows:

Beginning at a stone bound with a "X" cut on the southeasterly side of Foundry Place, so called, at the westerly corner of the parcel herein described and the northerly corner of land now or formerly of Kearsarge Mills Condominium Association; thence turning and running along the southeasterly side of Foundry Place, so called, N 44°38'09" E a distance of 167.36 feet to an iron rod and land now or formerly of John W. Gray Revocable Trust and Bradford A. Gray Revocable Trust; thence turning and running along land now or formerly of said Trusts S 40°13'28" E a distance of 4.32 feet to a drill hole; thence continuing along land now or formerly of said Trusts S 40°46'38" E a distance of 140.60 feet to a railroad spike and land now or formerly of Hill Hanover Group, LLC, said point being at the approximate center of the southwesterly terminus of Hill Street, so called, at the intersection of Autumn Street, so called; thence turning and running along land now or formerly of said Hill Hanover Group, LLC S 50°00'27" W a distance of 161.76 feet to a railroad spike and land now or formerly of Kearsarge Mills Condominium Association; thence turning and running along land now or formerly of said Kearsarge Mills Condominium Association N 43°00'28" W a distance of 129.42 feet to a stone bound with an "X" cut on the southeasterly side of Foundry Place, so called, and the point of beginning.

**EXHIBIT B TO DECLARATION OF THE RESIDENCES AT FOUNDRY PLACE  
CONDOMINIUM**

**ALLOCATION OF OWNERSHIP INTERESTS,  
VOTES IN UNIT OWNERS ASSOCIATION, AND  
DESCRIPTION OF LIMITED COMMON AREAS**

| <b>UNIT NUMBER</b> | <b>PERMITTED USES</b>   | <b>VALUE POINTS ASSIGNED</b> | <b>PERCENTAGE OWNERSHIP INTEREST IN COMMON AREA AND LIABILITY FOR COMMON EXPENSES AND NUMBER OF VOTES</b> | <b>ASSIGNED LIMITED COMMON AREA<sup>1</sup></b> |
|--------------------|-------------------------|------------------------------|---|---|
| 15                 | Commercial and Business | 1.84                         | 1.84%   | None  |
| 101                | Residential             | 1.94                         | 1.94%   | TBD   |
| 102                | Residential             | 2.14                         | 2.14%   | TBD   |
| 103                | Residential             | 2.22                         | 2.22%   | TBD   |
| 104                | Residential             | 2.04                         | 2.04%   | TBD   |
| 105                | Residential             | 1.69                         | 1.69%   | TBD   |
| 106                | Residential             | 1.48                         | 1.48%   | TBD   |
| 107                | Residential             | 1.36                         | 1.36%   | TBD   |
| 108                | Residential             | 1.91                         | 1.91%   | TBD   |
| 109                | Residential             | 2.01                         | 2.01%   | TBD   |
| 110                | Residential             | 2.63                         | 2.63%   | Hill Street Parking Space 1                     |
| 111                | Residential             | 1.33                         | 1.33%   | TBD   |
| 112                | Residential             | 1.51                         | 1.51%   | Storage Space E<br>Office Space 2               |
| 201                | Residential             | 1.96                         | 1.96%   | TBD   |
| 202                | Residential             | 2.16                         | 2.16%   | Parking Space 30                                |
| 203                | Residential             | 2.24                         | 2.24%   | Parking Space 3                                 |
| 204                | Residential             | 2.06                         | 2.06%   | Hill Street Parking Space 2                     |

<sup>1</sup> "TBD" to be completed upon sale, as applicable, and as assigned per deed of Declarant. Numeric and alphanumeric references correspond to the recorded Garage Floor Plan, except that numeric references to Hill Street Parking correspond to the recorded Site Plan.

| UNIT NUMBER | PERMITTED USES | VALUE POINTS ASSIGNED | PERCENTAGE OWNERSHIP INTEREST IN COMMON AREA AND LIABILITY FOR COMMON EXPENSES AND NUMBER OF VOTES | ASSIGNED LIMITED COMMON AREA <sup>1</sup> |
|-------------|----------------|-----------------------|--|---|
| 205         | Residential    | 1.71                  | 1.71%  | TBD                                       |
| 206         | Residential    | 1.50                  | 1.50%  | TBD                                       |
| 207         | Residential    | 1.38                  | 1.38%  | TBD                                       |
| 208         | Residential    | 1.93                  | 1.93%  | TBD                                       |
| 209         | Residential    | 2.03                  | 2.03%  | TBD                                       |
| 210         | Residential    | 2.63                  | 2.63%  | Storage Space B<br>Parking Space 5        |
| 211         | Residential    | 1.35                  | 1.35%  | TBD                                       |
| 212         | Residential    | 1.53                  | 1.53%  | TBD                                       |
| 213         | Residential    | 2.36                  | 2.36%  | Parking Space 31                          |
| 301         | Residential    | 1.97                  | 1.97%  | TBD                                       |
| 302         | Residential    | 2.17                  | 2.17%  | Hill Street Parking<br>Space 3            |
| 303         | Residential    | 2.25                  | 2.25%  | Parking Space 28                          |
| 304         | Residential    | 2.07                  | 2.07%  | TBD                                       |
| 305         | Residential    | 1.72                  | 1.72%  | TBD                                       |
| 306         | Residential    | 1.51                  | 1.51%  | TBD                                       |
| 307         | Residential    | 1.39                  | 1.39%  | TBD                                       |
| 308         | Residential    | 1.94                  | 1.94%  | TBD                                       |
| 309         | Residential    | 2.04                  | 2.04%  | TBD                                       |
| 310         | Residential    | 2.64                  | 2.64%  | Storage Space F<br>Parking Space 8        |
| 311         | Residential    | 1.36                  | 1.36%  | Storage Space D                           |
| 312         | Residential    | 1.54                  | 1.54%  | TBD                                       |
| 313         | Residential    | 2.43                  | 2.43%  | Parking Space 9                           |

<sup>1</sup> "TBD" to be completed upon sale, as applicable, and as assigned per deed of Declarant. Numeric and alphanumeric references correspond to the recorded Garage Floor Plan, except that numeric references to Hill Street Parking correspond to the recorded Site Plan.

| UNIT NUMBER | PERMITTED USES | VALUE POINTS ASSIGNED | PERCENTAGE OWNERSHIP INTEREST IN COMMON AREA AND LIABILITY FOR COMMON EXPENSES AND NUMBER OF VOTES | ASSIGNED LIMITED COMMON AREA <sup>1</sup>             |
|-------------|----------------|-----------------------|--|---|
| 401         | Residential    | 2.05                  | 2.05%  | TBD   |
| 402         | Residential    | 2.25                  | 2.25%  | Parking Space 27                                      |
| 403         | Residential    | 2.33                  | 2.33%  | Storage Space H<br>Parking Space 6                    |
| 404         | Residential    | 2.15                  | 2.15%  | TBD   |
| 405         | Residential    | 1.80                  | 1.80%  | TBD   |
| 406         | Residential    | 1.59                  | 1.59%  | TBD   |
| 407         | Residential    | 1.47                  | 1.47%  | TBD   |
| 408         | Residential    | 2.02                  | 2.02%  | TBD   |
| 409         | Residential    | 2.12                  | 2.12%  | Storage Space C<br>Parking Space 29<br>Office Space 1 |
| 410         | Residential    | 2.72                  | 2.72%  | Storage Space G<br>Parking Space 4                    |
| 411         | Residential    | 1.44                  | 1.44%  | TBD   |
| 412         | Residential    | 1.62                  | 1.62%  | Parking Space 26                                      |
| 413         | Residential    | 2.47                  | 2.47%  | Parking Space 7                                       |

<sup>1</sup> "TBD" to be completed upon sale, as applicable, and as assigned per deed of Declarant. Numeric and alphanumeric references correspond to the recorded Garage Floor Plan, except that numeric references to Hill Street Parking correspond to the recorded Site Plan.

**EXHIBIT C TO DECLARATION THE RESIDENCES AT FOUNDRY PLACE  
CONDOMINIUM  
INITIAL BYLAWS**

**BYLAWS  
OF  
THE RESIDENCES AT FOUNDRY PLACE CONDOMINIUM ASSOCIATION**

ARTICLE I

INTRODUCTORY

1.1 Definitions. Capitalized terms not otherwise defined in these Bylaws shall have the meanings specified in the Declaration of The Residences at Foundry Place Condominium (the "Declaration"), and, if not defined in the Declaration, shall have the meanings specified in Section 3 of the Condominium Act.

1.2 Bylaws Applicability. The provisions of these Bylaws are applicable to the management and operation of the Condominium, and the use, occupancy, sale, lease, and other transfer of Units in the Condominium.

1.3 Condominium Management Association. The Association is a "condominium management association" organized and operated to provide for the acquisition, construction, management, maintenance, and care of "association property," as those terms are defined in Section 528 of the Internal Revenue Code. No part of the net earnings of the Association shall inure (other than by acquiring, constructing, or providing management, maintenance, and care of association property, and other than by a rebate of excess membership dues, fees, or assessments pursuant to Section 5.2(d)) to the benefit of any Unit Owner.

1.4 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.

1.5 Period of Control by Declarant. Notwithstanding any other provision of these Bylaws, until the Transition Date, the Declarant shall have the power, in its sole discretion, to (a) appoint or remove any or all Officers and Directors of the Association at any time, without cause, and (b) exercise any or all powers and responsibilities otherwise assigned by the Condominium Instruments or the Condominium Act to the Association, its Officers, or its Board of Directors. The appointees of the Declarant need not be Unit Owners.

## ARTICLE II

### UNIT OWNERS ASSOCIATION

2.1 Composition. All of the Unit Owners are members of the Unit Owners Association. The Unit Owners Association 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, the Declaration, or these Bylaws specifically require to be performed or approved by the vote of the Unit Owners, the administration of the Condominium shall be performed or approved by the Board of Directors.

2.2 Place of Meetings. Meetings of the 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. The Association, committees thereof, and the Board of Directors may meet by telephonic, video, or other conferencing process, provided that the requirements of the Act are also met.

2.3 Annual Meetings. The first annual meeting of the Association shall be held on a date to be determined by the Declarant, which date shall be within one year after the recording of the Declaration at the Registry but no later than the Transition Date. Notice of such meeting shall be given to all of the Unit Owners at least twenty-one (21) days prior to the meeting in accordance with the provisions Section 17.3 of the Declaration. Subsequent annual meetings of the Association shall be held on such date as may be designated by the Board of Directors and recited in the notice. At the annual meetings following the Transition Date, the Owners shall elect the members of the Board of Directors and may also transact such other business as may properly come before them at such meetings.

2.4 Special Meetings. The President shall call a special meeting of the Association if so directed by the Board of Directors or upon a petition signed and presented to the Secretary by Owners having not less than thirty-three (33) percent of the votes of all Owners. The requesting Unit Owners may call a Special Meeting if the President and Secretary refuse to do so within thirty (30) days of their request.

2.5 Notice of Meeting. The Secretary shall provide notice of each annual meeting or special meeting to the Owners at least twenty-one (21) days in advance of each annual meeting in accordance with Section 17.3 of the Declaration, and at least seven (7) days in advance of a special meeting, stating the purpose of the meeting, as well as the time, place and location of the meeting. The foregoing minimum time to give notice may be reduced or waived for a meeting called to deal with an emergency.

2.6 Quorum. A quorum shall consist of fifty percent (50%) of the total votes in the Association excluding disqualified Owners. Valid proxies shall count toward the quorum requirement.

2.7 Voting.

- (a) Casting Votes The Owner of each Unit shall be entitled to a number of votes equal to the Percentage Interest assigned to such Unit in the Declaration. Since an 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. 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 casts the votes appertaining to that Unit without protest being made by any of the others to the individual 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 any one natural person having authority to execute deeds on behalf of such Person. Except where a greater number is required by the Condominium Act, the Declaration, or these Bylaws including Sections 39 V and VI of the Act, decisions at any meeting of the Association shall be by majority vote of those present and qualified to vote. If the Declarant owns or holds title to one or more Units, the Declarant shall have the right at any meeting of the Association to cast the votes to which such Unit(s) are entitled.
- (b) Voting without a Meeting. The Unit may take action without a meeting as provided in Section 39-a of the Condominium Act.

2.8 Voting Limitations. An Owner shall be deemed to be in good standing and entitled to vote at any annual meeting or special meeting of the Association if, and only if, the Owner shall have fully paid all assessments made or levied and due against the Owner, the Owner's Unit and any Occupant of the Owners Unit by the Board of Directors or any Unit Owner as provided in the Condominium Instruments, together with all interest, costs, attorney's fees, penalties, and other expenses, if any, properly chargeable to the Owner and against the Owner's Unit, as of the third business day prior to the date fixed for the meeting, or thereafter by bank cashier's check or a bank certified check delivered to the Association prior to the meeting.

2.9 Proxies. The vote appertaining to any Unit may be cast pursuant to a proxy or proxies in accordance with the provisions of Section 39, IV of the Condominium Act. Where the Unit Owner is more than one Person, the proxy must be executed by or on behalf of all such Persons. The Board of Directors shall retain all proxies delivered to the Board and all independent written confirmation of any such proxies for inspection by

the Unit Owners for a period of not less than three (3) years from the date of the meeting.

2.10 Conduct of Meeting. The President or other Officer shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meetings and file them with the records of the Association. The presiding Officer shall announce the rules of procedure that will apply to the meeting at the beginning of each meeting.

2.11 Electronic Documents and Records. To the extent permitted by applicable law, all documents and records of the Association may be signed, stored, published and transmitted in electronic form, including meeting minutes and proxies. All records of the Association, both electronic and physical, shall be retained in an organized and customary filing method for a period of not less than three (3) years, or longer, if required by the Condominium Instruments, or by the Condominium Act, IRS regulations, or other applicable law.

### ARTICLE III

#### BOARD OF DIRECTORS

3.1 Powers and Duties. The affairs and business of the Condominium shall be managed by the Board of Directors, 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 permitted by law and by the terms of the Condominium Instruments. 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 powers and duties described in by these Bylaws, the Board of Directors shall have the power to and shall be responsible for the following:

- (a) Preparing and adopting an annual budget, in which there shall be established the assessment of each Owner for Common Expenses;
- (b) Making assessments against Owners to defray Common Expenses, establishing the means and methods of collecting such assessments from Owners, collecting said assessments, depositing the proceeds of the assessments in a bank depository, and using the proceeds to carry out the administration of the Condominium;
- (c) Providing for the operation, management of the Condominium, and the maintenance, and replacement of the Common Area;
- (d) Designating, hiring, and dismissing the personnel necessary for the operation, management of the Condominium, and the maintenance, and replacement of the Common Area, and, where appropriate, providing for the compensation of such personnel and the

purchasing of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

- (e) Making and amending the Rules respecting the use and enjoyment of the Premises, and enforcing by legal means the provisions of the Condominium Act, and the Condominium Instruments, and bringing any proceedings which may be instituted on behalf of the Association;
- (f) Obtaining and carrying insurance against casualties and liabilities, as provided in these Bylaws, and paying the premiums for such insurance; making, or contracting for the making of, repairs, additions, improvements, or alterations to the Premises; and effecting repairs to and restoration of the Premises, in accordance with the other provisions of these Bylaws, after damage or destruction by fire or other casualty;
- (g) Opening bank accounts on behalf of the Association; and keeping books with detailed accounts of the receipts and expenditures relating to the Premises and the administration of the Condominium; all such books to be available for examination and copying by the Owners and their duly authorized agents or attorneys, at reasonable times and places; and all such books and records to be kept in accordance with generally accepted accounting principles; and
- (h) Doing all such other things and acts that are permitted by law and are consistent with the Condominium Act and with the Condominium Instruments.

3.2 Additional Powers. The Board of Directors shall have the irrevocable power, which it may delegate to the President or other Officer, as attorney-in-fact on behalf of all Unit Owners and mortgagees, and their heirs, successors, and assigns, to do the following things:

- (a) To grant easements over the Common Area and to accept easements benefiting the Condominium or any portion of the Condominium;
- (b) To negotiate, settle, and litigate, including execution of any necessary documents, any proceeding by any governmental authority to condemn all or any portion of the Common Area, any dispute concerning the location of the boundaries of the Common Area, any dispute concerning title to all or any portion of the Common Area, and any other dispute which affects the Common Area;

(c) To execute any documents necessary to encumber all or any portion of the Common Area to secure any borrowing, providing that such borrowing is authorized pursuant to these Bylaws.

3.3 Manager. The Board of Directors, in its discretion, may employ, or contract with, a professional manager or management firm ("Manager") for a fee or compensation established by the Board, to perform such duties and services as the Board shall authorize, including the duties listed in Section 3.1. Except for the powers set forth in Sections 4.1 and 3.2, the Board may delegate to the Manager all of the powers granted to the Board by these Bylaws; provided that any action by the Manager with respect to the powers set forth in paragraphs (a), (b), (e) and (g), of Section 3.1 shall require the written consent of the Board. Any contract entered into with the Manager shall be for a term ending on the earlier of (a) three (3) years from the date of execution of the contract, and (b) ninety (90) days following the Transition Date, and shall provide that either party may terminate the contract at any time, without cause and without penalty, upon no more than 90 days' written notice.

3.4 Number of Directors. Following the Transition Date, the Board of Directors shall be composed of five (5) natural persons who are Unit Owners or Persons who have the authority to vote on behalf of a Unit Owner.

3.5 Initial Selection of Board and Terms of Office. At the first meeting of the Association following the Transition Date, five (5) Directors shall be elected. The term of office of two (2) Directors shall expire at the first annual meeting following such election, the term of office of two (2) Directors shall expire at the second annual meeting following such election, and the term of office of one (1) Director shall expire at the third annual meeting following such election. At the expiration of the initial terms of office of each respective Director, their successors shall be elected to serve terms of three (3) years. The Directors shall hold office until their respective successors have been elected and qualified.

3.6 Organizational Meeting. The annual meetings of the Board of Directors shall be held immediately after each annual meeting of the Association.

3.7 Regular Meetings. Unless the meeting is included in a schedule given to the Unit Owners or the meeting is called to deal with an emergency, regular meetings of the Board of Directors may be held upon ten (10) days' notice to each Board Member and Unit Owner at such time and place as shall be determined, from time to time, by a majority of the Directors. At least one such meeting shall be held during each quarter each year.

3.8 Special Meetings. Special meetings of the Board of Directors may be called by the President, or by Secretary or a Board Member at the written request of a majority of the Directors on ten (10) days' notice to each Director and Unit Owner. The foregoing minimum time to give notice may be reduced or waived for a meeting called to deal with an emergency.

3.9 Quorum and Voting. A majority of the Directors shall constitute a quorum for the transaction of business, and the Board may act by majority vote of the Directors present at a meeting at which a quorum is present. If, at any meeting of the Board, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business that might have been transacted at the meeting as originally called may be transacted without further notice.

3.10 Vacancies. After the Transition Date, vacancies on the Board of Directors caused by any reason other than removal of a Director by a vote of the Association shall be filled by vote of the remaining Directors, even though the remaining Directors may constitute less than a quorum of the Board; and each person so elected shall serve for the remainder of the term of the Director so replaced.

3.11 Removal of Directors. After the Transition Date, a Director may be removed without cause, and a successor elected for the remainder of such Director's unexpired term, at any duly called regular or special meeting of the Association.

3.12 Compensation. No Director shall receive any salary or compensation from the Association for acting as Director unless approved by the Unit Owners as provided in Section 40 of the Act, but Board approved expenses incurred by a Director shall be reimbursed by the Association in a timely manner.

3.13 Conduct of Meetings. The President, or, in the President's absence, the Treasurer and then the Secretary, shall preside over all meetings of the Board of Directors, and the Secretary shall keep the minutes, which minutes shall be filed in the records of the Association.

3.14 Executive Session. The Board of Directors may meet in executive session as provided in and subject to the provisions of Section 37-d of the Condominium Act.

3.15 Alternate Forms of Board Action. In lieu of physical meetings, the Board may act pursuant to any of the following procedures:

- (a) Written Consent. The Board of Directors may take actions without a meeting, if all of the members of the Board shall consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the Board.
- (b) Conference Calls. The members of the Board of Directors, or any committee or subcommittee of the Board may participate in a meeting of the Board or such committee by means of video or telephone conference or similar communications equipment by means of which all persons participating in the meeting can confirm their identity. It is preferred that participation include a live video representation of each Director. Participation by this means shall

constitute presence by the person at the meeting.

- (c) Telephone and Email Polls. The members of the Board of Directors, or any committee or subcommittee of the Board may also take action via telephone or email poll conducted by the President or any Officer designated by the President to conduct such poll. The exact text of the action to be voted upon shall be written or read to each Director, committee or subcommittee member entitled to vote on the matter and the vote of the Director, committee or subcommittee member shall be recorded. A majority vote of all such Directors or committee or subcommittee members shall be required to adopt any resolution by telephone or email poll. The results of any such poll shall be presented to and reviewed by the Board of Directors, the committee or subcommittee, respectively, at their next regularly scheduled meeting following the poll.
- (d) Other. Any procedure permitted by Section 17.3(d) of the Declaration or Section 37-b of the Act.

3.16 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 or actions which are contrary to the provisions of the Condominium Act, or the Condominium Instruments. The Owners shall indemnify and hold harmless each of the Directors from and against (a) all liability to others arising out of contracts made or action taken or omitted on behalf of the Owners, unless any such contract shall have been made, or action taken or omitted, in bad faith, due to willful misconduct, or contrary to the provisions of the Condominium Act, or the Condominium Instruments, and (b) all expenses (including reasonable attorneys' fees), judgments, fines, and amounts paid in settlement incurred by such Director in connection with any threatened, pending, or completed action, suit, or proceeding, unless he acted in bad faith, was guilty of willful misconduct, or acted contrary to such provisions. It is intended that the members of the Board shall have no personal liability (except as Owners) with respect to any contract made or action taken or omitted by them on behalf of the Owners, unless made, taken, or omitted in bad faith, due to willful misconduct, or contrary to such provisions. It is also intended that the liability of any individual Owner arising out of any contract, action, or omission made by the Board, or out of the above indemnity in favor of the members of the Board, shall be limited to the Owner's Percentage Interest applied to the total amount owed. Every written agreement made by the Board on behalf of the Owners shall, if possible, provide that the members of the Board are acting only as agents for the Owners and shall have no personal liability under the agreements (except as Owners), and that each Owner's liability thereunder shall be limited to the same percentage of the total liability under any agreement as the Owner's Unit's undivided percentage interest in the Common Area.

## ARTICLE IV

### OFFICERS

4.1 Designation. The principal Officers of the Association shall be a President, a Secretary, and a Treasurer. All Officers shall be Owners or Persons entitled to vote on behalf of an Owner. The Board may appoint such other Officers as in its judgment may be necessary. With the exception of the President and the Treasurer, no Officer need be a member of the Board. The offices of Treasurer and Secretary may be held by the same person.

4.2 Election of Officers. After the Transition Date, the election of the Officers of the Association and the filling of any vacancy in an office shall occur at any regular meeting or special meeting of the Board that is called for such purpose. Officers shall serve at the pleasure of the Board. After the Transition Date, the Officers shall hold office for terms of one (1) year or until their respective successors are elected and qualified.

4.3 Removal of Officers. Any Officer elected or appointed by the Board of Directors may be removed at any time without cause by the affirmative vote of a majority of the whole Board.

4.4 President. The President shall be the chief executive officer. The President shall preside at meetings of the Association and of the Board of Directors and shall be an ex officio member of all committees. The President shall have general and active management of the business of the Condominium. The President shall have all of the general powers and duties that 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.

4.5 Secretary. The Secretary shall attend all meetings of the Board of Directors, the Association and any committees, and shall record the minutes of all proceedings in the record book of the Association, shall keep the record book current and in his or her custody, shall give notice of all meetings of the Association, the Board, and any committees, shall perform such other duties and maintain all records as may be prescribed by the Board or President or the Condominium Act, including Sections 37, 37-c, 37-e, and 39 IV, and shall compile and keep current at the principal office of the Condominium (a) a complete list of the Owners and their Notice Addresses, and (b) copies of the Condominium Instruments. These documents shall be open to inspection by all Owners and other persons lawfully entitled to inspect the same, at reasonable hours on regular business days.

4.6 Treasurer. The Treasurer shall have the custody of 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, shall deposit all monies and other valuable effects in such

depositories as may be designated by the Board, shall disburse funds as authorized by the Board, and shall provide to the Board and the Association an account of all transactions as Treasurer and of the financial condition of the Condominium. Owners shall have the right to examine the books of the Association at reasonable times and places.

4.7 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.

4.8 Compensation of Officers. No Officer shall receive any salary or compensation from the Association except as provided in Section 40 of the Condominium Act.

4.9 Liability of Officers. The provisions of Section 3.16 of these Bylaws, with regard to liability and indemnification of Directors shall apply equally to Officers of the Association.

## ARTICLE V

### OPERATION OF THE PROPERTY

5.1 Access to Financial and Other Information. In addition to financial and other information to be provided pursuant to the Condominium Instruments and the Act, the Board shall provide the Owners with the financial and other information as and when provided in Section 37-e of the Act.

5.2 Determination of Common Expenses and Assessments against Owners.

- (a) Fiscal Year. The fiscal year of the Association shall be the calendar year, except that the first fiscal year shall begin on the date that the Declaration is recorded and terminate on December 31 of that year. The fiscal year 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 proposed budget for the Condominium containing an estimate of the total amount which it considers necessary to pay the expenses of maintenance, management, operation, repair, and replacement of the Condominium, including the cost of wages, materials, insurance premiums, services, utilities, supplies, and other expenses during the ensuing fiscal year. Such budget shall also include such reasonable reserves as the Board considers necessary, including those specified below. To the extent practicable, the budget shall include a breakdown of any anticipated expenses to be specially assessed against one or more

of the Units pursuant to Section 5.6(a) and shall show how the periodic assessments for individual Units are calculated.

- (c) Notice and Review of Proposed Budget by Owners. Within thirty (30) days after the adoption of the proposed budget, the Board shall provide the Owners with a summary of the budget and a notice of a meeting of the Owners that is not less than ten (10) nor more than sixty (60) days after providing such summary to the Owners. At the meeting, the Owners shall consider the proposed budget, and unless two-thirds (2/3) of all Unit Owners reject the proposed budget, the proposed budget shall be deemed to be ratified. If the Owners reject the proposed budget, the prior year's budget shall continue as the budget for the new year until a new budget is ratified.
  
- (d) Assessment and Payment of Common Expenses. The total amount of the estimated funds required for the operation of the Condominium set forth in the budget for the fiscal year adopted by the Board of Directors shall be assessed against each Owner of a Unit in proportion to the number of votes in the Association appertaining to his Unit, with any appropriate adjustments for expenses specially assessed under Section 5.6(a) and shall be a lien against each Owner's Unit in accordance with the Condominium Act. On or before the first day of each fiscal year, and on the first day of each of the succeeding eleven (11) months in such fiscal year, each Owner shall be obligated to pay to the Association one-twelfth of the assessment for such fiscal year made pursuant to the foregoing provisions, with a pro rata amount due for the initial partial month of ownership. Within sixty (60) days after the end of fiscal year, the Board shall supply to all Owners an itemized income and expense statement for that fiscal year. Any amount accumulated in excess of the amount required for actual expenses and budgeted reserves shall, in the discretion of the Board, either be rebated to the Owners in accordance with each Owner's votes in the Association, with any appropriate adjustments under the special assessment provisions of Section 5.6(a) below, by crediting same to the next successive monthly installments due from Owners under the then current fiscal year's budget, until exhausted, or shall be added to reserves. Any net shortage shall, if the Board deems it advisable, be added according to each Owner's votes in the Association, with any appropriate adjustments under the special assessment provisions of Section 5.6(a) to the installments due in the succeeding six months after the rendering of the accounting.

- (e) Reserves. The Board of Directors shall fund and maintain both an adequate operating reserve, equal to at least two months' estimated assessments for each Unit; and a separate reserve for replacement of the Common Area; both of which shall be funded by regular monthly payments, as provided in subsection (c) above, and additionally, with respect to the operating reserve, by assessment as provided in subsection (f) below. 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 separate bank account, segregated from the general operating funds, and shall be used only for such purposes. If for any reason, including nonpayment of any Owner's assessment, the reserves are inadequate, the Board may at any time levy a further assessment, which shall be assessed against the Owners according to their respective votes in the Association, with any appropriate adjustments under the special assessment provisions of Section 5.6(a), and which may be payable in a lump sum or in installments as the Board may determine. The Board shall serve notice of any such further assessments on all Owners by a statement in writing giving the amount and reasons for the assessment, 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 full amount of such assessment.

If all or any portion of such assessments are not available to the Board prior to the time that the amounts thereof are needed to pay authorized costs, the Board may borrow such amounts on behalf of the Association, and may secure such borrowing by assignment of the liens relative to unpaid assessments arising pursuant to Section 12.3.

- (f) Initial Assessment and Operating Assessment Due On Sale. The Declarant shall determine the budget, as defined above, for the period commencing with the recording of the Declaration and ending on the last day of the fiscal year. Assessments shall be levied against the Owners during this period as provided in subsection (c) above. The operating reserves shall be funded in part through an assessment, payable by the purchaser of a Unit (other than the Declarant, an Eligible Mortgagee, or the Association) at the time of closing of each sale of a Unit, in an amount equal to two (2) times the then applicable regular monthly assessment against said Unit.

- (g) 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 its allocable share of the Common Expenses and any special assessments as provided in these Bylaws, 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 ten days after a statement has been mailed or delivered, showing the monthly payment that is due under the new annual or adjusted budget.

### 5.3 Payment of Assessments.

- (a) Owners Liable. All Owners shall be personally obligated to pay all regular and special assessments made by the Board of Directors, and all interest, late charges, costs, and attorney's fees related to such amounts. No Owner shall be exempt from liability for contribution toward Common Expenses by waiver of the use or enjoyment of any of the Common Area, by abandonment of a Unit or by the fact that the assessment results from the actions of an Occupant of the Owner's Unit. No Owner shall be liable for the payment of any assessment made against a Unit subsequent to a sale, transfer, or other conveyance of such Unit.

- (b) Priority of Association Lien. If a mortgagee or other purchaser of a Unit obtains title to the Unit as a result of foreclosure of a first mortgage, or through the enforcement of any other remedies provided in the mortgage, or by virtue of a deed in lieu of foreclosure, such mortgagee or purchaser, and its successors and assigns, shall not be liable for the payment of Common Expenses assessed prior to such acquisition of title, and the Unit shall not be subject to a lien for the same, except to the extent that the Association's lien had priority over the first mortgage as provided in Section 46 of the Condominium Act.

5.4 Collection of Assessments. The Board of Directors shall take prompt action to collect any assessments due from any Owner which remain unpaid for more than sixty (60) days from the due date. In addition to other remedies the Board may, after thirty (30) days' prior written notice to the Unit Owner and the Owner's first mortgagee of nonpayment of common assessments, terminate the delinquent Unit's common privileges and cease supplying the delinquent Unit with any and all services normally supplied or paid for by the Association. Any terminated services and privileges shall be restored upon payment of all assessments.

5.5 Uncollectible Assessments. Any assessments which are not collectible due to a waiver or limitation under the provisions of Section 5.3 above shall be

collectible from all Owners, including a purchaser or first mortgagee acquiring a Unit through foreclosure, in proportion to their respective votes in the Association, with any appropriate adjustments under the special assessment provisions of Section 5.6(a) below.

5.6 Maintenance and Repair.

(a) By the Association. Except as otherwise provided in Section 5.6(b) the Association shall be responsible for the maintenance, repair, and replacement of all the Common Area, whether located inside or outside of the Units, and whether presently existing or constructed in the future, the cost of which shall be charged to all Owners as a Common Expense; provided that (i) any Common Expenses associated with any Limited Common Area (including Limited Common Area parking spaces located within the Building) shall be specially assessed against the Unit or Units to which the Limited Common Area is appurtenant; (ii) any Common Expenses necessitated by the negligence, misuse, or neglect of an Owner, or an Occupant, shall be specially assessed against the Unit owned, occupied or used, as applicable, by the Owner or Occupant, and (iii) any other Common Expenses benefiting less than all of the Units, or caused by the conduct of less than all of the Owners or Occupants, may be specially assessed against the Units involved in reasonable proportion to such benefit or causation.

(b) By the Owner. Except for any portion of the Unit required to be maintained, repaired, or replaced by the Association, each Owner shall be responsible for the maintenance, repair, and replacement, at his or her own expense, of the Owner's Unit, including any interior walls, finished interior surfaces of ceilings and floors; all fixtures and appliances, and those parts of the heating and air conditioning, plumbing, electrical, and other utility systems that are wholly contained within the Owner's Unit and serve no other. Each Owner shall keep the Owner's Unit, equipment and appurtenances in good order and condition. Each Owner shall at all times maintain the interior of his or her Unit at such minimum temperature as may be set by Rule, so as to prevent the freezing of pipes in adjoining Units or Common Area.

Each Owner shall perform his or her responsibilities in such a manner as shall not unreasonably disturb or interfere with the other Owners.

(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 payments for all repairs and replacements shall be determined by the Board of Directors.

5.7 Additions, Alterations, or Improvements to Units.

(a) Board Approval. No Owner shall make any structural addition, alteration, or improvement in or to the Owner's Unit or the Common Area without the prior written consent of the Board.

(b) Prohibited Changes. No Owner shall change the external appearance of the Owner's Unit, including the doors and windows, without the prior written consent of the Board. No such addition, alteration, or improvement shall impair the structural integrity of any part of the Condominium.

(c) Governmental Approvals. The Unit Owner proposing any addition, alteration or improvement shall be responsible in all cases for obtaining all required town or other governmental approvals for such work. If a municipality or any other governmental authority requires execution of any document by the Association, the Officer of the Association shall execute such document, provided that the proposed work has been previously approved by the Board, the Unit Owner is not then in violation of any provision of law, any provision of the Condominium Instruments or any condition set by the Board with regard to such work.

(d) Hold Harmless and Indemnify. Neither the Association nor any Director or Officer, nor any Unit Owner other than the Owner seeking the approval, shall be liable to the governmental authority or any other person in connection with such work. The Unit Owner seeking the approval shall indemnify and hold harmless the Association, its Directors and Officers, and all other Unit Owners from any claims made or damage or loss suffered in connection with such addition, alteration, or improvement or such approval.

ARTICLE VI

INSURANCE

6.1 Insurance Required. The Board of Directors shall obtain (i) a master casualty policy affording "all risk" coverage in an amount equal to the full replacement value of the Building within the Condominium, in the name of the Association, "for the use and benefit of the individual owners and their mortgagees"; (ii) a master liability policy covering the Association, its Directors and Officers, the Manager, and agents or employees of the Association or the Manager with respect to the Condominium, and all Owners and Occupants; (iii) fidelity bonds covering the Association, its Directors and Officers, and any management agent; and (iv) such other policies as are specified below; which insurance specified above shall include and be governed by the following provisions to the extent obtainable or possible:

(a) The casualty insurance with "all risk" coverage shall insure the Building, including all such portions of the interior of the Building as are for insurance purposes normally deemed to constitute part of the Building and customarily covered by such insurance, such insurance to be in an amount at least equal to the replacement value of the Building, as defined above, and to be payable to the Association as Trustee for the Owners and their mortgagees as their respective interests may appear. The deductible amount under such insurance shall be no greater than one-half percent of the policy face amount.

(b) The public liability insurance shall be in such amounts as the Board may from time to time determine, but in no event 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 6.1(ii) against liability, and with cross liability coverage with respect to liability claims of any one insured against any other insured. This insurance, however, may not insure against individual liability of an Owner or other person entitled to occupy a Unit for negligence of such Owner or other persons occurring within the Unit or within the Limited Common Area appurtenant to the Unit.

(c) The blanket fidelity bonds for the Association, its Directors and Officers, and any management agent, shall covering all persons who either handle or are responsible for funds, whether or not they receive compensation for their services, in the amount of the greater of (i) the maximum funds that will be in the custody of the Association or management agent at any time, or (ii) the sum of three months' assessments on all Units plus the Association's reserve funds.

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

(e) Such directors' and officers' liability insurance as may be available, in an amount to be determined by the Board in its discretion.

(f) Such other insurance as the Board may determine to be appropriate.

## 6.2 General Insurance Provisions.

(a) The Board shall deal with the insurer or insurance agent in connection with the adjusting of all claims covered by the insurance policies provided for under Section 6.1 and shall review with the insurer or insurance agent, at least annually, the coverage under the policies, the review to include an appraisal of improvements within the Condominium, and shall make any necessary changes in the policy provided for under

Section 6.1(a) (prior to the expiration date set forth in any agreed amount endorsement contained in the policy) in order to meet the coverage requirements of that Section.

(b) The Board shall make every effort to see that all policies of liability insurance provided for under Section 6.1:

(i) cover all common areas, public ways, and any other areas under the supervision of the Association, and any commercial spaces owned by the Association, even if leased to others;

(ii) provide coverage for bodily injury and property damage resulting from the operation, maintenance, or use of the Common Area;

(iii) provide coverage for any legal liability resulting from lawsuits relating to employment contracts to which the Association is a party;

(iv) if they do not include "severability of interest" clauses, provide that no Unit Owner's claim will be denied because of negligent acts of the Association or other Unit Owners; and

(v) provide that such policies may not be canceled or substantially modified without at least thirty (30) days' written notice to the Association and all first mortgagees of Units named in the policies.

(c) The Association's fidelity bond shall name the Association as obligee. The Manager's required fidelity bond should name the Association as an additional obligee. All bonds must provide that they may not be canceled or substantially modified without at least (30) days' written notice to the Association and all first mortgagees of Units of which the insurer has notice.

### 6.3 Individual Policies.

(a) Owners must obtain a "Condominium Unit Owner's Policy," or equivalent, to insure against loss or damage to personal property or liability claims related to the occupancy of the Unit, or to any improvements made to the Unit that may not be covered by the master Association policies.

(b) No such policy shall be written so as to decrease the coverage under any of the policies obtained by the Board pursuant to this Article, and each Owner 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. Owners shall provide the Association with acceptable certificates evidencing such coverage and, as applicable, naming the Association as an additional insured, and said certificates shall be filed with the Association or, at the Board's election, Owners shall also provide copies of all such policies (except policies covering only personal property, owned or supplied by individual Owners).

## ARTICLE VII

### REPAIR AND RECONSTRUCTION AFTER FIRE OR OTHER CASUALTY

7.1 When Repair and Reconstruction Are Required. Subject to the provisions of the Declaration, in the event of damage to or destruction of all or part of the Building 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 portions of the Building. Notwithstanding the foregoing, each Owner shall have the right to supervise the redecorating work in his own Unit.

7.2 Procedure for Reconstruction and Repair.

(a) Immediately after a fire or other casualty causing damage to the 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 determines to be necessary. The Board shall contract for such repair and restoration, and in doing so shall exercise its sole discretion in selecting from among the estimates.

(b) If the proceeds of insurance are not sufficient to defray the said estimated costs of reconstruction and repair, or if, upon completion of reconstruction and repair, the funds for the payment of 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 Association, with any appropriate adjustments under the special assessment provisions of Section 5.6(a) above. If all or any portion of such assessments are not available to the Board prior to the time that the amounts thereof are needed to provide payment of such costs, the Board may borrow such amounts on behalf of the Association, and may secure such borrowing by assignment of the liens relative to the unpaid assessments arising pursuant to Section 12.3 of these Bylaws.

(c) Any such reconstruction or repair shall be substantially in accordance with the original plans and specifications under which the 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 Building was originally constructed. Such encroachments shall be allowed to continue in existence for so long as the Building (as reconstructed) shall stand.

### 7.3 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 (or borrowed by the Board as provided in Section 7.2(b) above) shall constitute a construction fund which shall be disbursed in payment of the cost of reconstruction and repair by the Board.

(b) The contents of the construction fund shall be paid out by the Board 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.

(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 first be applied to any borrowing pursuant to Section 7.2(b) above, and the remainder, if any, shall be distributed to the Owners to repay them for assessments, if any, pursuant to that section. Otherwise, any remainder shall be added to the reserve for replacements of Common Area.

(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 MORTGAGES OF UNITS

8.1 No Severance of Ownership. No Owner shall execute any deed, lease, mortgage, or instrument conveying or mortgaging the title to a Unit without including

therein the undivided interest of such Unit in the Common Area, it being the intention to prevent any severance of such combined ownership. Any such deed, lease, mortgage, or other instrument purporting to affect a Unit, but not expressly including such undivided interest, shall be deemed and taken to include such interest. Except to the extent otherwise expressly provided by the Declaration, these Bylaws, 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.

8.2 Payment of Assessments. No Owner shall convey, mortgage, sell, lease, give, or devise his Unit unless and until the Owner shall have paid in full to the Board of Directors all unpaid Common Expenses assessed by the Board with respect to the Unit, and shall have satisfied all unpaid liens of the Association or other Unit Owner with respect to the Unit.

8.3 Resales. In the event of any resale of a Unit or any interest therein by any person other than the Declarant, the prospective Unit Owner shall have the right to obtain from the Association, prior to the contract date of the disposition, the following:

- (a) A recordable statement setting forth the amount of unpaid assessments levied against the Unit, as required pursuant to Section 46 of the Condominium Act.
- (b) A statement of any capital expenditures and major maintenance expenditures anticipated by the Association within the current or succeeding two fiscal years.
- (c) A statement of the status and amount of any reserve for the major maintenance or replacement fund and any portion of such fund earmarked for any specified project by the Board of Directors.
- (d) A copy of the income statement and balance sheet of the Association for the last fiscal year for which such statement is available.
- (e) A statement of the status of any pending suits or judgments in which the Association is a party defendant.
- (f) A statement setting forth what insurance coverage is provided for all Unit Owners by the Association and what additional insurance coverage would normally be secured by each individual Unit Owner.
- (g) A statement that any improvements or alterations made to the Unit, or the Limited Common Area appurtenant to the Unit, by the prior Unit Owner are not known to be in violation of the Condominium Instruments.
- (h) A copy of the current Condominium Declaration, By-laws, and

Rules of the Association.

- (i) A statement of the amount of monthly and annual fees, and any special assessments made within the last 3 years.

The President of the Association shall furnish the statements prescribed above upon written request of any prospective Unit Owner within ten days of the receipt of such request, and may charge a reasonable fee for the statement.

## ARTICLE IX

### AMENDMENT OF BYLAWS

9.1 Amendments. These Bylaws may be amended by the procedure, and subject to the limitations, set forth in the Declaration. Any Officer may prepare, execute, certify and record evidence of amendments to Condominium Instruments.

9.2 Conflicts. No amendment of these Bylaws may be adopted which shall be inconsistent with the provisions of the Condominium Act or with the provisions of the Declaration.

## ARTICLE X

### MORTGAGES

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

10.2 Notice of Default. No suit or other proceeding may be brought to foreclose the lien for any assessment levied pursuant to the Declaration or these Bylaws except after ten (10) days' written notice to the holder of the first mortgage on the Unit which is the subject matter of such suit or proceeding, provided that the Board has previously received a written request from such mortgagee to be furnished with such notice.

10.3 Financial Statements. Any first mortgagee shall be entitled upon written request to receive a copy of the latest annual financial statement of the Association from the Secretary.

## ARTICLE XI

### NOTICE

11.1 All notices required or called for under these Bylaws shall be given as

provided in Section 17.3 of the Declaration.

## ARTICLE XII

### DEFAULT AND LIENS

12.1 Remedies. Upon the default of an Owner or Occupant under the terms of the terms of these Bylaws the Association and other Unit Owners shall have all rights and remedies set forth in the Declaration, including Article 15 of the Declaration.

12.2 Additional Remedies. Upon the violation of the Condominium Instruments, the Board, the Manager or other Unit Owner, as applicable, may, in addition to any other rights set forth in the Condominium Instruments: (a) enter the Owner's or Occupants Unit and abate such violation, at the expense of the Owner, and the Board or Manager shall not thereby be deemed guilty in any manner of trespass; (b) enjoin, abate, or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such violation; (c) suspend or limit the right of the Owner and Occupant committing the violation to use any part of the Common Area during the continuance of such violation; or (d) terminate the Unit's common privileges and cease supplying any or all services to the Unit, after notice in accordance with Section 5.4.

#### 12.3 Lien for Assessments.

(a) Every assessment against an Owner for Common Expenses, and every special assessment levied pursuant to these Bylaws, is hereby declared to be a lien levied against the Unit of such Owner as provided in the Condominium Act, which lien shall be effective when perfected in accordance with the Act.

(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 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 assessment 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 or Manager. The Association, in order to perfect such lien, shall file before the expiration of six months from the time that the delinquent assessment (or installment, where such assessment is payable in installments) became due and payable, a memorandum in the Registry in the form and manner prescribed in the Act.

(c) The lien for assessments shall also cover all related interest, late

charges, costs, and attorneys' fees collectible under the Condominium Act or any Condominium Instrument, and may be foreclosed in the manner provided by the laws of the State of New Hampshire for the foreclosure of power of sale mortgages (including RSA 479:25-27-a), or by suit brought by the Association. The lien for each item of interest, late charges, costs, or reasonable attorney's fees shall relate back to the original due date of the earliest assessment to which such item applies, and shall take priority over all other liens and encumbrances to the extent allowed by law.

(d) A proceeding to recover a money judgment for unpaid assessments shall be maintainable without foreclosure or waiver of 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

13.1 Compliance. These Bylaws are set forth in compliance with the requirements of the Condominium Act.

13.2 Conflict. In the event of any inconsistency or conflict between these Bylaws and the provisions of the Condominium Act, the Declaration, or the Rules, the Bylaws shall yield to the Condominium Act and the Declaration, but shall override the Rules.

13.3 Severability. If any provision of these Bylaws, or any section, sentence, clause, phrase, or word, or the application thereof in any circumstance, is held to be invalid, the validity of the remainder of these Bylaws shall not be affected thereby, and to this end the provisions hereof are declared to be severable.

13.4 Waiver. No provision of these Bylaws shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same (except where a right is dependent upon notice to be given within a specified period), irrespective of the number of violations or breaches which may occur.

13.5 Captions. The captions contained in these Bylaws are for convenience only, are not part of the Bylaws, and are not intended in any way to limit or enlarge the terms and provisions of the Bylaws.

13.6 Gender, etc. Whenever in these Bylaws 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.

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**EXHIBIT D TO DECLARATION  
THE RESIDENCES OF FOUNDRY PLACE CONDOMINIUM ASSOCIATION  
AMENDMENTS OF A MATERIAL NATURE TO DECLARATION OR BYLAWS**

A change in any of the provisions of the Declaration or Bylaws of the Condominium affecting the following matters would be considered to be an "amendment of a material nature" under Article 16:

1. Voting rights;
2. Assessments, assessment liens, or the priority of assessment liens;
3. Reserves for maintenance, repair, and replacement of Common Area;
4. Responsibility for maintenance and repairs;
5. Reallocation of interests in the Common Area or Limited Common Areas, or rights to their use;
6. Redefinition of any Unit boundaries;
7. Convertibility of Units into Common Area or vice versa;
8. Expansion or contraction of the Condominium, or the addition, annexation, or withdrawal of property to or from the Condominium;
9. Insurance or fidelity bonds;
10. Leasing of Units;
11. Imposition of any restrictions on a Unit Owner's right to sell or transfer his or her Unit;
12. A decision by the Association to establish self-management when professional management had been required previously by the Declaration or Bylaws or by an Eligible Mortgage Holder;
13. Restoration or repair of the Condominium (after a hazard damage or partial condemnation) in a manner other than that specified in the Declaration and Bylaws;
14. Any action to abandon or terminate the legal status of the Condominium;
15. Any action to partition or subdivide a Unit that is subject to an Eligible Mortgage or any Common Area (exclusive of the granting of easements for utility lines through the Common Area and or the subdivision of the

Commercial Unit as provided in this Declaration);

16. The use of the hazard insurance proceeds for purposes other than the repair, replacement or reconstruction of the damaged Unit or Common Area; and
17. The amendment of any provision that expressly benefits mortgage holders, or their insurers or guarantors.