SHEEHAN PHINNEY

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BASS &
GREEN PA

MEMORANDUM

TO: Ryan O'Connor
City of Rochester, NH Planning & Development Department

CC: Matthew Menning

FROM: Susan A. Manchester, Esq.

DATE: December 8, 2022

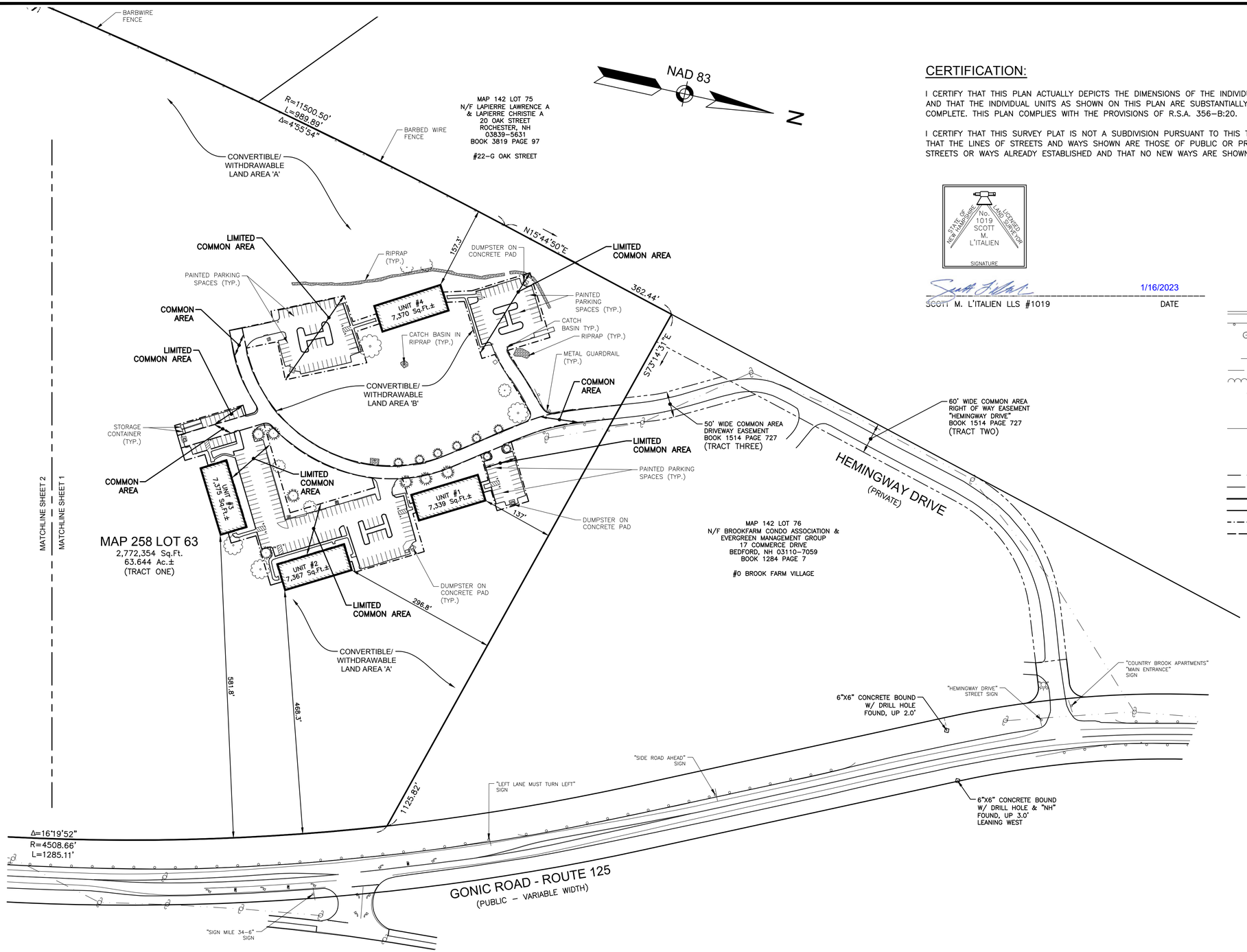
RE: NH RSA 356-B Registration with Attorney General Requirements

NH RSA Chapter 356-B governs the creation of a condominium in New Hampshire, the requirements of a Unit Owner's Association and, in certain cases, the disposition of units created by the Condominium.

All NH condominiums must comply with Subdivisions I-III, Sections 1-47 of 356-B. The requirements to register with the Attorney General's Office are contained in the last subdivision of 356-B, namely Subdivision IV, Sections 48-69. Subdivision IV, inter alia, requires a declarant to register (or obtain an exemption from registration) from the New Hampshire Attorney General's Office before disposing of any unit.

Your proposed condominium is not required to register with the Attorney General's Office. First, 356-B:49 states that Subdivision IV does not apply to commercial use. Here, the units are the entire building, not the individual apartments. Each building/unit will be used for commercial use as it will be an apartment building. While the City may consider the use "residential" under its zoning ordinance, that is not what residential use means under the Condominium Act. Your use of the units is commercial.

# # #



CERTIFICATION:

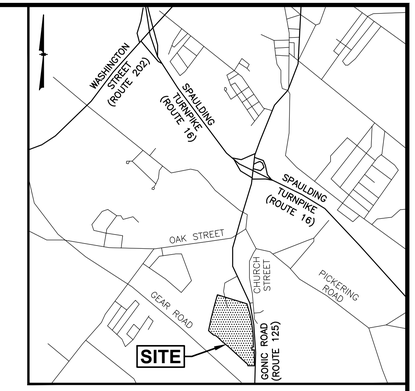
I CERTIFY THAT THIS PLAN ACTUALLY DEPICTS THE DIMENSIONS OF THE INDIVIDUAL UNITS AND THAT THE INDIVIDUAL UNITS AS SHOWN ON THIS PLAN ARE SUBSTANTIALLY COMPLETE. THIS PLAN COMPLIES WITH THE PROVISIONS OF R.S.A. 356-B:20.

I CERTIFY THAT THIS SURVEY PLAT IS NOT A SUBDIVISION PURSUANT TO THIS TITLE AND THAT THE LINES OF STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED AND THAT NO NEW WAYS ARE SHOWN.

STATE OF NEW HAMPSHIRE
No. 1019
SCOTT M. L'ITALIEN
LICENSED LAND SURVEYOR
SIGNATURE

1/16/2023

SCOTT M. L'ITALIEN LLS #1019 — DATE



LOCATION MAP
(NOT TO SCALE)

LEGEND

- CCB — CAPE COD BERM
- METAL GUARDRAIL
- TREE
- UTILITY POLE
- GUY WIRE
- OVERHEAD WIRE
- TREELINE
- SIGN
- CATCH BASIN
- SEWER MANHOLE
- BOB WIRE FENCE
- WATER MANHOLE
- MANHOLE
- FIRE HYDRANT
- WATER FEATURE
- EASEMENT LINE
- PROPERTY LINE
- ABUTTER PROPERTY LINE
- LIMITED COMMON AREA LINE
- COMMON AREA LINE

NOTES:

1) ZONE: RESIDENTIAL-2 DISTRICT
2) THE INTENT OF THIS PLAN IS TO ACCOMPANY THE DECLARATION OF CONDOMINIUM OF COUNTRY BROOK APARTMENTS CONDOMINIUM. SEE DECLARATION TO BE RECORDED HEREWITH.
3) INFORMATION SHOWN ON MAP 258 LOT 63 IS THE RESULT OF AN ON-THE-GROUND FIELD SURVEY PERFORMED BY THIS OFFICE BETWEEN DECEMBER 9 AND DECEMBER 19, 2022 AND A UAS SURVEY PERFORMED BY THIS OFFICE IN DECEMBER OF 2022. A PORTION OF THE PLANIMETRIC DETAIL AND PERMANENT PHYSICAL FEATURES SHOWN ON THIS PLAN WERE DIGITIZED FROM RECTIFIED ORTHOPHOTOGRAPHY DERIVED FROM AERIAL IMAGERY OBTAINED VIA SAID UAS SURVEY. THE POSITIONAL ACCURACY OF THE DATA MEETS AND EXCEEDS THE REQUIREMENTS AS SET FORTH IN THE FEDERAL GEOGRAPHIC DATA COMMITTEE'S (FGDC) GEOSPATIAL POSITIONING ACCURACY STANDARDS, PART 3: NATIONAL STANDARD FOR SPATIAL DATA ACCURACY
4) BEARINGS SHOWN HEREON ARE BASED ON NAD83 PER GPS OBSERVATIONS PERFORMED BY THIS OFFICE ON DECEMBER 13, 2022.
5) THE SURVEY TRACT IS NOT LOCATED IN A SPECIAL FLOOD HAZARD AREA (100 YEAR FLOOD) PER FLOOD INSURANCE RATE MAP NUMBER 33017C0213D, WITH AN EFFECTIVE DATE OF MAY 17, 2005.
6) ALL LIMITED COMMON AREAS SHOWN ON THIS PLAN ARE ASSIGNED TO UNITS 1, 2, 3, &4.

PLAN REFERENCES:

STRAFFORD COUNTY REGISTRY OF DEEDS

1) PLAN 27A-35.
2) PLAN 30-144.
3) PLAN 31A-41.
4) PLAN 51-5.
5) PLAN 107-47.

0 100 200 300 400
SCALE: 1" = 100'

NO.	DESCRIPTION	BY	DATE

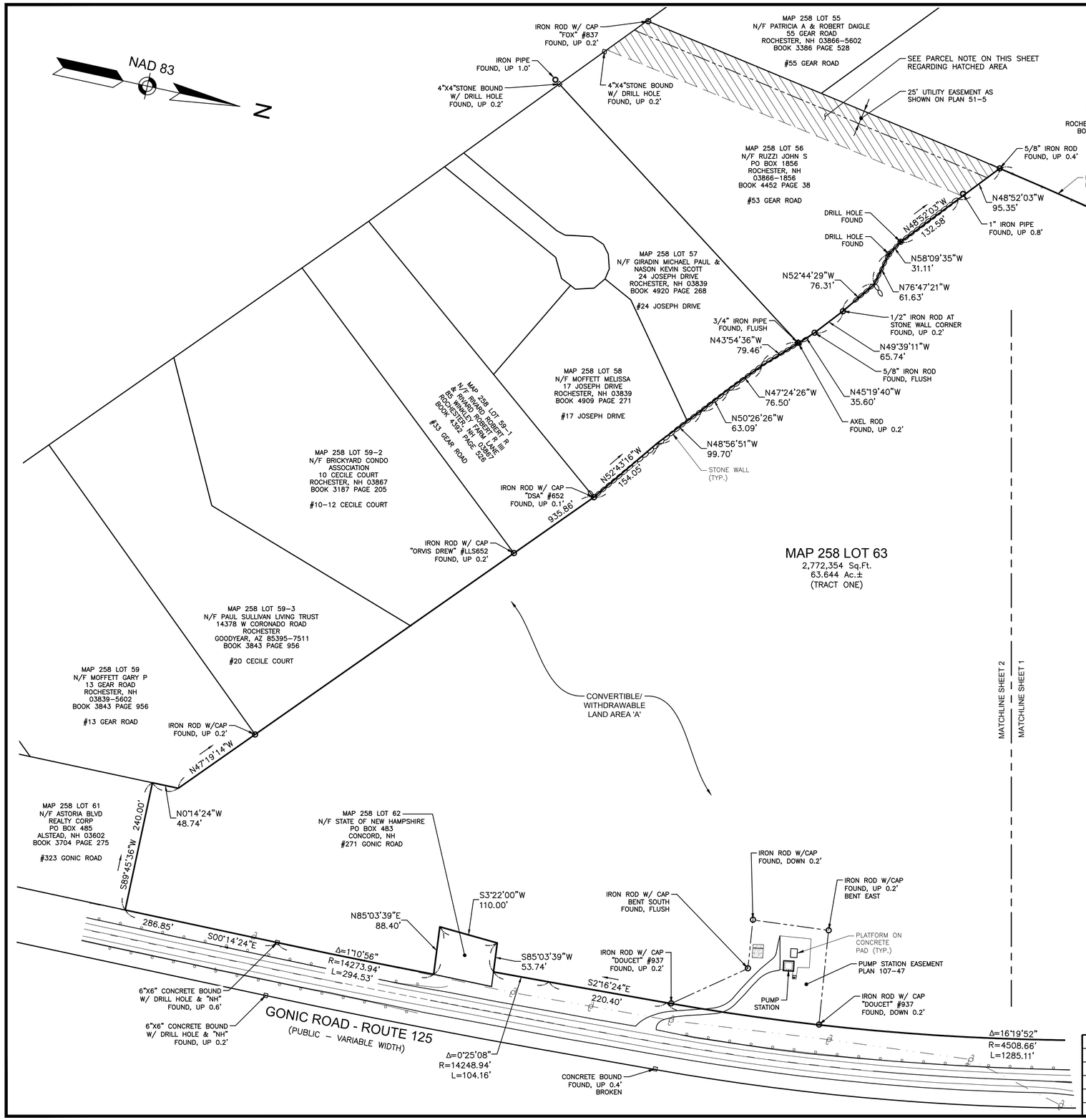
REVISIONS

CONDOMINIUM SITE PLAN

COUNTRY BROOK APARTMENTS CONDOMINIUM
ASSESSORS MAP 258 LOT 63
68 HEMINGWAY DRIVE
ROCHESTER, NH
OWNED BY:
ELM GROVE COMPANIES
440 HANOVER STREET
MACHESTER, NH 03104
BOOK 4997 PAGE 740

GPI Engineering Design Planning Construction Management
603.893.0720 GPINET.COM
Greenman-Pedersen, Inc.
44 Stiles Road
Suite One
Salem, NH 03079

SCALE: 1"=100'	DATE: JANUARY 16, 2023		DRAWING NO. 2200431_SV.dwg
DRAWN BY:	CHECKED BY:	PROJECT NO.	SHEET NO.
JMS/DPD	AKC/DRJ	2200431	1 OF 2



PARCEL NOTE:

HATCHED AREA SHOWN IS DESCRIBED IN DEED FOR SUBJECT PARCEL AND DEPICTED AS PART OF SUBJECT PARCEL ON PLAN 30-144. HOWEVER, TITLE TO THIS AREA APPEARS TO BE WITH #53 GEAR ROAD AS DESCRIBED IN BOOK 4452 PAGE 38. FOR CHAIN OF TITLE TO THIS AREA AS PART OF #53 GEAR ROAD, SEE DEED FROM BOSTON AND MAINE CORPORATION TO RICHARD G. GRANT RECORDED IN BOOK 1984 PAGE 160 AND ACCOMPANYING PLAN RECORDED AS PLAN 51-5.

LEGEND

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- TREE
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- GUY WIRE
- OVERHEAD WIRE
- TREELINE
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STATE OF NEW HAMPSHIRE — No. 1019 SCOTT M. L'ITALIEN — LICENSED LAND SURVEYOR — SIGNATURE

1/16/2023

SCOTT M. L'ITALIEN LLS #1019 — DATE

0 100 200 300 400

SCALE: 1" = 100'

NO.	DESCRIPTION	BY	DATE

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CONDOMINIUM SITE PLAN

COUNTRY BROOK APARTMENTS CONDOMINIUM
ASSESSORS MAP 258 LOT 63
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DRAWN BY:	CHECKED BY:	PROJECT NO.	SHEET NO.
JMS/DPD	AKC/DRJ	2200431	2 OF 2

After Recording Return to:
Susan A. Manchester, Esquire
Sheehan Phinney Bass + Green, PA
1000 Elm Street
Manchester, NH 03101

DECLARATION

OF

COUNTRY BROOK APARTMENTS CONDOMINIUM

ROCHESTER, NEW HAMPSHIRE

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DECLARATION
OF
COUNTRY BROOK APARTMENTS CONDOMINIUM
a Condominium

THIS DECLARATION is made as of the _____ day of _____, 2022, by _____, a _____ limited _____ organized under the laws of the State of New Hampshire with a mailing address of c/o Elm Grove Companies, LLC, _____, _____, New Hampshire, (the "**Declarant**") for the purpose of submitting the lands and buildings described in the attached **Appendix A**, to the condominium form of ownership in the manner provided by New Hampshire Revised Statutes Annotated, Chapter 356-B (the "**Condominium Act**" or the "**Act**").

ARTICLE 1

STATEMENT OF PURPOSE

Declarant owns certain land located at 68 Hemmingway Drive, Rochester, New Hampshire, more particularly described on Appendix A (together with all appurtenant buildings, improvements, easements and other rights, the "**Submitted Land**"). The Submitted Land includes a so-called Fee Simple Parcel, a Right of Way Easement Parcel, and a Drive-Way Easement Parcel as described on Appendix A.

The Submitted Land currently contains 4 buildings containing _____ residential apartments, parking lots and other improvements.

Elm Grove Companies, LLC ("**Sponsor**") is in the business of developing, constructing, owning and operating affordable housing projects utilizing the Low-Income Housing Credit financing available under Section 42 of the Internal Revenue Code, and the Sponsor, through related entities, wishes to develop the Submitted Land for such purpose, residential apartment parking and other improvements ("**Project**"). The Project will be developed in more than one (1) phase, and each phase is expected that each phase will be separately owned and financed.

The plan of development for the Condominium is as follows: first, the existing buildings will be renovated. Next, the Declarant expects to build additional residential buildings on land which will be designated in this Declaration convertible/withdrawable land. The Declarant may also build a clubhouse/community building on another piece of convertible land. It is expected that some utilities and road infrastructure will be shared.

To maximize the effectiveness of the Low-Income Housing Credit and facilitate the orderly and efficient development of such affordable housing project, it is the intent that all structures and improvements constructed and paid for by a person be owned by that person, even if, in certain circumstances, others may use the same. Each phase will be separately owned and separately financed. It is also intended, to the extent practical, that each phase be self-sufficient. Accordingly, each multifamily Building to be constructed on the Submitted Land will constitute

one Condominium Unit and, to the extent possible, parking, utilities, and access-ways will be assigned as limited common area to the Units in that phase.

NOW, THEREFORE, the Declarant hereby submits the Submitted Land and improvements thereon to the provisions of N.H. RSA Chapter 356-B and is held and shall be held, conveyed, encumbered, leased, used, occupied, and improved, subject to the Act and the following restrictions, covenants, conditions, uses, 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) **Association** or **Condominium Association** or **Country Brook Apartments Condominium Association** means the unincorporated Association of Unit Owners acting as a group in accordance with the Declaration and Bylaws.

(b) **Board** or **Board of Directors** means the governing body of the Association elected pursuant to the Bylaws of the Association.

(c) **Building** means any permanently enclosed structure placed, constructed or located on or within the Submitted Land, including any appurtenant canopies, supports and outward extensions.

(d) **Bylaws** means the Bylaws of the Association, which are attached hereto as **Appendix B**.

(e) **Common Area** means all portions of the Condominium other than the Units.

(f) **Common Expenses** means expenses assessed by the Association to all Unit Owners with respect to the Common Areas used by all Unit Owners.

(g) **Condominium or Condominium** means the real property and interests that have been submitted to the Condominium Act by the recording of the Condominium Instruments.

(h) **Condominium Act** or **Act** means the provisions of New Hampshire Revised Statutes Annotated, Chapter 356-B, as amended.

(i) **Condominium Instruments** means this Declaration, the Bylaws, the Site and Floor Plans, now existing, hereafter created, and as amended from time to time. Any exhibit, schedule, appendix, plan, or certification accompanying a

Condominium Instrument and recorded with it, or incorporated by reference in it, shall be deemed to be incorporated into that Condominium Instrument.

(j) **Condominium Rules** means the Rules for the use of the Submitted Land that may, but need not be, adopted from time to time by the Association.

(j) **Convertible Land** means the land described on Exhibit D attached hereto.

(k) **Days** means calendar days unless modified by the word "business," in which case said term shall include all days except Saturdays, Sundays, and legal holidays of the State of New Hampshire.

(l) **Declarant** means _____ and any persons or entities who come to stand in the same relation to the Condominium as it, including any successor or assign thereof.

(m) **Eligible Mortgagee** means the holder of any mortgage or deed of trust encumbering a Unit who has given written notice to the Association, in the manner provided in Section 9.1 hereof, of its desire to be provided with notice of those matters which are the subject of Article 9 hereof. The notice to the Association must state the name of the Eligible Mortgagee and the address to which notices are to be directed, and must sufficiently identify the Unit for which the Eligible Mortgagee holds the mortgage or deed of trust. It shall be the obligation of the Eligible Mortgagee to keep the Association informed of any change of address to which required notices are to be sent. Any Eligible Mortgagee shall cease to become such after the discharge of its mortgage or deed of trust, as applicable.

(n) **Governmental Approvals** means all existing or future permits and approvals issued or required by the City of Rochester, the State of New Hampshire, the United States of America, or any of their subdivisions applicable to the Condominium any improvements thereon and the use and occupancy thereof, including all site plan approvals and conditional use permits and development agreements executed in connection therewith.

(o) **Hazardous Materials** means all chemicals, materials and substances listed or identified in, or regulated by, any federal, state, county, municipal, local or other governmental statute, law, ordinance or regulation which relate to or deal with the protection of human health or the environment, including all petroleum products, byproducts, asbestos, polychlorinated biphenyls, radioactive materials.

(p) **Investor Limited Partner** shall mean any entity (together with its respective successors and assigns) which is a limited partner or investor member in the limited partnership or limited liability company, as applicable, that owns a Unit when the construction of the Building and other improvements within the Unit are financed, in whole or in part, pursuant to Internal Revenue Code Section 42, Low Income Housing Credit, and whose name and address have been provided to the

Association in writing in the manner provided in Section 9.1 hereof. Any Investor Limited Partner shall cease to become such if it no longer holds an ownership interest in the Unit Owner.

(q) **Limited Common Area** shall have the meaning set forth in Section 7.2 below.

(r) **Manager** means the management company or property manager that may be hired or retained by the Board of Directors (subject to any approval required by the Investor Limited Partners), from time to time to manage or to assist with the management of the Common Area.

(s) **Occupant** means any Person, from time to time entitled to the use and occupancy of all or any portion of a Unit under an ownership right, lease, sublease, license, concession, or other similar agreement, and all of their officers, directors, employees, agents, contractors, customers, vendors, suppliers, concessionaires, visitors, invitees, and licensees.

(t) **Officer** means any duly elected or appointed officer of the Association.

(u) **Ownership Interest** means a Unit Owner's undivided proportional interest in the Common Area.

(v) **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.

(w) **Phase** means each Unit or group of Units that are owned by one person. Phase 1 is Units 1, 2, 3 and 4.

(x) **Registry of Deeds** means the Strafford County, New Hampshire, Registry of Deeds.

(y) **Site Plans** means the site plans prepared in accordance with Section 20, I of the Condominium Act and recorded in the Registry of Deeds, as the same may be amended.

(z) **Condominium Owner or "Unit Owner" or "Owner"** means the Person who owns a Condominium Unit created hereunder.

(aa) **Condominium Unit or "Unit"** means those portions of a Condominium that are designed and intended for individual ownership.

(bb) **Withdrawable Land** means the land described on Appendix E attached hereto.

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

(a) Except as otherwise expressly provided herein, whenever a party's consent or approval is required under this Declaration, or whenever a party shall have the right to give an instruction or request another party to act or to refrain from acting under this Declaration, or whenever a party must act or perform before another party may act or perform under this Declaration, 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.

(b) 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.

(c) 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 Submitted Land. In the event of any inconsistency between this Declaration 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 and the Investor Limited Partner of such Owner, and such Unit's Eligible Mortgagees.

(d) Whenever required by the context of this Declaration, (i) the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa and (ii) 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.

(e) 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 of this Declaration. 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 this Declaration.

(f) Invalidation of any of the provisions contained in this Declaration, or 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 this Declaration or the application of this Declaration to any other Person and the same shall remain in full force and effect.

(g) This Declaration may be executed in several counterparts, each of which shall be deemed an original. The signatures to this Declaration may be executed and notarized on separate pages, and when attached to this Declaration shall constitute one complete document.

(h) 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 this Declaration shall be given by the Person to whom directed within fifteen (15) days of receipt. Each disapproval shall be in writing and, shall clearly state the reasons. A request for a consent or approval that has not been responded to or denied for a period of fifteen (15) days after notice has been given as provided for in this Declaration shall be deemed granted.

ARTICLE 3

NAME

The name of the Condominium is the **"Country Brook Apartments Condominium.**"

ARTICLE 4

LOCATION

The Condominium is located at 68 Hemmingway Drive, Rochester, New Hampshire.

ARTICLE 5

DESCRIPTION OF SUBMITTED LAND

A legal description of the Submitted Land is contained in **Appendix A**.

ARTICLE 6

DESCRIPTION OF UNITS

6.1 **Units**. The Units created in the Condominium 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.

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

Lower Boundary: With respect to Buildings existing on the date hereof, the lower horizontal boundary of the Unit is the exterior finished surface of the slab or basement of the

Building. With respect to Units where Buildings will be constructed in the future, the initial lower horizontal boundary of the Unit is the plane immediately above the surface of the land shown on the Site Plan. At the time of substantial completion of the Building, the lower boundary is, ipso facto, the exterior finished surface of the slab or basement of the Building.

Upper Boundary: With respect to Buildings existing on the date hereof, the upper horizontal boundary of the Unit is the exterior finished surface of the roof of the Building. With respect to Units where Buildings will be constructed in the future, the initial upper horizontal boundary of the Unit is the upper limits of the atmosphere. At the time of substantial completion of the Building, the upper boundary is, ipso facto, the exterior finished surface of the roof of the Building.

Initial Vertical Boundary: With respect to Buildings existing on the date hereof, the vertical boundaries of each Unit are the exterior finished surfaces of the walls, windows, and doors. With respect to Units where Buildings will be constructed in the future, the initial vertical boundaries of each Unit are the planes which intersect the exterior boundaries of the Unit shown on the Site Plan with the ground and extend to the upper limits of the atmosphere. At the time of substantial completion of the Building, the vertical boundaries of the Unit are, ipso facto, the exterior finished surfaces of the walls, windows and doors.

Upon completion of construction of each Building within the Unit, as-built plans in connection therewith shall be recorded which as built plans shall supersede prior plans.

Each Unit shall include all Buildings and improvements constructed thereon and thereunder, which serve only the Unit.

ARTICLE 7

DESCRIPTION OF COMMON AREA AND LIMITED COMMON AREA

7.1 **Common Area**. The Common Area consists of the Submitted Land minus the Units and includes, but not by way of limitation:

(a) The land, appurtenant easements thereto, and the walks, shrubbery and other plantings, interior roads, parking areas, the water supply, common pump station, sewage disposal, electrical, telephone and other utility systems serving more than one (1) Unit in the Condominium to the extent said systems are not owned by the supplier of the utility service;

(b) Pipes, ducts, chutes, conduits, plumbing, wires, meters, meter housings, and other facilities located within a Unit, which serve parts of the Condominium other than the Unit within which they are located;

(c) Portions of the Common Area are designated in Section 7.2 below as Limited Common Areas.

7.2 **Limited Common Area.** The Limited Common Area consists of the following:

(a) all land located within the Initial Vertical Boundaries referred to in Section 6.2 is Limited Common Area appurtenant to such Unit; and

(b) all land located within under and twenty (20) feet of the as-built vertical boundaries of the as-built Building is Limited Common Area appurtenant to such Unit; and

© all land labeled on the Condominium Site plan as "Limited Common Area"; and

(d) utilities serving more than one but less than all Units.

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

7.4 **Use**. The use of the Common Area is limited to the Unit Owners and their Occupants. Except to the extent described in Section 12.4 below, Limited Common Areas shall be for the exclusive use of the Unit Owner and Occupants to which such Limited Common Area is appurtenant.

7.5 **Construction of Improvements and Maintenance Responsibilities.** The Owner of each Unit shall have the right to construct a Building within its Unit or Limited Common Area and pavement, landscaping and other improvements, provided such construction is in accordance with Governmental Approvals and is done in a good and workmanlike manner. The Unit Owner shall have the responsibility to maintain, replace, and repair the Building and all improvements located within its Unit and Limited Common Area appurtenant thereto. Any maintenance, replacement, or repair of the Common Area arising out of or caused by the willful or negligent act or omission of a Unit Owner, or such Unit Owner's family, guests, invitees, or tenants must be done at the Unit Owner's expense or a special assessment for such maintenance, replacement or repair will be made against the related Unit. Notwithstanding the foregoing, each Unit shall be solely responsible for any costs relating solely to its Unit and Limited Common Area including, but not limited to, real estate taxes, insurance premiums and utility related services. Each Unit's utilities shall be separately metered.

ARTICLE 8

ALLOCATION OF OWNERSHIP INTERESTS

Allocation of Interest. Ownership Interests in the Condominium shall be proportionate to value shown on **Appendix C**. As provided in the Bylaws, Unit Owners shall have votes in the Association that are proportionate to the Ownership Interest appertaining to their Unit.

ARTICLE 9

ELIGIBLE MORTGAGEES AND INVESTOR LIMITED PARTNERS

9.1 **Rights of Eligible Mortgagees and Investor Limited Partners**. The following provisions are intended for the benefit of Eligible Mortgagees and the Investor Limited Partners, and to the extent, if at all, that any other provisions of this Declaration conflict with the following provisions, the following provisions shall control:

(a) Each Eligible Mortgagee and Investor Limited Partner shall:

(i) have the right to examine current copies of this Declaration, the By-Laws, rules and regulations and the books, records and financial statements of the Association during normal business hours;

(ii) receive, without charge and within a reasonable time after such request, any annual audited or unaudited financial statements which are prepared and distributed by the Association to the Unit Owners with respect to and after the end of each of its respective fiscal years;

(iii) receive written notices of all meetings of the Association and shall have the right to designate a representative to attend all such meetings;

(iv) receive thirty (30) days' prior written notice of any decision by the Unit Owners to make an amendment to this Declaration, By-Laws contained herein or the Association's organizational documents;

(v) receive fifteen (15) days' prior written notice of any lapse, cancellation or modification of any insurance policy or fidelity bond maintained by the Association;

(vi) receive thirty (30) days' prior written notice of any action which would require the consent of any Eligible Mortgagees or the Investor Limited Partners;

(vii) receive thirty (30) days' prior written notice of any change in the boundaries in any Unit, the percentage interest in the Common Area or Limited Common Area of any Unit Owner, or the exclusive easement rights appertaining thereto;

(viii) receive thirty (30) days' prior written notice of a change in the number of votes in the Association appertaining to any Unit;

(ix) receive written notice of any default by the Unit Owner of that Unit Owner's obligations under this Declaration. Such written notice shall be delivered within 30 days of any such default;

(x) receive written notice of any damage to or destruction or taking of any Common Area;

(xi) commencement of any condemnation or eminent domain proceeding;

(xii) receive notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the association;

(xiii) receive notice of any judgment rendered against the association in excess of $25,000 or in excess of insurance coverage; and

(xiv) receive notice of any delinquency in the payment of Common Expense assessments owed by a Unit Owner.

(b) No provision of this Declaration or any other instrument shall be deemed to give a Unit Owner or any other party priority over the rights of the Eligible Mortgagees pursuant to their Eligible Mortgages in the case of distribution to Unit Owners of

insurance proceeds or condemnation awards for losses to or a taking of the Units, or the Common Area, or any portion thereof or interest therein.

9.2 <u>Required Approval of the Eligible Mortgagees and Investor Limited Partners.</u> In addition to any requirements or prerequisite provided for elsewhere in this Declaration, the By-Laws, or the rules and regulations of the Association, the prior written consent of the Eligible Mortgagees and each Investor Limited Partner will be required for the following:

(a) Adoption of an amendment to this Declaration or other Condominium Instruments;

(b) The partition or subdivision of a Unit;

(c) The abandonment, partition, subdivision, encumbrance, sale or transfer of the Common Area, except (i) as the result of a taking by eminent domain; (ii) the granting of easements for public utilities or for other purposes consistent with the intended use of the Common Area; or (iii) for the encumbrance, sale or transfer of a percentage interest in the Common Area in connection with the encumbrance, sale or transfer of a Unit;

(d) The removal of all or a portion of the Submitted Land from the provisions of the Act and this Declaration;

(e) Any amendment to the Condominium Instruments that redefines the boundaries of any Unit;

(f) Any termination and/or dissolution of the Association, this Declaration or other Condominium Instruments;.

(g) The conveyance or encumbrance of the Common Area or any portion thereof. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area for the benefit of all Unit Owners shall not be deemed a conveyance or encumbrance within the meaning of this clause;

(h) The assignment of the future income of the Association, including its right to receive Common Expense assessments;

(i) The use of hazard insurance proceeds for losses to any property of the Condominium (whether to Units or to Common Areas) for purposes other than the repair, replacement or reconstruction of such property of the Condominium, or for reserves therefor, provided, however, that nothing in this sub-paragraph shall prevent a Listed Mortgagee, at its sole discretion, from applying any such hazard insurance proceeds as are attributable to the Unit as to which such Listed Mortgagee is a mortgagee towards the payment of such Listed Mortgagee's mortgage loan(s); and

(j) The restoration or repair of any Unit after hazard damage or a partial condemnation in a manner other than that specified as permitted in the loan documents between each respective Eligible Mortgagee and the Unit Owner.

Notwithstanding anything to the contrary set forth in this Declaration, the consent of the Eligible Mortgagees and each Investor Limited Partner to the matters set forth in this Section 9.2 (b) – (f) may be withheld in the sole and absolute discretion of each such party.

ARTICLE 10

CONVERSION OF THE COMMON AREA

The Declarant hereby expressly, for itself and its assigns, reserves the right, to be exercised in its sole discretion, to convert portions of the Common Area to create Units and Limited Common Area thereon from time to time. The right to convert shall be effected by amendment to this Declaration amending the appropriate exhibits of the Declaration and recording appropriate site and floor plans in the Registry. The Amendment to Declaration shall be executed by Declarant alone in the manner provided by Section 23 of the Condominium Act. The Undivided Percentage Interest appurtenant to each Unit upon conversion shall become effective upon the recordation of such an Amendment in the Registry, and, thereupon, the Undivided Percentage Interest and number of votes appurtenant to previously created Units will be decreased. The right Declarant (or its assignee) to convert shall be subject to the following:

10.1 Limitations on Option. There are no limitations on the option to convert except as provided in this Article 10 or in the Condominium Act. No consent of any Unit Owner or mortgagee of a Unit Owner shall be required in connection with the exercise of such option;

10.2 Time Limit. The time limit within in which to convert shall be the maximum permitted under the Act;

10.3 Legal Description. A legal description by metes and bounds of the Convertible Land is set forth in Appendix D attached hereto;

10.4 Portions of Convertible Land. If only a portion of the Convertible Land is converted, there is no requirement that all of it or any particular portion be converted;

10.5 Portions at Different Times. Portions of the Convertible Land may be converted at different times in any order, subject only to the limitations provided in this Article 10 or in the Condominium Act. At the time that any such portion is converted, the boundaries of such portion shall be fixed by legal description setting forth the metes and bounds thereof. If portions are added, they will be contiguous to the existing Condominium. There are no other limitations as to what portions may be converted or concerning the fixing of the boundaries of those portions;

10.6 Location of Improvements. Declarant makes no assurances as to the locations of any improvements that may be made on any portion of the Convertible Land;

10.7 Maximum Number of Units. The maximum number of Units that may be created within Convertible Land A is Twenty (20). The maximum number of Units that may be created on Convertible Land B is two (2).

10.8 Residential Use Restriction. All Units to be created on the Convertible Land A shall be restricted to residential use. The Unit on Convertible Land B may be used as a clubhouse/community building;

10.9 Compatibility of Structures. No assurances are made as to whether any structure erected on any portion of the Convertible Land will be consistent with structures serving a like purpose on the Submitted land in terms of quality of construction, the principal materials to be used and the architectural style;

10.10 Other Improvements. No assurances are made as to whether other improvements erected on any portion of the Convertible Land submitted to the Condominium will be consistent with improvements serving a like purpose on the Submitted land in terms of quality of construction. No assurances are made with regard to other improvements which may be created on any portion of the Convertible Land;

10.11 Compatibility of Units. No assurances are made as to whether Units erected on any portion of the Convertible Land will be consistent with Units on the Submitted land in terms of quality of construction, design, layout, size and quality and other significant characteristics of Units or buildings which may be created on any portion of the Convertible Land;

10.12 Right to Create Limited Common Area. The Declarant (or its assignee) shall have the right, exercisable in its sole discretion, to create Limited Common Area within any portion of the Convertible Land, and/or to designate Common Area therein which may subsequently be assigned as Limited Common Area. No assurances are made as to the description of any Limited Common Area created on any such portion with regard to type, size or maximum number per residential structure.

ARTICLE 11

CONTRACTION OF THE CONDOMINIUM

The Declarant hereby expressly reserves, for itself and its assigns the right, to be exercised in its sole discretion, to contract the Condominium from time to time. The right to contract shall be effected by amendment to this Declaration amending the appropriate Exhibits of the Declaration. The Amendment to Declaration shall be executed by Declarant (or its assignee) alone in the manner provided by Section 26 of the Condominium Act. The right to contract shall be subject to the following:

11.1 Limitations on Option. There are no limitations on the option to contract except as provided in this Article 11 or in the Condominium Act. No consent of any Unit Owner or mortgagee of a Unit Owner shall be required in connection with the exercise of such option;

11.2 Time Limit. The time limit to contract shall be the maximum permitted under the Act;

11.3 Legal Description. A legal description by metes and bounds of the Withdrawable Land is the same as the Convertible Land and is set forth in Appendix E attached hereto;

11.4 Portions of Withdrawable Land. If only a portion of the Withdrawable Land is removed to the Condominium, there is no requirement that all of it or any particular portion be removed;

11.5 Portions at Different Times. Portions of the Withdrawable Land may be withdrawn at different times in any order, subject only to the limitations provided in this Article 11 or in the Condominium Act. At the time that any such portion is withdrawn to the Condominium, the boundaries of such portion shall be fixed by legal description setting forth the metes and bounds thereof. There are no other limitations as to what portions may be withdrawn or concerning the fixing of the boundaries of those portions;

11.6 The legal description of the Submitted land to which the option to contract the Condominium does not extend is attached hereto as Exhibit E; and,

11.7 Miscellaneous. In the event that any or all Withdrawable Land is withdrawn, Declarant (or its assignees) shall nevertheless have the right to construct all or any portion of any building or other improvements on the Withdrawable Land and operate the same without restriction.

ARTICLE 12

EASEMENTS AND OTHER MATTERS OF RECORD

12.1 **Third Party Easements**. The Submitted Land is subject to and has the benefit of all easements, agreements and other restrictions of record, including but not limited to those set forth in **Appendix A**. The rights, benefits and obligations associated with such agreements, easements and restrictions shall be deemed to be part of the Common Area and shall be administered by the Association. However, to the extent that an easement or restriction relates solely to one Unit or less than all Units, such Unit(s) shall be solely responsible to comply with such easement or restriction and to pay any expenses associated with such compliance.

12.2 **Access; Parking; Utilities; Amenities**. The parking areas, access ways and utilities (e.g. sewer, water, electricity, telecommunication) located within the Common Area and any sheds, play areas or other amenities constructed by a Unit Owner but intended to be used by other Units, are hereby made subject to an undivided, non-exclusive perpetual easement benefiting the other Unit Owners and their Occupants, and the Association for the passage and parking of vehicles, and for the passage and accommodation of pedestrians, and for utilization of utilities. Each Unit Owner shall have an easement in common with the Owner of the other Units for ingress and egress through, and use and enjoyment of, all Common Area (excluding Limited Common Areas) by persons lawfully using or entitled to the same. Each Building will be separately metered for utilities, and the utilities consumed by occupants of a Building shall be the responsibility of the Unit Owner of the Building.

12.3 **Easements for Structural Support and Encroachments**. None of the rights and obligations of the Owners created herein, or in any deed conveying a Unit from the Declarant to a purchaser thereof, shall be altered in any way by encroachments as a result of construction of any structures or due to settling or shifting of structures. There shall be valid easements for maintenance of such encroachments so long as they shall exist; provided, however, that in no event shall a valid easement for encroachments be created in favor of a Unit Owner if said encroachment occurred due to the willful conduct of said Unit Owner. Each portion of a Unit which contributes to the structural support of a Building shall be burdened by an easement of structural support for the other Units and Common Area.

12.4 **Easements Over Limited Common Areas.** In the event there are any roadways, parking areas or utilities constructed by a Unit Owner over or under any Common Area (including Limited Common Area) which are necessary for the occupancy of a Unit owned by a Person other than the Person who constructed such facilities, the non-constructing Unit shall have an easement to use such facilities and shall be responsible for its Proportionate Share of the costs to maintain and repair (including necessary replacement thereof) the same.

12.5 **Easements Reserved to Declarant Across Limited Common Areas**. Declarant reserves the right and easement to cross and recross Limited Common Areas and place utilities thereunder, as needed to develop the Condominium, provided that (i) Declarant uses reasonable efforts to minimize any interference with the Unit Owner's use and enjoyment of such Limited Common Area; (ii) the Declarant restores the Limited Common Area to the condition they were in before exercising its right; (iii) Declarant insures that no mechanics liens attach to the Limited Common Areas or upon notice of such lien, the Declarant obtains a release or bonds said lien within fifteen (15) days of receipt of notice of same; (iv) Declarant obtains liability insurance in the amount of One Million Dollars ($1,000,000.00) (single event), Two Million Dollars ($2,000,000.00) (aggregate) naming the Unit Owner(s) of such Limited Common Areas as a named insured; (v) Declarant defends, indemnifies and holds harmless the affected Unit Owner(s) from all claims, losses, costs and damages asserted against said Unit Owner(s); (vi) the Declarant does not bring hazardous materials onto the Limited Common Area; and (vii) the Declarant provides the affected Unit Owner(s) reasonable prior notice of its intent to enter upon such Limited Common Area (except in cases of emergency).

12.6 **Easements to Facilitate Conversion and Contraction**. The Declarant reserves transferable easements over and on the Common Area for its employees, other agents and its independent contractors for the purpose of doing all things reasonably necessary and proper to convert Common Area of the Condominium as provided in Article 10 above and/or contract the Condominium as provided in Article 11 above; provided that, however, (i) Declarant uses reasonable efforts to minimize any interference with a Unit Owner's use and enjoyment of its Unit and appurtenant Limited Common Area; (ii) the Declarant restores any land and/or improvements to the condition they were in before exercising its right; (iii) Declarant insures that no mechanics liens attach to any other Unit or Limited Common Areas or upon notice of such lien, the Declarant obtains a release or bonds said lien within fifteen (15) days of receipt of notice of same; (iv) Declarant obtains liability insurance in the amount of One Million Dollars ($1,000,000.00) (single event), Two Million Dollars ($2,000,000.00) (aggregate) naming the Unit Owner(s) whose Limited Common Area may be affected as named insureds; (v) Declarant defends, indemnifies

and holds harmless the affected Unit Owner(s) from all claims, losses, costs and damages asserted against said Unit Owner(s) as a result of Declarant's exercise of its easement rights; (vi) the Declarant does not bring hazardous materials onto the Condominium; and (vii) the Declarant provides the affected Unit Owner(s) reasonable prior notice of its intent to enter upon appurtenant Limited Common Area (except in cases of emergency). Such easements include the right to install, construct, reconstruct, maintain, repair, operate and inspect all roadways and/or utility services necessary or desirable in connection with such conversion, and/or contraction, including access, water, sewage disposal, telephone, gas and electrical systems and the right to convey such easements directly to suppliers and/or distributors of such utility services.

12.7 **General Provisions Relating to Easements**. The exercise of the easement rights and obligations set forth in this Declaration by the Declarant, the Unit Owners, and the Association and their agents and successors shall be done in a manner so as to avoid unreasonable interference with the use or occupancy of any Unit. Except as otherwise provided, no Unit Owner may, in the course of exercising any easement right, disturb any Unit without first securing the affected Unit Owner's prior approval which shall not be unreasonably withheld, conditioned, or delayed. Any portion of the Common Area or Unit that has been disturbed by the exercise of any easement rights shall be expeditiously restored by the party responsible for the disturbance to the condition that existed prior to such exercise.

12.8 **Easements Running with the Land**. The easements either referenced in or granted in this Declaration shall run with the land for the benefit and burden of the Declarant and each respective Unit Owner and their successors and assigns.

ARTICLE 13

MAINTENANCE AND REPAIR

13.1 **Maintenance By the Association**. The Association shall maintain, repair and replace the Common Area (except for any Limited Common Area), in a sightly, safe condition and good state of repair in compliance with all governmental laws, rules, regulations and orders and in compliance with the provisions of the Condominium Instruments and the Governmental Approvals.

13.2 **Maintenance by Unit Owner**. Each Unit Owner covenants and agrees, at its sole cost and expense, to maintain and keep its Unit and its Building and improvements contained thereon or on its Limited Common Area, in sightly, safe and good condition and state of repair, in compliance with all governmental laws, rules, regulations and orders, and in compliance with the provisions of the Condominium Instruments and the Governmental Approvals. Each Unit Owner shall store all trash and garbage in adequate containers, and shall locate or screen such containers so as not to be easily visible from the parking area or abutting streets, and shall arrange for regular removal of such trash or garbage either directly or through the Association. In addition, each Owner is responsible to and must reimburse the Association and the other Unit Owner for all damage to the other Unit(s) and/or to the Common Area resulting from the Unit Owner's failure to: (i) to maintain the Owner's Unit, Buildings and improvements in good condition; (ii) to perform maintenance on its Unit, Buildings and improvements, including preventive maintenance,

on a periodic basis, (iii) to timely make repairs to its Unit, Buildings and improvements; and (iv) to take preventive actions to reduce the effects and damages associated with equipment, fixtures, flues, ducting, vents, wiring, piping, plumbing, and system failures comprising a part of its Unit. Any Unit Owner or Occupant causing damage to any other Unit and/or to the Common Area shall be subject to the enforcement remedies as provided for in this Declaration and Bylaws, including the full cost of repair and replacement of the damaged items and areas. Maintenance to be performed by a Unit Owner is to be undertaken in such a manner as not to unreasonably disturb or interfere with the other Unit or with the use of the Common Area, and replacement shall not be of a lesser quality than that originally installed.

ARTICLE 14

OPERATION OF THE CONDOMINIUM

14.1 **Limitations on Use**. Permitted uses on the Submitted Land shall be multi-family affordable residential housing and those subordinated uses allowed under the City of Rochester Zoning Ordinance, as amended from time to time and the Governmental Approvals. Use of all Units, Common Area and Limited Common Area is subject to all Governmental Approvals.

14.2 **Condominium Rules**. The Board of Directors may adopt Condominium Rules governing activities at the Submitted Land. The Condominium Rules shall not abrogate any rights of Unit Owners established in this Declaration and shall not otherwise be an enlargement of or inconsistent with the terms, conditions and covenants of this Declaration. In the event that any of the Condominium Rules differs from any of the terms of this Declaration, the terms of this Declaration shall be controlling. The Condominium Rules shall be provided to the Unit Owners.

14.3 **Use of Common Area**. No merchandise, equipment or services shall be displayed, offered for sale or lease, or stored within the Common Area, except as otherwise provided by the Condominium Instruments.

14.4 **Hazardous Materials**. No Unit Owner shall use or permit the use of Hazardous Materials on, about, under or in its Unit, or the Common Area, except in the ordinary course of its usual business operations and in compliance with all environmental laws.

ARTICLE 15

INSURANCE

15.1 **Insurance Required**.

(a) Pursuant to Section 43 of the Condominium Act, the Association shall obtain and maintain in place: (i) A master casualty policy affording fire and extended coverage in an amount equal to the full replacement value of all buildings and other improvements that are Common Area within the Condominium, including, without limitation, all such portions of the interior of any building as are for insurance purposes normally deemed to constitute part of the building and customarily

covered by such insurance; (ii) a master public liability policy covering the Association, its Officers, and any Manager, agents or employees of the foregoing with respect to the Condominium and all Unit Owners and other persons entitled to occupy any portion of the Condominium (this shall be deemed to require that the Association obtain what is commonly known as "directors' and officers' liability" insurance coverage) in such amounts as the Association may from time to time determine, but in no event shall the limits of liability be less than One Million Dollars ($1,000,000) for bodily injury and property damage per occurrence, and Two Million Dollars ($2,000,000) aggregate, with cross liability coverage with respect to liability claims of anyone insured thereunder against any other insured thereunder (this insurance, however, shall not insure against individual liability for negligence occurring within a Unit); and (iii) such other insurance as a majority of the Unit Owners may determine.

(b) Each Unit Owner shall obtain and maintain in place a casualty policy affording fire and extended coverage in an amount equal to the full replacement value of all Buildings and improvements located on its Unit, including, all portions of the interior of such Buildings as are, for insurance purposes, covered by such insurance.

(c) Each Unit Owner shall obtain and maintain in place a commercial general liability insurance policy in the amount of no less than One Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) aggregate, for bodily injury and property damage occurring within such Unit Owner's Unit. Each insurance policy shall cover the interests of all Eligible Mortgagees, as their interests may appear.

(d) Each builders risk and property casualty policy shall contain, among other provisions, a waiver by the insurer of any right to claim by way of subrogation against Unit Owners and Eligible Mortgagees and waivers of any defense based on coinsurance or of invalidity arising from any acts of the insured. It shall provide that such policies may not be cancelled or substantially modified without at least thirty (30) days prior written notice to all of the insureds, including all Eligible Mortgagees of Units. Duplicate originals of all policies of physical damage insurance and of all renewals thereof, together with proof of payment of premiums, shall be delivered to all Eligible Mortgagees of Units upon their written request therefor, and their payment of the cost of obtaining copies.

15.2 **General Provisions**.

All insurance required by this Article 15 shall be written on an occurrence basis and procured from companies authorized to do business in New Hampshire. All insurance may be provided under (i) an individual policy covering this location, (ii) a "blanket" policy or policies covering other properties of the party, its subsidiaries, and its controlling or affiliated corporations (provided that the required coverage amounts apply to this location regardless of occurrences at any other insured locations), or (iii) a combination of any of the foregoing insurance programs. The policies of insurance required pursuant to this Article 15 shall include the following provisions: (i) that the policies shall not be cancelled, or reduced in amount or coverage below the

requirements of this Declaration, nor shall it be allowed to expire, without at least thirty (30) days prior written notice by the insurer to each insured and to each additional and named insured; (ii) that there be severability of interests; and (iii) that the act or omission of one of the insureds or additional insureds which would void or otherwise reduce coverage, shall not reduce or void the coverage as to the other insureds. With respect to insurance to be obtained by the Association, the Secretary or President of the Association shall promptly furnish to each Unit Owner, written notice of the obtainment of insurance obtained by or on behalf of the Association, and of any subsequent changes therein or termination thereof. Such notice shall be given to each Unit Owner to the mailing or electronic mail address designated by the Unit Owner to the Secretary of the Association, or, if a Unit Owner has not designated an address, the Secretary or President shall deliver the notice by hand delivery, United States mail, postage prepaid or commercially reasonable delivery service to the mailing address of such Unit.

15.3 **Contractor Insurance**. Prior to commencing any construction activities on the Submitted Land, each Unit Owner shall obtain or require its contractor (the "**Contractor**") to obtain and maintain so long as such construction activity is occurring, the minimum insurance coverages set forth below:

(a) Workers' compensation and employer's liability insurance:

(i) Worker's compensation insurance as required by any applicable law or regulation.

(ii) Employer's liability insurance in the amount of at least One Million Dollars ($1,000,000) each accident for bodily injury, at least One Million Dollars ($1,000,000) policy limit for bodily injury by disease and at least One Million Dollars ($1,000,000) each employee for bodily injury by disease.

(b) General liability insurance: Commercial General Liability insurance covering all operations by or on behalf of the Contractor, which shall include the following minimum limits of liability and coverages:

(i) Required coverages:

(1) Premises and Operations;

(2) Products and Completed Operations;

(3) Contractual Liability, insuring the indemnity obligations assumed by Contractor under the Contract Documents;

(4) Broad Form Property Damage (including Completed Operations);

(5) Explosion, Collapse and Underground Hazards; and

(6) Personal Injury Liability.

(ii) Minimum limits of liability:

(1) One Million Dollars ($1,000,000) each occurrence (for bodily injury and property damage);

(2) One Million Dollars ($1,000,000) for Personal Injury Liability;

(3) Two Million Dollars ($2,000,000) aggregate for Products and Completed Operations (which shall be maintained for a three (3) year period following final completion of the Work), and

(4) Two Million Dollars ($2,000,000) general aggregate applying separately to the Submitted Land.

(c) Automobile Liability Insurance: Automobile liability insurance including coverage for owned, hired, and non-owned automobiles. The limits of liability shall not be less than One Million Dollars ($1,000,000) combined single limit each accident for bodily injury and property damage combined. The Contractor shall require each of his subcontractors to include in their liability insurance policies coverage for Automobile Contractual Liability.

(d) Umbrella/Excess Liability Insurance: The Contractor shall also carry umbrella/excess liability insurance in the amount of Three Million Dollars ($3,000,000).

The Declarant, all Unit Owners, the Association, the Eligible Mortgagees, the Investor Limited Partners and the Manager shall be named as named or additional insureds on all above-referenced policies as their interests may appear, and each policy shall provide for thirty (30) days' prior written notice of cancellation of such policy. If such insurance is canceled or expires then the constructing Unit Owner shall immediately stop all work on or use of the Unit until either the required insurance is reinstated or replacement insurance obtained.

ARTICLE 16

REPAIR AND RECONSTRUCTION AFTER FIRE OR OTHER CASUALTY

16.1 **When Repair and Reconstruction Are Required**. In the event any Building within a Unit or Limited Common Area is damaged or destroyed by fire or other casualty (whether insured or not), its Unit Owner shall, subject to governmental regulations and/or insurance adjustment delays, promptly remove the debris resulting from such event and provide a sightly barrier. Within a reasonable time after the fire or casualty, the Owner of the Unit shall, in its discretion, either (i) repair or restore the Building, or (ii) erect another Building, or (iii) demolish the damaged portion and restore the cleared area to a landscaped condition until and unless a replacement Building is erected. All such repairs, reconstruction, demolition, or restoration shall

be commenced and completed expeditiously. During any period that a Building is damaged, destroyed or demolished, the Unit Owner shall remain liable for its share of Common Expenses as fully as if such casualty had not taken place.

16.2 **Procedure for Reconstruction and Repair of Common Area (excluding Limited Common Area)**.

(a) Immediately after a fire or other casualty causing damage to any Common Area (excluding Limited Common Area), 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. Any such reconstruction or repair shall be substantially in accordance with the original plans and specifications under which the damaged Common Area was originally constructed. Such costs may also include professional fees and premiums for such bonds as the Board of Directors determines to be prudent. The Board of Directors shall contract for such repair and restoration and in doing so shall exercise its reasonable discretion in selecting from among said estimates.

(b) If the anticipated proceeds of insurance are not sufficient to defray the estimated costs of completion of reconstruction and repair, or, if after completion of reconstruction or repair the proceeds are insufficient, the Association, by following the procedures in Section 16.2 below may make special assessments in sufficient additional amounts to provide payment of such costs shall be made against the Owners. If all or any portion of such assessments are not available to the Association prior to the time that the amounts thereof are needed to provide payment of such costs, the Association may, at a special meeting duly called and held for such purpose may vote to borrow such amounts, and may secure such borrowing by assignment of the liens relative thereto arising.

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

16.3 **Disbursements of Construction Funds For such Common Area**.

(a) The net proceeds of insurance collected on account of a casualty to any such Common Area and any additional amounts collected by the Association from assessments against the Owners on account of such casualty (or borrowed by the Association as provided above) shall constitute a construction fund which shall be disbursed in payment of the cost of reconstruction and repair of such Common Area by the Association.

(b) The construction fund shall be paid by the Association 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 Common Area as are designated by the Association.

(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 funds is established, such balance shall first be applied to any borrowing pursuant to Section 16.2(b) above and the remainder, if any, shall be distributed to the Unit Owners in accordance with their Ownership Interest.

(d) When the damage is to both Common Area and Units, the insurance proceeds of the Association policy 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 17

EXPENSES

17.1 **Adoption of Budgets**.

(a) The Board of Directors, annually, shall adopt a proposed budget for the Association for consideration by the Unit Owners. The budget shall cover the Common Expenses anticipated to be incurred by the Association for the upcoming year. Not later than thirty (30) days after adoption of a proposed budget, the Board of Directors shall provide to all the Unit Owners and each Investor Limited Partner a summary of the budget, including any reserves, and a statement of the basis on which any reserves are calculated and funded. Simultaneously, the Board shall set a date not less than ten (10) days or more than sixty (60) days after providing the summary for a meeting of the Unit Owners and the Investor Limited Partners to consider ratification of the budget. Upon approval by all Unit Owners, the budget shall be ratified. If a proposed budget is rejected, the budget last ratified by the Unit Owners continues until the Unit Owners ratify a subsequent budget. The Board of Directors must obtain each Investor Limited Partner's written approval for: (i) the initial fiscal year budget; and (ii) any annual budget increase which exceeds the prior fiscal year Budget by more than six percent (6%).

(b) On or before April l of each calendar year, the Board shall supply to all Unit Owners and each Investor Limited Partner an itemized accounting of the Common Expenses for the preceding calendar year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the estimates provided, and showing the net amount over or short of the actual expenses plus reserves. Such accounting shall, upon the written request of any Unit Owner, be prepared by a certified public accountant, in which event such accounting shall be due as soon as reasonably possible after such request. Any net shortage or excess shall be applied as an

adjustment to the installments due under the current year's estimate in the succeeding three (3) months after rendering of the accounting.

(c) Upon the request of an Eligible Mortgagee, the Board promptly shall supply copies of the budgets and accountings of Common Expenses to such Eligible Mortgagee.

17.2 **Special Assessments**.

(a) If any given annual budget proves to be insufficient to cover the actual Common Expenses, the Board of Directors may propose a special assessment. Except as otherwise provided in Section 17.2(b) below, any such special assessment is effective only if: (A) the Board of Directors follows the procedures for ratification of a budget described in Section 17.1 above; and (B) the Unit Owners and the Investor Limited Partners approve the proposed assessment by a unanimous vote of all Unit Owners and the Investor Limited Partners of such Unit Owners (if any), and if such special assessment is approved by any Eligible Mortgagee as required by its loan documents with a Unit Owner.

(b) If the Board of Directors determines that a special assessment is necessary to respond to an emergency: (i) the special assessment becomes effective immediately in accordance with the terms of the vote; (ii) notice of the special assessment shall be provided promptly to all Unit Owners, Eligible Mortgagees and all Investor Limited Partners; and (iii) the Board of Directors may spend the funds paid on account of the special assessment only for the purposes described in the vote.

(c) Declarant, for each Unit it owns (for so long as it owns such Units), hereby covenants, and each Unit Owner of a Unit by acceptance of a deed therefor, whether or not it shall be so expressed in such deed or other conveyance instrument, is deemed to covenant and agree to pay to the Association all special assessments levied by the Board pursuant to this Declaration. Such assessments, together with such interest and late charges thereon and costs of collection thereof (including reasonable attorneys' fees), as hereinafter provided, shall be a charge on the Unit and shall be a continuing lien upon the Unit against which each such assessment is made.

17.3 **Allocation of Expenses**.

(a) Subject to Sections 17.3(b) and (c) below, the Common Expenses (including those set forth in a ratified Budget and special assessments properly made) shall be allocated between the Unit Owners in accordance with their Ownership Interests. On or before January 1 of the ensuing calendar year, and the first day of each and every month of such year, each Unit Owner, shall be personally liable (excluding the Investor Limited Partners) for and obligated to pay to the Association (or as it may direct) one twelfth (1/12) of such Unit Owner's proportionate share of the Common Expenses for each year as shown by the annual budget (that has been approved in accordance with this Declaration).

(b) Expenses benefiting only one or more, but not all, Units, in the reasonable judgment of the Board of Directors, shall be specially assessed against such benefited Units in proportion to the Unit Owner(s) and their respective Occupants' receipt of the benefits of such expense by providing written notice thereof to the affected Unit Owner(s).

(c) Expenses caused by the conduct of a Unit Owner or its respective Occupants, in the reasonable judgment of two-thirds of the members of the Board of Directors, shall be specially assessed against the Unit Owner who, alone or with its Occupants, has caused such expenses to be incurred in proportion to their responsibility for such expense by providing written notice thereof to the affect Unit Owner.

(d) For any expense assessed under Subsection (b) or (c) above, the affected Unit Owner shall have thirty (30) days from the date of receipt of the written statement from the Board to object to the same; provided, however, that any such notice shall simultaneously be sent to the Investor Limited Partner and each Eligible Mortgagee of such Unit Owner. In the event of the failure of the Unit Owner and the Board of Directors to reach agreement with respect to the disputed special assessment within thirty (30) days of the Unit Owner's notice of objection, the parties agree that the dispute shall, to the fullest extent permitted by law, be settled by arbitration in any forum and form agreed upon by the parties or, in the absence of such agreement, under the auspices of the American Arbitration Association, in Rochester, New Hampshire. The Unit Owner shall pay the amount of the disputed assessment to the Association to be held in escrow pending the outcome of the arbitration. Should the arbitration award be less than the amount of the escrowed funds, the excess shall be refunded to the Unit Owner. The parties to the arbitration shall bear equally the cost of all administrative fees and arbitrator's fees and expenses associated with the arbitration, however, each party shall pay the cost of its own legal fees and expenses.

17.4 **Commencement of Liability**. The responsibility for payment by each Unit Owner of its allocated share of Common Expenses shall commence upon the conveyance of the Unit from the Declarant. Each Unit is created upon the recordation of this Declaration and the Site Plan. Any Unit that becomes obligated to pay an allocated share of Common Expenses other than at the beginning of a calendar year shall be assessed a proportional amount of such allocation of Common Expenses.

17.5 **Payment of Assessments**. Unless the Board of Directors determines otherwise, each Unit Owner shall pay to the Association monthly, one-twelfth of the Unit Owner's allocated share of Common Expenses. No Unit Owner may exempt itself from liability for that Unit Owner's contribution toward Common Expenses by waiver of the use or enjoyment of any of the Common Area or by abandonment or non-use of its Unit.

17.6 **Failure to Pay Assessment**. The Association shall have and may enforce all rights provided for under Section 14 of the Condominium Act and may obtain a lien on any Unit and enforce all such other rights provided for under Section 46 of the Condominium Act in order to

secure payment of and collect any Unit Owner's allocated share of Common Expenses and any expenses specially assessed pursuant to this Declaration or the Bylaws. The lien for unpaid assessments shall include interest, costs and attorney's fees 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 or by suit brought in the name of the Association. The Association may also bring suit to recover a money judgment for unpaid assessments without foreclosing, waiving, or perfecting the lien securing the same, and foreclosure shall be available without bringing suit to recover a money judgment. In addition, the Association shall have the right under RSA 356-B:46-a and under any other provision of the Condominium Act now existing or hereafter enacted giving rights to Associations for failure of Unit Owners to pay its share of Common Expenses.

ARTICLE 18

AMENDMENT OF DECLARATION

18.1 **General**. This Declaration may be amended by the unanimous vote of Unit Owners holding Ownership Interests in the Condominium. However,

(a) no such amendment shall impose any materially greater obligation on, or materially impair any right of a Condominium Owner or its Condominium Unit without the prior written consent of such Condominium Owner.

(b) no such amendment shall impose any new obligations on or alter the rights and privileges of the Declarant without the Declarant's prior consent.

(c) no such amendment shall be effective until evidence of it has been prepared and duly executed by the President of the Association and recorded in the Registry of Deeds pursuant to Sections 11, 34 and 35 of the Condominium Act. Such recorded amendment shall contain a certification by the President of the Association that the requisite vote was obtained.

18.2 **Consent of Mortgagees, Eligible Mortgagees and Investor Limited Partners**. Notwithstanding any of the foregoing, any amendments to this Declaration and the Bylaws shall require the prior written consent and approval of each Eligible Mortgagee, and each Investor Limited Partner.

ARTICLE 19

TERMINATION OF CONDOMINIUM

This Condominium may be terminated in the manner provided for in Section 34 of the Condominium Act. Notwithstanding any of the foregoing, the Condominium shall not be terminated without the prior written consent and approval of each Eligible Mortgagee and each Investor Limited Partner (which consent may be withheld in their sole and absolute discretion).

ARTICLE 20

DEFAULT

20.1 **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 acceptance of any fee or similar interest in any Unit shall constitute an agreement that the provisions of the Condominium Instruments, as they may be lawfully amended from time to time, are accepted and ratified by such Unit Owner or Occupant. 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 each and every instrument of conveyance, lease, or other agreement.

20.2 **Default**.

(a) The occurrence of any one or more of the following events shall constitute a default of this Declaration by the non-performing party (the "**Defaulting Party**"):

(i) the failure to make any payment required to be made under any Condominium Instrument within ten (10) days after receipt of the written notice from the Treasurer or President; or

(ii) 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 Board of Directors, or another Unit Owner (the "**Non-Defaulting Party**") specifying the nature of the default claimed. However, the Defaulting Party receiving notice shall not be deemed to be in default under this section so long as the Defaulting Party starts to cure the claimed default within thirty (30) days after receipt of such notice and diligently pursues such cure.

(b) Each Non-Defaulting Party shall have the right to bring any proceedings at law or in equity against any Defaulting Party, or any other Person violating or attempting to violate any of the provisions contained in any Condominium Instrument or the Condominium Act, and to recover damages for any such violation or default. 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 at law 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 Non-Defaulting Party shall have all of the remedies permitted or available under this Declaration, under the Condominium Act, or at law or in equity, all of which shall be cumulative and not alternative; provided that, under no circumstances shall the Non-Defaulting Party be entitled to terminate this Declaration or the Condominium. The invocation of any specific right or remedy shall not constitute a wavier 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) In addition, with respect to any default under Section 19.2(a)(ii) above, any Non-Defaulting Party shall have the right, but not the obligation, following the expiration of any applicable cure period, to cure such 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 the default shall constitute an emergency condition, the Non-Defaulting Party, acting in good faith, shall have the right to cure such default upon such advance notice as is reasonably possible under the circumstances or, if necessary, without advance notice, so long as notice is given as soon as possible afterwards. To effectuate any such cure, the Non-Defaulting Party shall have the right to enter upon the Unit of the Defaulting Party to perform any necessary work or furnish any necessary materials or services to cure the default of the Defaulting Party. In the event any Non-Defaulting Party shall cure a default, the Defaulting Party shall reimburse the Non-Defaulting Party 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.

(d) Each Unit Owner shall be responsible for any default of or caused by an act or omission of the Occupants of its Unit or Limited Common Area. However, no Unit Owner shall be deemed to be in default so long as it is diligently pursuing default remedies against its Occupant.

(e) Notwithstanding anything in this Declaration to the contrary, Eligible Mortgagees and each Investor Limited Partner shall have the right, but not the obligation, to cure any defaults of the Owner of its Unit under this Declaration and the Non-Defaulting Party shall accept such payment or work, as applicable, as if it had been tendered or completed by such Defaulting Party. If any Investor Limited Partner or Eligible Mortgagee so exercises such right, it shall have a period of sixty (60) days after receipt of written notice of such default to cure such default.

20.3 **Interest**. Any time a party shall fail to pay any sum due under this Declaration 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 rate of three percent (3%) per annum in excess of the prime rate from time to time published by the Wall Street Journal or its successor; determined as of the due date for such payment.

20.4 **Mitigation of Damages**. In all situations arising out of this Declaration, all parties shall attempt to avoid and mitigate the damages resulting from the conduct of any other party. Each Unit Owner shall take all reasonable measures to effectuate the provisions of this Declaration.

20.5 **Declaration Shall Continue Notwithstanding Breach**. It is expressly agreed that no breach of this Declaration 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 Submitted Land. 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.

20.6 **No Waiver**. The failure of any Unit Owner or the Declarant or the Association or the Board of Directors or Officers to insist upon strict performance of any of the terms, covenants or conditions of this Declaration shall not be deemed a waiver of any rights or remedies which that Unit Owner or the Declarant or the Association or Board of Directors or Officers may have under this Declaration, 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 Declarant, the Association, a Unit Owner or Board of Directors or Officer of any default under this Declaration 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 of any default under any provision of this Declaration 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 this Declaration.

ARTICLE 21 - OMITTED

ARTICLE 22

GENERAL PROVISIONS

22.1 **Notices**. All notices required to be given by the Association to the Unit Owners shall be given to any mailing or electronic mail address a Unit Owner designates. Upon the purchase of a Unit, the Person purchasing the Unit shall deliver its designated mailing or electronic address for notice to the Secretary of the Association, and such address shall be the address for notices for such Unit Owner until written notice of a change of address is given to the Secretary. If a Unit Owner does not designate an address, the Association shall deliver notices by hand delivery, United States mail, postage prepaid, or commercially reasonable delivery service to the mailing address of each Unit.

The current notice address for the Declarant and the Association is: c/o Elm Grove Companies, LLC.

The current notice address for the Investor Partner of Phase 1 is: c/o _____.

The Secretary shall advise the Unit Owners in writing of any change of address of the Association when operational. The Declarant or the Association shall give prior written notice to the Unit Owners of the notice address of any manager with whom it has contracted.

Each Eligible Mortgagee and Investor Limited Partner shall be responsible to send the Executive Board written notice of any changes of name, address, service or other applicable information.

22.2 **Condemnation**. In the event any portion of the Submitted Land shall be condemned, or conveyed under threat of condemnation, the Association shall act on behalf of each Unit Owner in the condemnation proceedings against the Common Areas of the Condominium. The award for Common Area shall be paid to the Association as Trustee for the Unit Owners and the Unit Owners waive and release any right to recover any value attributable to the property interest so taken.

22.3 **Not a Public Dedication**. Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Condominium or of any Unit to the general public, or for any public use or purpose whatsoever. Except as specifically provided in this Declaration, no right, privileges or immunities of the Declarant or any Unit Owner under this Declaration 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 this Declaration.

22.4 **Choice of Law**. This Declaration shall be governed under the laws of the State of New Hampshire, without regard to its choice of law rules or rulings.

22.5 **Dispute Resolution**. In the event of any disagreement, controversy, dispute, or stalemate in, or the action or inaction of, any action to be taken by the Association or by the Board of Directors hereunder (a "Disputed Matter"), the Unit Owner/Board of Directors, as the case may be, shall first endeavor to resolve each Disputed Matter by good faith discussions among themselves. In the event that such discussions do not result in a resolution, the parties shall utilize the services of an impartial mediator in an effort to reach a mutually acceptable resolution. If a Disputed Matter has not been resolved within thirty (30) days after the commencement of such mediation, any party may submit the Disputed Matter to arbitration. Any award or decision obtained from any such arbitration proceeding shall be final and binding on the parties, and judgment upon any award thus obtained may be entered in any court having jurisdiction thereof.

ARTICLE 23

SPECIAL PROVISIONS

It is the intent of this Declaration that each phase be self-sufficient and independent to the maximum extent practical. To that end, notwithstanding any other provision of this Declaration to the contrary, the following provisions shall control:

23.1 The Owner(s) of the Units in a phase will have no rights to use, or responsibility to operate, maintain, repair or replace the Units or Limited Common Area of another phase.

23.2 The Owners of the Units in a phase shall have the right to construct Buildings and utilities, parking, amenities and other improvements within their Buildings and on and under the Limited Common Area appurtenant thereto without the consent of the Owners of the Units of other phases. The Owners of Units may also construct amenities on Common Area with the approval of the other Unit Owners. All Buildings and other improvements constructed by a Unit Owner shall be owned by that Unit Owner.

23.3 No one may make any improvements on the Limited Common Area other than the Owner of the Unit to which the Limited Common Area appertains.

23.4 No amendment may be made to this Article 23 of the Declaration without the written consent of the Owners of the Units.

[Signature page follows]

WITNESS my hands and seal this ____ day of _____, 2022.

_____, LLC

By:_____

STATE OF NEW HAMPSHIRE
COUNTY OF _____

On this the ___ day of _____, 2022, then personally appeared the above-named _____ in his capacity as _____ of _____, LLC and acknowledged that he executed the foregoing instrument on behalf of the Condominium for the purposes therein contained being authorized to do so.

_____
Notary Public/Justice of the Peace

My Commission Expires:_____

APPENDIX A

DESCRIPTION OF SUBMITTED LAND
Rochester, NH

Tract One - Fee Simple Parcel

Tract Two - Right of Way Easement Parcel

Tract Three - Driveway Easement Parcel

The Submitted Land is together with and/or subject to subject to the following easements and other rights of record [insert from Title Commitment]

1. **Sewer Pump Easement from Malibu Twoo Associates, LLC to the City of Rochester recorded at Book 4219 Page 0393**

2. **Easements set forth in Warranty Deed from William D. Hamel and Ernestine L. Hamel to Richard C. Moores and Ina A. Moores dated December 31, 1968 and recorded at Book 852 Page 437**

ADD OTHERS PER TITLE

APPENDIX B

BYLAWS

OF

COUNTRY BROOK APARTMENTS CONDOMINIUM

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APPENDIX B

COUNTRY BROOK APARTMENTS CONDOMINIUM

BYLAWS

ARTICLE 1

GENERAL PROVISIONS

1.1 **Purpose**. The Country Brook Apartments Condominium Association (the "**Association**") is an unincorporated association formed for the purposes of administering the Country Brook Apartments 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 "Association" under the Condominium Act. It is considered formed upon the recording of the Declaration with the Registry of Deeds.

1.2 **Definitions**. Capitalized terms not otherwise defined in these Bylaws or in the Declaration of the Country Brook Apartments Condominium, shall have meanings specified in Section 3 of the Condominium Act.

1.3 **Applicability of Condominium Instruments**. All present and future Unit Owners and Occupants shall be subject to these Bylaws and to the Condominium Instruments. The acceptance of a deed of conveyance, the entering into a lease, or the act of occupancy of a Unit or any portion of a Unit, shall constitute an acknowledgment that such Unit Owner or Occupant has accepted and ratified these Bylaws and the provisions of the other Condominium Instruments and will comply with them.

1.4 **Office**. The office of the Association shall be located at c/o _____, _____ or at such other place as may be designated from time to time by the Secretary or the President of the Association.

1.5 **Conflicts**. If there is any conflict between the provisions of these Bylaws and the Declaration, the Declaration shall control.

1.6 **Composition**. Each of the Unit Owners shall automatically become a member of the Association upon taking title to a Unit. A Unit Owner's membership interest shall be noted in the records of the Association, but shall not be evidenced by stock or other certificates.

ARTICLE 2

MEETINGS OF THE ASSOCIATION

2.1 **Place of Meeting**. Meetings of the Association shall be held at the principal office of the Condominium or at such other suitable place in the State of New Hampshire as may be

designated by the Secretary in the notice of the meeting.

2.2 **Annual Meetings**. The first meeting of the Association shall be held within one (1) year after the recordation of the Declaration which date is the formation of the Association. Thereafter, the annual meetings of the Association shall be held during the month of September of each succeeding year, or on such other date as may be designated by the Secretary and reflected in the notice of the meeting. Meeting notices shall be sent as described in Section 2.5 below.

2.3 **Special Meetings**. The Association shall hold a special meeting of Unit Owners to address any matter affecting the Unit Owners or the Association if its President, a majority of the Board of Directors, or either Unit Owner requests that the Secretary call the meeting. If the Secretary does not notify Unit Owners of a special meeting within thirty (30) days after the Unit Owner requests the Secretary to do so, the requesting Unit Owner may directly notify all of the Unit Owners of the special meeting, for the purpose of which shall be to present the issue to fellow residents and Unit Owners and to vote on any proposal set forth in the meeting notice. Only matters described in the meeting notice may be considered at a special meeting. All meeting notices shall be sent as described in Section 2.5 below.

2.4 **Voting**. Each Unit Owner shall be entitled to cast the number of votes proportional to its Ownership Interest. When a Unit is owned by more than one (1) person, if only one of such persons is present at a meeting of the Association, that person shall be entitled to cast the votes appertaining to that Unit. But if more than one of such persons is present, the vote appertaining to that Unit shall be cast only in accordance with agreement of a majority in interest of the Owners, and such consent shall be conclusively presumed if any one of them purports to cast the votes appertaining to that Unit without protest being made forthwith by any of the others to the person presiding over the meeting. Since a person need not be a natural person, the word "person" shall be deemed for the purposes of this Section 2.4 to include, without limitation, any natural person having authority to execute deeds on behalf of any person, excluding natural persons, which is, either alone or in conjunction with another person or persons, a Unit Owner. A unanimous vote of the Unit Owners in good standing and entitled to vote at the meeting, all as set forth in these Bylaws, is required to adopt decisions at any meeting of the Association. Notwithstanding the foregoing, in the event a unanimous vote is not obtained for a decision relating to an emergency condition, a Unit Owner may take such action as is reasonably necessary to address such emergency situation and be promptly reimbursed for the costs thereof by the Association.

2.5 **Notice of Meetings**. The Secretary (or the requesting Unit Owner in the case described in Section 2.3 above where the Secretary does not notify Unit Owners of a special meeting within thirty (30) days after the requisite number or percent of Unit Owners have requested the Special Meeting) shall provide to each Unit Owner, with a copy to be sent to each Investor Limited Partner, a notice of each annual or regular meeting or special meeting of the Association (i) at least twenty-one (21) days in advance of each such annual or regular meeting , and (ii) at least seven (7) days in advance of any special or other meeting, to each Unit Owner of record in the records of the Association and the Investor Limited Partner of each such Owner. The minimum time to give notice may be reduced or waived for a meeting called to deal with an emergency. The notice shall state the purpose as well as the time and place where the meeting is to be held, and it shall include an agenda and proxy forms bearing a control number and otherwise

compliant with the terms of these Bylaws and the Condominium Act. Purposes of the meeting shall include any budget changes or proposal to remove an officer or member of the Board of Directors. Notice shall be given to any mailing or electronic mail address a Unit Owner designates to the Secretary. If the Unit Owner does not designate an address to the Secretary, the Secretary shall deliver notices by hand delivery, United States mail postage prepaid, or commercially reasonable delivery service to the mailing address of each Unit. The Secretary shall prepare an affidavit which shall be accompanied by a list of the addresses of all Unit Owners currently on file with the Association and shall attest that notice of the Association meeting was provided to all Unit Owners on that list in a manner conforming to RSA 356-B:37-a. A copy of the affidavit and Unit Owners list shall be available at the noticed meeting for inspection by all Unit Owners then in attendance and shall be retained with the minutes of that meeting. The affidavit required in this section shall be available for inspection by Unit Owners for at least three (3) years after the date of the subject meeting.

2.6 **Disqualification to Vote**. A Unit Owner who is more than thirty (30) days delinquent in the payment of Common Expense assessments to the Association shall not be deemed qualified to vote and may not vote at any meeting of the Unit Owners.

2.7 **Proxies**.

(a) The votes appertaining to any Unit may be cast pursuant to a proxy or proxies duly executed by or on behalf of the Unit Owner, or, in cases where the Unit Owner is more than one person, by or on behalf of all such persons; provided, however, that any designation of a proxy for a Unit Owner must be approved in writing by its Investor Limited Partner. A person may not cast undirected proxies representing a majority of the votes in the Association. The proxy or proxies shall list the name of the person who is to vote. No such proxy shall be revocable except by actual notice to the person presiding over the meeting, by the Unit Owner or by any of such persons, that it be revoked. Any proxy shall be void if it is not dated or if it purports to be revocable without the required notice. The proxy of any person shall be void if not signed by a person having authority, at the time of the execution thereof, to execute deeds on behalf of that person. Any proxy shall terminate automatically upon the adjournment of the first meeting held on or after the date of that proxy. The Board of Directors shall deliver to the Unit Owners, together with their notice of meeting and agenda, proxy forms bearing a control number which the Board of Directors shall correlate to the list of all Unit Owners then entitled to vote. At the noticed meeting, the Board of Directors shall recover all proxies and compare them to the control list maintained for that purpose. Any proxies which are on a form other than that provided by the Board of Directors or which do not correlate with the control list maintained by the Board of Directors shall be disregarded for purposes of determining whether a quorum was present at the meeting and for purposes of casting any vote at that meeting.

(b) The Board of Directors shall retain all proxies delivered to the Board of Directors 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 Association meeting.

2.8 **Quorum**. Unit Owners present at the beginning of a meeting, in person or by proxy, and qualified to vote and holding _____ percent (___%) of the Ownership

Interests in the Condominium shall constitute a quorum of members for the entire meeting. A quorum shall be deemed to be present throughout any meeting of the Association until adjourned if persons entitled to cast _____ percent (___%) of the votes are present at the beginning of such meeting. If a quorum is not met for an annual meeting, the Board of Directors shall reschedule the meeting within sixty (60) days and provide proper notice and proxies in accordance with Section 2.5 above and the Condominium Act. Notwithstanding the foregoing, in the event a quorum is not present at a meeting and an emergency condition is to be addressed at such meeting, a Unit Owner may take such action as is reasonably necessary to address such emergency situation and be promptly reimbursed for the costs thereof by the Association.

2.9 **Conduct of Meeting**. Meetings of the Association may but need not be conducted in accordance with the most recent edition of Roberts' Rules of Order Newly Revised. Unit Owners shall be given a reasonable opportunity at any meeting of the Association to comment regarding any matter affecting the Association.

2.10 **Minutes of Meetings**. The Board of Directors shall make copies of the minutes of all meetings available to the Unit Owners within sixty (60) days of the meeting, or fifteen (15) days of the date such minutes are approved by the Board of Directors, whichever occurs first. The Association may opt to provide the minutes electronically or publish them on the Association website, in which case the Unit Owners shall be informed of the Association's web address. The Secretary or other designee duly authorized by the Board of Directors shall take minutes of all meetings held in accordance with this section and RSA 356-B:37-c. An electronic or paper copy of all meeting minutes shall be available to the Unit Owners for at least three (3) years after the date of the meeting. The Board shall respond to a Unit Owner's written request for the minutes within 15 days of receipt of the request.

2.11 **Voting Without a Meeting**.

(a) Any action required or permitted to be taken at any meeting of Association may be taken by ballot without a meeting if the requirements set forth in (b) below are met:

(b) The Association shall notify the Unit Owners, with a copy to be sent to each Investor Limited Partner, that the vote will be taken by ballot and deliver a paper or electronic ballot to every Unit Owner entitled to vote on the matter. The notice shall be sent to the mailing or electronic email address designated by the Unit Owner and, if the Unit Owner does not designate an address, the notice will be delivered by hand delivery, United States mail postage prepaid, or commercially reasonable delivery service to the mailing address of the Unit. The ballot shall:

(i) Set forth each proposed action and provide an opportunity to vote for or against the action.
(ii) Indicate the number of responses needed to meet the Quorum requirements.
(iii) State the percent of votes necessary to approve each matter other than election of directors.
(iv) Specify the time and date by which a ballot must be delivered to the Association to be counted, which time and date may not be fewer than ten (10) days after the date the Association delivers the ballot.

(v) Describe the time, date, and manner by which Unit Owners wishing to deliver information to all Unit Owners regarding the subject of the vote may do so.

A ballot is not revoked after delivery to the Association by death or disability or attempted revocation by the person that cast that vote in the ballot.

Approval by ballot pursuant to this section is valid only if the number of votes cast by ballot equals or exceeds the Quorum required to be present at a Meeting authorizing the action.

All ballots cast in the Association vote under this section shall be counted using a tally sheet for the vote. If more than one ballot item was voted on, the board may elect to keep a corresponding tally sheet for each ballot items. The ballots and tally sheets shall be made available for examination and recount, by request of any owner participating in the vote, immediately following announcement of the results of the vote taken. During any examination and recount one or more members of the Board of Directors and at least one additional Unit Owner shall be present. The ballots shall be examined and tallied to verify that the count and announced result was correct.

2.12 **Meetings By Telephonic, Video or Other Conferencing Process**. The Association may also meet by telephonic, video or other conferencing process.

ARTICLE 3

BOARD OF DIRECTORS

3.1 **Powers and Responsibilities**. The affairs and business of the Association shall be managed by a Board of Directors which shall have all of the powers and duties necessary for the administration of the affairs of the Condominium. The Board may do all such acts and things that are not prohibited by the Condominium Act, by the Declaration, or by these Bylaws directed to be exercised and done by the Association that are in the collective best interest of the Unit Owners. By way of example, but not in limitation of the generality of the foregoing, the Board shall have the power to carry out and be responsible for the following:

a. **Budget Preparation**. The Board shall prepare the annual budget for ratification by the Unit Owners and each Investor Limited Partner, if required under the provisions of Article 17 of the Declaration, including any reserves, and a statement of the basis on which any reserves are calculated, and shall also set the date for the meeting of the Association to ratify the Budget in accordance with Article 17 of the Declaration.

b. **Assessment Authority**. Making assessments against Unit Owners to defray the Common Expenses of the Condominium, making special assessments where appropriate under Article 17 of the Declaration and/or the Condominium Act, establishing the means and methods of collecting such assessments from the Unit Owners, collecting said assessments, depositing the proceeds thereof in a bank depository which it shall approve, and issuing the proceeds to carry out the administration of the Association. Unless otherwise determined by the Board, the annual assessments against each Unit Owner for the Unit Owner's proportionate share of the Common Expenses shall be payable in equal monthly installments, each such installment to be due and

payable in advance on or before the first day of each month for said month. .

c. **Operating of the Common Area**. Providing for the operation, care, upkeep, replacement and maintenance of all of the Common Area (other than Limited Common Area) and also for any Unit or Limited Common Area if the Unit Owner or Unit Owners have failed or refused to perform maintenance or repair of their Unit and/or Limited Common Area within a reasonable time after written notice of the necessity of said maintenance or repair is delivered to such Unit Owner(s) and such maintenance or repair is reasonably necessary in the opinion of the Board of Directors to protect the Common Area or preserve the appearance and/or value of the Condominium.

d. Omitted.

e. **Insurance**. Obtaining and carrying out insurance against casualties and liabilities, as provided in the Declaration and Bylaws, and paying the premium cost thereof and making, or contracting for the making of, repairs, additions, and improvements to, or altering of the Condominium, and the restoration of the Condominium, in accordance with other provisions of the Declaration, after damage or destruction by fire or other casualty.

f. **Accounting**. Keeping books with detailed accounts of the receipt and expenditures affecting the Association, and the administration of the Association and of the Condominium.

g. **Repair and Reconstruction After Casualty**. Providing for the repair and restoration of the Common Areas after a casualty; provided, however, that any material modification or addition to the Common Areas must be approved by each Unit Owner and its Investor Limited Partner and Eligible Mortgagees.

h. **Proxies**. Preparing and retaining proxies that comply with these Bylaws and NH RSA 356-B:39(IV).

i. **Easements**. Granting easements and rights with respect to utilities to be installed in, upon, under or over the Common Area and to enter into such agreements and undertakings as shall be necessary. To approve the location and relocation of easements and rights for utilities which have been installed in, upon, under or over the Common Area and to execute, acknowledge and record such instruments and plans identifying such easements as the Board deems necessary or desirable.

j. **General Authority**. To do such other things and acts not inconsistent with the Condominium Act, the Declaration, and these Bylaws which it may be authorized to do by a vote of the Association and which are in the best interests of the Unit Owners as a whole.

3.2 **Qualifications of Board Members**. There are no special qualifications to be a Board Member

3.3 **Election, Term of Office, Vacancies, Resignation and Removal**.

a. The members of the Board of Directors shall consist of one (1) member per Phase and shall take office upon election or appointment.

b. Board members shall serve a term of three (3) years; terms may be staggered, and if so, initial directors may serve less than three (3) years.

c. The Unit Owner of each Phase shall elect a person to serve on the Board of Directors.

d. Any vacancies on the Board shall be filled by the vote of the Unit Owners of the Phase who elected the resigning member and such person so elected shall be a director for the remainder of the term of the director so replaced.

e. Notwithstanding any provision of the Declaration or Bylaws to the contrary, Unit Owners present in person or by proxy at any meeting of the Unit Owners at which a quorum is present, may remove any member of the Board of Directors, with cause, if the number of votes cast in favor of removal exceeds the number of votes cast in opposition to removal, provided that:

(i) The Unit Owners may not consider whether to remove a member of the Board of Directors or an officer elected by the Unit Owners at a meeting of the Unit Owners unless that subject was listed in the notice of the meeting.

(ii) At any meeting at which a vote to remove a member of the Board of Directors is to be taken, the member being considered for removal shall have a reasonable opportunity to speak before the vote.

Notwithstanding the foregoing, in the event that Investor Limited Partner removes the general partner of a Unit Owner, such Investor Limited Partner shall have the right to remove and replace the directors appointed by such Unit Owner, regardless of the status of the directors' term.

3.4 **Compensation**. No director shall receive any salary or compensation from the Association for acting as such.

3.5 **Board Meetings**. Meetings of the Board and any committees shall be held and conducted in the following manner:

a. For purposes of this Section 3.5, a gathering of Board members at which Board members do not conduct Association business is not a meeting of the Board of Directors. The Board of Directors, any committee or any of its members may not use incidental or social gatherings of Board or committee members or any other method to evade the open meeting requirements of this Section 3.5 or NH RSA 356-B:37-c.

b. Not less than once each quarter, the Board of Directors shall, subject to the provisions of (f) below and RSA 356-B:37-d (executive session), hold an open regular meeting during which Unit Owners shall be afforded a reasonable opportunity to comment on any matter affecting the Association. At its discretion, the Board of Directors may meet in a meeting not open to Unit Owners provided the meeting is recorded and the recording is made available to Unit

Owners for up to thirty (30) days upon request.

c. Unless the meeting is included in a schedule given to the Unit Owners or the meeting is called to deal with any emergency, the Secretary shall give notice of each meeting of the Board of Directors to each Board member, to the Unit Owners, and to each Investor Limited Partner. The notice shall be given at least ten (10) days before the meeting and shall state the time, date, place and agenda of the meeting.

d. If any materials are distributed to the Board of Directors before the meeting, the Board of Directors at the same time shall make copies of those materials reasonably available to Unit Owners and each Investor Limited Partner, except that the Board of Directors need not make available copies of unapproved minutes or matters that are to be considered in executive session.

e. In the case of self-managed community associations, meetings of the Board of Directors or committees expressly for purposes of implementation of decisions made in open meetings shall be exempt from the requirements of RSA 356-B:37 (Meetings), 356-B:37-a (Notice to Unit Owners) and RSA 356-B:37-c (Meetings of the Board of Directors and Committees of the Association) and this Section 3.5.

f. **Executive Session**. The Board of Directors may hold an executive session only during a regular or special meeting of the Board of Directors. No final vote or action may be taken during an executive session. An executive session may be held only to:

(i) Consult with the Association's attorney.

(ii) Discuss existing or potential litigation or mediation, arbitration, or administrative proceedings.

(iii) Discuss labor or personnel matters.

(iv) Discuss contracts, leases, and other commercial transactions to purchase or provide goods or services currently being negotiated, including the review of bids or proposals, if premature general knowledge of those matters would place the Association at a disadvantage or prevent public knowledge of the matter to be discussed if the Board of Directors or a committee determines that public knowledge would violate the privacy of any person.

g. **Quorum**. A quorum shall be deemed to be present throughout any meeting of the Board of Directors if persons entitled to cast more than one half of the votes of the Board of Directors are present at the beginning of the Board Meeting.

h. **Meetings By Telephonic, Video or Other Conferencing Process**. The Board may also meet by telephonic, video or other conferencing process provided the requirements of RSA 356-B:37-c and Sections 3.5(a) – (f), inclusive are also met.

i. **Attendance by Officers**. The Officers of the Association shall have the right to attend meetings of the Board of Directors, it being understood that only the Board of Directors

shall have the right to vote at such meetings.

3.6 **Standard of Care.** The Board of Directors acts on behalf of the Association and shall have a fiduciary relationship to members of the Association. The Board shall not undertake any of the Activities prohibited by RSA 356-B:40(II). In the performance of their duties, members of the Board of Directors appointed by the Declarant shall exercise the degree of care and loyalty to the Association required of a trustee. Officers and members of the Board of Directors not appointed by the Declarant shall exercise the degree of care and loyalty to the Association required of an officer or director of a corporation organized under RSA 292, and are subject to the conflict of interest rules governing directors and officers under RSA 292. The standards of care and loyalty described in this Section 3.6 apply regardless of the form in which the Association is organized. The Unit Owners shall and hereby indemnify and hold harmless each of the members of the Board of Directors from and against all contractual liability to others arising out of contracts made by the Board on behalf of the Unit Owners unless any such contract shall have been made in violation of this standard of care. The members of the Board of Directors are not to be personally liable (except as Unit Owners) with respect to any contract made by them on behalf of the Unit Owners, unless made in violation of this standard of care. Every written agreement made by the Board on behalf of the Unit Owners shall, if such agreement allows, provide that the members of the Board of Directors are acting only as agents for the Unit Owners, and the person executing the contract shall have no personal liability thereunder (except as Unit Owners). The Association shall indemnify all members of the Board of Directors from all threatened, pending or completed actions, suits or other legal proceedings whether or not based in contract, by reason of the fact that a member of the Board of Directors is or was a member of the Board of Directors, or officer, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement incurred by the member of the Board of Directors in connection with such action, suit or proceeding unless such member of the Board of Directors violated the standard of care.

3.7 **Fidelity Bonds**. The Board of Directors may require that all officers or agents of the Association handling or responsible for funds, furnish adequate fidelity bonds. The premiums on such bonds shall constitute a Common Expense.

3.8 **Dispute Resolution**. In the event of any disagreement, controversy, dispute, or stalemate in, or the action or inaction of any member of the Board of Directors hereunder (a "**Disputed Matter**"), the member of the Board of Directors shall first endeavor to resolve each Disputed Matter by good faith discussions among themselves. In the event that such discussions do not result in a resolution, the parties shall utilize the services of an impartial mediator in an effort to reach a mutually acceptable resolution. If a Disputed Matter has not been resolved within thirty (30) days after the commencement of such mediation, any party may submit the Disputed Matter to arbitration. Any award or decision obtained from any such arbitration proceeding shall be final and binding on the parties, and judgment upon any award thus obtained may be entered in any court having jurisdiction thereof.

3.9 **Emergency Conditions**. In the event a quorum or a unanimous vote of the Board of Directors is not obtained for a decision relating to an emergency condition, a Unit Owner may take such action as is reasonably necessary to address such emergency situation and be promptly reimbursed for the costs thereof by the Association.

ARTICLE 4

OFFICERS

4.1 **Designation**. The principal Officers of the Association shall be a President, a Secretary, and a Treasurer, and such other Officers as the Association shall deem necessary. The President shall serve as Chairman of any meeting of the Unit Owners. The offices of Treasurer and Secretary may be held by the same person.

4.2 **Election of Officers**. Any person who is qualified to serve as a member of the Board of Directors is qualified to serve as an Officer. Any person who is deemed disqualified to be a member of the Board of Directors under Section 3.2 of these Bylaws shall be disqualified to serve as an Officer. Officers shall serve three (3) year terms. The Officers of the Association shall be elected annually by the Board of Directors and they shall hold office until the next annual meeting of the Board of Directors or until their successors are duly elected or qualified. Any vacancy in an office shall be filled by the Board of Directors at a regular meeting or special meeting called for that purpose. During the Period of Declarant Control, the Declarant shall have the right to appoint all officers.

4.3 **Removal of Officers**. Any Officer elected or appointed by the Board of Directors may be removed at any time for good cause by the affirmative vote of all the Unit Owners, at any regular or special meeting of the Board of Directors called for such purpose.

4.4 **President**. The President shall be the chief executive officer of the Association. The President shall preside at meetings of the Association and shall be an ex officio member of all committees. The President shall have power over the general and active management of the business of the Association and shall see that all orders and resolutions of the Association are carried into effect. The President shall also have the authority to prepare, execute, certify and record amendments to the Declaration on behalf of the Association.

4.5 **Secretary**. The Secretary shall attend all meetings of the Association and shall record the minutes of all proceedings in the record book of the Association and perform like duties for committees when required (the "**Secretary**"). The Secretary shall keep the Record Books current, shall give notice of all meetings of the Association, and committees, and shall perform such other duties as may be prescribed by the President. The Secretary shall compile and keep current, a complete list of the Unit Owners and their last known designated addresses as well as the Record Book of the Association. This list of Unit Owners shall be open to inspection by all Unit Owners and other persons lawfully entitled to inspect the same, at reasonable hours during regular business days and upon reasonable advance notice.

4.6 **Treasurer**. The Treasurer shall have the custody of all funds of the Association, shall keep full and accurate records of the receipts and disbursements, prepare all required financial data, and deposit all monies and other valuable effects in such depositories as may be designated by the Unit Owners (the "**Treasurer**"). The Treasurer shall disburse the funds as ordered by the Board of Directors and render to the President and the Board of Directors, at the regular meetings

of the Unit Owners or whenever they may require it, an account of all transactions and of the financial condition of the Association.

4.7 **Agent for Service of Process**. Any officer of the Association is a suitable person to receive service of process in any proceeding against the Association. For the purpose of receipt of notification by a municipality of local land use board hearings, the Officers shall be responsible for serving as agents of the Association.

4.8 **Standard of Care**. Officers appointed by the Declarant shall exercise the degree of care and loyalty to the Association required of a trustee. Officers not appointed by the Declarant shall exercise the degree of care and loyalty to the Association required of an officer of a corporation organized under RSA 292 and are subject to the conflict of interest rules governing officers under RSA 292. The standards of care and loyalty described in this Section apply regardless of the form in which the Association is organized. Subject to this standard of care and loyalty, the Owners shall and hereby indemnify and hold harmless each of the Officers from and against all contractual liability to others arising out of contracts made by the Officers on behalf of the Owners unless any such contract shall have been made in bad faith, violates this standard of care. The Officers are not to be personally liable (except as Owners) with respect to any contract made by them on behalf of the Owners, unless made in violation of this standard of care or due to willful negligence or misconduct. Every written agreement made by any Officer on behalf of the Owners shall, if such agreement allows, provide that the Officers are acting only as agents for the Owners, and the person executing the contract shall have no personal liability thereunder (except as Owners). The Association shall indemnify any person who was or is a party, or who is threatened to be made a party, to any threatened, pending, or completed action, suit, or proceeding, whether or not based in contract, by reason of the fact that such person is or was an Officer of the Association, against expenses (including reasonable attorney's fees), judgments, fines, and amounts paid in settlement (together "**Costs**") incurred by such person in connection with such action, suit, or proceeding, unless the claim for such Costs arose in connection with or resulted from an action or inaction by the Officer that violated the standard of care, is in bad faith, or due to willful negligence or misconduct.

4.9 **Agreements, Contracts, Deeds Checks**. All agreements, contracts, deeds, leases, checks, and other instruments to which the Association is a party shall be executed by the President as to those matters within the powers of the office, and otherwise by any person or persons lawfully designated to do so by the Association.

4.10 **Compensation of Officers**. No Officer shall receive, directly or indirectly any salary or compensation from the Association for acting as such, and shall not in any other way benefit from service to the Association.

ARTICLE 5

MANAGER

5.1 The Board of Directors may employ, or contract with, a manager or management firm ("**Manager**") for a fee or compensation established by the Board of Directors and approved

by the Investor Limited Partners and Eligible Mortgagees, to perform any or all of the duties and responsibilities to be performed by the Board, as the Board may authorize. If the Association or Board of Directors has delegated certain powers and duties to a managing agent, the Manager shall disclose any referral fees received from contract work performed on behalf of the Association to the Board of Directors prior to the next regularly scheduled Board meeting, unless the terms of any referral fees are disclosed in the Manager's contract with the Association, in which case disclosure of fees actually received shall not be required.

5.2 The Manager also shall disclose to the Board of Directors the amount and purpose of any fees, other than maintenance fees, received from a Unit Owner, unless the terms of any such fees are disclosed in the Manager's contract with the Association, in which case disclosure of fees actually received shall not be required.

5.3 Any contractor licensed by the state of New Hampshire who performs work for a Unit Owner shall disclose on the bill any referral fee paid by the contractor.

ARTICLE 6

SALES, LEASES, AND ALIENATION OF UNITS

6.1 **No Severance of Ownership**. No Unit Owner shall execute any deed, lease, mortgage, or instrument conveying or mortgaging the title to a Unit without including the undivided interests of such Unit in the Common Areas, and all other rights and obligations of the Unit Owner, as set forth in the Declaration, it being the intention of this sentence to prevent any severance of such rights. Any such deed, lease, mortgage, or other instrument purporting to affect one or more of such interests, without including all such interests, shall be deemed and taken to include the interest or interests so omitted, even though the latter shall not be expressly mentioned or described in the instrument. Except to the extent otherwise expressly provided by the Declaration, these Bylaws, or Condominium Act, the undivided interests in the Common Areas allocated to any Unit shall not be altered.

6.2 **Payment of Assessments**. No Unit Owner shall be permitted to convey, mortgage, sell, lease, give, or devise that Owner's Unit unless and until that Unit Owner shall have paid in full, all unpaid Common Expenses assessed to date by the Association with respect to said Unit.

6.3 **Transfer of Units**. The purchaser of a Unit or portion of a Unit shall be jointly and severally liable with the transferring Unit Owner for all unpaid assessments against the Unit up to the time of conveyance without prejudice to the acquiring Unit Owner's right to recover from the transferring Unit Owner such amounts paid by the acquiring Unit Owner. However, as provided in Section 46 of the Condominium Act, any such acquiring Unit Owner may request a recordable statement from the Association setting forth the amount of the unpaid assessments against the Unit, and such acquiring Unit Owner shall not be liable for, nor shall the Condominium Unit be conveyed subject to, a lien for any unpaid assessments in excess of the amount set forth in such statement. The Association may charge up to the maximum fee allowable under the Condominium Act as a prerequisite for issuance of such a statement.

ARTICLE 7

AMENDMENT TO BYLAWS

7.1 **Amendments**. Except as otherwise provided in the Condominium Act and the Declaration, these Bylaws may be modified or amended either by (i) vote of Unit Owners holding TBD Ownership Interests in the Condominium, cast in person or by proxy at a meeting duly held in accordance with the provisions of these Bylaws, provided that a copy of the proposed amendment shall have been included with the notice of such meeting, or (ii) pursuant to a written instrument or instruments duly executed by all Unit Owners holding Ownership Interests in the Condominium and with the consent of each Investor Limited Partner and Eligible Mortgagee. The President of the Association shall have the authority to execute and record all Amendments to these Bylaws which were lawfully accepted

7.2 **Recording**. A modification or amendment of these Bylaws shall become effective only when it has been duly evidenced and recorded in accordance with the provisions of Section 34(IV) of the Condominium Act.

7.3 **Conflicts**. No modification or amendment of these Bylaws may be adopted (a) which shall be inconsistent with the provisions of the Condominium Act or with the provisions of the Declaration, (b) which purport to impose any new obligations on or to limit or alter any rights or privileges of the Declarant under the Condominium Instruments without the consent of the Declarant, or (c) which impose any materially greater obligation on, or materially impair the rights of a Unit Owner, without the consent of such Unit Owner and its Investor Limited Partner and Eligible Mortgagees.

ARTICLE 8

NOTICE

8.1 **Manner of Notice**. All notices required or provided for under these Bylaws shall be given in the same manner as is provided for notices in the Declaration.

8.2 **Waiver of Notice**. Whenever any notice is required to be given under the provisions of the Condominium Act, the Declaration, or these Bylaws, a waiver in writing, signed by the person or persons entitled to such notice, shall be deemed equivalent to notice given.

ARTICLE 9

MISCELLANEOUS PROVISIONS

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

9.2 **Severability**. In case any of the Bylaws are in conflict with any provisions of the

Condominium Act, or the Declaration, the contrary provisions of the Act and the Declaration will control in that order of priority. If any provisions of these Bylaws or any Section, sentence, clause, phrase or word is held invalid, the validity of the remainder of these Bylaws shall not be affected and to this end, the provisions of these Bylaws are declared to be severable.

9.3 **Waiver**. No restriction, condition, obligation or provision of these Bylaws shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

9.4 **Interpretation**. The Rules of Construction and Interpretation set forth in the Declaration shall apply to these Bylaws.

9.5 **Governing Law**. These Bylaws shall be governed and interpreted in accordance with the laws of the State of New Hampshire.

9.6 **Condemnation**. The Unit Owners' Association shall act on behalf of each Unit Owner in condemnation proceedings against the Common Areas of the Condominium.

9.7 **Dispute Resolution**. In the event of any disagreement, controversy, dispute, or stalemate in, or the action or inaction of any Unit Owner hereunder (an "**Owner Disputed Matter**"), the Unit Owners shall first endeavor to resolve each Owner Disputed Matter by good faith discussions between themselves; provided, however, that a written summary of the nature and status of any such Owner Disputed Matter shall be provided to each Investor Limited Partner and Eligible Mortgagee. In the event that such discussions do not result in a resolution after good faith efforts for a reasonable length of time, the Unit Owners shall utilize the services of an impartial mediator in an effort to reach a mutually acceptable resolution. If an Owner Disputed Matter has not been resolved within thirty (30) days after the commencement of such mediation, either Unit Owner may submit the Owner Disputed Matter to arbitration. Any award or decision obtained from any such arbitration proceeding shall be final and binding on the parties, and judgment upon any award thus obtained may be entered in any court having jurisdiction thereof.

APPENDIX C

ALLOCATION OF OWNERSHIP INTERESTS, VOTES IN ASSOCIATION

UNIT IDENTIFIER	VALUE POINTS	PERCENTAGE OF OWNERSHIP INTEREST IN COMMON AREA AND NUMBER OF VOTES
Unit 1	100	25%
Unit 2	100	25%
Unit 3	100	25%
Unit 4	100	25%

APPENDIX D

DESCRIPTION OF CONVERTIBLE LAND

All Common Area minus all Limited Common Area

APPENDIX E

DESCRIPTION OF WITHDRAWABLE LAND

[Same as Convertible Land]

APPENDIX F

DESCRIPTION OF SUBMITTED LAND TO WHICH OPTION TO CONTRACT DOES NOT EXTENT
(All Units and Limited Common Area)