

July 22, 2021

**COMMENTS FROM DURHAM TOWN PLANNER**

Return to:  
Donahue, Tucker & Ciandella/SAC  
111 Maplewood Avenue  
Portsmouth, NH 03801

**DECLARATION  
FOR  
THE CROSSINGS CONDOMINIUM  
DURHAM, NEW HAMPSHIRE**

**TABLE OF CONTENTS**

	PAGE NO.
<b><u>Recitals</u></b>	
Article 1. Name of Condominium .....	2
Article 2. Location .....	2
Article 3. Description of Property.....	2
Article 4. Development Plan.....	2
Article 5. Contractable/Withdrawable Land .....	3
Article 6. Division of Property.....	3
Article 7. Description of Unit Boundaries .....	3
Article 8. Common Areas .....	3
Article 9. Allocation of Undivided Interests (Common Interests).....	4
Article 10. Parking .....	4
Article 11. Conservation Restrictions Applicable to Open Space .....	5
Article 12. Elderly Housing .....	7
Article 13. Easements .....	9
Article 14. Use of Condominium and Each Unit .....	9
Article 15. Enforcement of Restrictions .....	11
Article 16. Insurance .....	11
Article 17. Restoration Following Casualty .....	13
Article 18. Condemnation .....	14
Article 19. Amendments to the Condominium and Termination .....	14
Article 20. Mortgagee Provisions .....	14
Article 21. Declarant's Reservation of Rights .....	16
Article 22. Definitions .....	17
Article 23. Partial Invalidity .....	17
<b><u>Exhibits</u></b>	
Exhibit A Legal Description of Submitted Land	
Exhibit B Table of Common Interest	
Exhibit C The Crossings Condominium By-Laws	
Exhibit D Stormwater Management Manual	

Exhibit E Mortgagee's Joinder  
Exhibit F Legal Description of Withdrawable Land

## THE CROSSINGS CONDOMINIUM DECLARATION

THIS CONDOMINIUM DECLARATION dated this \_\_\_\_ day of \_\_\_, 202\_\_, by **MICHAEL J. MULHERN AND MARTHA A. MULHERN**, husband and wife, with an address of 91 Bagdad Road, Durham, New Hampshire 03824 (hereinafter referred to as "Declarant").

**SUBMISSION OF PROPERTY:** The Declarant hereby submits its ownership in fee simple in a parcel of land being a nineteen (19) unit condominium located on Gerrish Drive *note that the name of the street remains to be determined* in the Town of Durham, County of Strafford, State of New Hampshire, and more particularly described in **Exhibit "A"** attached hereto and made a part hereof (hereinafter referred to as the "Land"), all improvements heretofore or hereafter constructed thereon, and all easements, rights and appurtenances thereto (hereinafter, together with the Land, referred to as the "Property") to the provision of the Condominium Act of the State of New Hampshire, Chapter 356-B of the Revised Statutes Annotated (hereinafter referred to as the "Act" or the "Condominium Act"), in order to create a condominium with respect to the Property.

Reference is made to the Condominium Site Plan, entitled "\_\_\_\_\_", prepared by MJS Engineering, P.C., *changed to Horizons Engineering* dated \_\_\_\_\_ and recorded in the Strafford County Registry of Deeds as Plan No. \_\_\_\_\_ (hereinafter referred to as "Site Plan").

The Declarant hereby declares and agrees that the Property is and will be held, conveyed, encumbered, used, occupied and improved subject to the terms of this Declaration, all of which shall constitute covenants running with the Property and shall be binding on and for the benefit of the Declarant and its respective successors in interest, including all persons acquiring interests in any condominium unit or units.

**ARTICLE 1. NAME OF CONDOMINIUM:** The condominium established hereby shall be known as **THE CROSSINGS CONDOMINIUM**.

**ARTICLE 2. LOCATION:** The condominium is located on Gerrish Drive in the Town of Durham, County of Strafford, State of New Hampshire.

**ARTICLE 3. DESCRIPTION OF PROPERTY:** The property submitted to the condominium is described in **Exhibit "A"** attached hereto and made a part hereof.

**ARTICLE 4. DEVELOPMENT PLAN.** The Property is designed and intended for use as a pocket subdivision *pocket neighborhood is probably a better term* to be served by a private

road, replicating the concept of a town green with houses surrounding a central pocket of common area that may be used by residents, guests and invitees for recreation and community activities. Additionally, a significant portion of the Property will permanently be subject to restrictions preventing building or improvements. This area will be known as the Open Space Area and will be available for use and enjoyment by residents, guests and invitees. The Open Space Area will also be available for use by the public subject to the provisions of Article 11.

**Something should be included about trash and recycling. It will not be provided by the Town of Durham.**

**Something should be said about the shared post office boxes**

**There should be a very prominent note, probably near the beginning, stating that the roads and infrastructure are private and are owned and maintained by the homeowners.**

**Some level of house/architectural standards will be needed. When will these be prepared? How will they be administered?**

**ARTICLE 5. CONTRACTABLE/WITHDRAWABLE LAND.** Pursuant to the provisions of RSA 356-B:26, this condominium may be contracted by the Declarant, or their successors and assigns. If the option to contract the condominium is exercised, no consent is required from any unit owner. The Declarant, their successors and assigns, shall have up to seven (7) years in which to exercise the option to contract, however, this period of time may be extended with an amendment adopted pursuant to the provisions of RSA 356-B:54,V. A legal description of the land which may be withdrawn (the “Withdrawable Land”) is set forth in Exhibit F of this Declaration. The Withdrawable Land will have a 1/19 interest in the common area but will not be subject to any of the obligations under the Declaration, including payment of assessments. Further, the Withdrawable Land will not enjoy any of the rights and privileges set forth in the Declaration, including, but not limited to, voting on Association matters and use of common area. **I suggest specifying which unit this is here – presumably the existing house and that house only - and providing a clear explanation of what this means. Note that approval from the Town of Durham may be needed for the change. Shouldn’t you say if the house is withdrawn everybody else will then have a 1/18<sup>th</sup> interest?**

**ARTICLE 6. DIVISION OF PROPERTY:** The property, together with all buildings and improvements thereon, is hereby divided into nineteen (19) separate freehold condominium units. The condominium consists of land and nineteen (19) residential structures to be constructed, to be referred to as Units 1 through 19, and labeled as Units 1 through 19 on the Site Plan.

**ARTICLE 7. DESCRIPTION OF BOUNDARIES OF UNITS:** The Units shall be Land Units, the vertical boundaries being coextensive with the area identified as such Unit on the Plan and the horizontal boundaries being from the center of the earth to the upper edge of the

atmosphere and includes the entirety of any existing building, any additional buildings or improvements, including, but not limited to, driveways, to be constructed on the land, and includes all rights above the land and any existing building and improvements or any building or improvements constructed within the Land Unit. For the purposes of RSA 356-B, the Condominium Plan shall serve as the Floor Plan for each Land Unit declared herein. In the event a building is constructed within the Land Unit, upon completion of the foundation, a Floor Plan, certified as required by RSA 356-B:20 shall also be recorded, however the boundary of the Land Unit shall remain the unit boundary.

**Are the land units owned? What rights attach to them? Who controls them? Who maintains what? Who is responsible for landscaping within each land unit?**

**Will need to show all land units on the plans**

**How is maintenance handled for duplex units? Who owns what?**

**ARTICLE 8. COMMON AREAS:** The Common Area consists of all areas and improvements that are not included within or defined as part of the units. Common area shall also include all other parts of the Condominium, including personal property acquired by the Association, necessary or convenient to its existence, maintenance and safety or normally in common use, and including any easements serving the Property. Subject to the provisions of Article 7 set forth below, nothing shall be altered, constructed in or removed from the Common Area without the prior written consent of the Association.

SECTION A. Common areas include, but are not limited to, the following:

1. The private roadway as depicted on the Site Plan;
2. All drainage ~~and detention~~ structures, *if any*;

**Include all other private infrastructure on the property serving the condominium**

3. The area shown abutting the private roadway; **What does this mean?**
4. The area marked as “Crossings Green” on the Site Plan which is intended for use solely by the Unit Owners, guests and invitees for recreational and community activities; **This is not marked on the plans**
5. The water, sewer, electric, telephone and any of the utility systems serving the Condominium to the extent that such systems are located within the Property, are not contained within and serving only one Unit, and are not owned by the supplier of the utility service, however, ..... (insert Mike Sievert language) **This is very confusing**

**Include the bulk of the open space as well**

SECTION B.

1. The Association of Unit Owners shall be responsible for maintaining the Common Areas, except as otherwise provided in the Condominium Instruments:

2. The Association shall maintain, repair and replace the private roadway. **and all attendant infrastructure supporting the roadway, including but not limited to culverts, arches, retaining walls, ditches, swales, and other drainage structures**

3. The Association shall maintain, repair and replace the drainage ***and detention*** structures shown on the Site Plan.

**ARTICLE 9. ALLOCATION OF UNDIVIDED INTERESTS (“COMMON INTERESTS”):** There is hereby allocated to each Unit an undivided interest in the common areas as set forth on **Exhibit "B"** attached hereto and made a part hereof, under the column "Common Interest". Said undivided interest appurtenant to each Unit is herein called the "common interest". The interest appurtenant to each Unit shall be 1/19 for each Unit. The common interest appurtenant to each Unit will have a permanent character and shall not be altered without the consent of the owner of each Unit affected thereby. The common interest appurtenant to each Unit will not be separated from said Unit even though not expressly mentioned or described in the conveyance or other instrument. The common areas will remain undivided and no right shall exist to partition or divide any part thereof except as may be provided in the New Hampshire Condominium Law.

**ARTICLE 10 PARKING:** Subject to regulation by the Association of Unit Owners, the owner of each unit shall have the right to park personal vehicles registered with the appropriate authorities in the proposed driveway associated with his/her Unit as shown on the Site Plan. However, Unit Owners and their guests may not park unregistered vehicles, boats, RV's, or other camping trailers in for any time period longer than twelve (12) consecutive hours. Any unregistered vehicles parked in any unauthorized area may be towed from the Condominium at the Unit Owner's expense.

**ARTICLE 11. CONSERVATION RESTRICTIONS APPLICABLE TO OPEN SPACE:**

The Declarant declares that the Open Space Area (“Open Space”) as shown on the Condominium Site Plan are to remain in their natural state for the purpose of protection from further development and protection of the habitat of the existing vegetation and wildlife.

1. USE LIMITATIONS:

A. The Open Space shall be maintained in perpetuity as open space. It shall be managed in its natural state, without there being conducted thereon any industrial, commercial or residential activities except as described below.

B. The Open Space shall not be subdivided.

C. Subject to the permitted activities set forth in Section 2 herein, no changes in topography, surface or sub-surface water systems shall be allowed that would harm state or federally recognized rare or endangered species or that would alter the natural habitat of the existing vegetation and wildlife. Otherwise, none of the aforementioned shall be allowed except as necessary in the accomplishment of the habitat management or conservation uses of the Open Space.

D. The Open Space shall be open to the public, as well as Unit Owners and others specified in Section 2.B below.

E. No outdoor advertising structures such as signs and billboards shall be displayed on the Open Space except those which are necessary in the accomplishment of the conservation restrictions and habitat protection of the Open Space and provided that they are not detrimental to the purposes of these restrictions.

F. There shall be no mining, quarrying, excavation or removal of rocks, minerals, gravel, sand, topsoil, or such other materials on the Open Space. No vegetation removal shall be allowed unless such action is to remove dead, dying, dangerous, toxic, invasive or diseased plants.

G. There shall be no activities, actions or uses detrimental to water conservation, erosion control, soil conservation and wildlife habitat.

H. There shall be no dumping, injection, burning or burial of man-made materials or materials known to be environmentally hazardous, including vehicle bodies or parts.

I. Pursuant to NHDES Subsurface Subdivision Permit and Env-WQ 1005.04(d), the area contained within the open space area shall not be further used for sewage loading outside of this dedicated condominium. *What does this mean?*

J. No structure or improvements such as dwellings shall be constructed, placed or introduced onto the Open Space except those which may be shown on the approved plans, *plans approved by the Town of Durham as part of this subdivision*

*You might allow for one or more accessory support structure, like an equipment shed with none more than 200 square feet (allowed per the Conservation Subdivision ordinance).*

## 2. Permitted Activities

Notwithstanding anything to the contrary contained herein, the following activities shall be permitted on the Open Space.

A. Dead, diseased or invasive species of vegetation may be removed. *Use same description as F. above*

B. The Open Space may be used by the public, Declarant, its successors, assigns, and Unit Owners and guests and invitees, for walking, cross-country skiing, snowshoeing and other recreational activities provided that recreational activities do not alter the natural habitat of the existing vegetation and wildlife. No motorized vehicles will be allowed in the Open Space. The Association may post appropriate signage to indicate that the Open Space is open to the public but that all other portions of the Property may not be used by the public. In the event any new trails are proposed to facilitate these permitted activities then the Association is encouraged to contact New Hampshire Fish and Game prior to installation to discuss whether the proposed location of the new trails will have a negative impact on the natural habitat of the existing wildlife. Users of the Open Space shall, at all times, comply with the rules and regulations adopted by the Association regarding its usage. The Association reserves the right to post a portion or all of the Open Space, temporarily or permanently, in the event public access proves detrimental to the open space and conservation value of the open space area, or, to the health and safety of the residents of the non-open space area owned by the Association or the Unit Owners.

## 3. Enforcement

A. The Condominium Association shall regularly monitor the Open Space and all of its parts for such inspection as is necessary to determine compliance with and enforcement of these restrictions.

B. The Condominium Association shall adopt appropriate rules and regulations to ensure that the public, the Unit Owners, guests and invitees adhere to the conservation restrictions contained herein. Enforcement of the conservation restrictions against any person or persons violating the restrictions shall be implemented by the Condominium Association as part of their enforcement authority under the Declaration and Bylaws of the Condominium.

C. The conservation restrictions contained herein may not be amended. All Units within the Condominium shall be conveyed subject to the Conservation Restrictions described herein, and such Conservation Restrictions shall be binding on all successors and assigns of each Unit.

*Here are two excerpts from the Conservation Subdivision ordinance we will need to discuss:  
Appropriate legal mechanisms for the on-going maintenance and stewardship of the*

common open space shall be established, including the creation of a stewardship account or payment to the Town's Stewardship Fund as set forth in the Subdivision Regulations, subject to approval by the Planning Board as part of the approval of the subdivision in accordance with the Subdivision Regulations.

175-108. Stewardship Fund.

Payments to the Town to provide for the periodic monitoring of conformance with the conservation restrictions on common open space shall be deposited in the Town's Stewardship Fund. The Stewardship Fund shall be maintained as a separate trust account and shall be used only for the monitoring of conservation restrictions. The use of the Fund shall be managed by the Town's Conservation Commission. The Commission shall provide the Town Council with an annual accounting of the use of the fund. At its discretion, after consulting with the Conservation Commission, the Planning Board may approve an alternative arrangement to the stewardship fund as described here.

Here are excerpts from the Subdivision Regulations:

B. Executory Interest. If any common open space will be owned by a homeowners or community association or a private landowner, the owner(s) shall convey an executory interest with power of termination to the Town of Durham

C. Conservation Provisions. The common open space shall be protected from development or intensive use and shall be maintained as undeveloped open land and/or active or passive recreation land but may include other support uses as provided for in 175-107 of the Zoning Ordinance and approved by the Planning Board as part of the approval of the subdivision. Permanent conservation restrictions shall be established, subject to approval by the Planning Board, to assure that the future use and maintenance of the common open space is consistent with the subdivision approval. These provisions may include deed restrictions or covenants, conservation easements, the sale or transfer of development rights, or other legal mechanisms approved by the Planning Board.

D. Stewardship Provisions. Legally binding provisions shall be established in the conservation restriction tool (e.g., deed, easement) for the periodic monitoring of the use and maintenance of the common open space to ensure that the terms of the restrictions are being met. The monitoring shall occur at least once every two years on an ongoing basis. The party or organization designated to conduct the monitoring shall be qualified in land conservation and resource management, shall have an established record in land management or the oversight of conservation easements or

**restrictions, shall be willing to assume the review obligation, and shall be subject to approval by the Planning Board. The stewardship arrangements shall provide for the enforcement of the conservation provisions by the Town of Durham against the owner of the property if the reviewer finds that the conservation provisions are not being met and for the ability of the Town to charge the owners of the property with the costs of enforcement of the provisions.**

**E. Stewardship Account. A Stewardship Account shall be established by the applicant for all land with conservation restrictions and shall be held and managed by the property owner or grantee. The purpose of this account shall be to pay the costs of the biennial monitoring. If the Town holds an executory interest in a property with conservation restrictions or is asked to take ownership of a property, the applicant shall place a sum of money in the Town's Stewardship Fund the amount of which shall be determined by the Planning Board based upon the fee schedule established by the Town Council. Prior to release of the approved plan, the applicant shall provide the Director of Planning and Community Development with evidence that the Stewardship Account has been established and funded, or that full payment has been made to the Town's Stewardship Fund.**

## **ARTICLE 12. ELDERLY HOUSING**

SECTION A. The 19 units declared hereunder are designated as "Elderly Housing". Under RSA 354-A:15, as it may be amended from time to time, and applicable Federal law, it is housing intended for and occupied by at least one person 55 years of age or older per unit and is exempted from the anti-discrimination laws. Under the Town of Durham Zoning Ordinance, the units declared hereunder qualify as elderly housing (also referred to as "Senior Housing" in the Town of Durham Zoning Ordinance). **Do you want to limit the existing house to be senior housing**

1. In addition to the restrictions on use and occupancy otherwise provided hereunder, the Declarant hereby establishes certain special use and conveyancing restrictions pertaining to the units declared hereunder, as follows:
  - a. The use and occupancy of 100% of the units be by at least one person age 55 or older. Provided however, that the following conditional exceptions shall apply:
    - (1) In the event of the death of one occupant which shall result in the use and occupancy by person(s) who have previously occupied that unit and who are less than 55 years of age, such occupancy shall be allowed to continue until the next conveyance or transfer of the record title to that unit at which time the use and occupancy by at least one person age 55 or older must be re-established.

- (2) In the event of a) divorce, b) legal separation, or c) abandonment by a person in a relationship with the other occupants of a unit which shall result in the use and occupancy by person(s) who have previously occupied that unit who are less than 55 years of age, such occupancy shall be allowed to continue until the next conveyance or transfer of the record title to that unit, at which time the use and occupancy shall be by at least one person age 55 or older must be re-established.
  - (3) The term “abandonment” shall mean an uninterrupted and permanent cessation of occupancy and residency. The terms “person in relationship with other occupants of a unit”, shall mean either a person who has a direct familial relationship with any other occupant, or who has cohabited with another person in common residency.
  - (4) The occupants of any unit who shall claim entitlement to this exception shall be required to file an Affidavit with the Board of Directors of the Association, and the Town of Durham attesting to the fact that the initial occupation was established in conformity with the age 55 condition and that events have occurred since that time which entitle those occupants to qualify the unit under this exception. The Affidavit shall be signed under penalties of perjury.
- b.*** No rental, lease or other tenancy shall be made or entered into unless at least one of the Lessees occupying the unit shall be at least 55 years of age or older and unless such rental, lease or tenancy shall be for a period of at least six (6) months. ***This is confusing. Isn't this two separate requirements?***
  - c.*** Except as provided under 1.a above, no guest(s) or other invitee(s) under the age of 55 years of age shall be permitted to occupy any unit for a period of more than one (1) month unless at least one person age 55 or older shall also inhabit the unit at the same time as such guest, invitee or relative.
  - d.*** The above restrictions shall be binding upon the Declarant, the Declarant's Grantees and shall run with the unit as a permanent restriction until and unless at least 75% of the unit owners within the Condominium shall vote to eliminate these restrictions, and the appropriate Board(s) or Agency(ies) within the Town shall have approved elimination of such zoning designations by reason of a change to the Zoning Ordinance which would allow for such elimination. Any such documents effecting such an elimination shall be recorded at the Strafford County Registry of Deed.

In the event of a violation of any of the conditions set forth in Section A(1) above, the Declarant or the Association or the Town of Durham shall, after a thirty (30) day written notice to cease the violation, enforce the age restriction in any Court of competent jurisdiction. The Court shall have the ability to enforce all equitable or legal remedies deemed appropriate,

including but not limited to the requirement that the unit be sold or where appropriate, person(s) be evicted. All costs, including legal fees shall be recoverable by the successful moving party against the unit owner, and shall be deemed a charge against the unit, recoverable by the Association as a lien under the By-laws and this Declaration, which in the event that the Town shall be the moving party shall be reimbursable to the Town.

Furthermore, in the event that the occupancy of any unit shall be established in apparent conformity with this Declaration, but which occupancy was not intended for permanent qualification, but rather as subterfuge, the above remedies shall apply and be available. An example of an instance where this provision would apply would be any circumstance where a unit is initially occupied for a short period of time, by a person aged 55 or older, who then moves out, leaving occupants of school or college age as occupants, without a resident age 55 or older, or any equivalent or similar circumstance, or any circumstance which is determined to be a willful attempt to evade the purposes of the above age restrictions.

## SECTION B: ELDERLY SERVICES

Pursuant to RSA 354-A:15, IV(a), the Declarant hereby establishes and declares that as part of this Condominium, the Declarant or the Board of Directors of the Association, shall make available to the Unit Owners services which the Unit Owners determine will assist with meeting the physical or social needs of older persons. **This is ambiguous. Will services be provided or only a list of services in the area?**

## **ARTICLE 13. EASEMENTS:**

SECTION A. Each unit shall have appurtenant thereto non-exclusive easements in the Common Areas designed for such purposes for ingress to, egress from, and utility services for such Unit, and in the other common areas for their use according to their respective purposes. If any Unit or Common Area encroaches on any other Unit or Common Area, a valid easement for such encroachment and the maintenance and use thereof so long as it continues shall exist;

SECTION B. To the extent permitted by the Act, Section 42, II, as amended from time to time or any successor statute, the Association of Unit Owners shall have the irrevocable power as attorney in fact on behalf of all of the Unit Owners and their successors in title to grant easements through the Common Areas and accept easements benefitting the Condominium or any portion thereof;

SECTION C. Declarant hereby expressly reserves the right to grant easements to the owners of abutting property, as well as to the Town of Durham, private utilities, electric utilities or gas line utilities, telephone utilities or cable utilities, and any other utilities over, under and through the common area of the Condominium for whatever use may be made thereof. Consistent with the Declarant's reserved rights set forth in Article 19 to construct, market and sell the Units, and notwithstanding any termination of Declarant's interim control as set forth in Article 5 of the Bylaws, the Declarant may grant such easements up to the time when the last unit is sold and the Declarant need not obtain the consent of the Unit Owners.

SECTION D. With regard to the portions of the Common Area subject to open space restrictions described above in Article 6, and notwithstanding any provisions to the contrary, the Declarant's reserved rights, as well as the rights of the Association of Unit Owners referenced above, may be exercised, provided that the grant of any easements shall be approved by the Town of Durham, which approval shall not be unreasonably withheld.

**ARTICLE 14. USE OF CONDOMINIUM AND EACH UNIT:** The use of each Unit and the Common Areas shall be subject to all of the following rules and restrictions:

SECTION A. Units shall be used solely for residential purposes and uses accessory thereto permitted from time to time by the zoning ordinances of the Town of Durham. The Common Area shall not be used in a manner which is inconsistent with the residential character of the Condominium.

SECTION B. Livestock, poultry and animals other than domesticated household pets are not permitted. No more than three (3) domesticated household pets are permitted, subject to the understanding that their owners shall strictly comply with all rules and regulations concerning pets as may be adopted by the Association. No animals of any kind may be bred or kept for any commercial purpose.

SECTION C. No more than (a) five people related by blood or marriage or (b) three unrelated persons may reside in one Unit at any one time, unless otherwise permitted by the Association of Unit Owners. **The zoning ordinance does not allow more than 3 unrelated people in a unit in this zone**

SECTION D. No noxious or offensive activity which may disturb the occupants of any Unit shall be allowed. The Association of Unit Owners, by and through its Board of Directors, may adopt detailed rules and regulations for the use and enjoyment of the Common Areas, for avoiding noxious or offensive activity which may disturb the occupants of any Unit, and for the occupants of any Unit, and for the general governing of the Condominium, consistent with, and not in conflict with, this Declaration and the By-Laws. All Unit Owners and their tenants, guests and licensees will strictly comply with said rules and regulations. The Association of Unit Owners, by and through its Board of Directors, may enact a schedule of fines and penalties associated with the enforcement of the Declaration, By-Laws, and any rules and regulations.

SECTION E. Each Unit must maintain and keep in good order the siding, roofing, doors, windows, stairways, walkways, porches, yards, decks, driveways and other appurtenances to the Unit. The cost of all maintenance and repair of the Unit shall be the responsibility of the Unit Owners.

SECTION F. No Unit Owner may change or alter the Common Areas.

SECTION G. The architectural integrity of the structures within the Units shall be preserved, and to that end, no Unit Owner shall change, in any way, the exterior appearance of any structure within the Unit in the Condominium without the Association's prior consent and approval in writing. No awnings, antennas, and no exterior change, addition, structure, projection, decoration or other feature which is visible from the exterior of such structure shall be erected or placed upon the Common Area or attached to the Unit, or any part of either, unless previously approved by a vote of the Board of Directors in writing. This subparagraph, however, shall not restrict the right of the Unit Owners to decorate the interiors of the Unit as said Unit Owners may desire.

SECTION G. Nothing shall be done or kept in any Unit or in the Common Areas which will increase the rate of insurance in the Common Areas without the prior written consent of the Board of Directors. No Unit Owner shall permit anything to be done or kept in his/her Unit or in the Common Areas which will result in the cancellation of insurance of any Unit or any part of Common Areas of which would be in violation of any law. No waste shall be permitted in any Common Areas.

SECTION H. The Unit Owners may lease their Condominium Units so long as the tenants thereof occupy and use the leased premises in accordance with the provisions of the Condominium Instruments and such leases have a term of one (1) year or more. The Unit shall only be occupied by tenant and tenant's immediate family. Only one family per Unit shall be permitted to lease the Units. If a tenant's activities have been deemed by the Board of Directors to interfere with the other Unit Owners' use and enjoyment of their Units, or if the tenant is in violation of the Condominium Instruments, by a majority vote of the Board of Directors, the Board of Directors may terminate the lease and institute eviction proceedings in the name of the Unit Owner and at the Unit Owner's expense.

**ARTICLE 15. ENFORCEMENT OF RESTRICTIONS.** If any person or entity shall violate or attempt to violate any of the rules or restrictions set forth in this Declaration, in the By-Laws or in any rules or regulations adopted by the Association of Unit Owners, the Association may commence legal action against said person or entity or against the owner(s) of any Units within which such violation is occurring, either to prevent or abate such violation, or to recover damages caused by such violation or both. In the event of a successful prosecution, the Association of Unit Owners will be entitled to receive its costs, including reasonable attorney's fees, as part of its judgment against the defendant.

If the Association of Unit Owners shall fail to enforce this or any one or more of the covenants set forth in this Declaration or any rule contained in the By-Laws or any rules of the Association of Unit Owners after receiving written request to do so from any Unit Owner within the Condominium, then any such Unit Owner may attempt to enforce said requirements by giving 10 days' prior written notice to the person violating them, followed by legal proceedings either to enjoin the violation or to recover damages or other compensation, including reasonable collection costs and attorney's fees if the court deems it appropriate under the circumstances.

Notwithstanding anything in this Declaration or in the By-Laws to the contrary, no Unit Owner shall be liable for any violations except such as occur during his or her Unit ownership.

**ARTICLE 16. INSURANCE.** As directed below, the Board of Directors, or the owners as indicated, shall obtain and maintain at all times insurance of the type and kind and in the amounts hereafter provided, and including insurance for such other risks of a similar or dissimilar nature as are or shall hereafter customarily be covered with respect to other

condominium projects similar in construction, design and use, which insurance shall be governed by the provisions of this section.

SECTION A: Each owner must obtain and pay for fire and casualty insurance for each Unit. The Board of Directors, in conjunction with their review authority referenced in Section D below, have the authority to require that fire and casualty insurance coverage be provided through a master policy. Each Owner shall provide the Board of Directors with evidence of such insurance annually by February 1 of each year or within thirty (30) days of any change of ownership and annually by February 1 thereafter. The Unit Owner's insurance coverage shall cover fire and casualty loss on the unit for at least 100% of the replacement value, as well as use and extended loss of occupancy coverage, which shall give protection to the Unit Owners, and their mortgagees, as their respective interests exist, which policy or policies shall provide for a separate loss payable endorsement in favor of the mortgagee, or mortgagees, of each Unit, if any. The Association shall be listed as an additional insured on the Unit Owner's insurance policy and the Association shall be provided with thirty (30) days' notice prior to any cancellation of the policy. If an Owner fails to secure such insurance in an amount satisfactory to the Association, the Board may purchase insurance or additional insurance on said Unit and shall charge the premium therefor against the Unit, which shall constitute an assessment against the Unit, which shall be enforceable against the Owner of said Unit, and which shall constitute a lien on said Unit should the Board record such lien at the Strafford County Registry of Deeds.

1. Each unit owner shall be responsible for obtaining separate insurance coverage, commonly known as a "unit owner's policy," which shall provide coverage for the individual unit and personal possessions of the unit owner and such other coverage as is typically provided by such a policy.

SECTION B. For the benefit of the unit owners, the Board of Directors shall obtain and maintain at all times, and shall pay out of the common expenses fund, a Master Policy, or subscription policies, of fire and casualty insurance on the Common Area with extended coverage, special extended coverage, for at least 100 percent of the replacement value of all such Common Area, and such other fire and casualty insurance as the Condominium Association shall determine.

SECTION C. In addition to the Master Policy described above, the Board of Directors shall obtain and maintain a Master Policy, or subscription policies, insuring the Association, its Board of Directors, the Unit Owners and the Manager, if any, against any liability to the public and the owners of unit and their invitees or tenants, occurring in, on, or about the units and common elements, or either thereof, arising out of, or incident to, the ownership of any use of the project, and including the personal liability exposure of the unit owners. Limits of liability under such insurance shall not be less than \$1,000,000 for all persons injured in any one accident, and shall not be less than \$500,000 for property damage in each occurrence (such limits and coverage to be reviewed at least annually by the Board of Directors and to be increased in its discretion). In addition, the Directors shall maintain an umbrella

liability policy of \$1,000,000 insuring against the same risks. The policy or policies shall be issued on a comprehensive liability basis and shall provide cross liability endorsements wherein the rights of named insured under the policy or policies shall not be prejudiced as respects his, her or their action against another named insured.

All policies shall be written by a company or companies licensed to do business in New Hampshire.

Exclusive authority to adjust losses under policies hereafter in force on the project shall be vested in the Board of Directors, or its authorized representative acting on behalf of all insureds, including the individual unit owners and their mortgagees.

In no event shall the insurance coverage obtained and maintained by the Board of Directors hereunder be brought into contribution with insurance purchased by individual unit owners or their mortgagees.

SECTION D: At least annually, the Board of Directors shall review the adequacy of all insurance carried by the Association and the Association shall provide each unit owner with notices describing each new policy of insurance and all amendments and terminations thereof, all as required by New Hampshire Revised Statutes Annotated, Section 356-B:43 as it may be amended from time to time, or any successor statute. Such review shall include an appraisal of all improvements to the project by a representative of the insurance carrier writing the master policy.

#### **ARTICLE 17. RESTORATION FOLLOWING CASUALTY.**

SECTION A. In the event of damage to any portion of the Common Area, insured under the Master Casualty Policy described in Article 16 is damaged by fire or other casualty, the proceeds of the master casualty policy shall, pursuant to Section 43 III of the Condominium Act, be used to repair, replace or restore the damage to the Common Area including any buildings or improvements (“Improvements”), unless the Unit Owners vote to terminate the Condominium pursuant to Section 34 of the Condominium Act. The Board of Directors is hereby irrevocably appointed the agent for each Owner of a Unit and for each mortgagee of a Unit and for each Owner of any other interest in the Condominium to adjust all claims arising under such policy, or otherwise resulting from such damage, and to execute and deliver releases upon the payment of claims. If the insurance proceeds are insufficient to reconstruct the damage or destroyed Improvements, the damage to, or destruction of, such Improvements, shall be promptly repaired and restored by the manager of the Board of Directors, using the proceeds of insurance, if any, on such Improvements, for that purpose and the deficiencies shall be assessed to Unit Owners as a common expense.

SECTION B. In the event of damage to the Units, for those units which contain duplex buildings with a common wall, each Unit shall file a claim on their respective insurance

policy if there is damage to the common wall. If there is damage to any Unit, whether it be single family or duplex, the Unit Owners agree to expend the proceeds of their respective casualty policies to repair, replace or restore the damaged area within a reasonable period of time following the damage. Should the Unit Owner fail to repair the damage within one (1) year of the date of damage, then the Board of Directors is authorized to repair, restore or replace the Unit and the Board of Directors shall have the authority to pursue all legal and equitable right against the owner including but not limited to an assessment on the Unit for such costs and which shall constitute a lien on the Unit.

**ARTICLE 18. CONDEMNATION.** If part of the project shall be taken or condemned by any authority having the power of eminent domain such that no Unit or any part thereof is taken, then all compensation and damages for on account of the taking of the common elements, exclusive of compensation for consequential damages to certain affected units, shall be payable to the Board of Directors as Trustee for all Unit Owners and Mortgagees according to the loss or damage to their respective interests in such common elements. The Board of Directors shall have the right to act on behalf of the Unit Owners with respect to all issues related to the taking and compensation affecting the common elements. Such proceeds shall, subject to the prior rights of such mortgagees, become a part of the reserve funds of the Association.

If any Unit or a part thereof is taken, the Unit Owners directly affected by such taking and their respective mortgagees shall represent and negotiate for themselves with respect to the damages affecting their respective units. The awards so made shall, subject to the prior rights of mortgagees, be used and distributed by the Trustee first to restore the units and buildings or facilities on the remaining land of the project in the same manner as provided for restoration under Article 14 hereof to the extent possible, attempting to rebuild buildings, containing new units of the same number, size and basic plan as the units taken, with any excess award distributed in accordance with the provisions of this section.

**ARTICLE 19. AMENDMENTS TO THE CONDOMINIUM AND TERMINATION.** This Declaration, the By-Laws, the Floor Plan, the Site Plan or any other condominium instruments (as defined by the Act) may be amended from time to time, or this Condominium may be terminated, with the affirmative vote of 2/3 of the Unit Owners and only in strict compliance with the Act, Section 34, as amended from time to time or any successor statute. **Changes that are inconsistent with the conditions of the subdivision approval should require approval by the Town of Durham. Will need to develop appropriate language for this**

**ARTICLE 20. MORTGAGE PROVISIONS.** The following provisions apply to the Condominium, and none may be amended materially without the consent of at least fifty percent (50%) of the Eligible Mortgagees; provided, however, that if an Eligible Mortgage Holder has been notified by certified or registered mail, return receipt requested, and has not responded within sixty (60) days after receipt of such notification, the consent of that mortgagee shall be implied for whatever Unit or Units that mortgagee has, holds, insures or guarantees the mortgage

on. Such implied consent may be satisfied by the recording of an affidavit of the President of the Association.

SECTION A. Consent of Lenders Required. A change to any of the provisions governing the following items would be considered to be material:

- (1) Voting rights;
- (2) Increases in assessments that raise the previously assessed amounts by more than twenty-five percent (25%);
- (3) Changes in provisions regarding assessments liens or the priority of assessment liens;
- (4) Reductions of reserves for maintenance, repair and replacement of common elements;
- (5) Responsibility for maintenance and repairs;
- (6) Reallocation of interests in the Common Areas or rights to their use;
- (7) Redefinition of any Unit boundaries;
- (8) Casualty or fidelity insurance requirements;
- (9) Imposition of any restrictions in the leasing of Units;
- (10) Imposition of any restriction on Unit Owner's right to sell or transfer his or her Unit;
- (11) Restoration or repair of the project (after damage or partial condemnation) in the manner other than that specified in the document; or
- (12) Any provisions that expressly benefit mortgage holders, insurers or guarantors.

SECTION B. Payment of Taxes. First mortgagees of Units may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for such Common Area. First mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

SECTION C. No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any owner or any other party priority over any rights of the first mortgagee of a Unit pursuant to its mortgage in the case of distribution to such owner of insurance proceeds or condemnation awards for losses to or taking of Common Area.

SECTION D. Notice to Mortgagee. An eligible mortgagee shall be given timely written notice of:

- (1) Any condemnation or casualty loss that affects either a material portion of the project or the unit securing the mortgage.
- (2) Any sixty (60) day delinquency in the payment of assessments or charges owed by the owner of any unit on which it holds the mortgage.
- (3) A lapse, cancellation or material modification of any insurance policy maintained by the Association.
- (4) Any proposed action that requires the consent of a specified percentage of Eligible Mortgage Holders.

SECTION E. Management Agreement Limitations. Notwithstanding anything contained herein which might otherwise be construed to the contrary, any agreement for professional management of the Condominium, or any other agreement providing for services by the Declarant, may not exceed one (1) year and must provide for termination by either party without cause and without payment of a termination fee on thirty (30) days or fewer written notice.

## **ARTICLE 21. DECLARANT'S RESERVATION OF RIGHTS.**

SECTION A. The Declarant shall have the right to take all actions and transact all business necessary to market and sell the Units, including, but not limited to, maintaining and placing models and signs on Condominium Property, using and showing all Common Areas and unsold Units, and all other uses as are necessary and proper for the marketing and sale of any Unit and Declarant need not obtain consent from the Association before making such actions. All signs, furniture, furnishings, equipment, and other equipment placed or used in any Unit to model or market said Unit shall remain the property of the Declarant. In the event that there is any unsold Unit, the Declarant, as the owner of said Unit, shall be treated as a Unit Owner and shall be subject to all rights, powers, duties, and obligations of a Unit Owner, unless otherwise provided in the Declaration, By-Laws, or the Act.

SECTION B. The Declarant, its agents, contractors, and employees, shall have the right of ingress and egress over, upon, and through Common Areas and shall have the right to store equipment and materials on Common Areas. The Declarant shall have the right to make such other use of Common Areas as may be reasonably necessary and incident to the construction,

development, and sale of the Condominium or Unit including, but not limited to, excavation, removal of earth materials, grading, landscaping and planting. Notwithstanding the foregoing, the Declarant shall not exercise said rights in a manner that unduly interferes with the Unit Owners or any person living in a Unit or said individuals use of the Common Areas and facilities therein, however, in no event, shall Declarant be required to obtain consent from the Association before performing any of the above referenced actions.

**ARTICLE 22. DEFINITIONS.** All terms and expressions used in this Declaration which are defined in the Act shall have the same meanings here unless the context otherwise requires.

**ARTICLE 23. PARTIAL INVALIDITY.** The invalidity of any provision of this Declaration shall not impair or affect the validity of the remainder of this Declaration and all valid provisions shall remain enforceable and in effect notwithstanding such invalidity.

EXECUTED as of the day and year first above written.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Michael J. Mulhern

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Martha A. Mulhern

STATE OF NEW HAMPSHIRE  
COUNTY OF STRAFFORD, ss.

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by Michael J. Mulhern and Martha A. Mulhern.

\_\_\_\_\_  
Notary Public/Justice of the Peace

**EXHIBIT A**  
**LEGAL DESCRIPTION**

To be inserted

***Please send to the town planner when these exhibits are written***

July 22, 2021

**EXHIBIT B**  
**TABLE OF COMMON INTERESTS**

<b><u>UNIT NO.</u></b>	<b><u>COMMON INTEREST VOTE</u></b>
Unit 1 .....	1/19
Unit 2 .....	1/19
Unit 2 .....	1/19
Unit 3 .....	1/19
Unit 4 .....	1/19
Unit 5 .....	1/19
Unit 6 .....	1/19
Unit 7 .....	1/19
Unit 8 .....	1/19
Unit 9 .....	1/19
Unit 10 .....	1/19
Unit 11 .....	1/19
Unit 12 .....	1/19
Unit 13 .....	1/19
Unit 14 .....	1/19
Unit 15 .....	1/19
Unit 16 .....	1/19
Unit 17 .....	1/19
Unit 18 .....	1/19
Unit 19 .....	1/19

**EXHIBIT C**

**BYLAWS**

**EXHIBIT D**

**STORMWATER MANAGEMENT MANUAL TO BE INSERTED**

**EXHIBIT F**  
**WITHDRAWABLE LAND**

To be inserted

JOINDER OF MORTGAGEE TO EASEMENT

\_\_\_\_\_, holder of a mortgage recorded at the  
Strafford County Registry of Deeds in Book \_\_\_\_, Page \_\_\_\_, joins herein for the sole purpose  
of assenting to the recordation of the foregoing Condominium Declaration and to the legal effect  
and operation thereof; provided, however, that the fee interest of the Grantor,  
\_\_\_\_\_, in the property does and shall remain subject to the lien of the aforesaid  
Mortgage pursuant to the terms set forth therein.

WITNESS:

\_\_\_\_\_

By:

\_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_ day of \_\_\_\_\_, 2021  
by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

Print Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_