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DECLARATION OF CONDOMINIUM  
FOR  
HADLEIGH WOODS ADULT COMMUNITY CONDOMINIUM

This DECLARATION is made this 14<sup>th</sup> day of August, 2003, by H and B Homes Corp., a New Hampshire corporation, with a mailing address of 8 Deenwood Hollow, Chester, New Hampshire 03036 (hereinafter sometimes called "The Declarant"), for the purpose of submitting certain property to condominium use and ownership in accordance with the provisions of the New Hampshire Condominium Act, New Hampshire RSA Chapter 356-B ("The Act");

WHEREAS, The Declarant owns a certain tract of land, with the improvements heretofore or hereafter constructed thereon, located on Hadleigh Road, Bissell Camp Road, and Flat Rock Road, all in Windham, Rockingham County, New Hampshire on which it proposes to construct certain buildings containing 62 detached Condominium Units with parking areas, which The Declarant intends as a condominium project known as Hadleigh Woods Adult Community Condominium, (hereinafter sometimes called "The Condominium"); and

WHEREAS, The Declarant intends to sell and convey Units in said the Condominium project, subject to certain mutually beneficial restrictions, covenants, conditions, equitable servitudes, and charges which it desires to impose thereon under a general plan of improvement of The Condominium for the benefit of all of said Units and the future Owners thereof;

NOW THEREFORE, The Declarant hereby declares that all of the premises described in Exhibit "A" attached hereto, including all of the Units and other improvements located and to be located thereon, and all easements, rights, and appurtenances belonging thereto are hereby submitted to the provisions of The Act and are held and shall be held, conveyed, encumbered, leased, used, occupied, and improved subject to the following restrictions, covenants, conditions, uses, limitations, and obligations, all of which are declared, intended, and agreed to enhance and protect the value and desirability of The Condominium as a whole and to mutually benefit each of said Units and to impose upon them the servitude described herein favor of each and all other Units therein; to create reciprocal rights and privity of contract and estate between all persons acquiring or owning an interest in any of said Units, including The Declarant, and their grantees, heirs, devisees, successors, and assigns, and shall be deemed to run with the land and be a burden and benefit to all such persons, including the Declarant, their grantees, heirs, devisees, successors, and assigns.

ARTICLE 1  
DEFINITIONS

NEW HAMPSHIRE RSA 356-B:3:

- 1-0. Certain of the terms as used in this Declaration, and in the Bylaws which are annexed hereto as Schedule "B" and made a part hereof, are defined and shall have meaning as follows, unless the context clearly indicates a different meaning therefor:
- 1-1. "The Act" means the New Hampshire Condominium Act (New Hampshire RSA Chapter 356-B).
- 1-2. "Amendment" means any amendment to this Declaration whereby typographical errors hereto are corrected, or any other permitted change to this Declaration is made.
- 1-3. "Assessment" means that portion of the cost of maintaining, repairing, and managing the property which is to be paid by each Owner.
- 1-4. "Association" or "Association of Owners" means the Owners acting as a group in accordance with the Act, the Declaration, and the Bylaws of the Hadleigh Woods Adult Community Condominium.
- 1-5. "The Board" or "Board of Directors" means the executive and administrative entity designated in this Declaration, or Bylaws of the Association as the governing body of said Association.

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REGISTRY OF DEEDS

ROCKINGHAM COUNTY  
REGISTRY OF DEEDS

- 1-6. "Bylaws" means the instrument attached hereto and made a part hereof, which instrument provides for the self-government of The Condominium by The Association.
- 1-7. "The Common Area" means all that portion of The Condominium, other than the Units, and is more particularly described in ARTICLE "2" hereof. The Common Area includes Limited Common Area.
- 1-8. "Common Expenses" means all expenditures lawfully made or incurred by or on behalf of The Association, together with all funds lawfully assessed for the creation and/or maintenance of reserves pursuant to the provisions of The Condominium Instruments; "Future Common Expenses" shall mean Common Expenses for which Assessments are not yet due and payable.
- 1-9. "Common Profits" means all income collected or accrued by or on behalf of The Association, other than income derived from Special Assessments against individual Units.
- 1-10. "The Condominium" means the real property and any interests therein described in Exhibit "A" hereof.
- 1-11. "The Condominium Instruments" means this Declaration and the Bylaws annexed hereto as the same from time to time may be amended.
- 1-12. "The Declarant" means H and B Homes Corp., New Hampshire corporation duly established by law, with a place of business at 8 Deerwood Hollow, Chester, New Hampshire and its successors and assigns.
- 1-13. "Declaration" means this instrument.
- 1-14. "Institutional Lender" or "Institutional Lenders" means one or more commercial or savings banks, savings and loan association, trust companies, credit unions, industrial loan associations, insurance companies, pension funds, or business trusts, including any other lender regularly engaged in financing the purchase, construction, or improvement of real estate, or any assignee of loans made by such a lender, or any combination of any of the foregoing entities.
- 1-15. "Limited Common Area" means a portion of The Common Area reserved for the exclusive use of those entitled to the use of one or more, but less than all, of the Units.
- 1-16. "Manager" means the person designated by The Board to manage the affairs of The Condominium, and to perform various other duties as may be assigned to such person by The Board in accordance with the provisions of this Declaration and the Bylaws.
- 1-17. "Owner" or "Owners" means one or more persons who own a Unit.
- 1-18. "Rules and Regulations" means such reasonable regulations as The Board from time to time may adopt relative to the use of The Condominium, or any part thereof, including Schedule "C" hereto.
- 1-19. "Site Plan" means any and all site plans or plats which concern The Condominium and the land described in Exhibit "A" and any revisions thereof, and any and all floor plans relative thereto, recorded in Rockingham County Registry of Deeds herewith or subsequently hereto or subsequently for the purpose of amending any previously recorded Plan or plat.
- 1-20. "Submitted Land" means the land in The Condominium, which land is described in Exhibit "A" hereto.

- 1-21. "Supplemental Declaration" means any Declaration of Covenants and Restrictions which by its terms is expressly made supplemental to this Declaration.
- 1-22. "Undivided Percentage Interest" means the undivided percentage interest in and to The Common Area attributed to each Unit and as set forth in Exhibit "B" appended hereto.
- 1-23. "Unit" or "Units" means a portion or portions of The Condominium designated and intended for individual ownership and use and the undivided interest in The Common Area appertaining to that use.
- 1-24. "FNMA" and "FHLMC" respectively means the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, and their successors in interest.

**NEW HAMPSHIRE RSA 356-B:16:**

**ARTICLE 2  
UNITS, COMMON AREA, LIMITED COMMON AREA**

- 2-1. **Description of Land.** A legal description of the land, hereby submitted to the provisions of New Hampshire RSA 356-B is contained in Exhibit "A" attached hereto and made a part hereof.
- 2-2. **Description of Buildings.** There shall be residential structures in The Condominium, containing a total of 62 condominium units in buildings containing two units each. The buildings are and shall be constructed of wood or steel frame and concrete block on a concrete slab or poured full foundation, or "crawl space".
- 2-3. **Description of Units.** The Unit number and the dimensions of each Unit are shown on the Site Plans and Floor Plans recorded herewith and "as-built" plans to be recorded in the future. No exterior enlargements or additions to the approved buildings will be allowed, except those necessary for ADA accessibility. The boundaries of each Unit with respect to floors, ceilings, walls, doors, and windows thereof are as follows:
- 2-3-1. (1) **Horizontal Boundaries:**
- (a) **Lower Boundary**
- (i) The upper surface of the concrete slab or basement, or "crawl space", slab, as the case may be.
- (b) **Upper Boundary**
- (ii) The interior plane excluding roof shingles.
- 2-3-2. (2) **Vertical Boundaries:**
- The vertical boundaries of each Unit shall be:
- (a) **Interior building walls, doors, and windows**
- (i) **Interior walls:**
- The interior unfinished plane of the interior walls of the unit.
- (ii) **Exterior doors, windows and skylights:** The outer surface of the door and the outer surface of the window or skylight sash.
- 2-3-3. Each Unit includes the portion of the building within said boundaries and the space which is enclosed thereby, excepting only such Common Area as may be located therein. All doors and windows serving the Unit, and all lath, wallboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting part of the finished surfaces in the Unit are part of the Unit.

**2-3-4.** The pipes, ducts, flues, chutes, conduits, wires, and other utility installations, including air conditioning situated in a Unit, which serve that Unit alone, are part of the Unit. If any such pipes, ducts, flues, chutes, conduits, wires, and other utility installations lie partially within and partially outside of the designated boundaries of a Unit, any portions thereof serving only that Unit shall be deemed a part of that Unit, while any portions thereof serving more than one Unit or any portion of The Common Area shall be deemed part of The Common Area, or the Limited Common Area pertaining to such unit, as the case may be.

**2-4.** Description of the Common Area. The Common Area includes, but not by way of limitation:

**2-4-1.** The land on which the buildings containing the Units are located and the walks, gazebo, shrubbery, and other plantings, parking areas, the driveway, and other land and interests in land included in the description of The Condominium in Exhibit "A";

**2-4-2.** The water supply lines and equipment serving more than one Unit, electrical and telephone systems serving The Condominium, to the extent said systems are located within the Common Area, and are not owned by the supplier of the utility service ( but not including any portion thereof contained within and servicing a single Unit unless such portions are entirely encased within other Common Area within the Unit); and subject to the addition thereof as Limited Common Area, the subsurface disposal systems, tanks, leach fields, chambers, pumps, and other improvements which form a part of the subsurface disposal system, including all pipes and lines located outside of any Unit.

**2-4-3.** Any (if any) amenities which are constructed as recreational amenities which are a part of The Common Area as may be shown on the Site Plan.

**2-4-4.** All other parts of The Condominium, including Limited Common Area and personal property acquired by The Association, necessary or convenient to its existence, maintenance, and safety, or normally in common use, and including any other easements set forth in Exhibit "A" or in this Declaration.

**2-4-5.** All driveways and roadways within The Condominium, and contained within The Common Area, as shown up on the Site Plan to be recorded herewith, as amended from time to time, all of which shall be and remain private rights-of-way as part of The Common Area, to be constructed, owned by and maintained by The Association as a Common Expense, and The Association shall indemnify and hold the Town of Windham harmless from and against any and all liability for construction, maintenance, and repair of the same.

All such roadways shall be laid out and constructed so as to serve The Condominium only, and shall not be constructed to form a throughway or connection between public highways.

Such roadways shall, however, be constructed to specifications determined by the Windham Planning Board, and in a manner which shall, at all times, be maintained so as to allow accessibility to all Units and other buildings by emergency, police, fire, and Town official vehicles, in order to provide normal and emergency Town health and safety services.

**2-5.** Description of Limited Common Area. There is appurtenant to some of the Units' Limited Common Area which are limited to the exclusive use of the Owner or Owners of the Unit or Units to which they are appurtenant:

**2-5-1.** The exclusive right to use a porch or deck, or any garage (if not part of the Unit) attached to some of the Units as shown on the Site Plans and Floor Plans. Each owner shall be required to keep their respective Limited Common Area properly maintained and required at all times in accordance with standards promulgated by the Association..

**NEW HAMPSHIRE RSA 356-B:17:****2-6. Unit Percentage Interest in Common Area and Facilities.**

An equal undivided interest in The Common Area is allocated to each Unit in accordance with Exhibit "B", as amended from time to time. There shall appertain to each Unit in The Condominium, for voting purposes in connection with meetings of The Association, one vote in accordance with Exhibit "B" as amended from time to time. Where a particular Unit is owned by more than one person, said Owners may not divide the vote appertaining to that Unit.

**NEW HAMPSHIRE RSA 356-B:16.(h):**

- 2-7. Statement of the Purposes of Condominium Use.** The Condominium is exclusively intended for residential use and occupancy by persons over the age of fifty-five (55); and the following provisions, together with the provisions of the Regulations attached hereto, are in furtherance of this purpose:
- 2-7-1.** Each Unit shall be occupied and used only for private, residential purposes by the Owner and his or her family, or by lessees or guests of the Owner, and not for any business or professional use whatsoever. This restriction shall not be construed to prohibit Owners from leasing their Units so long as the lessees thereof occupy and use the leased premises in accordance with the provisions hereof. Any rental shall be by written lease. Said lease shall be for no less than one hundred eighty (180) days and shall be subject to The Condominium Instruments. The Declarant shall also have the right to lease Units whether or not in the ordinary course of Declarant's business.
- 2-7-2.** The Common Area shall not be used in a manner which is inconsistent with the residential character of The Condominium. No one shall obstruct, commit any waste in, or otherwise cause any damage beyond reasonable wear and tear to The Common Area, and anyone causing such damage shall pay the expense incurred by The Board in repairing the same. No boats, boat trailers, trucks (semi), commercial vehicles, snowmobiles, or other such personal property shall be stored in The Common Area, unless and except to the extent a specific storage area is designated by The Association. Nothing shall be altered, constructed in, or removed from The Common Area without the prior written consent of The Board. No exterior alterations to the residential structures, except to meet the requirements of ADA, shall be made without the consent of the Board and the Town of Windham.
- 2-7-3.** No noxious or offensive use shall be made of any part of The Condominium, and nothing shall be done therein which is or will become in annoyance or nuisance to other Owners. No use shall be made of any part of The Condominium, which shall constitute a fire hazard or which will result in the cancellation of insurance on any part of The Condominium, or which is in violation of any law, ordinance, or governmental regulation applicable thereto. No use shall be made of any part of The Condominium, which will increase the rate of insurance on The Common Area without the prior written consent of The Board.
- 2-7-4.** No signs (except as provided in Section "2-7-6." below), clothes lines, television antennas, refuse, or loose clothing or similar material or equipment shall be hung, posted, or otherwise so placed as to be within the public view or within the view of other Owners without the prior written consent of The Board.
- 2-7-5.** No animals, livestock, or poultry, except two (2) domesticated household pets, consisting of dogs or cats, shall be kept anywhere within The Condominium. Fish aquariums not in excess of twenty (20) gallons and no more than two (2) birds weighing less than ten (10) pounds

each and which are kept in cages are exempt. Dogs shall be under the control of their owners at all times and shall not be allowed to run loose (except in the presence and control of the owner). Dogs which are persistently allowed to run loose or to soil the common area may be ordered to be removed by the Board of Directors.

- 2-7-6. The administration of The Condominium shall be governed by The Association. Each Owner shall be a member of The Association. The membership of The Association shall consist of all the Owners. Each unit shall be allocated a percentage interest as set forth in Exhibit "B" as amended from time to time in accordance with Section "18-9" below. The administration, powers, and duties of The Association and its Board of Directors shall be as contained within this Declaration and the Bylaws of the Association and the Condominium Act. The Declarant shall be deemed to be the Owner of any Units not sold by The Declarant and The Declarant and its representatives and assigns may make such use of such unsold Units and out of The Common Area as may facilitate such sale, including, without limiting the generality of the foregoing, the maintenance of a sales office, the showing of the property and the displaying of signs; however, all of the foregoing shall not substantially interfere with the use of the Units by the respective Owners.
- 2-7-7. The Association is empowered to adopt and amend, from time to time, Residency Regulations concerning the use of The Condominium and various parts thereof, which Residency Regulations shall be furnished in writing to all Owners.
- 2-7-8. The consent of The Board referred to in this ARTICLE "2" may be withdrawn by The Board whenever it deems such withdrawal to be in the best interests of The Condominium.
- 2-7-9. Occupancy within any Unit is limited to not more than four (4) full-time occupants per Unit, all of whom must be in compliance with the restrictions of section 2-7-10 below.
- 2-7-10. **Elderly Housing Covenants.** In order to assure compliance with the Windham Zoning Ordinances and the Site Plan approvals for elderly housing, the following covenants are hereby adopted by The Declarant, and binds The Declarant, and shall bind, the Owner of each Unit within The Condominium:
1. The CONDOMINIUM has been approved by the Windham Planning Board, under its elderly housing zoning ordinance provision, and under a variance granted by the Windham Board of Adjustment on the basis that it shall be used as the primary residence for and by persons over the age of fifty-five (55), and it shall be used as such by the owners.
  2. The Condominium is being established and shall be maintained in compliance with 42 USC S 3801 etc. and 24 CFR Part 100, Sections 100.304 through 100.308, and with the provisions of the Windham Elderly Housing Zoning Ordinance provisions under a variance granted by the Windham Board of Adjustment.
    - A. To this end, Units shall only be sold to Buyers (and their spouses) who execute an Affidavit that (1) the Unit is to be such Buyers' immediate permanent residence; and (2) such Buyers are not acquiring the Unit for purposes of or with the intent to resell or lease such Unit to persons under the age of fifty-five (55); and (3) both of the resident Buyers is or will be at the time of the closing, in excess of fifty-five (55) years of age; the only exception to the age restriction included herein is that included in 24 CFR Part 100.305 (e)(3) which allows persons under 55 years of age "...who are necessary to provide a reasonable accomodation to disabled residents...."
  3. This covenant shall run for the benefit of the Town of Windham, a municipal

corporation, situated in the State of New Hampshire and further shall benefit and be enforced by the ASSOCIATION and the Town of the Windham. Further, this covenant may not be amended or deleted without the expressed written approval of the Windham Planning Board.

The full text of these restrictive covenants shall be printed in bold-faced type on every deed conveying a Unit within The Condominium before it is filed at the Rockingham County Registry of Deeds.

- 2-7-11. Rights of Action.** Except as to the restrictive covenants contained and Section "2-7-10." above, The Association and any aggrieved Unit Owner shall have the right to enforce the terms of this Declaration, the Bylaws, or the Rules and Regulations of the CONDOMINIUM against any Unit Owners or The Association who, if such owner fails to comply with requirements of the Condominium Instruments or the decision made by The Association, by seeking injunctive relief in the Rockingham County Superior Court. The restrictive covenants contained in Section "2-7-10." above may be enforced only by The Association or by the Town of Windham, who may, in addition to other remedies, seek injunctive relief in the Rockingham County Superior Court.

**NEW HAMPSHIRE RSA 356-B:68:**

- 2-8. Persons to Receive Service of Process.** Unless otherwise determined in an amendment kept appropriately recorded of the Rockingham County Registry of Deeds, the Consumer Protection and Antitrust Division of the New Hampshire Department of Justice, shall be the person to receive service of any lawful process in any non-criminal proceeding arising under The Act against The Association. For the purposes of this paragraph, the place of business of The Board shall be considered to be Windham, New Hampshire.
- 2-8-2.** Service of any lawful process in any proceeding arising under The Act against The Declarant or its personal representatives shall be made upon John Bacheller, President, H and B Homes Corp., 8 Deerwood Hollow, Chester, New Hampshire 03036.

**NEW HAMPSHIRE RSA 356-B:43:**

**ARTICLE 3**  
**INSURANCE AND VOTING IN THE EVENT OF DAMAGE OR DESTRUCTION**

**3-1. Purchase of Insurance.**

- (a) The Association shall obtain and maintain in force insurance covering The Common Area of the Condominium and all insurable improvements therein of the types and the amounts hereinafter set forth, for the benefit of The Association, all Owners, and their respective Institutional Lenders, as their interests may appear. The premiums for such coverage and other expenses in connection with such insurance shall be assessed against Owners as part of the Common Expenses. The named insured shall be The Association, individually, and as agent for the Owners, without naming them, and as agent for their Institutional Lenders.
- (b) Provisions shall be made for the issuance of mortgagee endorsements and certificates of insurance to the Institutional Lenders of Owners. All such policies shall provide that payments for losses thereunder shall be made to The Association and all policies and endorsements thereon shall be deposited with the Board of Directors.

3-2. Coverage.

- (a) **Casualty.** All buildings, improvements, and structures which are included in The Common Area of the Condominium, including buildings, improvements, and structures in The Common Area and the Limited Common Area, and all personal property in The Common Area, and all fixtures, machinery, equipment, and supplies

maintained for the service of The Condominium, and all fixtures, improvements, alterations, and equipment within any individual Units but serving more than that unit, shall be insured in an amount equal to the full replacement cost thereof (unless one hundred percent (100%) of the insurable value is less), all as determined annually by the Board of Directors. Such coverage shall afford protection against:

- (i) Loss or damage by fire and other hazards normally covered by a standard extended coverage endorsement; and
- (ii) All such other risks and perils as from time to time shall be customarily covered with respect to use of the buildings included in The Condominium, including but not limited to vandalism and malicious mischief, including those covered by the standard "all risk" endorsement, and shall not be written on policies calling for any deductible amount in excess of the lesser amount of one percent (1%) of the insurance coverage or Ten Thousand Dollars (\$10,000.00), whichever is less.

- (b) **Public Liability.** The Association shall procure and maintain comprehensive public liability insurance covering The Association, the Board of Directors, the Manager (if any), all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the foregoing, all Owners, and all other persons entitled to occupy any Unit or other portion of The Condominium. Such insurance shall be written on an "occurrence" basis and shall provide coverage:

- (i) of not less than Five Hundred Thousand Dollars (\$500,000.00) for injury to or death of one person, not less than One Million Dollars (\$1,000,000.00) for injury to or death of more than one person in the same occurrence; and not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) for damage to property; or
- (ii) such greater coverage as may, from time to time, be required for multifamily protection in order to qualify for FHLMC and FNMA underwriting; A single limit policy in the amount of One Million Dollars (1,000,000.00) shall be deemed in compliance with the foregoing sentences.

Such insurance shall provide cross liability coverage with respect to liability claims of any one insured thereunder against any other insured thereunder, or against all other insureds thereunder as a group, but shall not insure against the individual liability of a Owner for negligence occurring within his or her Unit or his or her Limited Common Area. Such insurance shall also provide coverage for any liability that results from lawsuits related to employment contracts in which The Association is a party.

- (c) **Workmen's Compensation.** The Association shall procure and



maintain workmen's compensation insurance as required by law.

(d) **Other Insurance.** The Association shall procure and maintain:

- (i) insurance upon owned and non-owned motor vehicles;
- (ii) as is required by New Hampshire RSA 356-B;
- (iii) including flood insurance, in an appropriate amount, considering the full replacement cost of property insured, if required by FNMA or FHLMC for mortgage programs underwritten by them or either of them;
- (iv) Fidelity Bond coverage as required by FNMA and/or FHLMC; and
- (v) such other insurance as the Board of Directors shall determine from time to time to be desirable.

Every Fidelity Insurance Bond must:

- (A) name The Association as the insured;
- (B) have coverage equal to no less than the maximum amount of funds in The Association's (or its management agents') custody at any one time.

### 3-3. General Insurance Provisions.

- (a) The Board shall deal with the insurer or insurance agent in connection with the adjusting of all claims under insurance policies provided for under this **ARTICLE "3"** and shall review with the insurer or insurance agent, at least annually, the coverage under said policies, said review to include an appraisal of the improvements within The Condominium, and shall make any necessary changes in the policy provided for hereunder (prior to the expiration date set forth in any agreed amount endorsement contained in said policy) in order to meet the coverage requirements of such section.
- (b) The Board shall be required to make every effort to see that all policies of physical damage insurance provided for under this **ARTICLE "3"**:
  - (i) shall contain waivers of subrogation by the insurer as to claims against The Association, its employees, and agents, members of The Board, The Manager, Owners, and members of the family of any Owner who reside with said Owner, except in cases of arson and fraud;
  - (ii) shall contain a waiver of the defense of invalidity or prejudice on account of the conduct of any of the Owners over which The Association has no control;
  - (iii) shall contain a waiver of defense of invalidity or prejudice by failure of the insured, or Owners collectively, to comply with any warranty or condition with regard to any portion of The Condominium over which the insured, or Owners collectively, have no control;
  - (iv) shall provide that such policies may not be canceled or substantially modified without at least thirty (30) days written notice to all of the insureds thereunder and all mortgagee's of Units in The Condominium;

- (v) shall provide that in no event shall the insurance under said policies be brought into contribution with insurance purchased individually by Owners or their mortgagee's;
- (vi) shall exclude policies obtained by individual Owners for consideration under any "no other insurance" clause;
- (vii) shall provide that until the expiration of thirty (30) days after the insurer gives notice in writing to the mortgagee of any Unit, the mortgagee's insurance coverage will not be affected or jeopardized by any act or conduct of the Owner of such Unit, the other Owners, the Board of Directors, or any of their agents, employees or household members, nor canceled for nonpayment of premiums;
- (viii) shall recognize an Insurance Trust Agreement should The Association enter into one;
- (ix) shall contain a "loss payable" clause showing The Association as trustee for each Owner and the holder of each Unit's mortgage; and
- (x) shall contain the standard mortgagee clause naming the mortgagees of the Units.

**3-4. Individual Policies.** All Owners shall, and any mortgagees may, obtain at his or her own expense insurance on each freestanding Unit. Such insurance should contain the same waiver of subrogation provision as that set forth in Section 3-3 (b)(i). It is recommended that each Owner also obtain a "Tenant's Homeowner's Policy", or equivalent, to insure against loss or damage to personal property used or incidental to the occupancy of the Unit and the Limited Common Area pertaining thereto, additional living expense, vandalism or malicious mischief, theft, personal liability and the like.

- (a) Each Owner may obtain additional insurance policy for his or her own benefit and at his or her own expense. No such policy shall be written so as to decrease the coverage under any of the policies obtained by The Board pursuant to ARTICLE "3" above, and each Owner hereby assigns to The Board to proceeds of any such policy to the extent that any such policy does in fact result in a decrease in such coverage, said proceeds to be applied pursuant to the terms hereof as if produced by such coverage. Copies of all such policies (except policies covering only personal property, owned or supplied by individual Owners) shall be filed with The Association.
- (b) Each Owner should obtain insurance for his or her own benefit and at his or her own expense insuring all personal property presently or hereafter located in his or her Unit or Limited Common Area, and any other of their respective property, including any floor coverings, appliances, and other personal property not covered in the master policy and all improvements to his or her Unit which exceeded a total value of One Thousand Dollars (\$1,000.00) and which are not reported to the Board.
- (c) Each Owner should obtain liability insurance with respect to his or her ownership and/or use of his or her Unit.

**3-5. Notice to Owners.** When any policy of insurance has been obtained on behalf of The Association, written notice of the obtained thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each Owner by the Secretary of The Association. Such notice shall be sent by United States certified mail, return receipt requested, to all Owners of record at the address of their respective Units and to such other addresses as any of them may have designated to the Secretary; or such notice maybe hand-delivered by the Secretary or Manager, provided the Secretary or Manager obtains a receipt of acceptance of such notice from the Owner.

**3-6. Action Following Casualty Damage.** In the event of damage to any portion of The

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Condominium by fire or other casualty, the proceeds of the master casualty Policy shall, pursuant to Section 43, III of The Act, be used to repair, replace, restore the structure or The Common Area damaged, unless the Owners, to the extent permitted by The Act and this Declaration, vote not to repair, replace or restore the same, or vote to terminate The Condominium pursuant to Section 34 of The Act. The Board of Directors is hereby irrevocably appointed the agent and attorney-in-fact for each Owner, for each mortgagee of a Unit, and for each Owner of any other interest in The Condominium to adjust all claims resulting from such damage and to deliver releases upon the payment of claims.

**NEW HAMPSHIRE RSA 356-B:17:**

**ARTICLE 4**

**EXTENT OF OWNERSHIP AND POSSESSION BY OWNER**

- 4-1. Subject to the provisions of this Declaration, each Owner shall be entitled to the exclusive ownership and possession of his or her Unit. No Owner shall be deemed to own pipes, wires, conduits, or other utility lines running through the Unit which are utilized for or serve more than one Unit, which items are hereby made part of The Common Area.
- 4-2. Each Owner shall own an undivided interest in The Common Area as set forth in Exhibit "B". Each Owner's undivided interest is arrived at by dividing one Unit by the total number of all Units then in The Condominium. No such interest shall be altered in a manner which is contrary to the provisions of The Act, as amended from time to time, and no such interest shall be separated from the Unit to which it appertains, it being deemed to be conveyed or encumbered with the Unit even though it is not expressly mentioned or described in the instrument of conveyance or encumbrance. Subject to the provisions of this Declaration, each Owner may use The Common Area, excepting Limited Common Area, in accordance with the purposes for which it is intended, so long as he or she does not hinder or encroach upon the lawful rights of the other Owners or otherwise violate the provisions hereof or of any Regulations adopted pursuant to said provisions.
- 4-3. Subject to the provisions of this Declaration, each Owner shall be entitled to the use of the Limited Common Area appurtenant to his or her Unit either exclusively or in common with one or more designated units as set for the herein or on the Site Plan. The right to use of the Limited Common Area shall not be altered without the consent of all the Owners expressed in an Amendment to the Declaration duly recorded and, without such unanimous consent, shall not be separated from the Unit to which it is appurtenant, it being deemed to be conveyed or encumbered with the Unit even though it is not expressly mentioned or described in the instrument of conveyance or encumbrance.

**NEW HAMPSHIRE RSA 356-B:41:**


**ARTICLE 5**

**MAINTENANCE AND REPAIRS**

- 5-1. **Owners' Obligation to Repair and Maintain.** Each Owner shall, at his or her own expense, keep his or her Unit and its equipment and appurtenances, including the Limited Common area pertaining thereof, in good order, condition and repair. In addition to keeping the Unit in good repair, each Owner shall be responsible for the maintenance, repair, or replacement of the interior of the unit, including, any bathroom, kitchen fixtures, plumbing fixtures, water heater, appliances, heating equipment, lighting fixtures, doors and other property which are not The Common Area, and which are located in his or her Unit. Each Owner shall immediately notify The Board or its agents of any damage to or malfunction of any facilities for the furnishing of utility services or waste removal which are The Common Area within his or her Unit. Each Owner shall also, at his or her own expense, keep the Limited Common Area appurtenant to his or her Unit in a neat and orderly condition, and shall make all repairs of damage

thereto (or, if required, the replacement thereof) caused or permitted by him or her, reasonable wear and tear excepted. In the event an Owner fails to make such repairs after thirty (30) days written notice of the need for the same is given to him or her by The Board, The Board may enter and make such repairs, the expense of what shall be borne by said Owner. No Owner shall permit any repair or other work of in aggregate cost in excess of Five Hundred Dollars (\$500.00) in his or her Unit or the Limited Common Area appurtenant to his or her Unit by anyone unless such person or and entity has furnished written evidence that it has obtained reasonably adequate public liability and workmen's compensation insurance in forms in amounts which are satisfactorily to The Board, and unless such repair or other work is performed in compliance with governmental laws, ordinances, rules, and regulations. Unit owners are directly responsible, together with other users thereof, for the repair, replacement and maintenance of Limited Common Areas, including subsurface disposal facilities for the respective unit and shall pay an annual Limited Common Area assessment to the Association, to be held in trust by such association, and solely for the benefit of such unit owner(s) for the sole purpose of repair or replacement of the respective Limited Common Area, including waste disposal facilities. Such repairs shall be undertaken by the Association out of funds available as reserves for such repair or replacement, with any deficiency thereof to be paid by the respective owners to which such Limited Common Areas pertain by Special Assessment.

**5-2. Association's Obligation to Maintain.** Except as otherwise provided, The Association shall be responsible for:

- (a) the maintenance, repair, and replacement; and
- (b) the expense of such repair (unless necessitated by the negligence, misuse or neglect of an Owner, or of a person gaining access with said Owner's actual or implied consent, in which case the expense shall be charged to such Owner, unless forgiven by vote of The Association) of all of The Common Area and sewage disposal and all non-public utility owned water systems and equipment, and whether now existing or hereafter constructed, the cost of which shall be assessed to all Owners as a Common Expense. (Maintenance of Limited Common Area shall not include the keeping of said Area in a neat and orderly condition as provided in Section "5-1." above, nor to maintain it on a day-to-day basis); and
-  (c) the inspection and proper maintenance of the catch basins and drainage systems at least once every three (3) years.

**5-3. Management Contract.** The Board of Directors, acting on behalf of The Association, may enter into a Management Agreement with any firm, person or corporation, or may join with other condominium associations and entities in a joint Management Agreement; for the management of The Condominium and its maintenance and repair, and may delegate to a Manager all the powers and duties of The Association, except such as are specifically required by the Declaration, or by the Bylaws, to have the approval of the Board of Directors or the membership of The Association. The Manager may be authorized to determine the annual budget and make and collect Assessments for Common Expenses as provided by the Declaration, Bylaws, and Appendices to the Declaration.

**NEW HAMPSHIRE RSA 356-B:30**

**ARTICLE 6  
PROHIBITION AGAINST STRUCTURAL CHANGES BY OWNER**

**6-1.** No Owner shall, without first satisfying the requirements regarding repair or other work set forth in Article "5" above, and in addition, obtaining the written consent of The Board:

- 6-1-1. Make or permit to be made any structural alterations, improvement, or addition in or to his or her Unit or in or to any other part of The Condominium;
- 6-1-2. Tamper with any bearing wall or take any action or permit any action to be taken that will impair the structural soundness or integrity or safety of the building or any other structure in The Condominium;
- 6-1-3. Impair any easement or right or personal property, which is a part of The Condominium;

**NEW HAMPSHIRE RSA 356-B:41.J.:**

**ARTICLE 7  
ENTRY FOR REPAIRS AND GRANT OF EASEMENT**

- 7-1. The Association shall have the irrevocable right, to be reasonably exercised by The Board or its agents, to enter any Unit or Limited Common Area to inspect the same, to remove violations therefrom, or to perform any repair, maintenance, or construction for which The Board is responsible and shall have the irrevocable right, to be reasonably exercised by The Board or its agents, to enter any Unit or Limited Common Area for the purpose of making emergency repairs necessary to prevent damage to other parts of The Condominium. Such entry shall be made with as little inconvenience to the Owner as practicable, and any damage caused thereby or expenses in connection therewith shall be repaired or satisfied by The Board out of the Common Expenses unless such emergency repairs are necessitated by the negligence, misuse, or neglect of one or more Owners, in which case the said Owner of Owners shall bear the expense of such repairs.
- 7-2. The Association shall have the power and right to grant reasonable, non-exclusive permits, licenses, and easements over The Common Area for utilities, roads and other purposes necessary for the proper operation of The Condominium.

**NEW HAMPSHIRE RSA 356-B:22:**

**ARTICLE 8  
CERTAIN PROVISIONS PERMITTED BY THE ACT**

- 8-1. **Encroachments.** If any portion of The Common Area now encroaches upon any unit, any unit now encroaches upon any other Unit or upon any portion of The Common Area, or if any such encroachment shall occur hereafter as a result of:
  - (a) settling of a building;
  - (b) alteration of or repair to The Common Area made by or with the consent of the Board of Directors;
  - (c) repair or restoration of a building or any Unit after damage by fire or other casualty; or
  - (d) condemnation or eminent domain proceedings;

a valid easement shall exist for such encroachment and for the maintenance of the same so long as the affected building stands.

**NEW HAMPSHIRE RSA 356-B:33:**

- 8-2. **Alterations Within Units.** Subject to the notification requirement of ARTICLE "3" above, an Owner may make alterations, additions, and improvements within his or her Unit which do not violate ARTICLE "6" hereof, including moving, removing, altering, or adding to interior non-load bearing walls and partitions, provided that no such alteration, addition, or improvement may affect the structural elements or integrity of any structure without the prior written consent by The Board.

**ARTICLE 9  
AMENDMENT OF CONDOMINIUM INSTRUMENTS**

**NEW HAMPSHIRE RSA 356-B:33:**

- 9-1. **Amendment Prior to Conveyance of a Unit.** Prior to the conveyance of any Unit to an Owner other than The Declarant, The Condominium Instruments may be amended at any time and from time to time by an instrument in writing signed by The Declarant.

**NEW HAMPSHIRE RSA 356-B:34:**

- 9-2. **Amendment After Conveyance of a Unit.** Subsequent to the conveyance of a Unit to an Owner other than The Declarant and except as provided in ARTICLE "18" or Section "9-4." below, The Condominium Instruments may be amended only by an instrument in writing approved and agreed to by Owners of Units to which two-thirds (2/3) of the voting power in The Association appertain, provided that:
- (a) No instrument of amendment which alters the dimensions of any Unit shall be of any force or effect unless the same has been signed by the Owner(s) and any Institutional Lender of record of the Unit so altered;
  - (b) Except as provided in ARTICLE "18" below, no instrument of amendment which alters the percentage of undivided interest in The Common Area, the liability for Common Expense, the rights to Common Profits, or the voting rights in The Association appurtenant to any Unit shall be of any force or effect unless the same is permitted or required by The Condominium Instruments, is consistent with the applicable provisions of The Act and, except as provided in Section "9-4." below, has been approved and agreed to by all the Owners and any Institutional Lenders of record of the Units affected thereby;
  - (c) No instrument of amendment which alters The Condominium Instruments in any manner which would render any of them contrary to or inconsistent with any requirements or provisions of The Act shall be of any force or effect;
  - (d) No instrument of amendment, which purports to affect The Declarant's reserved rights of control set forth in ARTICLE "16" of this Declaration shall be of any force and effect unless it is assented to in writing by The Declarant, and this assent is recorded in such Amendment at the Rockingham County Registry of Deeds;
  - (e) No instrument of amendment, which purports to affect The Declarant's reserved rights and easements shall be of any force and effect unless it is assented to in writing by The Declarant and this assent is recorded with such amendment at the Rockingham County Registry of Deeds;

- (f) No instrument of amendment which would adversely affect The Declarant's right and ability to develop and/or market The Condominium shall be of any force or effect unless it is assented to in writing by The Declarant, and this assent is recorded with such amendment at the Rockingham County Registry of Deeds; and

9-2-1. Subsequent to the conveyance of a Unit to an Owner other than The Declarant the prior written approval of the first mortgagees of Units to which sixty-seven percent (67%) of the voting power in The Association appertains shall be required in order to adopt any amendment to any or all of The Condominium Instruments which amendment would have the effect of altering:

- (a) The voting rights of the Owners in The Association;
- (b) The manner of assessing Common Expenses, assessment liens or subordination of assessment liens;
- (c) The requirement of The Association reserves for replacement, maintenance, and repair of The Common Area;
- (d) The terms of The Condominium Instruments relating to responsibility for maintenance and repair of the Units, The Common Area or the Limited Common Area;
- (e) The terms of The Condominium Instruments relating to the conversion of Units in The Common Area;
- (f) The terms of The Condominium Instruments relating to the insurance of fidelity bonds to be provided by The Association;
- (g) The terms of The Condominium Instruments stating which Units and under what conditions Units may be leased;
- (h) The terms of The Condominium Instruments relating to or adding restrictions to an Owner's right to sell or transfer his or her Unit;
- (i) Any term of The Condominium Instruments that expressly benefits mortgage holders, insurers or guarantors;
- (j) The terms of The Condominium Instruments providing for the restoration or repair of the project after a hazard, damage, or partial condemnation; or
- (k) Any term of The Condominium Instruments relating to terminating The Condominium's legal status after substantial destruction or condemnation occurs.

9-3. **Recording Required.** No amendment to The Condominium Instruments shall become effective until an instrument setting it forth in full shall be recorded at the Rockingham County Registry of Deeds. After the conveyance of a Unit to an Owner other than The Declarant, such instrument shall either:

- (a) be signed by Owners holding the requisite voting power for its adoption; or
- (b) be signed by the President and Treasurer of The Association, in which case it shall be accompanied by a certification of vote by the Secretary of The Association and shall recite that the consent and approval of the Owners

required for its adoption has been obtained. Such instrument, as so executed and recorded, shall be conclusive evidence of the existence of all facts recited therein and of compliance with all prerequisites to the validity of such amendment in favor of all persons who rely thereon without actual knowledge that such facts are not true or such amendment is not valid.

- 9-4. The Declarant reserves the right to itself and its successors in interest to amend The Condominium Instruments without the consent of any Unit Owners or First Mortgagees, but only to:
- (a) correct typographical errors; or
  - (b) to bring The Condominium Instruments in compliance with New Hampshire RSA 356-B; or
  - (c) to conform The Condominium Instruments to the requirements of FNMA and FHLMC loan guaranty underwriting requirements, but only until the provisions of Section "16-1." below have occurred.
- 9-5. Notwithstanding any other provisions herein with respect to amendment of this Declaration, the provisions dealing with the Elderly Housing Covenants (Section 2-7-10) may not be amended without the consent of the Town of Windham.

#### **ARTICLE 10 ASSESSMENTS**

##### **NEW HAMPSHIRE RSA 356-B:45:**

- 10-1. **Power to Fix and Determine.** The Association, through its Board of Directors, shall have the power to fix and determine from time to time the sum or sums necessary and adequate to provide for the Common Expenses of The Condominium and such other fees and charges as are specifically provided for in the Declaration and the Bylaws. The procedure for the determination of all such Assessments shall be as set forth in the Bylaws of The Association and the Declaration and the Exhibits attached hereto.
- 10-2. **Owner's Obligation To Pay Assessments.** Each Owner shall pay all Common Expenses, including Limited Common Assessment, assessed against him or her and all other Assessments and charges made against him or her by the Board of Directors pursuant to the Declaration or Bylaws. Any Owner having executed a contract for the disposition of his or her Unit, shall be entitled, upon written request to the President, Treasurer, or Secretary of The Association and payment of a fee which shall be fixed by the Board of Directors but which shall not exceed Ten Dollars (\$10.00) or the largest amount allowed by The Act, whichever is greater, to a recordable statement setting forth the amount of unpaid Assessments currently levied against that Unit. Such statement setting forth the amount of unpaid Assessment shall be binding upon The Association, the Board of Directors, and every Owner. Failure to furnish such statement within ten (10) business days following receipt of such request shall extinguish the lien created by Section 46 of The Act.
- 10-3. **Unpaid Assessments.** Assessments for Common Expenses, maintenance fees and other fees and charges that are unpaid for over ten (10) days after due date shall bear interest at the rate of eighteen percent (18%) per annum (or such other rate as the Board of Directors may determine) provided said interest rate does not violate any then applicable usury statute or regulations (in which case said interest rate shall automatically be reduced to the then highest permitted rate) from due date until paid, and in addition and at the sole discretion of the Board of Directors, a late charge to be determined by the Directors of The Association, but which shall not exceed any limits imposed by The Act and which shall initially be Twenty-Five Dollars (\$25.00), shall be due and payable. Regular Assessments shall



be due and payable monthly on the first day of each calendar month. A purchaser of a Unit other than a purchaser at a foreclosure sale or a purchaser at a sale in lieu of foreclosure, shall be liable for the payment of any Assessments against such Unit which are unpaid at the time of such purchase.

**NEW HAMPSHIRE RSA 356-B:46:**

**10-4. Lien For Unpaid Assessments.**

- (a) The Association shall have a lien upon each Unit for unpaid Assessments, together with interest thereon, against the Owner thereof. Expenses incurred by The Association, including reasonable attorney's fees, incident to the collection of such Assessments or the enforcement of such lien, together with all sums advanced and paid by The Association for taxes and payments on account of superior mortgages, liens or encumbrances which may be required to be advanced by The Association, in order to preserve and protect its lien, shall be payable by the Owner and secured by such lien. The Board of Directors may take such action as it deems necessary to collect Assessments by personal action or by enforcing and foreclosing said lien, and may settle and compromise the same if deemed in the best interests of The Association. Said lien shall be effective as and in the manner provided for by The Act, and shall have the priorities established by The Act. The Association shall be entitled to bid at any sale held pursuant to foreclosure of a lien for unpaid Assessments, and to apply as a cash credit against its bid, all sums due, as provided herein, and covered by the lien being enforced. In connection with any such foreclosure, the Owner shall be required to pay a reasonable rental for the Unit for the period of time said Unit is occupied by the Owner or anyone by, through or under said Owner, while such foreclosure proceeding is pending;
- (b) In the event an Institutional Lender, or other purchaser of a Unit, obtains title to such Unit as a result of foreclosure by the Institutional Lender, or if an Institutional Lender accepts a deed to such Unit in lieu of foreclosure, the person or entity so acquiring title shall not be liable for any Assessments by The Association pertaining to such Unit, or chargeable to the former Owner which became due prior to acquisition of title as a result of the foreclosure. Such unpaid Assessments shall be deemed to be Common Expenses collectable from all of the Owners, including the person or entity acquiring title; and
- (c) No person who acquires an interest in a Unit, except through foreclosure by an Institutional Lender, or the acceptance by an Institutional Lender of a deed in lieu of foreclosure, (including, without limitation, persons acquiring title by operation of law, including purchasers at judicial sales), shall be entitled to occupancy of the Unit or enjoyment of The Common Area until such time as all unpaid Assessments due and owing by the former Owner have been paid. The Association shall have the right to assign its claim for the recovery of any unpaid Assessments to The Declarant, or to any Owner or group of Owners or to any third party.

**10-4-1. Limitation Upon Liability of The Association.** Notwithstanding the duty of The Association to maintain and repair parts of The Condominium, The Association shall not be liable for injury or damage, other than the cost of maintenance and repair, caused by any latent condition of the property to be maintained and repaired by The Association.

**ARTICLE 11**  
**COVENANTS REGARDING WETLANDS**

11-1. The Declarant on behalf of itself and its successors in interest and The Association covenant that the "Wetlands" on the Site Plan, is and shall forever be and remain subject to the following restrictions:

- (a) such reasonable rules and regulations as may from time to time be promulgated by The Association for their use; and
- (b) no above-ground improvements by The Declarant and/or The Association which would result in the "Wetland" area of The Condominium to no longer comply with the Windham Zoning Ordinance as in effect at the time of approval of the Site Plan for The Condominium by the Windham Planning Board; and
- (c) such uses as shall from time to time be permitted for "Wetland" by the Windham Zoning Ordinance; and
- (d) no improvements shall be constructed within any wetlands shown on the Site Plan except as may be permitted by the Wetlands Bureau of the Department of Environmental Services and the Windham Planning Board. These restrictions and covenants may be enforced by:
  - (i) any Unit Owner;
  - (ii) The Association;
  - (iii) the State of New Hampshire; or
  - (iv) the Town of Windham.

**ARTICLE 12**  
**WAIVER**

12-1. The failure of The Board to insist, in any instance, upon the strict performance of any of the terms, covenants, conditions, or restrictions of this Declaration or of the Bylaws or to exercise any right herein or therein contained, or to serve any notice or to institute any action shall not be construed as a waiver or a relinquishment in the future of such term, covenant, condition, restriction, or right and the same shall remain in full force and effect. The receipt by The Board of payment of any Assessment from a Owner with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach and no waiver by The Board of any provision hereof shall be deemed to have been made unless expressed in writing and signed by The Board.

**ARTICLE 13**  
**LIABILITY OF THE BOARD**

13-1. The members of The Board shall not be liable to the Owners for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct, or bad faith and except as provided for below. The Owners shall indemnify and hold harmless each of the members of The Board against all contractual liability to others arising out of contracts made by The Board on behalf of The Condominium unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or of the Bylaws. It is permissible for the members of The Board, who are Directors or Officers of The Declarant, to contract with

The Declarant and affiliated corporations without fear of being charged with self-dealing during the period in which The Declarant is in control of the Board of Directors and Officers pursuant to ARTICLE "18" below. It is intended that the members of The Board shall have no personal liability, other than as Owners, with respect to any contract made by them on behalf of The Condominium, except with respect to any such contract made in bad faith or contrary to the provisions of the Declarations or of the Bylaws. It is also intended that the personal liability of each Owner arising out of any contract made by The Board or out of the aforesaid indemnity in favor of the members of The Board shall be limited to such proportion of the total liability thereunder as his or her interest in The Common Area bears to the interests of all the Owners in The Common Area (except that the personal liability of Owner who are members of The Board and who contract in bad faith or contrary to the provisions of the Declaration or of the Bylaws shall not be so limited). The provisions of this ARTICLE "13" do not apply to and shall not preclude claims for property damage and personal injury by Owners against The Board or any other insured under the liability insurance by Section "3-2." above. Notwithstanding the foregoing, each owner who is responsible for all or part of the cost of maintenance, repair or replacement of a Limited Common Area shall be fully liable for the cost thereof and for the performance of any contract with respect thereto to the extent of the owner's respective interest(s) therein.

**ARTICLE 14**  
**ENFORCEMENT**

- 14-1. Each Owner shall comply strictly with the provisions of the Declaration, the Bylaws, and the Residency Regulations as the same may be lawfully amended from time to time and with decisions adopted by the Board, pursuant to said Declaration, Bylaws, and Residency Regulations; and failure to comply shall be grounds for an action to recover sums due for damages, or injunctive relief, or both, maintainable by The Board on behalf of the Owners, or in a proper case, by an aggrieved Owner.

**ARTICLE 15**  
**PERSONAL PROPERTY**

- 15-1. The Board may acquire and hold, for the benefit of the Owners, tangible and intangible personal property and may dispose of the same by sale or otherwise; and the beneficial interest in such property shall be owned by the Owners in the same proportion as their respective shares in other Common Area. A transfer of a Unit shall transfer to the transferee ownership of the transferor's beneficial interest in such personal property, whether or not such personal property is specifically mentioned therein.

**ARTICLE 16**  
**DECLARANT'S RESERVED RIGHTS OF CONTROL AND TO FILE**  
**SPECIAL AMENDMENTS AND TO OPERATE WATER SYSTEMS**

**NEW HAMPSHIRE RSA 356-B:36:**

- 16-1. **Rights Reserved.** The Declarant reserves the right to appoint and remove some or all of the Officers of The Association, or its Board of Directors, or both, and may exercise the powers and responsibilities otherwise assigned by The Condominium Instruments to The Association, its Officers or the Board of Directors, but only until:
- (a) the expiration of two (2) years from the filing of the Declaration in the Rockingham County Registry of Deeds; or
  - (b) the date upon which Units to which three-fourths (3/4) of the undivided interests in The Common Area appertain have been conveyed (including any Units located on the Convertible Land and the Additional Land in the event The Declarant

exercises its rights pursuant to ARTICLE "18" below); or

(c) the earlier of such dates.

16-2. The Declarant reserves the right and power to record a special amendment ("Special Amendment") to this Declaration at any time and from time to time which amends this Declaration:

- (a) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veterans Administration or any other governmental agency or any other public, quasi-public, or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities;
- (b) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Unit ownerships;
- (c) to bring this Declaration into compliance with New Hampshire RSA 356-B
- (d) to correct clerical or typographical errors in the Condominium Instruments or any Amendment thereto. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to The Declarant to vote in favor of, make, or consent to a Special Amendment on behalf of each Unit Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation or other instrument affecting a Unit and the acceptance thereof, shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of the power to The Declarant to vote in favor of, make, execute and record Special Amendments. The right of The Declarant to act pursuant to rights reserved or granted under this Section "16-2." shall be automatically assigned by The Declarant to the Board of Directors of the **CONDOMINIUM UNIT OWNERS' ASSOCIATION** at such time as The Declarant no longer holds or controls title to any Unit.

16-3. **Declarant's Reserved Water Facility Easements.** The Declarant reserves to itself, its affiliates, and its assignees, the right and easement to lay, construct, reconstruct, operate, repair, and maintain, water pipes and mains, install water pumps and pump houses, valves, and other equipment on, in and under the property including The Common Area, as it, in its sole discretion, deems appropriate for the purposes of constructing, reconstructing, repairing, maintaining, and operating a water system, pumping, operating, and maintaining a water supply system to supply water to and within The Condominium and to others off-site and without The Condominium; and the right to enforce all easements as now or in the future are shown on approved Site Plan shall be deemed to be included in this reservation.

16-4. **Declarant's Reserved Right to Transfer Water System.** Declarant reserves for five (5) years after the vote of this Declaration, the right to transfer all water pipes, mains, and lines lying within any Common Areas, and any and all pumps, pump houses generators which are or may become a part of the water system built or to be built on and serving The Condominium, including any easement necessary to maintain, operate, repair, or reconstruct the same, to any company or entity which holds a franchise (from the New Hampshire Public Utilities Commission) to supply water to residences in the area in which The Condominium is located. No compensation shall be due The Association upon such transfer, since the consideration is and shall be deemed to be the providing of potable water to all Unit Owners by a franchised public utility.

- 16-5. **Renewal of Management or Other Agreement.** If entered into during the period of control contemplated by this ARTICLE "16", no Management Agreement, or any other contract or lease executed by or on behalf of The Association, its Board of Directors or the Owners a group shall be binding after such period of control unless then renewed or ratified with the consent of Owners of Units to which a majority of the votes in The Association appertain.

**ARTICLE 17**  
**TERMINATION OF CONDOMINIUM**

**NEW HAMPSHIRE RSA 356-B:33:**

- 17-1. **Termination Prior To Conveyance Of A Unit.** Prior to the conveyance of a Unit to an Owner other than The Declarant, The Condominium may be terminated at any time by an instrument in writing signed by The Declarant.

**NEW HAMPSHIRE RSA 356-B:34:**

- 17-2. **Termination After Conveyance of A Unit.**

- (a) **Required Vote.** Subsequent to the conveyance of a Unit to an Owner other than The Declarant, The Condominium may be terminated only by an instrument in writing approved and agreed to by Owners of Units to which four-fifths (4/5) of the voting power in The Association appertain.
- (b) **Effect of Termination.** If The Association votes to terminate The Condominium at any time or for any reason, then upon the recording of an instrument terminating The Condominium all of the property constituting the same shall be owned by the Owners as tenants-in-common in proportion to their respective undivided interests in The Common Area immediately prior to such recordation. As long as such tenancy-in-common lasts, each Owner and their respective heirs, successors, and assigns shall have an exclusive right of occupancy of that portion of The Condominium property which formerly constituted his or her Unit.

- 17-3. **Recording Required.** No termination of The Condominium shall become effective until an instrument reciting the fact of such termination shall be recorded at the Rockingham County Registry of Deeds. After the conveyance of a Unit to an Owner other than The Declarant, such instrument shall either;

- (a) be signed by Owners holding the requisite voting power for its adoption; or
- (b) be signed by the President and Treasurer of The Association, in which case it shall be accompanied by a certification of vote by the Secretary of The Association and shall recite that the consent and approval of the Owners required for its adoption has been obtained. Such instrument, as so executed and recorded, shall be conclusive evidence of the existence of all facts recited therein and of compliance with all prerequisites to the validity of such termination in favor of all persons who rely thereon without actual knowledge that such facts are not true or such amendment is not valid.

**ARTICLE 18**  
**CONSENT OF FIRST MORTGAGEE**

- 18-1. Notwithstanding any other provision of this Declaration, the Bylaws, or Regulations, so long as

a mortgagee is the holder of a construction mortgage lien conveyed to it by The Declarant covering one or more of the Units, and unless all construction mortgagees shall have given their approval. The Association and Board of Directors shall not be entitled to:

- (a) by act or omission, seek to abandon or terminate The Condominium;
- (b) partition or subdivide any Unit;
- (c) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer The Common Area;
- (d) use hazard insurance proceeds for losses to the property (whether to Units or to The Common Area) for other than the repair, replacement or reconstruction of such losses, except as provided by statute in case of substantial loss to the Units and/or The Common Area; or

**ARTICLE 19**  
**UNIT MORTGAGEE**

**FNMA/FHLMC REQUIREMENTS**

19-1. Notwithstanding any other provision of this Declaration, the Bylaws, or Residency Regulations, it shall require the prior written approval of two-thirds (2/3) of the mortgagees (based on one vote per first mortgagee) holding mortgages recorded in the Rockingham County Registry of Deeds constituting first liens on Units within The Condominium, or the mortgagees of such number of Units to which two-thirds (2/3) of the voting power in The Association appertains, in order for The Association or its Board of Directors to be entitled to:

- (a) by act or omission, seek to abandon or terminate The Condominium (and subject to the requirements of New Hampshire RSA 356-B:34 I and Section "21-2" below);
- (b) partition or subdivide any Unit;
- (c) by act or omission, seek to abandon, partition, subdivide, encumber, sell, or transfer The Common Area;
- (d) use hazard insurance proceeds for losses to the property (whether to Units or to The Common Area) for other than the repair, replacement or reconstruction of such losses, except as provided by statute in case of substantial loss to the Units and/or The Common Area.
- (e) change the pro rata interest or obligations of any Unit in order to levy Assessment or charges, allocate distribution of hazard insurance proceeds or condemnation awards or determine the pro rata share of ownership of each Unit in the common elements. As used in this Section "19-1." only, the word "Owner" shall not include The Declarant.

19-2. No provision of this Declaration, the Bylaws, or the Residency Regulations shall be construed to grant to any Owner, or to any other party, any priority over any rights of first mortgagees of the Units pursuant to their first mortgages in the case of the distribution to Owners of insurance proceeds or condemnation awards for losses to, or a taking of, Units and/or The Common Area or any portions thereof.

19-3. **Notices.** The Association shall notify, in writing, all holders, insurers, or guarantors of first

mortgages of a Unit in the event:

- (a) that any condemnation or casualty loss occurs which affects a material portion of The Condominium or the mortgaged Unit;
- (b) of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by The Association;
- (c) of any action which requires the consent of a special percentage of mortgage holders; or
- (d) of or for a particular Unit, any sixty (60) days delinquency in the payment of assessments or charges owed by the Owner of the mortgaged Unit.

To obtain this information, the holder, insurer, or guarantor of a mortgage on a Unit, must submit a written request and notice to The Association which specifies their particular interest.

- 19-4. Until and unless such time as The Condominium contains sixty-two (62) or more Units and there is no audited financial statement of the Unit Owners' Association accounts available, any mortgage holder may have an audited statement prepared of the Unit Owners' Association accounts at the mortgage holder's expense. At the time The Condominium contains sixty-two (62) Units, the Unit Owners' Association will prepare an audited statement for the preceding fiscal year if a holder, insurer, or guarantor of any first mortgage that is secured by a Unit of The Condominium submits a written request for such an audited statement.

#### **ARTICLE 20 NOTICES**

- 20-1. All notices hereunder, and under the Bylaws and The Act, to The Association and The Board shall be sent by United States certified mail to The Board at THE HADLEIGH WOODS ADULT COMMUNITY CONDOMINIUM ASSOCIATION, c/o H and B Homes Corp., 8 Deerwood Hollow, Chester, New Hampshire 03036, or to such other address as The Board may designate, from time to time, by notice in writing to all Owners. All such notices to Owners shall be sent to the address of the Owners at their respective Units and to such other addresses as any of them may have designated to The Board. All notices shall be deemed to have been given when mailed, except notices of change of address which shall be deemed to have been given when received, and except as otherwise provided herein.

#### **NEW HAMPSHIRE RSA-356-B:34:**

- 20-2. No act of omission by the Unit Owners to terminate The Condominium for any reason other than substantial destruction or condemnation of the Submitted Land shall be valid or effective unless approved by eligible mortgagees of Units to which at least sixty-seven percent (67%) of the voting power of The Association appertains, and unless Unit Owners holding eighty percent (80%) or more of the voting power of The Association concur.

#### **ARTICLE 21 EASEMENTS**

- 21-1. The Declarant reserves the right to convey easements to any utility companies including, without limitation, cable, communications, electric and other utilities, which easements are necessary or desirable for The Condominium. All such easements do hereby take precedence over the Unit Owners right and title in and to their Units and The Common Area, and this right shall pass to The Association upon the completion and transfer of the sixty-second (62nd) and last unit to a third party.

**ARTICLE 22**  
**SEVERABILITY**

- 22-1. The provisions hereof shall be deemed independent and severable and the invalidity or partial invalidity of any part of this Declaration shall not affect in any manner the validity, enforceability, or effect of the balance of this Declaration.

**ARTICLE 23**  
**GENDER**

- 23-1. The use of the masculine gender herein shall be deemed to include the feminine gender and the use of the singular shall be deemed to include the plural, whenever the context so requires.

**ARTICLE 24**  
**INTERPRETATION**

- 24-1. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a Condominium project.

**ARTICLE 25**  
**OPTION TO CONTRACT**

- 25-1. **Option to Contract.** Except as set forth in Article "16." above, regarding the water system and any necessary easements, The Declarant hereby expressly declines any reservation of the rights to withdraw any part of the "Submitted Land" from this Declaration or The Condominium, and has, therefore, not created any "Withdrawable Land" within The Condominium.

**NEW HAMPSHIRE RSA 356-B:41 II:**

**ARTICLE 26**  
**STATUTORY WARRANTY AGAINST STRUCTURAL DEFECTS**

- 26-1. The Declarant warrants against structural defects:
- (a) each of the Units for one year from the date such is conveyed; and
  - (b) all of The Common Area for one year.

The one year referred to in the previous sentence shall begin as to each of The Common Areas whenever the same has been completed or if later, at the time the first Unit therein is conveyed.

For the purposes of this paragraph, no Unit shall be deemed conveyed unless conveyed to a bona fide purchaser. For the purposes of this paragraph, structural defects shall be those defects in components constituting any Unit or Common Area which reduce the stability or safety of the structure below accepted standards or restrict the normal intended use of all or part of the structure and which require repair, renovation, restoration, or replacement. Nothing in this paragraph shall be construed to make The Declarant responsible for any items of maintenance relating to the Units or Common Areas.

- 26-1-1. EXCEPT AS SET FORTH IN SECTION "26-1." ABOVE, OR IN ANY OTHER WRITTEN WARRANTY




OR HOME OWNER'S INSURANCE POLICY DELIVERED BY THE DECLARANT TO ANY UNIT OWNER, THE DECLARANT, ON BEHALF OF ITSELF AND ITS WHOLLY-OWNED SUBSIDIARIES, HEREBY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; AND EXCEPT FOR ANY WARRANTIES IMPLIED BY LAW AND NOT SUBJECT TO EXCLUSION, THERE ARE NO WARRANTIES IN FAVOR OF ANY UNIT OWNER OR THE ASSOCIATION WHICH EXTEND BEYOND THE EXPRESS WARRANTIES SET FORTH IN SECTION "26-1." ABOVE. THE TERM OF ANY WARRANTIES OF THE DECLARANT IMPLIED BY LAW AND NOT (A) SET FORTH IN SECTION "26-1." ABOVE; OR (B) SUBJECT TO EXCLUSION, SHALL END ONE YEAR AFTER (A) THE ISSUANCE OF ANY OCCUPANCY PERMIT; OR (B) AFTER THE DATE FIRST THIRD PARTY UNIT OWNER TAKES TITLE TO THE UNIT, WHICHEVER IS LATER TO OCCUR.

THE DECLARANT EXPRESSLY DISCLAIMS RESPONSIBILITY FOR INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES, AND THE SAME ARE EXPRESSLY EXCLUDED FROM THE WARRANTIES REFERRED TO HEREIN. THE DECLARANT RESERVES THE RIGHT TO SUBSTITUTE FOR ANY MATERIALS, EQUIPMENT, AND APPLIANCES TO BE USED IN THE UNITS AND BUILDINGS DESCRIBED HEREIN AND TO CHANGE THE SIZE, NUMBER, AND LOCATION OF BUILDINGS, UNITS, AND OTHER IMPROVEMENTS. THE DECLARANT IS NOT RESPONSIBLE FOR VARIATIONS IN DIMENSIONS FROM ONE UNIT TO ANOTHER OF SIMILAR DESIGN.

IN WITNESS WHEREOF, H AND B HOMES CORP., by its President, duly authorized, has executed this Declaration on the day and year first above written.


H AND B HOMES CORP.

  
\_\_\_\_\_  
Witness

By:   
\_\_\_\_\_  
Brian Harvey, Treasurer  
Duty Authorized

STATE OF NEW HAMPSHIRE  
ROCKINGHAM, SS.

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of August, 2003, by Brian Harvey, the Treasurer, of H and B Homes Corp., a New Hampshire corporation, on behalf of the corporation.

  
\_\_\_\_\_  
Peter H. Bronstein, Justice of the Peace  
My commission expires: 05-29-07

BK 4121PG0586

EXHIBIT "A"

A certain parcel of land situated in Windham, Rockingham County, State of New Hampshire, being shown as Tax Map 3-B Lot 265 on plan of land entitled, "Condominium Site Plan, Tax Map 3-B, Lot 265, Hadleigh Woods, Windham, New Hampshire 03087, Rockingham County, Owner of Record/Prepared For H & B Homes Corp., 8 Deerwood Hollow, Chester, New Hampshire 03036, Scale 1"=100', Sheet 1 of 1, September 24 2002."

EXHIBIT "B"

<u>Building/Unit</u>	<u>Percentage Undivided Interest</u>
3 & 5 Flat Rock Road	1.6129/unit
7 & 9 Flat Rock Road	1.6129/unit
11 & 15 Flat Rock Road	1.6129/unit
17 & 19 Flat Rock Road	1.6129/unit
21 & 23 Flat Rock Road	1.6129/unit
25 & 27 Flat Rock Road	1.6129/unit
2 & 4 Hadleigh Road	1.6129/unit
3 & 5 Hadleigh Road	1.6129/unit
6 & 8 Hadleigh Road	1.6129/unit
7 & 9 Hadleigh Road	1.6129/unit
10 & 12 Hadleigh Road	1.6129/unit
11 & 15 Hadleigh Road	1.6129/unit
14 & 16 Hadleigh Road	1.6129/unit
17 & 19 Hadleigh Road	1.6129/unit
18 & 20 Hadleigh Road	1.6129/unit
22 & 24 Hadleigh Road	1.6129/unit
26 & 28 Hadleigh Road	1.6129/unit
21 & 23 Hadleigh Road	1.6129/unit
30 & 32 Hadleigh Road	1.6129/unit
34 & 36 Hadleigh Road	1.6129/unit
25 & 27 Hadleigh Road	1.6129/unit
38 & 40 Hadleigh Road	1.6129/unit
42 & 44 Hadleigh Road	1.6129/unit
29 & 31 Hadleigh Road	1.6129/unit
33 & 35 Hadleigh Road	1.6129/unit
46 & 48 Hadleigh Road	1.6129/unit
50 & 52 Hadleigh Road	1.6129/unit
56 & 54 Hadleigh Road	1.6129/unit
2 & 4 Blackburn Road	1.6129/unit
6 & 8 Blackburn Road	1.6129/unit
5 & 3 Blackburn Road	1.6129/unit