

August 22, 2025

**Mr. Steve Puleo**  
Planning Director  
Town of Windham  
8 School Road  
Windham, ME 04062

**Subject: Plan Review Amendment  
Windham Village Apartments – Windham, ME  
Cover Letter**

Dear Steve:

**Windham Village Apartments, LLC.** has retained Gorrill Palmer to assist in the preparation of plans and permitting for the approved Major Site Plan and Subdivision project #23-18 – Windham Village Apartments. This project was approved at Windham’s July 1, 2024, Planning Board meeting with a vote of 5 to 0. A Minor Revision Site Plan Review Application dated October 17, 2024, was submitted to comply with Condition of Approvals. A letter dated November 25, 2024, was received from the Planning Director that confirmed the approval of the minor change request.

We provide this letter to the Town requesting a plan amendment review. For ease of review and brevity, we have listed the proposed amendments to the project below:

- A) The project is described as 3 condominium projects:
  - a. Phase A consists of 48 Condo Units.
  - b. Phase B consists of 52 Apartment Units.
  - c. Phase C consists of 72 Apartment Units.Condominium declarations, bylaws and association documents are provided in Attachment 5.
- B) There are minor revisions to parking, dumpster locations, as well as reduction in impervious are for removal of the oversized spaces:
  - a. In total, there are 349 parking spaces provided, of which 14 are accessible, meeting the Town of Windham and ADA guidelines.
    - i. Phase A consists of 104 parking spaces.
    - ii. Phase B consists of 102 parking spaces.
    - iii. Phase C consists of 143 parking spaces.
- C) The condo buildings (located in the southwestern corner of the parcel) intend to have revised color scheme and accents. Revised building elevations are provided in Attachment 4.



STRUCTURAL



FALL PROTECTION  
SAFETY



TRANSPORTATION



SITE DESIGN



SURVEY



WATER  
RESOURCES



TECHNOLOGY  
& INNOVATION

Please note that the "Phasing" terminology is related to condominium areas and not a phased development plan. The entire project will be constructed concurrently with proper construction sequencing.

In support of this application, we have also provided the following materials:

Attachment	Section
1	Application & Checklists
2	Title, Right, or Interest
3	Amended Subdivision Plan and Site Plan
4	Exterior Elevations (Condos)
5	Condominium Documents

A check in the amount of \$600 for the amended plan review request has been dropped off at the Town for this application.

### CLOSURE

As discussed with your office, an electronic version of this application is submitted for your review and approval. We look forward to continuing discussion of this project with you.

If you have any questions on the information being submitted, please contact our office.

Sincerely,

**GORRILL PALMER**



**Drew Gagnon, PE**

Service Line Leader – Land Development

Phone 207-772-2515 x288

dgagnon@gorrillpalmer.com

c: Loni Graiver, Windham Village Apartments, LLC

Angelo Coppola, Windham Village Apartments, LLC

*u:\graiver homes\3796\_gravier homes\_tandberg trail mixed residential housing - windham\p applications\local\amended subdivision august 2025\3796 - subdivision amendment (07.31.2025).docx*

## **ATTACHMENT 1**

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### **APPLICATION & CHECKLISTS**



## AMENDED SUBDIVISION APPLICATION

<b>FEES FOR AMENDED SUBDIVISION</b>		<b>APPLICATION FEE:</b>		<input checked="" type="checkbox"/> \$350.00 (Each lot/Revision)		<b>AMOUNT PAID:</b>			
		<b>REVIEW ESCROW:</b>		<input checked="" type="checkbox"/> \$250.00		\$ _____			
						<b>DATE:</b> _____			
<b>NAME OF ORIGINAL SUBDIVISION BEING REVISED OR AMENDED:</b>		Windham Village Apartments				<i>Office Use:</i>			
								<i>Office Stamp:</i>	
<b>PROPERTY DESCRIPTION</b>	<b>Parcel ID</b>	<b>Map #</b>	70	<b>Lot(s) #</b>	1-A01	<b>Zoning District(s)</b>	C-1	<b>Total Land Area SF</b>	388,989 SF
	<b>Physical Address</b>	770 Roosevelt Trail, Windham, ME 04062				<b>Watershed</b>	Presumpscot River		
<b>PROPERTY OWNER'S INFORMATION</b>	<b>Name</b>	Windham Village Apartment, LLC				<b>Name of Business</b>	Windham Village Apartments, LLC		
	<b>Phone</b>	207-329-7355				<b>Mailing Address</b>	40 Farm Gate Road Falmouth, ME 04105		
	<b>Fax or Cell</b>								
	<b>Email</b>								
<b>APPLICANT'S INFORMATION (IF DIFFERENT FROM OWNER)</b>	<b>Name</b>					<b>Name of Business</b>			
	<b>Phone</b>					<b>Mailing Address</b>			
	<b>Fax or Cell</b>								
	<b>Email</b>								
<b>APPLICANT'S AGENT INFORMATION</b>	<b>Name</b>	Drew Gagnon				<b>Name of Business</b>	Gorrill Palmer		
	<b>Phone</b>	207-772-2515				<b>Mailing Address</b>	300 Southborough Drive, Suite 200 South Portland, ME 04106		
	<b>Fax or Cell</b>	207-653-8748							
	<b>Email</b>	dgagnon@gorrillpalmer.com							
<b>PROJECT INFORMATION</b>	<b>Existing Land Use (Use extra paper, if necessary):</b> Existing wooded abd meadow areas boarded by Tandberg Trail to the South and Manchester Drive to the West.								
	<b>Provide a narrative description of the proposed changes to the approved plan (Use extra paper, if necessary):</b> The Amendment includes: <ul style="list-style-type: none"> <li>• Splitting the project into 3 phases. The areas will be condo lots, not subdivided lots.</li> <li>• Minor revisions to parking and dumpster locations based on the phases</li> <li>• One phase turning apartments to condos (48 total). The rest remain apartments.</li> <li>• Each phase has appropriate parking</li> <li>• Condo buildings will be white with black trim. Revised elevations are in the file.</li> <li>• Applicant intends to construct the infrastructure up front, but phase the building portion as shown in the application.</li> </ul>								
	<b>Provide a narrative description of construction constraints (wetlands, shoreland zone, flood plain, non- conformance, etc. Use extra paper, if necessary):</b> No wetlands exist on site. The site is mostly sand and existing topography generally slopes slightly towards Tandberg Trail. The site is not within the shoreland zone or a flood plain.								

## AMENDED SUBDIVISION REVIEW APPLICATION REQUIREMENTS

[Section 120-913](#) of the Land Use Ordinance

The submission shall contain, three (3) copies of following information, including full plan sets. Along with one (1) electronic version of the entire submission.

**The Subdivision Plan document/map:**

- A) Plan size: 24" X 36"
- B) Plan Scale: No greater 1":100'
- C) Title block: Applicant's name and address

- Name of preparer of plans with professional information
- Parcel's tax map identification (map and lot) and street address, if available

- Complete application submission deadline: three (3) weeks prior to the desired Planning Board or Staff Review Committee meeting.
  - 3 copies of application and plans
  - Application Payment and Review Escrow
- Contact information:
  - Windham Planning Department (207) 894-5960, ext. 2
  - Steve Puleo, Planning Director [sipuleo@windhammaine.us](mailto:sipuleo@windhammaine.us)
  - Amanda Lessard, Senior Planner [allessard@windhammaine.us](mailto:allessard@windhammaine.us)

## APPLICANT/PLANNER'S CHECKLIST FOR AMENDED SUBDIVISIONS

*The following checklist only includes items required by Windham's LAND USE ORDINANCE, [Section 120-913](#) for revisions to approved plans.*

Please refer to [Section 120-910](#) for submission requirements for new developments, and [Section 120-911](#) for subdivision performance and design standards to determine additional information that may be required to support the application.

**SUBMITTALS THAT THE TOWN PLANNER DEEMS INCOMPELTE IN CONTENT WILL NOT BE SCHEDULED FOR PLANNING BOARD REVIEW.**

**Per [SECTION 120-913B\(4\)](#), the Board's scope of review shall be limited to those portion of the plan which are proposed to be changed.**

Submission Requirements:	Applicant	Staff
Completed Application form	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Evidence of right, title, or interest in the property	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Evidence of payment of fees	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Original Subdivision Plan	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Proposed Amended Subdivision Plan. The revised plan shall indicate that it is a revision of a previously approved and recorded plan and shall show the title of subdivision and the book and page or cabinet and sheet on which the original plan is recorded at the Registry of Deeds	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Any additional supporting information to allow the Planning Board to make a determination that the proposed revisions meet the standards of Article 9 <a href="#">Section 120-911</a> of the Land Use Ordinance and the criteria of the state statute	<input type="checkbox"/>	<input type="checkbox"/>

*The undersigned hereby makes an application to the Town of Windham for approval of the proposed project and declares the foregoing to be true and accurate to the best of his/her knowledge.*



APPLICANT OR AGENT'S SIGNATURE

8-19-25

DATE

Drew Gagnon

PLEASE TYPE OR PRINT THE NAME

## AGENT AUTHORIZATION

<b>APPLICANT/ OWNER</b>	<b>Name</b>	Loni Gravier		
<b>PROPERTY DESCRIPTION</b>	<b>Physical Address</b>	770 Roosevelt Trail, Windham, ME 04062	<b>Map</b>	70
			<b>Lot</b>	1A
<b>APPLICANT'S AGENT INFORMATION</b>	<b>Name</b>	Drew Gagnon		
	<b>Phone</b>	772-2515	<b>Business Name &amp; Mailing Address</b>	Gorrill Palmer 300 Southborough Drive, Suite 200 South Portland, ME 04106
	<b>Fax/Cell</b>	207-653-8748		
	<b>Email</b>	dgagnon@gorrillpalmer.com		

***Said agent(s) may represent me/us before Windham Town officers and the Windham Planning Board to expedite and complete the approval of the proposed development for this parcel.***

APPLICANT SIGNATURE

4-18-23

DATE

**Loni Gravier**

PLEASE TYPE OR PRINT NAME HERE

CO-APPLICANT SIGNATURE

DATE



PLEASE TYPE OR PRINT NAME HERE

APPLICANT'S AGENT SIGNATURE

4-18-23

DATE



**Drew Gagnon**

PLEASE TYPE OR PRINT NAME HERE

## **ATTACHMENT 2**

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**TITLE, RIGHT, OR INTEREST**

SHORT FORM QUITCLAIM DEED WITH COVENANT  
DLN: **1002440279183**

**B33 WINDHAM II LLC**, a Delaware limited liability company, whose mailing address is 601 Union Street, Suite 1115, Seattle Washington 98101 (the “**Grantor**”), FOR CONSIDERATION PAID, grants to **WINDHAM VILLAGE APARTMENTS LLC**, a Maine limited liability company, whose mailing address is 40 Farm Gate Road, Falmouth, Maine 04105 (the “**Grantee**”), with QUITCLAIM COVENANT, certain real property, together with any improvements thereon, situated in the Town of Windham, County of Cumberland and State of Maine, more particularly described on **Exhibit A** attached hereto and made a part hereof, subject to those matters set forth on **Exhibit B** attached hereto and made a part hereof.

IN WITNESS WHEREOF, Andy Chien has caused this instrument to be executed as the Managing Principal of B33 WINDHAM II LLC, a Delaware limited liability company, thereunto duly authorized, this 27 day of JUNE, 2024.



WITNESS:

Mariana Guarino  
Name: Mariana Guarino

**B33 WINDHAM II LLC,**  
a Delaware limited liability company

By: Andy Chien  
Name: Andy Chien  
Title: Managing Principal

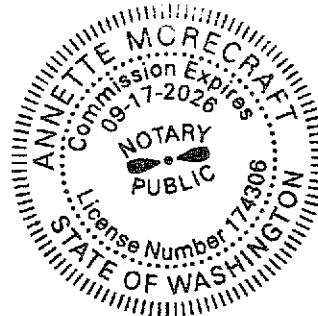
STATE OF WASHINGTON )  
COUNTY OF King ) ss

24th June, 2024

PERSONALLY APPEARED the above-named Andy Chien, Managing Principal of B33 WINDHAM II LLC, a Delaware limited liability company, as aforesaid, and acknowledged the foregoing instrument to be his/her free act and deed in his/her said capacity and the free act and deed of said limited liability company.

Before me,

Annette Morecraft  
Notary Public  
Print Name: Annette Morecraft  
Commission Expires: 9/17/2026



**EXHIBIT A**

**LEGAL DESCRIPTION**

A certain lot or parcel of land located in the Town of Windham, County of Cumberland and State of Maine, being more particularly described as follows:

**Proposed Lot 1 and Proposed Lot 2** as depicted on subdivision plan titled "First Amended Subdivision Shaw's Commercial Subdivision: Windham Village Apartments, 770 Roosevelt Trail, Windham, Maine" made for Windham Village Apartments LLC by Owen Haskell, Inc., dated February 5, 2024 and recorded in the Cumberland County Registry of Deeds in Plan Book 224, Page 52.

[EXHIBIT A]

**EXHIBIT B****PERMITTED EXCEPTIONS**

1. Rights and easements granted to Central Maine Power Company and New England Telephone and Telegraph Company by C. Harlan Chaplin and Lottie M. Chaplin in an instrument dated November 17, 1971 and recorded in Book 3211, Page 575.
2. Rights and easements granted to Central Maine Power Company by George C. Shaw Company in an instrument dated November 20, 1978 and recorded in Book 4371, Page 163.
3. Terms and conditions in a Department of Environmental Site Location Order for Shaw's Realty Co affecting Shaw's Plaza dated January 30, 1979 and recorded in Book 4381, Page 328.
4. Taking for purposes of Land, drainage and grading rights described in Notice of Layout and Taking by The State of Maine Department of Transportation for State Highway "113" (State Route #35) dated April 30, 1986 and recorded in Book 7175, Page 195; as affected by that certain Supplemental Notice of Taking dated December 2, 1986 and recorded in Book 7532, Page 337.
5. Terms and conditions affecting rights and easements in a 50 foot wide strip reserved by Shaw's Realty Co., in a Deed The Howland Corporation dated February 27, 1987 and recorded in Book 7664, Page 246; as corrected and re-recorded in Deed July 31, 1987 and recorded in Book 7995, Page 319.
6. Covenants and agreements set forth in an Agreement and Deed of Easement between Shaw's Realty Co. and the Inhabitants of the Town of Windham dated March 11, 1987 and recorded in Book 8137, Page 273.
7. Terms and conditions and rights and easements as set forth in an Agreement and Deed of Easements between Shaw's Realty Co., and the Inhabitants of the Town of Windham dated June 27, 1985 and recorded in Book 8595, Page 30.
8. Terms and conditions and rights and easements as set for in a Deed to Standby Corp. III from J & L Associates, dated February 13, 1989 and recorded in Book 8696, Page 151.
9. Terms, conditions, rights and easements (other than the appurtenant rights and easements insured herein) set forth in a Deed from Shaw's Realty Co. to the Town of Windham dated November 20, 1995 and recorded in Book 12331, Page 88.
10. Rights and easements granted to C M P Natural Gas, LLC by Shaw's Realty Co. in an instrument dated August 23, 1999 and recorded in Book 15043, Page 311.
11. Terms, conditions, restrictions, dedications, easements, conveyances, Right of Ways, Boundary Lines, and Lot Lines shown on a plan entitled Relieve Road, Route 35, North Windham, Maine, by William J. Doucet, P.L.S. 2263, dated June 7, 1995, and revised through November 10, 1995 and recorded in Plan Book 196, Page 17, as affected by a Notice of Expiration of Subdivision Approval by the Town of Windham, dated February 8, 1999, and recorded in Book 14562, Page 334.
12. Terms, conditions, restrictions, dedications, easements, conveyances, encroachments, Right of Ways, Boundary Lines, and Lot Lines shown on a plan entitled Commercial Subdivision, route 35, North Windham, Maine, William J. Doucet, P.L.S. 2263, dated June 7, 1995, and revised through

[EXHIBIT B]

November 21, 1995 and recorded In Plan Book 196, Page 18, as affected by a Notice of Expiration of Subdivision Approval by the Town of Windham, dated February 8, 1999, and recorded in Book 14562, Page 334.

13. Terms and provisions of a Lease by and between California State Teachers' Retirement System, Landlord, and Shaw's Supermarkets, Inc., as Tenant, a Memorandum and Notice of which is dated as of June 1, 2000 and recorded on June 5, 2000 in Book 15511, Page 338.
14. Terms and provisions of a Lease by and between California State Teachers' Retirement System, Landlord, and Staples The Office Superstore East, Inc., as Tenant, a Memorandum of which is dated as of June 12, 2001 and recorded on July 3, 2001 in Book 16485, Page 92.
15. Terms, conditions, rights and easements (other than the appurtenant rights and easements insured herein) as set forth in that certain Easement Agreement, dated as of April 2, 2002, by and between California State Teachers' Retirement System, as Grantor, and Gorham Savings Bank, as Grantee, recorded on April 2, 2002 in Book 17490, Page 269.
16. Rights, easements, restrictions, terms and conditions as described in that certain Easement, dated as of December 9, 2002, by California State Teachers' Retirement System, as Grantor, and Maine Natural Gas Corporation, as grantee, recorded on December 30, 2002 in Book 18623, Page 164.
17. State of Maine Department of Environmental Protection Transfer Order dated August 16, 2011 and recorded in the Cumberland County Registry of Deeds in Book 28930, Page 24.
18. Notice of Layout and Taking by the State of Maine Department of Transportation against SP Windham Owner LLC, et al dated February 19, 2020 and recorded in the Cumberland County Registry of Deeds in Book 36541, Page 345.
19. Department Order in the Matter of Site Location of Development Act made by Department of Environmental Protection, State of Maine, dated July 26, 2021 and recorded July 30, 2021 in Book 38487, Page 107.
20. Conditions of Partial Transfer (approval) of Windham Village Apartments, LLC, Board Order # L-4332-23-A-X, dated November 29, 2023, recorded November 30, 2023 in Book 40502 Page 162.
21. Plan for First Amended Shaw's Commercial Subdivision recorded February 15, 2024 in Plan Book 224, Page 52.

[EXHIBIT B]

## **ATTACHMENT 3**

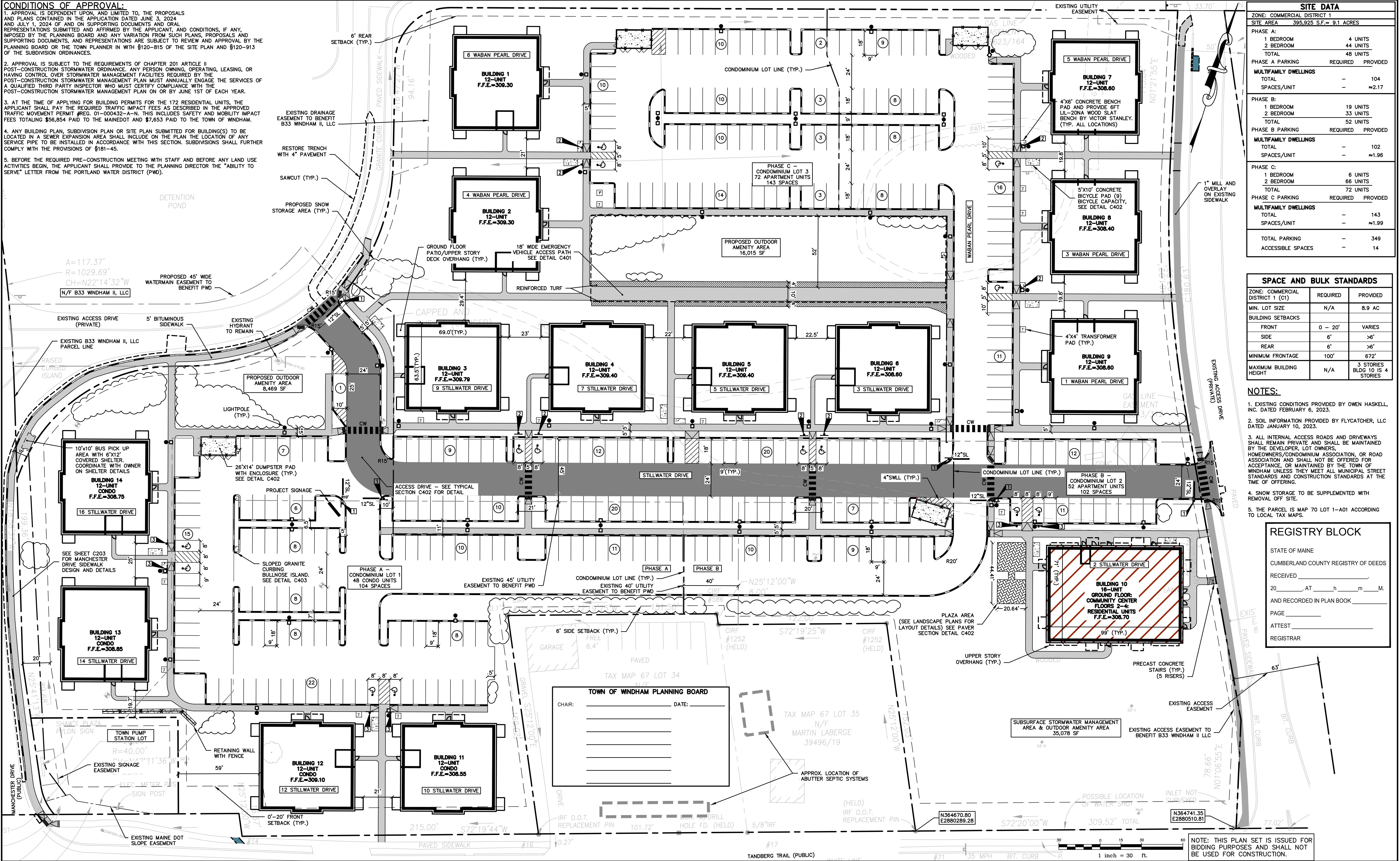
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### **REVISED PLANS**



CONDITIONS OF APPROVAL:

1. APPROVAL IS DEPENDENT UPON, AND LIMITED TO, THE PROPOSALS AND PLANS CONTAINED IN THE APPLICATION DATED JUNE 3, 2024 AND JULY 1, 2024 OF AND ON SUPPORTING DOCUMENTS AND ORAL REPRESENTATIONS SUBMITTED AND AFFIRMED BY THE APPLICANT, AND CONDITIONS, IF ANY, IMPOSED BY THE PLANNING BOARD AND ANY VARIATION FROM SUCH PLANS, PROPOSALS AND SUPPORTING DOCUMENTS, AND REPRESENTATIONS ARE SUBJECT TO REVIEW AND APPROVAL BY THE PLANNING BOARD OR THE TOWN PLANNER IN WITH §120-815 OF THE SITE PLAN AND §120-913 OF THE SUBDIVISION ORDINANCES.
2. APPROVAL IS SUBJECT TO THE REQUIREMENTS OF CHAPTER 201 ARTICLE II POST-CONSTRUCTION STORMWATER ORDINANCE. ANY PERSON OWNING, OPERATING, LEASING, OR HAVING CONTROL OVER STORMWATER MANAGEMENT FACILITIES REQUIRED BY THE POST-CONSTRUCTION STORMWATER MANAGEMENT PLAN MUST ANNUALLY ENGAGE THE SERVICES OF A QUALIFIED THIRD PARTY INSPECTOR WHO MUST CERTIFY COMPLIANCE WITH THE POST-CONSTRUCTION STORMWATER MANAGEMENT PLAN ON OR BY JUNE 1ST OF EACH YEAR.
3. AT THE TIME OF APPLYING FOR BUILDING PERMITS FOR THE 172 RESIDENTIAL UNITS, THE APPLICANT SHALL PAY THE REQUIRED TRAFFIC IMPACT FEES AS DESCRIBED IN THE APPROVED TRAFFIC MOVEMENT PERMIT REG. 01-000432-A-N. THIS INCLUDES SAFETY AND MOBILITY IMPACT FEES TOTALING \$56,854 PAID TO THE MAINE DOT AND \$7,653 PAID TO THE TOWN OF WINDHAM.
4. ANY BUILDING PLAN, SUBDIVISION PLAN OR SITE PLAN SUBMITTED FOR BUILDING(S) TO BE LOCATED IN A SEWER EXPANSION AREA SHALL INCLUDE ON THE PLAN THE LOCATION OF ANY SERVICE PIPE TO BE INSTALLED IN ACCORDANCE WITH THIS SECTION. SUBDIVISIONS SHALL FURTHER COMPLY WITH THE PROVISIONS OF §181-45.
5. BEFORE THE REQUIRED PRE-CONSTRUCTION MEETING WITH STAFF AND BEFORE ANY LAND USE ACTIVITIES BEGIN, THE APPLICANT SHALL PROVIDE TO THE PLANNING DIRECTOR THE "ABILITY TO SERVE" LETTER FROM THE PORTLAND WATER DISTRICT (PWD).



SITE DATA			
ZONE: COMMERCIAL DISTRICT 1			
SITE AREA 395,925 S.F. = 9.1 ACRES			
PHASE A:			
1 BEDROOM	4 UNITS		
2 BEDROOM	44 UNITS		
TOTAL	48 UNITS		
PHASE A PARKING			
MULTIFAMILY DWELLINGS		REQUIRED	PROVIDED
TOTAL		-	104
SPACES/UNIT		-	~2.17
PHASE B:			
1 BEDROOM	19 UNITS		
2 BEDROOM	33 UNITS		
TOTAL	52 UNITS		
PHASE B PARKING			
MULTIFAMILY DWELLINGS		REQUIRED	PROVIDED
TOTAL		-	102
SPACES/UNIT		-	~1.96
PHASE C:			
1 BEDROOM	6 UNITS		
2 BEDROOM	66 UNITS		
TOTAL	72 UNITS		
PHASE C PARKING			
MULTIFAMILY DWELLINGS		REQUIRED	PROVIDED
TOTAL		-	143
SPACES/UNIT		-	~1.99
TOTAL PARKING		-	349
ACCESSIBLE SPACES		-	14

SPACE AND BULK STANDARDS		
ZONE: COMMERCIAL DISTRICT 1 (C1)		
MIN. LOT SIZE	REQUIRED	PROVIDED
	N/A	8.9 AC
BUILDING SETBACKS		
FRONT	0 - 20'	VARIES
SIDE	6'	>6'
REAR	6'	>6'
MINIMUM FRONTAGE	100'	672'
MAXIMUM BUILDING HEIGHT	N/A	3 STORIES BLDG 10 IS 4 STORIES

- NOTES:
- EXISTING CONDITIONS PROVIDED BY OWEN HASKELL, INC. DATED FEBRUARY 6, 2023.
  - SOIL INFORMATION PROVIDED BY FLYCATCHER, LLC DATED JANUARY 10, 2023.
  - ALL INTERNAL ACCESS ROADS AND DRIVEWAYS SHALL REMAIN PRIVATE AND SHALL BE MAINTAINED BY THE DEVELOPER, LOT OWNERS, HOMEOWNERS/CONDOMINIUM ASSOCIATION, OR ROAD ASSOCIATION AND SHALL NOT BE OFFERED FOR ACCEPTANCE, OR MAINTAINED BY THE TOWN OF WINDHAM UNLESS THEY MEET ALL MUNICIPAL STREET STANDARDS AND CONSTRUCTION STANDARDS AT THE TIME OF OFFERING.
  - SNOW STORAGE TO BE SUPPLEMENTED WITH REMOVAL OFF SITE.
  - THE PARCEL IS MAP 70 LOT 1-A01 ACCORDING TO LOCAL TAX MAPS.

REGISTRY BLOCK

STATE OF MAINE  
CUMBERLAND COUNTY REGISTRY OF DEEDS  
RECEIVED \_\_\_\_\_  
20 \_\_\_\_ AT \_\_\_\_ h \_\_\_\_ m \_\_\_\_ M.  
AND RECORDED IN PLAN BOOK \_\_\_\_\_  
PAGE \_\_\_\_\_  
ATTEST \_\_\_\_\_  
REGISTRAR

Rev.	Date	Revision

AMENDED APPLICATION	07/30/25	DJG
TRAFFIC MOVEMENT PERMIT	01/10/25	DJG
FINAL PRICING PLANS	01/02/25	DJG
PROGRESS SET	12/30/24	DJG
FINAL PLAN	12/13/24	DJG
PROGRESS SET	11/26/24	DJG
Issued For	Date	By

Design: LEL	Draft: CEH	Date: DEC 2022
Checked: DJG	Scale: 1"=30'	Job No.: 3796
File Name: 3796-SUBD.dwg		
This plan shall not be modified without written permission from Gorrill-Palmer Consulting Engineers, Inc.(GPCEI). Any alterations, authorized or otherwise, shall be at the user's sole risk and without liability to GPCEI.		

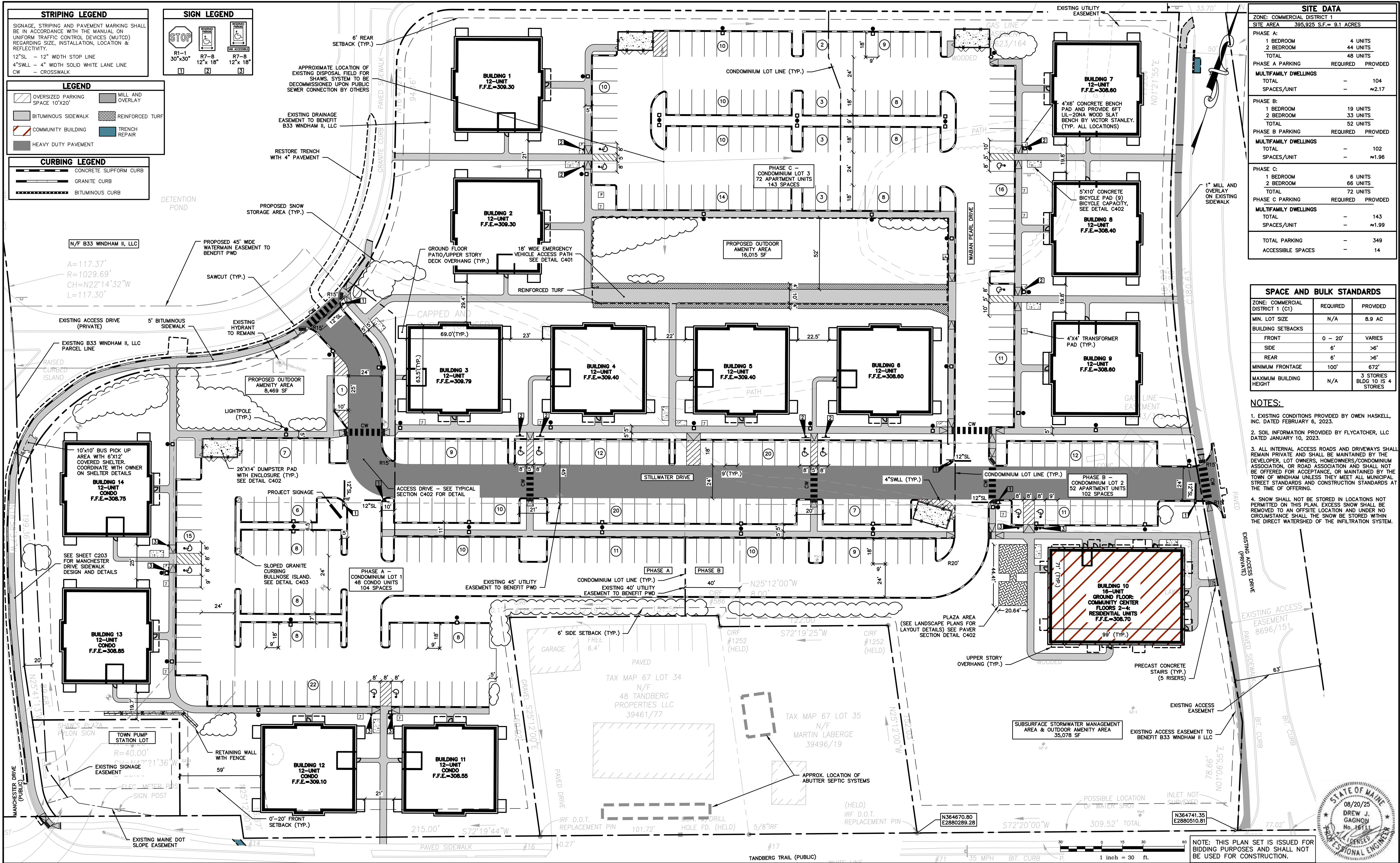


Gorrill Palmer, an LJB Engineering Company  
GorrillPalmer.com  
(207) 772-2515  
300 Southborough Drive - Suite 200  
South Portland, ME 04106

Drawing Name:	Site & Subdivision Plan
Project:	Windham Village Apartments 770 Roosevelt Trail, Windham, Maine 04062
Client:	Windham Village Apartments, LLC 40 Farm Gate Road, Falmouth, ME 04105

Drawing No.
C004





Rev.	Date	Revision

AMENDED APPLICATION	08/20/25	DJG
TRAFFIC MOVEMENT PERMIT	01/10/25	DJG
FINAL PRICING PLANS	01/02/25	DJG
PROGRESS SET	12/30/24	DJG
FINAL PLAN	12/13/24	DJG
PROGRESS SET	11/26/24	DJG
Issued For	Date	By

Design: LEL	Draft: CEH	Date: DEC 2022
Checked: DJG	Scale: 1"=30'	Job No.: 3796
File Name: 3796-SP.dwg		
This plan shall not be modified without written permission from GorriiPalmer Consulting Engineers, Inc.(GPCEI). Any alterations, authorized or otherwise, shall be at the user's sole risk and without liability to GPCEI.		



Gorrii Palmer, an LJB Engineering Company  
GorriiPalmer.com  
(207) 772-2515  
300 Southborough Drive - Suite 200  
South Portland, ME 04106

Drawing Name:	Site Plan
Project:	Windham Village Apartments 770 Roosevelt Trail, Windham, Maine 04062
Client:	Windham Village Apartments, LLC 40 Farm Gate Road, Falmouth, ME 04105

Drawing No.	C101
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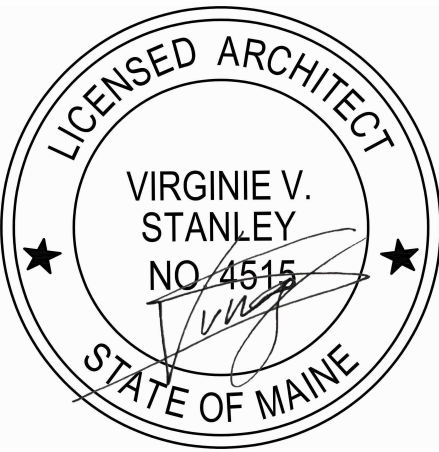


## **ATTACHMENT 4**

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### **EXTERIOR ELEVATIONS (CONDOS)**





Project:

**WINDHAM VILLAGE -  
APARTMENTS**

TANDBERG TRAIL,  
WINDHAM, ME 04062

Owner/Client:

WINDHAM VILLAGE  
APARTMENTS LLC

40 FARM GATE ROAD,  
FALMOUTH, ME 04105

Consultant:

Revisions:

Key Plan:

EXTERIOR ELEVATIONS

Scale: As indicated

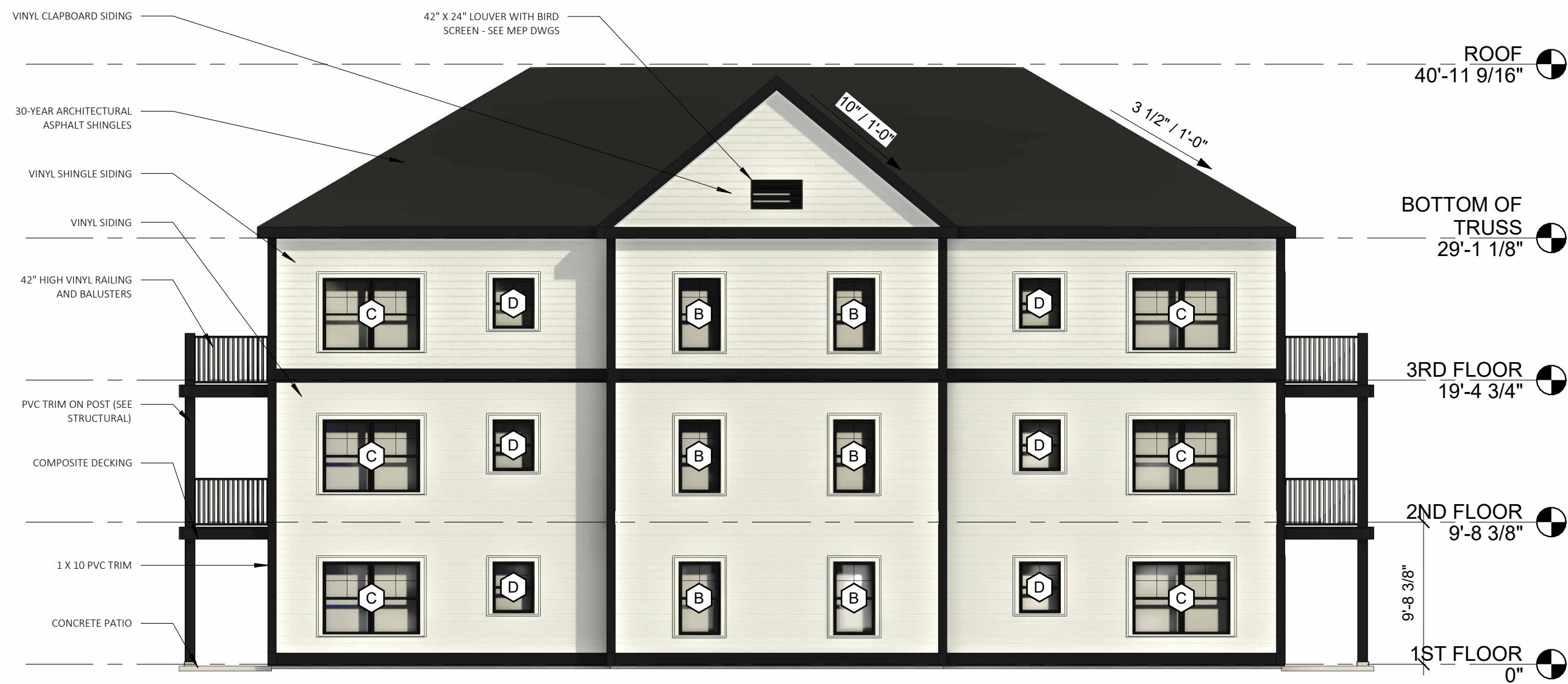
01/03/2025

**A2.00**



5 ENTRY ELEVATION

1/4" = 1'-0"



2 REAR ELEVATION

1/8" = 1'-0"



1 FRONT ELEVATION

1/8" = 1'-0"

NOTE: THE TYPICAL RIGHT ELEVATION IS THE LEFT  
ELEVATION FOR BUILDINGS 7 AND 11 DUE TO THE UTILITY  
ENTRANCE. PLEASE REFER TO CIVIL DWGS



4 RIGHT ELEVATION

1/8" = 1'-0"

NOTE: THE TYPICAL LEFT ELEVATION IS THE RIGHT  
ELEVATION FOR BUILDINGS 7 AND 11 DUE TO THE UTILITY  
ENTRANCE. PLEASE REFER TO CIVIL DWGS



3 LEFT ELEVATION

1/8" = 1'-0"

## **ATTACHMENT 5**

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### **CONDOMINIUM DOCUMENTS**

## WINDHAM VILLAGE APARTMENTS

### PROJECT STRUCTURE

Windham Village Apartments is a 172-unit residential multi-family project, proposed to be developed in 3 distinct parts, each being a “Unit.” The first part (Unit 1), which contains 48-units of residential condominiums (12 units in 4 buildings) is anticipated to be developed first; however, the developer may elect to construct the second part (Unit 2) at the same time as Unit 1. Unit 2 will contain 52-units of residential apartments (12-units in 3 buildings, and one 16-unit building with a community center located on the ground floor). The last part (Unit 3) will contain 72-units of residential apartments (12-units in 6 buildings), which will be constructed subject to overall market conditions.

Windham Village Apartments will utilize a master association structure, whereby each of Units 1, 2 and 3 will be a “Unit” in a master condominium called “Windham Village Master Condominium.” The Windham Village Master Association will be responsible for “common” infrastructure, such as Stillwater Drive, common drive aisles (such as Waban Pearl Drive,” common utilities, and the like. Each Unit within the Master Condominium will be able to be further condominium converted.

Unit 1 will be legally declared and developed as a condominium called the “Windham Village Unit 1 Condominium.” The Windham Village Unit 1 Condominium Association will manage the buildings and infrastructure (e.g., surface parking, outdoor amenity space) that are relevant to only that one project. The President of the Windham Village Unit 1 Condominium Association will be the representative to the Windham Village Master Association after Declarant control has ended.

Although each of Units 2 and 3 are intended to initially be apartment projects, and would not be further condominium converted, we are reserving that right to maintain flexibility with financing and overall market conditions – such that Units 2 and 3 could be developed and sold as residential condominiums.

**AFTER RECORDING RETURN TO:**

Nicholas J. Morrill, Esq.  
Jensen Baird  
10 Free Street, 4<sup>th</sup> Floor  
P.O. Box 4510  
Portland, Maine 04112-4510

**DECLARATION OF CONDOMINIUM**

**WINDHAM VILLAGE MASTER CONDOMINIUM  
Windham, Maine**

**ARTICLE 1**

**SUBMISSION**

**Section 1.1. Submission of Property.** Windham Village Apartments LLC, a Maine limited liability company with a place of business in Portland, Maine ("Declarant"), owner in fee simple of the land described in **Exhibit A** annexed hereto, located within the Town of Windham, Cumberland County, Maine (the "Land") being shown on a condominium plat entitled "Condominium Plat, Windham Village, Windham, Maine" prepared by Owen Haskell, dated \_\_\_\_\_, 2025, and recorded in the Cumberland County Registry of Deeds in Plan Book \_\_\_\_\_, Page \_\_\_\_\_ (the "Condominium Plat"), hereby submits the Land, together with all improvements, easements, rights and appurtenances thereunto belonging (the "Property") to the provisions of Chapter 31 of Title 33 of the Maine Revised Statutes Annotated, as amended, known as the Maine Condominium Act ("Condominium Act" or "Act") and hereby creates with respect to the Property a condominium, to be known as "Windham Village Master Condominium" (the "Condominium").

**Section 1.2. Name and Address of Condominium.** The name of the Condominium shall be "Windham Village Master Condominium." The address of the Condominium is currently 770 Roosevelt Trail, Windham, Maine, but will be re-numbered following construction of the buildings within the Unit(s). The name of the unit owners association is the "**Windham Village Master Condominium Association**" (the "Association").

**Section 1.3. Description of Condominium Development.** The Condominium consists of the Land described in the attached **Exhibit A** and initially consists of one (1) unit consisting of four twelve-unit Buildings, which is identified on the Condominium Plat as Unit 1, together with certain Common Elements and Limited Common Elements depicted on the Condominium Plat. Further, pursuant to this Declaration, the Declarant reserves the right to physically construct and legally create two (2) additional units, which are generally identified on the Condominium Plat as Unit 2 (which consists of three twelve-unit Buildings, and one sixteen-unit Building), and Unit 3 (which consists of six twelve-unit buildings), and such other additional Common Elements and Limited Common Elements depicted on the Condominium Plat, all of which NEED NOT BE BUILT.

**ARTICLE 2**

**DEFINITIONS**



**Section 2.1. Terms Defined in the Act.** Capitalized terms are defined herein or in the Condominium Plat, otherwise they shall have the meanings specified or used in the Condominium Act. In the case of conflict between the meanings specified or used in the Act, those meanings specified or used in the Condominium Act shall control.

**Section 2.2. Terms Specifically Defined in this Declaration.** In addition to the terms hereinabove defined, the following terms shall have the following meanings in this Declaration, the Bylaws, and Condominium Plat:

(a) "Assessment" means the Owner's share of the anticipated Common Expenses, allocated by Percentage Interest, for the Association's fiscal year as reflected in the budget adopted by the Executive Board for such year.

(b) "Association" means the Condominium Association of the Condominium, which is known as the **Windham Village Master Condominium Association**.

(c) "Buildings" (or in the singular, a "Building") means any residential, commercial, service or recreational structure or other improvement now or hereafter constructed on the Property.

(d) "Built Units" means Units on which residential Buildings have been constructed and for which a certificate of occupancy has been issued by the Town of Windham.

(e) "Bylaws" means the document having that name and providing for the governance of the Association, pursuant to Section 1603-106 of the Condominium Act, as such document may be amended from time to time.

(f) "Common Elements" (or in the singular, a "Common Element") means those parts of the Property other than the Units as described either in the Condominium Act as being Common Elements or described herein as being Common Elements.

(g) "Common Expenses" means expenditures made by or financial liabilities of the Association together with any allocations to reserves

(h) "Condominium" means the Condominium described in Section 1.1 above.

G) "Condominium Documents" means the Declaration, Condominium Plat, Bylaws and Rules and Regulations.

(k) "Condominium Plat" means the Condominium Plat as defined in Section 1.1 above, which is recorded in the Cumberland County Registry of Deeds, and as such may be amended and supplemented from time to time.

(l) "Declarant" means **Windham Village Apartments LLC**, a Maine limited liability company, its successors and assigns.

(m) "Declarant Control Period" means the period of time between the recording of this Declaration and the completion of construction of all Common Elements and Limited Common Elements.

(n) "Declaration" means this document, as the same may be amended from time to time.

(o) "Development Rights" means those rights defined in Section 1601-103(11) of the Condominium Act, as it may be amended from time to time, including, but not limited to, those rights which the Declarant has reserved to itself as set forth in Article 10 hereof to add real estate to the Condominium, to create Units, Common Elements or Limited Common Elements within the Condominium, to subdivide Units or, convert Units into Common Elements, or to withdraw any Real Estate, Units, or Property from the Condominium.

(p) "Eligible Mortgage Holder" means the holder of a recorded first mortgage on a Unit, which has delivered written notice to the Association by prepaid United States mail, return receipt requested, or by delivery in hand securing a receipt therefore, which notice shall state the mortgagee's name and address, the Unit Owner's name and address, and the identifying number of the Unit, and shall state that the mortgage is a recorded first mortgage. Such notice shall be deemed to have been given reasonably prior to the proposed actions described in Section 15.2 if sent at the time notice thereof is given to the Unit Owners.

(q) "Executive Board" means the Executive Board of the Association which serves as Board of Directors of the Association. The terms "Executive Board" and Board of Directors shall be interchangeable.

(r) "Insurance Trust Agreement" means that certain agreement, if any, between the Association and the Insurance Trustee providing for the management and disbursement of insurance proceeds in accordance with Section 16.3 hereof.

(s) "Insurance Trustee" means the entity responsible for the management and disbursement of insurance proceeds pursuant to the Insurance Trust Agreement, if any.

(t) "Limited Common Elements" (or in the singular, a "Limited Common Element") mean those portions of the Common Elements the exclusive use of which is reserved as an appurtenance to one or more, but fewer than all, of the Units as indicated and allocated pursuant to this Declaration.

(u) "Limited Common Expenses" mean the Common Expenses for services benefiting fewer than all the Units, which are assessed pursuant to this Declaration exclusively against the Units benefited in accordance with Section 1603-115(c)(2) of the Act.

(v) "Manager" or "Managing Agent" means the agent of the management company appointed by the Association to manage the Condominium or provide maintenance services. The terms "Manager" or "Managing Agent" do not refer to the separate trade contractors hired by the Association to provide maintenance services.

(w) "Mortgagee" means the holder of any recorded mortgage encumbering one or more of the Units.

(aa) "Owner" means the record owner or owners of a Unit but does not include a person or entity having an interest in a Unit solely as security for an obligation.

(bb) "Percentage Interest" means the undivided interest in the Common Elements appurtenant to a Unit, as set forth on **Exhibit B** attached hereto, as the same may be amended from time to time.

(cc) "Property" means the Property described in Section 1.1 above.

(dd) "Record" means to record in the Cumberland County Registry of Deeds.

(ee) "Rules and Regulations" means such rules and regulations as are promulgated by the Declarant or the Executive Board from time to time with respect to the use of all or any portion of the Property.

(ff) "Special Assessment" means an Owner's share of any assessment made by the Executive Board in addition to the Assessment.

(gg) "Special Declarant Rights" means those rights defined in Section 1601-103 (25) of the Condominium Act, as it may be amended from time to time, including, but not limited to, those rights the Declarant has reserved to itself to complete improvements, to maintain sales offices, to use easement through Common Elements for the purpose of making improvements within the Condominium, and to appoint or remove any officer of the Association during any period of Declarant control.

(hh) "Unit" means a physical portion of the Condominium created by this Declaration or any amendment thereto and designated for separate ownership or occupancy, the boundaries of which are described in Article 3 hereof.

(ii) "Yard" means any Unit area or Limited Common Element yard area, if any, shown on the Condominium Plat, the use of which is allocated to an individual Unit.

**Section 2.3. Provisions of the Condominium Act.** The provisions of the Condominium Act shall apply to and govern the operation and governance of the Condominium, except to the extent that contrary provisions, not prohibited by the Act, are contained in one or more of the Condominium Documents.

## **ARTICLE 3**

### **UNITS**

**Section 3.1. Units.** Initially one (1) condominium unit is created and declared under this Declaration as is more particularly described on the attached **Exhibit A**. The identifying number of the one (1) Unit created and declared hereby is Unit 1, and designated on the Condominium Plat. Attached as **Exhibit B** hereto is a list of all Units declared under this Declaration, their

identifying numbers, common element interest, common expense liability and vote appurtenant to each Unit, based upon the establishment of the one (1) Unit created hereby.

The Declarant has the right to create two (2) additional Units on the real estate described in Exhibit A. For each Unit subsequently created pursuant to this Declaration, its common element interest, common expense liability and vote appurtenant to each Unit shall be set forth in an amendment to Exhibit B, and any other information necessary to identify the Unit, the Common Elements to which the Unit has direct access, and associated Limited Common Elements, shall be shown on the Condominium Plat.

**Section 3.2. Unit Boundaries.** The Unit numbers, location of Unit(s) created by this Declaration and their approximate dimensions, the Common Elements, and Limited Common Elements, are shown on the Condominium Plat. The proposed location and dimensions of each undeclared Unit, and their Limited Common Elements, are subject to change by the Declarant until such time as each Unit is legally created, and such improvements need not be built or may be built with configurations and locations different than those shown on the Condominium Plat.

The boundaries of each Unit created by this Declaration are depicted on the Condominium Plat and extend below and above the said boundaries to include the area occupied or to be occupied by all structures and fixtures to be installed by the respective Unit Owners. All Buildings and other fixtures and improvements within the boundaries of a Unit are a part of the Unit. The Units shown on the Condominium Plat are subject to settling or lateral movement of the buildings to be constructed therein and minor variations between the Unit boundaries as shown or projected on the Condominium Plat and the physical boundaries as constructed or reconstructed.

**Section 3.4. Subdivision or Relocation of Unit Boundaries.**

(a) The Owner of Unit 1 may declare a condominium within Unit 1 pursuant to a separate declaration (the "Unit 1 Condominium Declaration") consisting of not more than four (4) individual Buildings, and forty-eight (48) units (the "Unit 1 Condominium"), wholly located within Unit 1 without the requirement of Executive Board Approval.

(b) The Owner of Unit 2, if legally declared, may declare a condominium within Unit 2 pursuant to a separate declaration (the "Unit 2 Condominium Declaration") consisting of not more than four (4) individual Buildings, and fifty-two (52) units, and a community center unit (the "Unit 2 Condominium"), or develop a residential apartment complex with the same number of Buildings, residential apartments, and a community center, all wholly located within Unit 2, without the requirement of Executive Board Approval.

(c) The Owner of Unit 3, if legally declared, may declare a condominium within Unit 2 pursuant to a separate declaration (the "Unit 3 Condominium Declaration") consisting of not more than six (6) individual Buildings, and seventy-two (72) units (the "Unit 3 Condominium"), or develop a residential apartment complex with the same number of Buildings, and residential apartments, all wholly located within Unit 3, without the requirement of Executive Board Approval.



Notwithstanding the foregoing, no subdivision of a Unit may result in the creation of a number of Units in excess of the number of Units approved by the Town of Windham, if applicable, unless approval by the Town of Windham is obtained to increase the number of approved Units.

## **ARTICLE 4**

### **DESCRIPTION AND ALLOCATION OF COMMON ELEMENTS, LIMITED COMMON ELEMENTS AND RESERVED COMMON ELEMENTS**

**Section 4.1. Description of Common Elements; Costs of Construction.** Common Elements shall consist of all of the Property except the individual Units, and shall include the land, buildings, all wires, pipes, ducts, foundation drains, electrical wiring and conduits, public and private utility lines (other than those which are contained within the Unit and serve only that Unit), Stillwater Drive, drive aisles, sidewalks not located within Units and the areas that provide access by emergency vehicles, and any easements as set forth in **Exhibit A**, and utilities; and in addition, all other parts of the Property necessary and convenient to its existence, maintenance and safety, normally in common use as defined in the Condominium Act, except such parts of the Property as may be specifically excepted or reserved herein or in any exhibit attached hereto. As provided in Section 1602-102(2) of the Condominium Act, any wires, ducts, pipes, or other fixtures located within a Unit but serving another Unit or Units are part of the Common Elements. Each Owner shall have the right to use the Common Elements in common with all other Owners, as may be required for the purposes of ingress and egress to and use, occupancy and enjoyment of the respective Owners and guests, tenants, and other authorized occupants, licensees, and visitors of the Owner. The use of the Common Elements and the rights of the Owners with respect thereto shall be subject to and governed by the provisions of the Act and Condominium Documents.

**Section 4.2. Description of Limited Common Elements.** The initial Limited Common Elements shall include, but are not limited to, ninety-eight (98) surface parking spaces assigned to Unit 1, and an outdoor amenity area, and such other Limited Common Elements depicted on the Condominium Plat. Until all Units which may be created hereunder have been conveyed to third parties or such earlier time as may be elected by the Declarant by written notice duly recorded, the Declarant shall have the right to designate additional Limited Common Element areas immediately adjoining the Unit and to improve all the Limited Common Element areas immediately adjoining the Unit. The allocation of Limited Common Elements to the Units cannot be altered except with the written consent of the Owners of the Units affected by the reallocation of Limited Common Elements, in compliance with the provisions of Section 1602-108(b) of the Act, together with the consent of any Mortgagees of such affected Units.

**Section 4.3. Locations of Common and Limited Common Elements.** The locations of the Common Elements and Limited Common Elements are shown on the Condominium Plat. The Declarant reserves the right to create and assign additional Common Elements, and Limited Common Elements within Common Elements, pursuant to an amendment to this Declaration, a deed conveying a Unit, or an instrument executed in the same manner as a deed. The power to create Common Elements, and create and initially assign Limited Common Elements, is

exclusively held by the Declarant.

**Section 4.5. Alteration of Common Elements by the Declarant.** The Declarant reserves the right to modify, alter, remove or improve portions of the Common Elements, including without limitation, any equipment, fixtures and appurtenances, when in the Declarant's judgment it is necessary or desirable to do so.

**Section 4.6. Common Elements to Remain Undivided.** A Unit's Percentage Interest shall be inseparable from each Unit, and any conveyance, lease, devise or other disposition or mortgage or other encumbrance of any Unit shall extend to and include the Percentage Interest, whether or not expressly referred to in the instrument effecting such transfer. Except as otherwise provided by law or this Declaration, the Percentage Interests and the fee titles to the respective Units conveyed therewith shall not be separately conveyed, transferred, alienated or encumbered, and each of said Percentage Interests shall be deemed to be conveyed, transferred, alienated or encumbered with its respective Unit notwithstanding that the description in the instrument of conveyance, transfer, alienation or encumbrance may refer only to the fee title to the Unit. The Common Elements shall remain undivided and no action for partition or division of any part thereof shall be permitted, unless otherwise provided by law and permitted by this Declaration.

Notwithstanding the foregoing, the Unit 1 Condominium Declaration (and if applicable, the Unit 2 Condominium Declaration, and Unit 3 Condominium Declaration) may include a delegation of the Unit 1 Owner's rights to Common Elements (including Limited Common Elements allocated to Unit 1, if any (and if applicable Unit 2, if any, or Unit 3, if any)) to the owners of units created pursuant to the Unit 1 Condominium Declaration (and if applicable, the Unit 2 Condominium Declaration, and Unit 3 Condominium Declaration) but such delegation shall be subject to the obligation of the owners of units in the Unit 1 Condominium (and if applicable, the Unit 2 Condominium, and Unit 3 Condominium) to comply with the reasonable rules and regulations adopted by the Association from time to time.

## **ARTICLE 5**

### **MAINTENANCE RESPONSIBILITIES**

**Section 5.1. Maintenance Responsibilities.** Notwithstanding the ownership of the various portions of the Common Elements and the Units by virtue of the foregoing boundary descriptions, the Units and Common Elements shall be maintained and repaired by each Unit Owner and by the Association in accordance with the provisions of Section 1603-107 of the Act, except as expressly set forth to the contrary herein.

**Section 5.2 Maintenance and Inspection of Limited Common Elements.** The maintenance, repair and replacement of Limited Common Elements created, if any, shall be the responsibility of the Association, with the cost thereof, if any, to be allocated among the Units so benefited, except as otherwise noted in the Condominium Documents.

**Section 5.3 Maintenance and Inspection of Common Elements.**

(a) The Association, or the Managing Agent of the Association in accordance with Article 7, shall be responsible for the maintenance, repair and replacement (unless, if in the opinion of the Board of Directors such expense was necessitated by the negligence, misuse or neglect of a Unit Owner) of all of the Common Elements whether located inside or outside of the Units, the cost of which shall be charged to the Unit Owners as a Common Expense except as otherwise provided herein with regard to Limited Common Elements and certain Reserved Common Elements. The maintenance, repair and replacement of Common Elements located within a Unit, if any, for which the Unit Owner is not responsible, to the extent required for the functioning of or for connecting utilities to the Property and Units, shall be furnished by the Association as part of the Common Expenses.

(b) The Association shall cause the regular inspection of Common Elements at intervals specified by the Town of Windham (if required by the Town), and/or at such other reasonable times as the Association deems appropriate.

**Section 5.4 Maintenance of Unit.** Each Unit Owner shall keep and maintain the structures within its Unit and its equipment, systems, appliances and appurtenances in good order, condition and repair and in clean and sanitary condition, whether such maintenance and repair shall be structural or nonstructural, ordinary or extraordinary, and shall do all maintenance, capital improvements, redecorating, painting and varnishing which may at any time be necessary to maintain the good appearance and condition of its Unit. The maintenance, repair and replacement of each Unit comprised of sidewalks, grass, plantings, curbing, trees, shrubs and the like shall be the responsibility of the Association, with the cost thereof to be allocated to the Units so benefitted, except as otherwise noted in the Condominium Documents. In addition, each Unit Owner shall be responsible for all damage to any other Units or to the Common Elements resulting from its failure or negligence to make any of the repairs required by this Article. Each Unit Owner shall perform its responsibility in such manner as shall not unreasonably disturb or interfere with the other Unit Owners. Each Unit Owner shall promptly report to the Executive Board or the Managing Agent any defect or need for repairs for which the Association is responsible.

**Section 5.5 Liability of Owner.** Each Unit Owner shall be liable for, and the Association shall have a lien against its Unit for, the expense of maintenance, repair or replacement of any portion of its Unit, another Unit, or the Common Elements, including Limited Common Elements, of another Unit caused by such Unit Owner's act, neglect or carelessness or by that of such Unit Owner's guests, employees, agents, lessees, or their pets, and the Association shall have the right to cure, correct, maintain, repair or replace any damage or disrepair resulting from such act of neglect or carelessness. The Association shall also have the right to perform maintenance required of a Unit Owner under Section 5.4, but not performed by the Unit Owner, including, without limitation, services of the Managing Agent requested by the Unit Owner and the Unit Owner shall be liable for and the Association shall have a lien against the Unit for the expense of such maintenance. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy, or abandonment of any Unit or its appurtenances. Nothing herein contained, however, shall be construed so as to modify any waiver by insurance companies of rights of subrogation against such Unit Owner.

In the event that any Unit fails to pay its obligation to the Association, the Association shall

have the right to enforce such obligation against such Unit. In the event that the Association exercise lien rights with respect to assessments unpaid by any Unit Owner, the Association shall make reasonable efforts to notify the owner (or owners) of such Unit (or units within the sub-Condominium) of such failure to pay assessments provided, however, that such notification shall in no way preclude or estop the Association from exercising its rights against any Unit.

## ARTICLE 6

### **ALLOCATION OF PERCENTAGE INTERESTS, COMMON EXPENSES AND VOTING RIGHTS**

**Section 6.1. Percentage Interests.** Attached hereto as **Exhibit B** is a list of Units by their identifying number and the Percentage Interest appurtenant to each Unit, for all Units created as of the time of the recording of this Declaration together with an explanation of the formula by which such Percentage Interest is determined.

**Section 6.2. Common Expenses.** The liability of each Unit for the Common Expenses of the Condominium shall be the same percentage share as the Percentage Interest set forth in **Exhibit B**, and as such shall be determined by the same formula by which the Percentage Interest is determined, and shall be adjusted based on the costs of maintenance incurred by the Association with respect to a particular Unit described in Section 5.4. Notwithstanding the foregoing, and in accordance with Section 1603-115 of the Act, the Association may adopt an annual Budget allowing for different categories or amounts of monthly assessments as applicable to Units that are (i) Built Units fully constructed and benefiting from all Common Expenses and (ii) Units that are not fully constructed or otherwise not benefiting from all Common Expenses ("Un-Built Units") and may assess Built Units and Un-Built Units based upon the reduced level of expenses that benefit such Un-Built Units (e.g., incomplete or unoccupied Units may be assessed a lower monthly assessment if such Units do not benefit from Common Expenses relating to common utilities, trash removal, snow removal, etc.).

All utilities that are not separately metered or billed to a Unit shall be treated as part of the Common Expenses; provided however, that the Declarant or the Association shall have the right to separately meter or submeter any or all utilities used by each Unit and to allocate expenses as Common Expenses or Limited Common Expenses, as the case may be.

**Section 6.3. Allocation of Owners' Voting Rights.** Each Owner of a Unit shall be entitled to vote as described on **Exhibit B**. If a Unit is owned by more than one person or entity, the voting interest shall not be divided and the vote for the Unit shall be cast by only one of the Owners as determined by a majority of the Owners of such Unit. Notwithstanding the foregoing, following declaration of a Unit into a sub-Condominium, the unit owners association for such Unit shall have the right to act for all purposes as the Unit Owner, except the Declarant of such sub-Condominium (and any successor), shall be referred to as the "Unit Declarant") shall have the right to act for such Unit Owner during any period of declarant control and during which period the Unit Declarant retains the right to act for the Condominium (the "Unit Authority"). The Association is authorized to rely on a certificate from the Unit Declarant or from the Unit sub-Condominium owners association with respect to the foregoing authority, as conclusive evidence

of the right to act for such Unit.

## ARTICLE 7

### **MANAGEMENT**

**Section 7.1. Managing Agent.** The Association shall have the right to employ a professional experienced property management firm to provide property maintenance services to individual Unit Owners at their request and/or to the Association, and the right to employ the same firm or another professional experienced property management firm to oversee the daily operation of the Condominium in accordance with the provisions of the Act and the Declaration (either or both firms, a "Managing Agent"); provided, however, that no agreement for such professional services may exceed a term of three (3) years but may be renewed upon consent of the Association. The initial property management provider shall be Maine Properties LLC, a Maine limited liability company. Such agreement(s) shall be cancelable by either party without cause and without a termination fee upon not less than sixty (60) days nor more than ninety (90) days written notice and shall be cancelable by the Executive Board with cause upon not less than thirty (30) days written notice. Any agreement for professional management negotiated by the Declarant shall meet the requirements of this Article 7 for such agreements negotiated by the Association and shall not exceed one (1) year, but may be renewed upon consent of the Executive Board.

**Section 7.2. Maintenance Responsibilities.** A Managing Agent, or the Association through the Executive Board in the absence of a Managing Agent, shall be responsible for maintenance, repair and replacement of the Common Elements, including, but not limited to, the Limited Common Elements. The cost of the provision of such services shall be a Common Expense.

## ARTICLE 8

### **EASEMENTS AND LICENSES**

**Section 8.1. Recorded Easements and Licenses.** The recording data for previously existing recorded easements and licenses appurtenant to or included in the Condominium or by virtue of any reservation contained in this Declaration or the Deed given to the Declarant are stated and set forth in **Exhibit A** hereto.

**Section 8.2. Utilities, Pipes and Conduits.** Each Unit Owner shall have an easement in common with all other Unit Owners to use all pipes, wires, ducts, cables, conduits, public utility lines and other Common Elements serving its Unit and located in any of the other Units. Each Unit shall be subject to an easement in favor of all other Unit Owners to use the pipes, ducts, cables, wires, conduits, public utility lines and other Common Elements serving such other Units and located in such Unit.

**Section 8.3. Structural Support.** Each Unit shall have an easement to the extent necessary for structural and subjacent support over every other Unit and over the Common Elements, and each Unit and the Common Elements shall be subject to an easement for structural and lateral support in favor of every other Unit.

**Section 8.4. Ingress, Egress and Regress.** Each Unit Owner shall have an easement, subject to any Rules and Regulations established by the Association, in common with all other Unit Owners to use the entrances, exits, and other Common Elements as a means of ingress, egress and regress to and from the Property and the adjoining streets and walkways within Windham Village leading to adjoining public streets. The Association shall not and cannot establish any Rules and Regulations depriving any Unit Owner of reasonable ingress, egress and regress to and from its Unit, the Property and Common Elements, and the adjoining public streets.

**Section 8.5. Encroachments.** If any portion of the Common Elements or Limited Common Elements hereafter encroaches upon any Unit, or if any Unit hereafter encroaches upon any other Unit or upon any portion of the Common Elements or Limited Common Elements, as a result of settling or shifting of the Building or if the Building or Units are not constructed precisely in accordance with the dimension shown on the Condominium Plat or otherwise except as a result of the purposeful or negligent act or omission of the Owner of the encroaching Unit, or of the Association in the case of encroachments by the Common Elements or Limited Common Elements, a valid easement appurtenant to the encroaching Units, Common Elements or Limited Common Elements for the encroachment and for the maintenance of the same shall exist for so long as the encroachment shall exist. In the event that any Building shall be partially destroyed as a result of fire or other casualty or as a result of taking by the power of, or in the nature of, eminent domain or by an action or deed in lieu of condemnation, and then is rebuilt, encroachments of a portion or portions of the Common Elements or Limited Common Elements upon any Unit or of any Unit upon any other Unit or upon any portion of the Common Elements or Limited Common Elements, due to such rebuilding, shall be permitted, and valid easements appurtenant to the encroaching Units, Common Elements or Limited Common Elements for such encroachments and the maintenance thereof shall exist so long as the Building as so rebuilt shall stand.

**Section 8.6. Common Elements Easement in Favor of Unit Owners.** The Common Elements (including, but not limited to, the Limited Common Elements) shall be and are hereby made subject to the following easements in favor of the Units benefited: (1) for the installation, repair, maintenance, use, removal and/or replacement of lighting fixtures, electrical receptacles, panel boards and other electrical installations which are Common Elements adjacent to such Unit; provided that the installation, repair, maintenance, use, removal or replacement of any such item does not unreasonably interfere with the common use of any part of the Common Elements, adversely affect either the thermal or acoustical character of the Building or impair or structurally weaken the Building; (2) for the maintenance of the encroachment of any lighting devices, outlets, exhaust fans, ventilation ducts, registers, grilles and similar fixtures which serve only one Unit but which encroach into any part of any Common Elements or Limited Common Elements on the date this Declaration is recorded or thereafter if installed by Declarant during the Declarant Control Period or within three (3) years after the termination thereof.

**Section 8.7. Association's Rights.** The Association shall have rights reserved to it by the Declarant in Section 5.3. It shall have the reasonable right of entry upon any Unit to

make emergency repairs and to do other work reasonably necessary for the proper maintenance or operation of the Condominium. The Association shall have the right to grant permits, licenses and easements over the Common Elements for utilities, ways and other purposes reasonably necessary or useful for the proper maintenance or operation of the Condominium. The Association has a right of access to each Unit for the purpose of making inspections or for the purpose of correcting any condition originating in a Unit or elsewhere and threatening another Unit or a Common Element, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical services, other Common Elements or Units, provided that requests for entry are made in advance and that any such entry is at a time reasonably convenient to the Unit Owner, and provided further that judicial proceedings shall be instituted by the Association before any items of construction can be altered or demolished. In case of an emergency, such right of entry shall be immediate, whether the Unit Owner is present at the time or not.

**Section 8.8. Special Declarant Rights.** Declarant, its successors and assigns, have the rights and easements specified in Article 10 of this Declaration entitled Development Rights and Special Declarant Rights.

**Section 8.9. Reservation of Easement Rights.** Until the legal creation and construction of all Units is completed, the Declarant reserves the right to grant to any third party any license or easement in, on, over or through the Property, in addition to and not in limitation of those set forth above, which license or easement is determined by the Declarant, in its reasonable judgment, to be necessary for the development or improvement of the Property. Any such license or easement granted hereunder may be recorded by the Declarant at its sole cost and expense. The Association, at the request of the Declarant, shall execute and deliver in recordable form any instrument or document necessary or appropriate to confirm the grant of such license or easement.

**Section 8.10. Additional Easements, Covenants, Restrictions.** The Property is also subject to any easements and restrictions set forth on the attached **Exhibit A** and as shown on the Condominium Plat, and is further subject to the following:

## **ARTICLE 9**

### **RESTRICTIONS ON USE, SALE AND LEASE OF UNITS AND/OR UNITS**

**Section 9.1.** The following restrictions shall apply to the use of the Condominium:

(a) **Residential and Other Use.** The Units and all portions thereof are restricted to residential use; provided, that, Unit 2, if legally declared and constructed, may contain a community center. The Units may not be used for any other purposes by the Owner or any future Owner. No present or future Owner of any Unit shall permit its Unit to be used or occupied for any purpose other than residential purposes, except as provided above. Notwithstanding any of the foregoing, an Owner may use a Unit for the purpose of a home office, provided, however, that any such use complies with all applicable state and local laws and ordinances, and that such use is otherwise consistent with the Condominium Documents.

(b) Obstruction of Common Elements. No Owner may obstruct the Common Elements in any way except areas designated for parking on the Condominium Plat in accordance with applicable Rules and Regulations. No Owner may store anything in or on the Common Elements without the prior written consent of the Executive Board. Motor vehicles left idle and unmoved in the parking areas for periods of longer than one week may be removed by the Association.

(c) Quiet Enjoyment. No Owner may carry on any practice, or permit any practice to be carried on, which unreasonably interferes with the quiet enjoyment of the occupants of any other Unit. The Property is to be maintained in a clean and sanitary condition, and no Owner may place any garbage, trash or rubbish anywhere in the Property other than in its own Unit and in or on such parts of the Common Elements as may be designated for such purpose by the Executive Board.

(d) Fire Hazards. No Unit shall be used, occupied or kept in a manner that in any way increases the fire insurance premiums for the Property without the prior written permission of the Executive Board.

(e) Signs. No Owner may erect any sign on or in its Unit or any Limited Common Element which is visible from outside his Unit or from the Common Elements, without in each instance having obtained the prior written permission of the Executive Board.

(f) Rules and Regulations. The Executive Board shall promulgate reasonable Rules and Regulations, not in conflict with the provisions of this Declaration, concerning the use and enjoyment of the Property. Copies of the then current Rules and Regulations and any amendments thereto shall be furnished to all Owners by the Association promptly after the adoption of such Rules and Regulations and any amendments thereto.

(g) Alterations to Units. Except as otherwise provided herein, once each Unit has become a Built Unit, no Unit Owner may make any alteration, remodeling or renovation of the exterior of any Building except as part of routine maintenance or facade improvements. Neither Executive Board approval nor approval from the Unit Owners shall be required for interior alterations of any Building. When making any alteration, the Unit Owner is required to obtain all necessary approvals and permits as may be required by the Town of Windham, engage insured contractors to perform the services, and otherwise comply with all Rules and Regulations of the Association.

(h) Labor, Mechanic's Liens. No Owner shall cause any material to be furnished to its Unit or any labor to be performed therein or thereon except in the manner set forth in subparagraph (g) above. Each Owner shall indemnify and hold the other Owners of its Unit harmless against any loss, damage or claim arising out of its breach of the provisions of this Section 9.1, including but not limited to the costs of removing any unauthorized improvements, any repairing and restoring the Unit to substantially its condition prior to such alteration, remodeling, renovation or repair and the cost of removing, bonding, defending or paying any mechanic's or materialmen's liens.

## ARTICLE 10



## **DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS**

**Section 10.1. General Development Rights.** In addition to the easement rights reserved in Article 8, the Declarant reserves to itself and for the benefit of its successors and assigns the right, during the Declarant Control Period:

(a) Until all Units have been declared and become Built Units, to connect with and make use of utility lines, wires, pipes and conduits located on the Property for construction purposes, provided that the Declarant shall be responsible for the cost of services so used;

(b) Until all Units have been declared and become Built Units and the construction, marketing and sale of all Sub-Units is completed, to use the Common Elements for ingress and egress, for the repair and construction of Common Elements including the movement and temporary storage of construction materials and equipment, including the maintenance of temporary storage and office structures, and for the installation of signs and lighting for sales and promotional purposes;

(c) Until all Units have been declared and become Built Units and the construction, marketing and sale of all Sub-Units is completed, to complete all improvements shown on the Condominium Plat, to relocate any improvements shown on the Condominium Plat, construct additional Common Element improvements on any part of the Property, to exercise the Development Rights set forth herein, to maintain models and sales offices and to exercise the easements as set forth in Article 8 hereof, to make the Condominium part of a larger condominium, to make the Condominium subject to a master association, to appoint or remove any officer or Executive Board member during any period of Declarant control of the Association and any and all other Special Declarant Rights as are now allowed or in the future may be allowed by the Condominium Act. The real estate subject to these Development Rights and Special Declarant Rights is all of the Property, except those portions lying within the boundaries of Built Units.

(d) Appoint and remove members of the Board of Directors and Officers of the Association for a Unit which has not been conveyed by the Declarant who would otherwise be appointed by a Unit Owner in accordance with Section 12.1.

(e) Developer reserves the following rights, but not the obligation, until fifty (50) years from the date of the recording of this Declaration to legally create and construct and legally create two (2) additional Units, which are generally identified on the Condominium Plat as Unit 2 (which consists of three twelve-unit Buildings, and one sixteen-unit Building), and Unit 3 (which consists of six twelve-unit buildings), and such other additional Common Elements and Limited Common Elements depicted on the on the Land described in Exhibit A, to legally create and construct additional Common Elements, and Limited Common Elements, and related improvements, all pursuant to Section 1602-110 of the Condominium Act. The Declarant shall have the continuing right but not the obligation to legally create the Units in stages. Each stage shall consist of the Unit and Buildings within such stage. Upon the creation of each stage, including the Unit and Building within such stage, the Unit within such stage shall be fully integrated into the Condominium as if this Declaration had been originally

executed and recorded containing the additional Unit and Buildings, and the allocated interests of such Unit shall be reallocated in accordance with the formulas set forth in this Declaration and as more particularly set forth in the amendment adding such Unit and Buildings. The Declarant need not physically construct or add Unit 2 or Unit 3, or any Building depicted within such stage on the Condominium Plat, other than those described in Section 3.1 above, or said Limited Common Elements to the Condominium and hence said Unit 2 and Unit 3, and any Buildings located within the stages associated with said Units, other than those described in Section 3.1 above, and Limited Common Elements NEED NOT BE BUILT. The Declarant must exercise its right hereunder within fifty (50) years of the recording of this Declaration.

**Section 10.2. Reserved.**

**Section 10.3 Exercise of Rights.** The exercise of the Development Rights and Special Declarant Rights reserved herein shall be in accordance with and governed by the provisions of the Act, including without limitation Section 1602-110 of the Act. A copy of all amendments to this Declaration prepared by Declarant shall be forwarded to Eligible Mortgage Holders upon request. Further, in accordance with Section 1602-109(f) of the Condominium Act, the Declarant will either record a new Condominium Plat or record an affidavit that the Condominium Plat previously recorded conforms to the requirements of the Act. An amendment to this Declaration creating such additional Units and executed by the Declarant may serve as the affidavit described in Section 1602-109(f) of the Act. Said amendment shall become effective upon recording without the consent of any other person.

**Section 10.4. Amendment, Waiver, Etc.** Until the Declarant no longer holds any Development Rights or Special Declarant Rights and no longer owns any Units, neither this Article 10 nor any of the other provisions of this Declaration benefitting Declarant or its exercise of its Development Rights or Special Declarant Rights shall be amended without the written consent of the Declarant duly recorded in the Cumberland County Registry of Deeds. The rights and benefits of this Article 10 and all other rights of Declarant set forth in this Declaration, the Bylaws or otherwise, as amended from time to time, may be transferred in whole or part by recorded instrument specifically referring to this Section and executed by Declarant and its successor or assignee. The Declarant shall have the right to waive the Development and Special Declarant Rights reserved hereunder in whole or part by a written instrument provided that such waiver shall only be effective upon recording in said Registry of Deeds and such waiver shall be subject to the limitations of Section 1603-103(d) of the Act regarding Declarant Control of the Association.

**Section 10.5. Other Declarant Amendments.** The Declarant further reserves the right, without seeking consents of Unit Owners or Eligible Mortgagees, to prepare, execute and record amendments to the Declaration and the Condominium Plat to correct technical errors, to address requirements of approval of the City, or any other governmental authority having jurisdiction over the Condominium, provided that no such amendment shall have a material adverse effect upon the use or enjoyment of any Unit, other than a Unit owned by the Declarant.

## **ARTICLE 11**

## **UNITS SUBJECT TO CONDOMINIUM DOCUMENTS, EMINENT DOMAIN**

**Section 11.1. Applicability of Condominium Documents.** Each present and future Owner, tenant, occupant, owner of a Sub-Unit and Mortgagee of a Unit therein shall be subject to and shall comply with the provisions of the Act, and with the covenants, conditions and restrictions as set forth in the Condominium Documents and the deed to such Unit; provided that nothing contained herein shall impose upon any tenant of a Unit or Mortgagee any obligation which the Act or one or more of such documents, or both, make applicable only to Owners (including, without limitation, the obligation to pay assessments for Common Expenses). The acceptance of a deed or mortgage to any Unit therein, or the entering into of a lease or the entering into occupancy of any Unit therein shall constitute an agreement that the provisions of the Act and the covenants, conditions and restrictions set forth in the Condominium Documents and the deed to such Unit therein are accepted and ratified by such grantee, Mortgagee or tenant. All of such provisions shall be covenants running with the land and shall bind any person having at any time any interest or estate in such Unit, as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage, contract or lease thereof. The Association and any aggrieved Owner shall have a right of action against Owners who fail to comply with the provisions of the Condominium Documents, the Act, or with decisions made by the Association or the Executive Board.

**Section 11.2. Eminent Domain.** Whenever all or part of the Common Elements shall be taken, injured or destroyed by eminent domain, each Owner shall be entitled to notice thereof and to participate in the proceedings incident thereto, provided, however, that the Association shall officially, represent the Owners in such proceedings. In any proceedings for the determination of damages, such damages shall be determined for such taking, injury or destruction as a whole and not for each Owner's interest therein and any award for such damages shall be payable to the Association for the benefit of the Owners and Mortgagees. Notwithstanding the foregoing, if the Association elects to distribute such award of damages to the Owners, any amount payable to an Owner shall be paid instead to the Owner's Mortgagee upon the written request of such Mortgagee to an officer of the Executive Board.

## **ARTICLE 12**

### **EXECUTIVE BOARD OF THE ASSOCIATION**

#### **Section 12.1. Members.**

(a) The Executive Board shall consist of three (3) members. The initial Executive Board shall consist of three (3) members designated by the Unit Owners. The members of the initial Executive Board shall be appointed, removed and replaced from time to time by the Unit Owners without the necessity of obtaining resignations.

(b) Each Unit Owner shall have the right to appoint one member of the Executive Board. The Unit Owners shall have the right to remove and replace the member of the Executive Board at any time upon written notice to the other Unit Owners.

(c) The Executive Board shall have the authority to change the number of Directors

and shall possess all of the duties; and powers granted to the Executive Board by the Act.

(d) Following recording of the Unit 1 Declaration (and if, applicable, the Unit 2 Declaration, and Unit 3 Declaration), the Unit Owner rights hereunder shall be based on the Unit Authority, as provided in Section 6.3, above.

**Section 12.2. Disputes.** (a) Regarding Owners, Condominium, and Condominium Documents. In the event of any dispute or disagreement between any Owners relating to the Property, or any questions of interpretation or application of the provisions of the Condominium Documents, the determination thereof by the Executive Board shall be final and binding on each and all such Owners. The Executive Board shall have the authority to seek a declaratory judgment or other appropriate judicial relief in order to assist it in carrying out its responsibilities under this Section 12.2. All costs of obtaining such a judgment shall be borne by the disputants, or in the absence of disputants, by the Association as a Common Expense.

(b) Disputes with Declarant. In any dispute between one or more Unit Owners and the Declarant regarding the Common Elements, the Board of Directors shall act for the Unit Owners, and any agreement with respect thereto by the Board shall be conclusive and binding upon the Unit Owners. All claims, disputes and other matters in question between the Declarant, on the one hand, and the Association or any Unit Owners on the other hand, arising out of or relating to a Unit, the Common Elements, the Limited Common Elements, this Declaration, the Bylaws, or the deed to any Unit or the breach thereof, or the course of dealing between any Unit Owner, the Association and the Declarant, except for claims which have been waived by the acceptance of a deed, shall be decided by binding arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining unless the parties mutually agree otherwise in writing. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Notice of the demand for arbitration shall be filed in writing with the other parties and with the American Arbitration Association. The demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations or other principals of law and equity.

**Section 12.3. Abating and Enjoining Violations by Owners.** The violation of any Rules and Regulations adopted by the Executive Board, the breach of any provision contained in the Bylaws or the breach of any provision of this Declaration or the Act by any Owner or tenant of such Owner, shall give the Executive Board the right, in addition to any other rights to which it may be entitled, to enjoin, abate or remedy by appropriate legal proceedings, either by law or equity, the continuance of any such breach.

## **ARTICLE 13**

### **LIMITATION OF LIABILITY**

**Section 13.1. Limited Liability of the Executive Board.** The Executive Board and its members in their capacity as members, officers and employees:

(a) Shall not be liable for the failure of any service to be obtained by the Executive Board and paid for by the Association, or for injury or damage to persons or property caused by the elements or by another Owner or person on the Property, or resulting from electricity, gas, water, rain, dust or sand which may leak or flow from the outside or from any part of the Buildings, or from any of its pipes, drains, conduits, appliances, or equipment, or from any other place unless in each such instance such injury or damage has been caused by the willful misconduct or gross negligence of the Association or the Executive Board; Shall not be liable to the Owners or any Mortgagees as a result of the performance of the Executive Board members' duties for any mistakes of judgment, negligence or otherwise, except for the Executive Board members' own willful misconduct or gross negligence;

(b) Shall have no personal liability in contract to an Owner, any Mortgagee, or any other person or entity under any agreement, check, contract, deed, lease, mortgage, instrument or transaction entered into by them on behalf of the Executive Board or the Association in the performance of the Executive Board members' duties;

(c) Shall not be liable to an Owner, or such Owner's tenants, employees, agents, customers or guests, for loss or damage caused by theft of or damage to personal property left by such Owner or its tenants, employees, agents, customers or guests in a Unit, or in or on the Common Elements or Limited Common Elements, except for the Executive Board members' own willful misconduct or gross negligence;

(d) Shall have no personal liability in tort to an Owner, any Mortgagee, or any other person or entity, direct or imputed, by virtue of acts performed by or for them, except for the Executive Board members' own willful misconduct or gross negligence in the performance of their duties; and

(e) Shall have no personal liability arising out of the use, misuse or condition of the Buildings, or which might in any other way be assessed against or imputed to the Executive Board members as a result of or by virtue of their performance of their duties, except for the Executive Board members' own willful misconduct or gross negligence.

**Section 13.2. Indemnification.** Each member of the Executive Board in their capacity as an Executive Board member, officer or both, shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon him or her in connection with any proceeding in which he or she may become involved by reason of his or her being or having been a member and/or officer of the Executive Board, or any settlement of any such proceeding, whether or not he or she is an Executive Board member, officer or both at the time such expenses are incurred, except in such cases wherein such Executive Board member and/or officer is adjudged guilty of willful misconduct or gross negligence in the performance of his duties or any other standard imposed by the Condominium Act; provided that, in the event of a settlement, this indemnification shall apply only if and when the Executive Board (with the affected member abstaining if he or she is then an Executive Board member) approves such settlement and reimbursement as being in the best interests of the Association.

The indemnification by the Owners set forth in this Section 13.2 shall be paid by the Association on behalf of the Owners and shall constitute a Common Expense and shall be assessed and collectible as such. Such right of indemnification shall not be deemed exclusive of any other rights to which such Executive Board member and/or officer may be entitled as a matter of law or agreement or by vote of the Owners or otherwise.

**Section 13.3. Joint and Several Liability of Owners and Lessees.** Each Owner shall be jointly and severally liable with any tenants of the Unit owned by such Owner for all liabilities arising out of the ownership, occupancy, use, misuse, or condition of any Unit or any portion of the Common Elements or Limited Common Elements.

**Section 13.4. Defense of Claims.** Complaints filed in any State or Federal court brought against the Association, the Executive Board or the officers, employees or agents thereof in their respective capacities as such, or the Condominium as a whole, shall be directed to the Executive Board of the Association, which shall promptly give written notice thereof to the Owners and any Mortgagees and such complaints shall be defended by the Association. The Owners and any Mortgagees shall have no right to participate other than through the Association in such defense. Complaints of a nature specified in Section 13.3 hereof against one or more but less than all Owners shall be defended by such Owners who are defendants themselves and such Owners shall promptly give written notice of the institution of any such suit to the Association and to any Mortgagees encumbering such Units.

## **ARTICLE 14**

### **ASSESSMENTS: LIABILITY OF OWNERS**

**Section 14.1. Power to Assess.** The Association, acting through the Executive Board in accordance with the Bylaws, shall have the power to fix and determine, from time to time, the sums necessary and adequate to provide for the Common Expenses, including, but not limited to such amounts as are necessary for the maintenance, repair and replacement of the Common Elements, and Limited Common Elements as set forth in Article 5 and in Section 7.2 hereof, such amounts as are necessary for uncollectible Assessments or license fees or maintenance expenses otherwise the responsibility of a Unit Owner; budget deficits; such expenses as are necessary for the Association's share of any Common Expenses for any master association or owners' association of which the Association may hereafter be a member of, or as may be payable for the Association's share of operating, maintaining, insuring, financing, managing, repairing or replacing any off-site Common Elements, common facilities or common amenities that the Association and the Unit Owners have the right to use; such reserves as are hereinafter described and such additional reserves as the Executive Board shall deem necessary or prudent, such utilities as are billed to, paid by, or provided or maintained by the Association, or any master association or owners' association of which the Association is hereafter a member of, or subject to, and such other expenses as are specifically provided for in the Condominium Act, this Declaration or the Bylaws. The Association shall establish an adequate reserve fund for maintenance, repair and replacement of all of those Common Elements and Property for which the Association is responsible which are anticipated to require replacement, repair or maintenance on a periodic basis, and to cover any deductible amount for insurance policies maintained by the Association. The reserve fund shall be funded as a part of the Common Expenses.

**Section 14.2. Assessments for Limited Common Expenses.** The Association, acting through the Executive Board in accordance with Section 1603-115(c) of the Act and the Bylaws and as circumstances may reasonably require, shall assess Common Expenses and Limited Common Expenses as follows: (i) If a Limited Common Expense or Common Expense only benefits a single Unit (e.g. fees and charges of the Managing Agent for services performed for an individual Unit Owner at its request), that Limited Common Expense or Common Expense may be assessed solely against the Unit benefited; and (ii) If a Limited Common Expense or Common Expense benefits more than a single Unit but fewer than all the Units, that Limited Common Expense or Common Expense may be assessed exclusively against the Units benefited in equal proportion between such Units, or, at the election of the Executive Board, in proportion to the relative Common Expense liabilities of such Units as between themselves, as the Executive Board may periodically determine, as those Common Expense liabilities may be changed as provided in Section 6.2 and **Exhibit B**. Pursuant to the foregoing, and in accordance with Section 1603-115 of the Act, the Association may adopt an annual Budget allowing for different categories or amounts of monthly assessments as applicable to Units that are (i) Built Units fully constructed and benefiting from all Common Expenses and (ii) Un-Built Units (e.g., incomplete or unoccupied Units, may be assessed a lower monthly assessment if such Units do not benefit from common expenses relating to common utilities, trash removal, snow removal, etc.).

**Section 14.3. Special Assessments.** If the cash requirement estimated at the beginning of any fiscal year shall prove to be insufficient to cover the actual Common Expenses for such fiscal year for any reason (including by way of illustration and not limitation, any Owner's non-payment of his Assessment or municipal assessments not yet assessed), the Executive Board shall have the power, at any time it deems necessary and proper, to levy one or more Special Assessments against each Owner. Special Assessments shall be due and payable in the manner and on the date set forth in the notice thereof.

**Section 14.4. Payment of Assessments.** Each Owner shall pay all Assessments levied by the Association. Liability for such assessments shall be determined in accordance with the formula set forth in **Exhibit B** hereto and the budget established by the Association in accordance with the Bylaws. Penalties for delinquent assessments shall be set forth in the Rules and Regulations of the Condominium.

**Section 14.5. Failure to Fix New Assessments.** If the Executive Board shall fail to fix new Assessments for Common Expenses for the subsequent fiscal year before the expiration of any fiscal year, the Owners shall continue to pay the same sums they were paying for such Assessments during the fiscal year just ended and such sum shall be deemed to be the new Assessments for the succeeding fiscal year. If the Executive Board shall change the Assessment at a later date, the difference between the new Assessment, if greater, and the previous year's Assessment up to the effective date of the new Assessment shall be treated as if it were a Special Assessment under Section 14.3 hereof; thereafter each Owner shall pay the new Assessment. In the event the new Assessment is less than the previous year's Assessment, in the sole discretion of the Executive Board, the excess either shall be refunded to the Owners, credited against future Assessments or retained by the Association for reserves.

**Section 14.6. Exemption by Waiver.** No Owner may exempt itself from liability for the

Common Expenses by waiver of the enjoyment of the right to use any of the Common Elements or by the abandonment of its Unit or otherwise.

**Section 14.7. Personal Liability of Owners.** All sums assessed by the Association as an Assessment, Special Assessment or Assessment for Limited Common Expenses shall constitute a liability of the Owner of the Unit so assessed and also, until fully paid, shall constitute a lien against such Unit pursuant to Section 1603-116 of the Condominium Act. The Association shall take action for failure to pay any assessment or other charges pursuant to Section 1603-116 of the Condominium Act. The delinquent Owner shall be obligated to pay (a) all expenses of the Executive Board, including reasonable attorneys' fees and costs, incurred in the collection of the delinquent assessment by legal proceedings or otherwise, and (b) any amounts paid by the Executive Board for taxes or on account of superior liens or otherwise to protect its lien, which expenses and amounts, together with accrued interest, shall be deemed to constitute part of the delinquent assessment and shall be collectible as such.

**Section 14.8. Liability of Purchaser of Unit for Unpaid Assessments.** Upon the voluntary sale, conveyance or any other voluntary transfer of a Unit or any interest therein, the grantee thereof shall not be personally liable with the grantor thereof for all unpaid Assessments for Common Expenses, special assessments, Limited Common Expenses, Reserved Common Expenses, which are a charge against the Unit as of the date of consummation of the sale, conveyance or transfer, unless such grantee agrees to assume the obligation therefor. A lien against the Unit so purchased for Assessments imposed pursuant to this Declaration or the Condominium Act shall not be affected by such sale, conveyance or other transfer, however.

**Section 14.9. Subordination of Certain Charges.** Any Assessments or any fees, charges, late charges, fines and interest that may be levied by the Association pursuant to Section 1603-102 of the Condominium Act or otherwise shall be subordinate to any first mortgage lien recorded before the due date of the Assessment or the due date of the first installment payable on the Assessment.

**Section 14.10. Surplus.** The Budget of the Association shall set forth general Common Expenses. Any amounts accumulated from assessments for Common Expenses in excess of the amount required for actual Common Expenses and reserves for future Common Expenses, unless otherwise directed by the Executive Board, in its sole discretion, shall be credited to each Owner, such credit to be applied to the next Assessments of Common Expenses due from said Owners under the current fiscal year's budget, and thereafter until exhausted, or retained by the Association for reserves.

## **ARTICLE 15**

### **RIGHTS OF MORTGAGEES, CONTRACT HOLDERS, INSURERS AND GUARANTORS:**

**Section 15.1. Subject to Declaration.** Whether or not it expressly so states, any mortgage which constitutes a lien against a Unit and an obligation secured thereby shall provide generally that the mortgage and the rights and obligations of the parties thereto shall be subject to the terms and conditions of the Act, the Declaration, the Condominium Plat and any Rules and Regulations.



**Section 15.2. Rights of Eligible Mortgage Holders.** The following provisions are intended for the benefit of Eligible Mortgage Holders, and to the extent, if at all, that any other provisions of this Declaration conflict with the following provisions, the following provisions shall control:

(a) The Association shall furnish to each Eligible Mortgage Holder of a defaulting Unit Owner a written notice of any default by such Unit Owner whose Unit is subject to the lien of such Eligible Mortgage Holder of that Unit Owner's obligations under this Declaration. An Eligible Mortgagee shall have the right, but not the obligation, to cure a default by and within the same cure periods afforded to the Owner of such Unit.

(b) Each Eligible Mortgage Holder has the right:

(i) to examine during normal business hours current copies of this Declaration, the Bylaws, the Articles of Incorporation of the Association, the Rules and Regulations, and any amendments to any of the foregoing, and the books, records and financial statements of the Association;

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

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

(iv) to receive written notice of any decision by the Unit Owners to make an amendment to this Declaration, the Bylaws, or the Association's organizational documents;

(v) to receive written notice of any lapse, cancellation or modification of any insurance policy or fidelity bond maintained by the Association;

(vi) to receive written notice of any action which would require the consent of any Eligible Mortgage Holders;

(vii) to receive written notice of any proposed change in the boundaries of any Unit, the Percentage Interest in the Common Elements or change in the Limited Common Elements of any Unit Owner, or the exclusive easement rights appertaining thereto; and

(viii) to receive written notice of a proposed change in the number of votes in the Association appertaining to any Unit.

(c) No provision of this Declaration or any other instrument shall be deemed to give a Unit Owner or any other Person priority over the rights of the Eligible Mortgage Holders pursuant to their mortgages in the case of distribution to Unit Owners of insurance proceeds

or condemnation awards for losses to or a taking of the Units, or the Common Elements, or any portion thereof or interest therein. In such event, the Eligible Mortgage Holders of the Units affected shall be entitled, upon specific written request, to timely written notice of any such loss.

(d) The Eligible Mortgage Holders shall be furnished notice in writing by the Association of any damage to or destruction or taking of the Common Elements. In no event will the provisions of any document entitle a Unit Owner or other party to priority over such Eligible Mortgage Holders with respect to distribution to such Unit Owner of the proceeds of any award or settlement.

(e) If any Unit or portion thereof or the Common Elements or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the Eligible Mortgage Holders will be entitled to timely written notice of any such proceeding or proposed acquisition and no provisions of any document will entitle a Unit Owner or other party to priority over such Eligible Mortgage Holders with respect to the distribution of the proceeds of any award or settlement.

**Section 15.3 Required Approval of the Eligible Mortgage Holders.** In addition to any requirements or prerequisites provided for elsewhere in this Declaration, the Bylaws, or the Rules and Regulations of the Association, the prior written consent of the Eligible Mortgage Holders (if any), each in its reasonable discretion, will be required for the following:

(a) Adoption of any amendment to this Declaration or any of the other Condominium Documents;

(b) The partition or subdivision of a Unit, except as to the Unit 1 Condominium, the Unit 2 Condominium, or the Unit 3 Condominium;

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

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

(e) The redefinition of the boundaries of any Unit.

Notwithstanding anything to the contrary set forth in this Declaration, the consent of the Eligible Mortgage Holders to the matters set forth in this Section 15.3 (a)- (e) may be withheld in their reasonable discretion.

**Section 15.4. Liability for Use and Charges.** Any Mortgagee who obtains title to a Unit pursuant to the remedies provided in a mortgage for foreclosure of such mortgage or a deed

in lieu of foreclosure shall not be liable for such Owner's unpaid assessments or charges which accrue prior to the acquisition of title to such Unit by the Mortgagee, except to the extent otherwise provided for in the Act and except to the extent that such Mortgagee is liable as an Owner for the payment of such unpaid assessment or charge that is assessed against the Mortgagee as a result of all Owners being reassessed for the aggregate amount of such deficiency.

**Section 15.5. Condemnation Rights.** No provision of this Declaration shall give an Owner, or any other party, priority over any rights of the Mortgagee of a Unit pursuant to its mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation award for loss to or a taking of one or more Units and/or Common Elements.

**Section 15.6. Books and Records.** Any Mortgagee shall have the right exercisable by written notice to the Executive Board, to examine the books and records of the Association and to require that it be provided with a copy of each annual report of the Association and other financial data of the Association reasonably requested by such Mortgagee.

## **ARTICLE 16**

### **INSURANCE**

**Section 16.1. Types and Amounts.** The Association shall maintain as a Common Expense and to the extent reasonably available, the following types and amounts of insurance:

(a) Property insurance insuring against all risks of direct physical loss normally covered by the standard extended coverage endorsement and commonly insured against, including those covered by the standard "all risk" endorsement, or such other fire and casualty insurance as the Executive Board may determine provides equal or greater protection for the Owners and their Mortgagees, if any, in each case complying with the applicable requirements of Section 16.2 hereof. The insurance maintained by the Association shall cover all Common Elements and Limited Common Elements to the extent required by Section 1603-113 of the Act, and building service equipment and common equipment, fixtures, personal property and supplies owned by the Association, excluding the Units or any portions thereof. The amount of any such hazard insurance obtained pursuant to this paragraph (a) shall be equal to one hundred percent (100%) of the current replacement cost of any improvements to the Common Elements, at the time the insurance is purchased and at each renewal date without deduction for depreciation, exclusive of land, foundations, excavation and other items normally excluded from coverage. Such hazard insurance policy may, at the option of the Association, contain a "deductible" provision in an amount reasonably determined by the Executive Board. Funds to cover this deductible amount shall be included in the Association's reserve fund, once the reserve fund contains sufficient funds to cover such amount through the payment of Unit Owner assessments. The named insured under the policy shall be "Windham Village Master Condominium Association, for the use and benefit of the individual owners", or a specified authorized representative of the Association, including but not limited to any Insurance Trustee, and the Association or its representative, as the case may be, shall be designated to represent the Owners in any proceedings, negotiations or settlements under such policy. The "loss payable" clause of such policy shall show the Association or the, Insurance Trustee, if any, as a trustee for each

Owner and each Mortgagee of a Unit. Such policy shall also contain a standard mortgage clause naming separately the Mortgagees of the Units, their successors and assigns. If the Executive Board fails within sixty (60) days after the date of an insured loss to initiate a claim for damages recoverable under the policy or policies obtained pursuant to this paragraph (a), any Mortgagee may initiate such a claim on behalf of the Association.

(b) Comprehensive Liability Insurance, including medical payments insurance, complying with the requirements of Section 16.2 hereof, insuring the Owners, in their capacity as Owners and Association members and any managing agent retained by the Association, against any liability to the public or to other Owners, their tenants or invitees, relating in any way to the ownership and/or use of the Common Elements, Limited Common Elements, and any other areas under the supervision of the Association and any part thereof. Such insurance policy shall contain a "severability of interest endorsement" or equivalent, coverage which precludes the insurer from denying the claim of an Owner because of the negligent acts of the Association or another Owner. Such insurance shall include coverage for bodily injury and property damage that results from the operation, maintenance or use of the Common Elements, Limited Common Elements and Reserved Common Elements, any liability resulting from lawsuits related to employment contracts in which the Association is a party, water damage liability, liability for non-owned and hired automobiles, liability for property of others, and such other risks as are customarily covered in similar projects. The amount of such liability insurance shall be at least \$1,000,000.00 for bodily injury and property damage for any single occurrence. The scope and amount of coverage of all liability insurance policies shall be reviewed at least once each year by the Executive Board and may be changed in its discretion provided that such policies shall continue to comply with the requirements of this Section and Section 16.2 hereof. To the extent reasonably available, Mortgagees shall be named, upon their written request, as additional insureds under the Association's liability policy or policies.

(c) Such worker's compensation insurance as applicable law may require, if any.

(d) Insurance to satisfy the indemnification obligation of the Association and all Owners set out in Section 13.2 hereof if and to the extent available, including but not limited to insurance coverage commonly referred to as "Directors and Officers Insurance."

(e) If at any time it is determined that all or any part of the improvements on the Property are located within a special flood hazard area, a master or blanket policy of flood insurance covering the any portion of the improvements comprising any Common Elements, and building service equipment and common equipment, fixtures, personal property and supplies owned by the Association, but excluding the Units and all other personal property of the Owner. The amount of any such flood insurance obtained pursuant to this paragraph (e) shall be equal to the lesser of one hundred percent (100%) of the insurable value of the property insured or the maximum coverage available under the appropriate National Flood Insurance Administration program. Such flood insurance policy may, at the option of the Association, contain a "deductible" provision in an amount reasonably determined by the Executive Board. Funds to cover this amount shall be included in the Association reserve fund.

**Section 16.2. Required Provisions.** Insurance obtained by the Association shall be in accordance with the following provisions:

(a) Exclusive authority to adjust losses under policies hereafter in force on the Property shall be vested in the Executive Board or its authorized representative.

(b) Each Owner shall obtain and maintain (or following creation of the Unit 1 Condominium (and, if applicable, the Unit 2 Condominium, and Unit 3 Condominium), the Unit 1 Association (and, if applicable, the Unit 2 Condominium Association, and Unit 3 Condominium Association) the shall be responsible to maintain) property, casualty and liability insurance on its Unit and Yard as well as any Building within the Unit at its own expense as set forth in Section 16.6 below; provided, however, that: (1) such policies shall not be invalidated by the waivers of subrogation required to be contained in policies required by this Declaration; and (2) no Owner shall be entitled to maintain insurance coverage in such a way as to decrease the amount which the Association may realize under any insurance policy which the Association may have in force on the Property at any particular time.

(c) With respect to the insurance policies described in subsection (a) and (b) of Section 16.1 issued to the Association, and covering all or any part of the Property, the Association shall cause such policies to provide that: (1) Each Owner is an insured person under such policies with respect to liability arising out of its ownership of an undivided interest in the Common Elements or membership in the Association; (2) The insurer waives its right to subrogation under the policy against any Owner; (3) No act or omission by any Owner, unless acting within the scope of its authority on behalf of the Association will void such policies or be a condition to recovery under such policies or prejudice the coverage under such policies in any way; (4) If at the time of a loss under such policies there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance; (5) The liability of the insurer shall not be affected by, and the insurer shall not claim, any right of set-off, counterclaim, apportionment, proration, or contribution by reason of any other insurance obtained by or for any Owner; (6) The insurer shall be relieved from no liability for loss occurring while the hazard to the Property is increased, whether or not within the knowledge or control of the Executive Board, or because of any breach of warranty or condition or any other act or neglect by the Executive Board or any Owner or any other person under either of them; (7) Such policies may not be cancelled nor may coverage thereunder be substantially changed (whether or not requested by the Executive Board) except by the insurer giving at least thirty (30) days prior written notice thereof to the Executive Board, the Insurance Trustee, if any, Owners, and every other party in interest who shall have requested such notice of the insurer; and (8) The insurer will recognize any Insurance Trust Agreement entered into by the Association.

**Section 16.3. Insurance Trustee and Power of Attorney.** Notwithstanding any of the provisions and requirements of this Article relating to property or liability insurance, the Executive Board may designate as an insured, on behalf of the Association, the Association's authorized representative, including any Insurance Trustee with whom the Association may enter into any Insurance Trust Agreement or any successor to such trustee, who shall have the exclusive authority to negotiate losses under any policy, providing such property or liability insurance.

**Section 16.4. Repair of Damage or Destruction to Condominium.** The repair or replacement of any damaged or destroyed portion of the Condominium shall be done in accordance with and

governed by the provisions of Sections 1603-113(e) and (h) of the Condominium Act.

**Section 16.5. Additional Insurance.** Nothing in this Declaration shall be construed to limit the authority of the Executive Board to obtain additional insurance which it deems advisable.

**Section 16.6. Unit Owner to Obtain Insurance on Unit.**

(a) Each Unit Owner (or following the creation of the Unit 1 Condominium (and, if applicable, the Unit 2 Condominium, and Unit 3 Condominium), the Unit 1 Association (and, if applicable, the Unit 2 Condominium Association, and Unit 3 Condominium Association), shall maintain at its own expense (i) property insurance insuring against all risks of direct physical loss normally covered by the standard extended coverage endorsement and commonly insured against, including those covered by the standard "all risk" endorsement, in each case complying with the applicable requirements of this Section 16.6. The amount of such hazard insurance obtained pursuant to this paragraph (a) shall be equal to one hundred percent (100%) of the current replacement cost of the Unit and any improvements to the Unit, at the time the insurance is purchased and at each renewal date without deduction for depreciation, exclusive of land, foundations, excavation and other items normally excluded from coverage. Such hazard insurance policy may contain a "deductible" provision in an amount reasonably determined by the Executive Board. Such policy shall also contain a standard mortgage clause naming separately the Mortgagees of the Unit, their successors and assigns; and (ii) Comprehensive Liability Insurance, including medical payments insurance, complying with the requirements of Section 16.6(b) hereof, insuring the Owners and Association members and any managing agent retained by the Association, against any liability to the public or to other Owners, their tenants or invitees, relating in any way to the ownership and/or use of the Unit, Yard and any part thereof. Such insurance policy shall contain a "severability of interest endorsement" or equivalent, coverage which precludes the insurer from denying a claim of the Association because of the negligent acts of the Owner or another Owner. Such insurance shall include coverage for bodily injury and property damage that results from use of the Unit, Yard, water damage liability, liability for property of others, and such other risks as are customarily covered in such policies. The amount of such liability insurance shall be at least \$500,000.00 for bodily injury and property damage for any single occurrence.

(b) With respect to the insurance policies described in subsection 16.6(a) issued to the Unit Owner, the Unit Owner (or following the creation of the Unit 1 Condominium (and, if applicable, the Unit 2 Condominium, and Unit 3 Condominium), the Unit 1 Association (and, if applicable, the Unit 2 Condominium Association, and Unit 3 Condominium Association) shall cause such policies to provide that: (1) The insurer waives its right to subrogation under the policy against the Association and the Declarant; (2) No act or omission by the Association or Declarant will void such policies or be a condition to recovery under such policies or prejudice the coverage under such policies in any way; (3) If at the time of a loss under such policies there is other insurance in the name of the Association or Declarant covering the same risk covered by the policy, the Owner's policy provides primary insurance; (4) The liability of the insurer shall not be affected by, and the insurer shall not claim, any right of set-off, counterclaim, apportionment, proration, or contribution by reason of any other insurance obtained by or for the Association or Declarant; (5) The insurer shall be relieved from no liability for loss occurring because of any breach of warranty or condition or any other act or neglect by the Association,

the Declarant or any person under either of them; (6) Such policy may not be cancelled nor may coverage thereunder be substantially changed except by the insurer giving at least thirty (30) days prior written notice thereof to Owner and every other party in interest who shall have requested such notice of the insurer.

(c) Each Unit Owner is required to file a copy of such individual policy or policies with the Association within thirty (30) days after purchase of such insurance provided, or following the creation of the Unit 1 Condominium (and, if applicable, the Unit 2 Condominium, and Unit 3 Condominium).

(d) Under no circumstances shall the Association or Declarant be liable for any losses or damages incurred by a Unit Owner resulting from any failure or insufficiency of the Unit Owner's insurance policy or policies.

**Section 16.7 Additional Requirements.** All policies shall be written with a company authorized to do business in the State of Maine and, for the hazard insurance policy described in Section 16.l(a) hereof, such company must hold a general policy holder's rating of at least "A" by Best's Insurance Reports, or by an equivalent rating bureau should Best's Insurance Reports cease to be issued.

## **ARTICLE 17**

### **ASSIGNABILITY OF DECLARANT'S RIGHTS**

The Declarant may not assign any or all of its rights or privileges reserved or established by this Declaration to any person who is not a Unit Owner or Mortgagee.

## **ARTICLE 18**

### **AMENDMENT OF DECLARATION**

Pursuant to Section 1602-117 of the Condominium Act and except as provided herein for amendments which may be executed by the Declarant, the Association or certain Owners, this Declaration may be amended only by vote or agreement of Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated. In addition, approval of amendments of a material nature must be obtained from Eligible Mortgage Holders representing at least 51% of the votes of Units that are subject to mortgages held by Eligible Mortgage Holders. A change to any of the following, except where such change may be effected by the Declarant in exercise of a Development Right or otherwise would be considered as material:

- (a) voting rights;
- (b) assessments, assessment liens, or subordination of assessment liens;
- (c) reserves for maintenance, repair and replacement of Common Elements;
- (d) responsibility for maintenance and repairs;
- (e) reallocation of interests in the Common or Limited Common Elements, or rights to their use;
- (f) boundaries of any Unit, except for locations of decks or patios or for the establishment of the initial location of vertical and horizontal Unit boundaries as may be approved by the Town of Windham;
- (g) convertibility of Units into Common Elements or Common Elements into Units;
- (h) expansion or contraction of the Condominium, or the addition, annexation or withdrawal of property to or from the Condominium;
- (i) insurance or fidelity bonds;
- (i) leasing of Units;
- (k) imposition of any restrictions on an Owner's right to sell or transfer its Unit;
- (I) a decision by the Association to establish self management when professional management had been required previously by an Eligible Mortgage Holder;
- (m) restoration or repair of the Condominium (after a hazard damage or



- partial condemnation) in a manner other than that specified in the Condominium Documents;
- (n) any action to terminate the legal status of the Condominium after substantial destruction or condemnation occurs; or
  - (o) any provisions that expressly benefit holders, insurers or guarantors of mortgages on the Units.

If the amendment is not of such a material nature, such as the correction of a technical error or the clarification of a statement, the approval of an Eligible Mortgage Holder may be assumed when that Eligible Mortgage Holder has failed to submit response to any written proposal for an amendment within thirty (30) days after the proposal is made.

Notwithstanding the foregoing, any amendments to this Declaration affecting in any way the use of any Unit and altering or affecting the calculation of Assessments, Common Expenses and Limited Common Expenses of such Unit shall be subject to the review and approval of the Owner of such Unit.

## **ARTICLE 19**

### **TERMINATION**

The Condominium may be terminated only by agreement of the Owners of Units to which eighty percent (80%) of the votes in the Association are allocated; provided, however, that if the Condominium is being terminated for reasons other than substantial destruction or condemnation of the Condominium, the termination of the Condominium must also be approved by Eligible Mortgage Holders of Units to which at least sixty-seven percent (67%) of the votes of Units subject to mortgages held by Eligible Mortgage Holders are allocated. Termination of the Condominium will be governed by the provisions of Section 1602-118 of the Condominium Act.

## **ARTICLE 20**

### **ATTORNEY IN FACT**

Each Owner by its acceptance of the deed or other conveyance vesting in it a Unit does hereby constitute and appoint the Managing Agent acting from time to time (or the Executive Board, acting through the officers of the Association if there is no Managing Agent) with full power of substitution, as his true and lawful attorney in his name, place and stead to enter into all agreements which the Managing Agent is authorized to enter into pursuant to the terms of this Declaration and which the Managing Agent in its discretion may believe are necessary and proper to carry out the agent's responsibilities and duties. Each Owner stipulates and agrees that the Power of Attorney created by this Article 20 is coupled with an interest. The action of the Managing Agent in settling any claim for damage to any personal property shall be binding upon each Owner in the absence of fraud or clear mistake.

## **ARTICLE 21**

### **GENERAL PROVISIONS**

**Section 21.1. Headings.** The headings used in this Declaration and the table of contents are inserted solely as a matter of convenience for the readers of this Declaration and shall not be relied upon or used in construing the effect or meaning of any of the provisions of this Declaration.

**Section 21.2. Severability.** The provisions of this Declaration shall be deemed independent and severable, and the invalidity or unenforceability of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion hereof unless such deletions shall destroy the uniform plan of development and operation of the Condominium which this Declaration is intended to create.

**Section 21.3. Applicable Law.** This Declaration shall be governed and construed according to the laws of the State of Maine.

**Section 21.4. Interpretation.** The provisions of this Declaration shall be liberally construed in order to effect Declarant's desire to create a uniform plan for development and operation of the Condominium.

**Section 21.5. Effective Date.** This Declaration shall become effective when it and the Condominium Plat have been recorded.

**Section 21.6. Notices.** Unless otherwise provided by the Condominium Documents, all notices and other communications required or permitted to be given under or in connection with this Declaration shall be in writing and shall be deemed given when delivered in person or on the third business day after the day on which mailed by regular U.S. mail, postage prepaid, addressed to the address maintained in the register of current addresses established by the Association.

**Section 21.7. Exhibits.** All exhibits attached to this Declaration are hereby made a part of this Declaration.

**Section 21.8. Pronouns.** Wherever used, the singular number shall include the plural, the plural the singular and the use of any gender shall include all genders.

[SIGNATURE PAGE TO FOLLOW]

WITNESS its hand and seal as of \_\_\_\_\_, 2025.

WINDHAM VILLAGE APARTMENTS LLC

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Name:  
Its:

STATE OF MAINE  
COUNTY OF CUMBERLAND, ss.

\_\_\_\_\_, 2025

Personally appeared before me the above-named \_\_\_\_\_, \_\_\_\_\_ of Windham Village Apartments LLC, and acknowledged the foregoing Declaration to be his free act and deed in his said capacity, and the free act and deed of Windham Village Apartments LLC.

\_\_\_\_\_  
\_\_\_\_\_  
Maine Attorney at Law | Notary Public  
Name:  
Commission Expiration:

## EXHIBIT A

A certain lot or parcel of land located in the Town of Windham, County of Cumberland and State of Maine, being more particularly described as follows:

Proposed Lot 1 as depicted on subdivision plan titled "First Amended Subdivision Shaw's Commercial Subdivision: Windham Village Apartments, 770 Roosevelt Trail, Windham, Maine" made for Windham Village Apartments LLC by Owen Haskell, Inc., dated February 5, 2024 and recorded in the Cumberland County Registry of Deeds in Plan Book 224, Page 52 (the "Subdivision Plan").

TOGETHER WITH certain appurtenant easement rights for ingress and egress for pedestrian and vehicle traffic over a parcel of land situated in the Town of Windham, County of Cumberland and State of Maine now or formerly owned by Maine Bank & Trust Company, and described in a deed from McDonald's Corporation dated August 9, 1995 and recorded in the Cumberland County Registry of Deeds in Book 12055, Page 224. Said easement rights are as set forth in a Cross Easement Agreement by and between Shaw's Realty Co. and McDonald's Corporation dated May 5, 1986 and recorded in the Cumberland County Registry of Deeds in Book 7623, Page 206, and in an Amendment to Cross Easement Agreement by and between Shaw's Realty Co. and Maine Bank & Trust Company dated July 20, 1995 and recorded in said Registry of Deeds in Book 12055, Page 227.

TOGETHER WITH certain appurtenant easement rights for ingress and egress for pedestrian and vehicle traffic over a parcel of land situated in the Town of Windham, County of Cumberland and State of Maine now or formerly owned by W/S North Windham Properties Limited Partnership, as described in a Deed from Manchester Properties, Inc. dated April 15, 1994 and recorded in the Cumberland County Registry of Deeds in Book 11394, Page 292. Said easement rights are as set forth in a Mutual Grant of Easements for Vehicular and Pedestrian Access by and between W/S North Windham Properties Limited Partnership and Shaw's Realty Co. dated August 18, 1994 and recorded in the Cumberland County Registry of Deeds in Book 11696, Page 141.

TOGETHER WITH certain appurtenant rights and easements, but subject to the terms and conditions described therein, set forth in Agreement and Deed of Easement by and between Shaw's Realty Co. and the Inhabitants of the Town of Windham dated March 11, 1987 and recorded in Book 8137, Page 273.

TOGETHER WITH certain appurtenant rights and easements, but subject to the terms and conditions described therein, set forth in Agreement and Deed of Easement by and between Shaw's Realty Co. and the Inhabitants of the Town of Windham dated June 27, 1985 and recorded in Book 8595, Page 30.

The above-described premises is further conveyed TOGETHER WITH and SUBJECT TO the following matters of record:

1. Rights and easements granted to Central Maine Power Company and New England Telephone and Telegraph Company by C. Harlan Chaplin and Lottie M. Chaplin in an

instrument dated November 17, 1971 and recorded in Book 3211, Page 575.

2. Rights and easements granted to Central Maine Power Company by George C. Shaw Company in an instrument dated November 20, 1978 and recorded in Book 4371, Page 163.
3. Site Location Order Request for Transfer Findings of Fact and Order #59-4332-05250, made by the Department of Environmental Protection, State of Maine, dated January 30, 1979 and recorded in Book 4381, Page 328, as affected by a Site Location of Development Act Transfer Findings of Fact and Order # L-04332-23-E-T, made by the Department of Environmental Protection, State of Maine, dated August 16, 2011 and recorded in said Registry of Deeds in Book 38428930, Page 24, as affected by a Site Location of Development Act Transfer Findings of Fact and Order # L-04332-23-G-T, made by the Department of Environmental Protection, State of Maine, dated July 26, 2021 and recorded in Book 38487, Page 107, as affected by a Conditions of Partial Transfer (approval) of Windham Village Apartments, LLC, Board Order # L-4332-23-A-X made by the Department of Environmental Protection, State of Maine, dated November 29, 2023 and recorded in Book 40502 Page 162, as affected by a Site Location of Development Act Amended Findings of Fact and Order # L-04332-87-I-A, made by the Department of Environmental Protection, State of Maine, dated July 26, 2021 and recorded in Book 40805, Page 253.
4. Taking for purposes of Land, drainage and grading rights described in Notice of Layout and Taking by The State of Maine Department of Transportation for State Highway "113" (State Route #35) dated April 30, 1986 and recorded in Book 7175, Page 195; as affected by that certain Supplemental Notice of Taking dated December 2, 1986 and recorded in Book 7532, Page 337.
5. Terms and conditions affecting rights and easements in a 50 foot wide strip reserved by Shaw's Realty Co., in a Deed The Howland Corporation dated February 27, 1987 and recorded in Book 7664, Page 246; as corrected and re-recorded in Deed July 31, 1987 and recorded in Book 7995, Page 319.
6. Terms and conditions and rights and easements as set for in a Deed to Standby Corp. III from J & L Associates, dated February 13, 1989 and recorded in Book 8696, Page 151.
7. Terms, conditions, rights and easements (other than the appurtenant rights and easements) set forth in a Deed from Shaw's Realty Co. to the Town of Windham dated November 20, 1995 and recorded in Book 12331, Page 88.
8. Rights and easements granted to C M P Natural Gas, LLC by Shaw's Realty Co. in an instrument dated August 23, 1999 and recorded in Book 15043, Page 311.
9. Terms, conditions, restrictions, dedications, easements, conveyances, Right of Ways, Boundary Lines, and Lot Lines shown on a plan entitled Relieve Road, Route 35, North Windham, Maine, by William J. Doucet, P.L.S. 2263, dated June 7, 1995, and revised

through November 10, 1995 and recorded in Plan Book 196, Pages 17 and 18, as affected by a Notice of Expiration of Subdivision Approval by the Town of Windham, dated February 8, 1999, and recorded in Book 14562, Page 334.

10. Use restrictions as contained in a Lease by and between California State Teachers' Retirement System, Landlord, and Shaw's Supermarkets, Inc., as Tenant, a Memorandum and Notice of which is dated as of June 1, 2000 and recorded on June 5, 2000 in Book 15511, Page 338.
11. Use restrictions as contained in a Lease by and between California State Teachers' Retirement System, Landlord, and Staples The Office Superstore East, Inc., as Tenant, a Memorandum of which is dated as of June 12, 2001 and recorded on July 3, 2001 in Book 16485, Page 92.
12. Terms, conditions, rights and easements (other than the appurtenant rights and easements) as set forth in that certain Easement Agreement, dated as of April 2, 2002, by and between California State Teachers' Retirement System, as Grantor, and Gorham Savings Bank, as Grantee, recorded on April 2, 2002 in Book 17490, Page 269.
13. Rights, easements, restrictions, terms and conditions as described in that certain Easement, dated as of December 9, 2002, by California State Teachers' Retirement System, as Grantor, and Maine Natural Gas Corporation, as grantee, recorded on December 30, 2002 in Book 18623, Page 164.
14. Notice of Layout and Taking by the State of Maine Department of Transportation against SP Windham Owner LLC, et al dated February 19, 2020 and recorded in Book 36541, Page 345.
15. Such state of facts as shown on the Subdivision Plan.
16. Easement Deed from Windham Village Apartments LLC to Portland Water District, dated June 25, 2024 and recorded in the Cumberland County Registry of Deeds in Book 40854, Page 33, as affected by a Corrective and Confirmatory Easement Deed, dated October 8, 2024 and recorded in Book 41043, Page 134.
17. Septic Field and Nitrate Easement Agreement by and between Windham Village Apartments LLC and B33 Windham II LLC, dated June 27, 2024 and recorded in Book 40857, Page 273.
18. Easement Agreement by and between Windham Village Apartments LLC and B33 Windham II LLC, dated June 27, 2024 and recorded in Book 40857, Page 290.

## EXHIBIT B

### EXHIBIT B [Allocated Interests]

<u>Unit #</u>	<u>#Dwelling Units</u>	<u># Votes</u>	<u>Percentage Interest</u>
1		1	100%

NOTE: Percentage Interest is determined by dividing the number of dwelling units (including residential condominiums and apartments) located on a Unit by the total number of dwelling units in the Condominium. Each Unit will have one (1) vote.

**BYLAWS OF  
WINDHAM VILLAGE MASTER ASSOCIATION**

**ARTICLE I  
CREATION AND APPLICATION**

**Section 1.01 Creation.**

A. This corporation is organized under the Maine Nonprofit Corporation Act in connection with the submission of premises known as the Windham Village Master Condominium (the “Condominium”) located at or near 770 Roosevelt Trail, Windham, Cumberland County, Maine, to the Maine Condominium Act pursuant to the Declaration of Condominium of Windham Village Master Condominium (the “Declaration”) as recorded in the Cumberland County Registry of Deeds. The name of the corporation is Windham Village Master Association (the “Association”).

B. The term “Premises” as used herein shall include the land, the buildings and all other improvements thereon, which initially consists of one (1) unit consisting of four twelve-unit Buildings, which is identified on the Condominium Plat as Unit 1, together with certain Common Elements and Limited Common Elements depicted on the Condominium Plat (and including, to the extent legally declared and created, two (2) additional units, which are generally identified on the Condominium Plat as Unit 2 (which consists of three twelve-unit Buildings, and one sixteen-unit Building), and Unit 3 (which consists of six twelve-unit buildings), and such other additional Common Elements and Limited Common Elements depicted on the Condominium Plat, all of which NEED NOT BE BUILT) and all other property, personal or mixed, intended for use in connection therewith now or hereafter submitted to or governed by the Declaration.

**Section 1.02 Application.**

All present and future unit owners, mortgagees, lessees, and occupants of the Units, their contractors, agents and invitees, and any other persons who may use the Premises in any manner are subject to these Bylaws and to the Rules and Regulations, all as adopted, amended or altered from time to time.

**Section 1.03 Office.**

The principal office of the Association shall be located at the Condominium.

**ARTICLE II  
PURPOSES AND POWERS OF THE ASSOCIATION**

**Section 2.1 Purposes.**

A. The purposes of the Association are to establish an association of unit owners pursuant to the Maine Condominium Act for the governance, operation and maintenance of the Condominium established under the Declaration.



## Section 2.2 Powers.

A. In addition to all the powers, authority and responsibilities granted to or imposed upon this Association by the laws of the State of Maine, specifically including those set forth or referred to in the Maine Condominium Act or the Maine Non-Profit Corporations Act, all of which the Association shall have to the extent permitted by law, and those set forth in the Declaration, the Association shall have the specific powers to:

1. Adopt and amend these Bylaws and Rules and Regulations;
2. Adopt and amend budgets for revenues, expenditures and reserves, and to collect assessments for common expenses and service charges from unit owners;
3. Hire and terminate managers and other employees, agents, and independent contractors;
4. Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or the unit owners on matters affecting the Condominium;
5. Make contracts and incur liabilities;
6. Regulate the use, maintenance, repair, replacement and modification of common elements, except as provided in the Declaration;
7. Cause additional improvements to be made as a part of the common elements, subject to the restrictions set forth in the Declaration;
8. Acquire, hold, encumber and convey in its own name any right, title, or interest to real or personal property;
9. Grant easements, leases and licenses for public utilities servicing or benefiting the Premises through or over the common elements;
10. Impose and receive payments, fees, or charges for the use, rental, or operation of facilities located on the common elements;
11. Impose charges and interest for late payment of assessments and service charges and, after notice and an opportunity to be heard, impose reasonable penalties for violations of the Declaration, Bylaws, and Rules and Regulations of the Association;
12. Impose reasonable charges for the preparation and recordation of amendments to the Declaration or statements of unpaid common charges and assessments or resale certificates furnished in accordance with the Condominium Act;
13. Provide for the indemnification of its officers and directors and maintain directors' and officers' liability insurance;
14. Exercise any other powers conferred by Declaration or Bylaws;
15. Exercise any other powers conferred by the Condominium Act; and
16. Exercise all other powers that may be exercised pursuant to the Maine Nonprofit Corporation Act.

B. The Board shall manage the Condominium and exercise such powers on behalf of the Association, subject to the terms of these Bylaws, the Declaration and the Maine Condominium Act.

### Section 2.3 Non-Profit Statuts.

The Association is not organized for profit and no property or profit thereof shall inure to the benefit of any person except in furtherance of the non-profit making purposes of the Association or in the course of acquiring, constructing or providing management, maintenance and care of the Premises, or by virtue of a rebate of excess membership dues, fees, assessments, or common charges.

## ARTICLE III ASSOCIATION OF OWNERS

### Section 3.1 Membership.

The members in the Association shall consist exclusively of the owners of Units in the Condominium now or hereafter created in accordance with the Declaration or, following termination of the Condominium, of the former unit owners entitled to the distribution proceeds or their heirs, successors and assigns. The membership of a unit owner shall terminate upon the conveyance, transfer or other disposition of the entire interest in the unit, whereupon such membership and any interest in the assets of the Association shall automatically transfer to and be vested in the successor in ownership. Membership is otherwise non-transferable. A mortgage of a unit or the grant of a security interest therein as security for an obligation shall not operate to transfer membership until a foreclosure of the mortgage or security agreement.

### Section 3.2 Annual Meeting.

Meetings of the members shall be held annually each successive year on the second Wednesday of October, or in the event that day is a legal holiday, then on the first day thereafter that is not a holiday. The annual meeting and any special meetings shall be held at the Condominium or such other place as may be designated in the Notice of Meeting.

### Section 3.3 Special Meetings.

Special meetings of the members may be held at any time upon the call of the board of directors of the Association, also known as the Executive Board (the "Board"), or upon the call of either of the two unit owners, which call shall state the purpose of the meeting. Upon receipt of such call, the Secretary shall promptly send out notices of the meeting to the members of the Association.

### Section 3.4 Notice of Meetings.

A. A written notice of each meeting of the Association, stating whether it is an annual meeting or special meeting, the authority for the call of the meeting, the place and time of the meeting, and the items on the agenda (including the general nature of any proposed Declaration or Bylaw amendment, any budget changes and any proposal to remove an officer) shall be sent by the President or Secretary or Assistant Secretary, if any, at least ten (10) days, but not more than sixty (60) days, before the date set for the meeting. Such notice shall be given to each

member listed with the records of the Association as set forth below and to each Eligible Mortgage Holder if and as required by the Declaration:

1. By hand delivering it to the member, or
2. By mailing it, postage prepaid, addressed to the member at the address of the Unit or any other address designated in writing by that member with the records of the Association.

### Section 3.5 Waiver of Notice.

The presence of the members in person or by proxy, at any meeting shall conclusively establish the meeting's validity, unless any member shall object at the meeting to the failure to comply with this Article. Any meeting so held without objection shall be valid for all purposes. At any annual meeting, any general business may be transacted and any action may be taken whether or not such action is indicated in the notice of the meeting.

### Section 3.6 Order of Business.

A. The order of business at all meetings of the members shall be generally as follows, if applicable:

1. Roll call.
2. Proof of notice of meeting or waiver of notice.
3. Reading of minutes of preceding meeting.
4. Reports of Officers.
5. Report of the Board.
6. Report of committees.
7. Election of the Board.
8. Unfinished business.
9. New business.
10. Adjournment.

### Section 3.7 Parliamentary Procedure.

At all meetings of the members or of the Board, Roberts Rules of Order, as then amended, generally shall be followed, except in the event of conflict with these Bylaws or the Declaration.

### Section 3.8 Quorum.

The presence at the beginning of any meeting of the Association, in person or by proxy of unit owners whose aggregate voting interest constitutes more than fifty-one percent (51%) of the total interest therein shall constitute a quorum for the transaction of all business.

### Section 3.9 Voting.

A. Any person, persons, partnership, limited liability company, corporation, trust, or

other legal entity or a combination thereof, owning any unit (other than an interest held as security for an obligation) duly recorded in its name, which ownership shall be determined from the records of the Cumberland County Registry of Deeds, shall be a member of the Association, and may vote either in person or by proxy.

B. Multiple owners of a unit shall be deemed one owner. If only one of the multiple owners of a unit is present in person or by proxy at a meeting of the Association, it is entitled to cast all the votes allocated to that unit. If more than one of the multiple owners are present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the owners. There is presumed to be a majority agreement if any one of the multiple owners present casts the votes allocated to that unit unless any of the other owners of the unit promptly protests in person or proxy to the person presiding over the meeting. In the event of a deadlock between multiple owners of a unit with respect to a vote on any action, that unit shall not be entitled to cast a vote on such action and the voting interest of such a unit shall not be deemed to be outstanding in determining the presence of a quorum or the percentage of approval needed to take such action.

C. Votes allocated to a unit may be cast pursuant to a written proxy duly executed by the unit owner. If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy. A unit owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not signed and dated or purports to be revocable without notice. A proxy shall automatically terminate eleven (11) months after its date, unless it specifies a shorter term.

D. An executor, administrator, personal representative, guardian, or trustee may vote in person or by proxy at any meeting of the Association with respect to any unit owned or held by him in such a capacity, whether or not the same shall have been transferred of record by a duly recorded conveyance. If the unit has not been so transferred of record, it shall satisfy the Secretary that it so controls the unit.

E. The Declarant may exercise the voting rights pertaining to any unit to which it retains title. No vote pertaining to a unit owned by the Association may be cast, and the voting interest of such a unit shall not be deemed to be outstanding in determining the presence of a quorum or the percentage of approval needed to act.

F. Each unit shall have one vote in the Association as specified in the Declaration. Any specified percentage vote refers to the aggregate percentage of votes cast.

G. At any meeting at which a quorum is present, the affirmative vote of a majority of the voting interest of those members present shall determine any question except the election of directors (which shall be as provided below) and unless a greater percentage vote is required by law, by the Declaration or by these Bylaws. To the extent required by the Condominium Act, for the purposes of amending the Declaration or these Bylaws, the percentage in interest approving an action shall be measured against the total voting interest regardless of whether or not such unit owners are present at the meeting.

### Section 3.10 Adjournment.

Any meeting of the Association may be adjourned from time to time to such place and time as may be determined by majority vote of the members present, whether a quorum be present or not, without further notice of the time and place of adjournment beyond that given at the meeting. At any adjourned meeting at which a quorum is present, any business may be transacted that might have been transacted by a quorum at the meeting as originally called.

### Section 3.11 Unanimous Action by Members Without a Meeting.

Any action required or permitted to be taken at a meeting of the members (to the extent not otherwise precluded by law) may be taken without a meeting if written consents, setting forth the action so taken, are signed by all the members entitled to vote on such action and are filed with the Secretary of the Association as part of the corporate records. Such written consents shall have the same effect as a unanimous vote of the members at a meeting duly called therefor.

## ARTICLE IV EXECUTIVE BOARD

### Section 4.1 Number and Qualifications.

The affairs of the Association shall be governed by the Board composed of three (3) directors pursuant to the terms below. Following the expiration of the Declarant Control Period, the members shall appoint or elect three (3) directors, one for a period of three years, one for a period of two years, and one for a period of one year. Each Unit so declared shall have the right to appoint one director. The number of directors or the method of election or appointment of directors may not be changed except by a unanimous vote of the members.

### Section 4.2 Term of Office.

Directors shall hold office until a successor director has been appointed pursuant to Section 4.1 above.

### Section 4.3 Powers and Duties.

The Board generally shall act on behalf of the Association, shall have all powers and duties necessary or appropriate for the administration of the affairs of the Association, and shall have all powers referred to in the Declaration, these Bylaws or otherwise provided under the Maine Condominium Act or the Maine Nonprofit Corporation Act, as either may be amended from time to time, except those matters which by law, by the Declaration or by these Bylaws specifically are reserved to the members.

### Section 4.4 Other Duties.

In addition to other duties imposed by these Bylaws or by duly adopted resolutions of the

members of the Association, the Board shall be responsible for the following:

- A. Appointment of the officers of the Association;
- B. Management and administration of the Condominium, the Association's property and the common elements and limited common elements, including the maintenance, repair and replacement thereof;
- C. Determination and collection of common expenses assessments and service charges from the unit owners and the regulation of the Association's fiscal affairs;
- D. Establishment of reserves, in the discretion of the Board, for the maintenance, repair and replacement of common elements and limited common elements and for contingencies;
- E. Engagement and termination of the personnel and agents for the maintenance and operation of the Condominium, including without limitation the common elements, and to fix the terms of their engagement and their compensation and authority; and
- F. Designation of executive and other committees.

#### Section 4.5 Manager or Management Agent, Employees, Generally.

The Board may employ on behalf of the Association a management agent or manager at a compensation established by the Board to perform such duties and services as the Board shall authorize including, but not limited to, the duties listed in Sections 4.4 and 6.2 of these Bylaws.

#### Section 4.6 Appointment and Vacancies.

A vacancy in the position of a director for whatever reason shall be filled by the owner of the unit appointing such director.

#### Section 4.7 Removal of Directors.

A director may only be removed by the owner the unit that appointed that director.

#### Section 4.8 Compensation.

No compensation shall be paid to directors for their services as directors or in any other capacity, unless a resolution authorizing such remuneration shall have been adopted by the members before or after the services are undertaken.

#### Section 4.9 Annual Meeting.

The annual meeting of the Board shall be held immediately following the annual meeting of the Association members and at the same place, and no further notice shall be necessary in order legally to constitute such meeting.

#### Section 4.10 Regular Meetings.

Regular meetings of the Board (other than the annual meeting) may be held at such time and place as shall be determined, from time to time, by the Board. Notice of regular meetings of the Board shall be given to each director, personally or by delivery to his unit, or by telephone, at least ten (10) days prior to the day named for such meeting. Upon reasonable advance notice, Board members may elect to attend any meeting via telephonic or internet speakerphone, or video or video conferencing software, at which they may hear and be heard by other Board members, but Board members wishing to attend in this manner shall be responsible for the costs of providing speakerphone or video services.

#### Section 4.11 Special Meetings.

Special meetings of the Board may be called by the President on ten (10) days' prior notice to each director, given personally or by delivery to his unit, or by telephone, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board may also be called by the President upon the written request of a director. Upon reasonable advance notice, Board members may elect to attend any special meeting via telephonic or internet speakerphone, or video or video conferencing software, at which they may hear and be heard by other Board members, but Board members wishing to attend in this manner shall be responsible for the costs of providing speakerphone or video services.

#### Section 4.12 Waiver of Notice.

Before or after any meeting of the Board, any director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board shall be a waiver of notice by him of the time and place thereof, unless such director's attendance is only to object to the form of notice of such meeting. If all the directors are present at any meeting of the Board, except to object as provided above, no notice shall be required and any business may be transacted at such meeting.

#### Section 4.13 Board Quorum.

At all meetings of the Board, the presence of a majority of the directors at the beginning of a meeting shall constitute a quorum for the transaction of business. The acts of the majority of the directors present shall be the acts of the Board. If at any meeting of the Board a quorum is not present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business that might have been transacted at the meeting as originally called, may be transacted without further notice.

#### Section 4.14 Unanimous Action.

Unless otherwise expressly provided by law, any action that may be taken at a meeting of the directors may be taken without a meeting if all of the directors sign written consents, setting forth the action taken or to be taken, at any time before or after the intended effective date of such action. Such consents shall be filed with the minutes of Board meetings and shall have the same effect as a unanimous vote at a duly-called Board meeting.

## ARTICLE V OFFICERS

### Section 5.1 Designation.

The principal officers of the Association shall be a President, a Secretary and a Treasurer, of whom only the President need be elected from among the directors. The directors may in their discretion appoint a Vice President, Assistant Treasurer, and an Assistant Secretary, and such other officers, none of whom need be directors, as in their judgment may be necessary.

### Section 5.2 Election of Officers.

The principal officers of the Association shall be elected annually by the Board at the annual meeting and shall hold office at the pleasure of the Board.

### Section 5.3 Removal of Officers.

Upon a majority vote of the Board, any officer may be removed, either with or without cause, and his successor elected at any regular meeting of the Board, or at any special meeting of the Board called for such purpose. Any officer whose removal has been proposed, shall be given an opportunity to be heard at the meeting, but the Board's decision shall be final.

### Section 5.4 President.

The President shall be the chief executive officer of the Association and shall be a director. He or she shall preside at all meetings of the Association and of the Board.

### Section 5.5 Treasurer.

The Treasurer shall be responsible for keeping financial records and accounts of all receipts and disbursements in books belonging to the Association. The Treasurer shall also, in the absence of the President, exercise the powers and perform the duties of the President. He or she shall be responsible, subject to the direction of the Board, for the preparation and dissemination to the members of all financial reports, and budgets, and for the preparation and signing, if necessary, of all financial reports or tax returns required to be filed by the Association.

### Section 5.6 Secretary.

The Secretary shall keep and certify the minutes of all meetings of the Board or of the Association members, shall give all notices as provided by these Bylaws or the Declaration, and shall have other powers and duties as may be incidental to the offices of Secretary, given him or her by these Bylaws or assigned to him or her from time to time by the directors. If the Secretary or any assistant secretary shall not be present at any meeting, the presiding officer shall appoint a secretary pro tempore who shall keep the minutes of such meeting and record them in the books provided for that purpose. The Secretary shall be responsible for the filing of all reports and documents required to be filed by the Association with any governmental agency.



#### Section 5.7 Auditor.

The directors may at any meeting appoint some person, firm or corporation engaged in the business of auditing to act as auditor of the Association and to perform such audits and fiscal duties as may be requested by the Board.

#### Section 5.8 Amendments to Declaration.

The Secretary shall prepare amendments to the Declaration and the President and Secretary shall execute the certificate for recording on behalf of the Association.

### ARTICLE VI FISCAL AFFAIRS AND ADMINISTRATION

#### Section 6.1 Accounting.

Books and accounts of the Association shall be kept under the direction of the Treasurer and in accordance with customary accounting principles and practices consistently applied. Within one hundred and twenty (120) days after the close of each fiscal year, the Association shall furnish its members with a statement of the income and disbursements for such prior fiscal year and a balance sheet as of the close of that fiscal year. All financial records of the Association, except as provided in the Declaration, shall be available for examination by unit owners, Eligible Mortgage Holders and their duly authorized agents and accountants at reasonable times with reasonable advance notice.

#### Section 6.2 Budget and Common Charges.

A. The Board shall cause a proposed annual budget to be prepared based on its estimate of annual income and expenses. At least thirty (30) days prior to the annual members' meeting, the Board shall send a summary of such budget to each member. As provided in the Declaration, the proposed budget approved by the Board shall be adopted unless rejected by a majority in interest vote of the unit owners at the annual members' meeting.

B. The budget shall include the estimated amount required by the Association to meet its expenses for each fiscal year or such other fiscal period as it deems appropriate, including but not limited to the following items:

1. Management and administration expenses;
2. The cost of operation, repairs, maintenance, replacement, and improvements of common elements, limited common elements and facilities benefiting the Condominium;
3. The cost of such insurance, bonds, services and utilities as may be furnished by

the Association, other than such items for which a service charge is assessed to unit owners;

4. In the discretion of the Board, the establishment and maintenance of adequate working capital and operating reserves including general operating reserves, reserves for contingencies, reserves for losses not covered by insurance or due to insurance deductibles, and reserves for periodic maintenance, repair and replacement of the common elements and limited common elements the Association is obligated to maintain, all to be held in a segregated account, owned by and in the name of the Association, established at a Maine financial institution insured by the Federal Deposit Insurance Corporation or other equivalent federally-sponsored insurance; and
5. Such other expenses of the Association as may be approved by the Board including operating deficiencies, if any, for prior periods.

C. Until an annual budget is adopted, the members shall continue to pay that monthly amount which had been previously established; any delay or failure to estimate, to deliver or to adopt such budget shall not waive or release such obligation. The Association may send periodic statements to members showing the amount of common expense assessments due, but each member shall pay his assessment promptly when due regardless of whether such a statement is sent.

D. Each member shall pay his share of common expense assessments as defined in the Declaration without setoff or deduction in an amount equal to the total Association budget, net of other income and service charges as defined herein, multiplied by his respective common expense liability. Each member shall become liable to the Association, and a lien shall arise against his unit for his entire fractional share of the assessments at the commencement of the pertinent fiscal period. Each member may pay his share of the common expense liability in monthly installments on or before the first day of each and every month during such period, provided, however, that if any such installment is not paid when due, then if not paid upon thirty (30) days written notice of default or once a member has been provided two (2) written notices of default in any calendar year (notwithstanding that the monthly installments have been paid prior to the expiration of the 30-day cure period), the entire remaining balance thereof for the fiscal period shall immediately become due and payable in full.

E. If any member shall fail or refuse to pay to the Association when due its share of the assessments or any service charges, user fees and penalties, thereafter the amount thereof shall bear interest at the rate of ten percent (10%) per annum or such other rate as may be set by vote of the Board prior to the date on which the payment came due. Such assessments and service charges with such late charges as may be determined by the Board, interest and all costs of collection, including reasonable attorneys' fees, shall constitute a lien on the unit of such member. Recording of the Declaration constitutes record notice and perfection of the lien for assessments, service charges, user fees, including penalties, late charges, interest, attorneys' fees and other costs of collection. The Association may record a notice from time to time stating the amount and nature of the lien against a unit, signed by an officer or director of the Association or

by an agent authorized by the Board, but such recorded notice is not necessary to establish or perfect the lien.

F. If such payments are not received within thirty (30) days after they become due, the Board may, in its discretion, exercise and enforce any and all rights and remedies provided in the Maine Condominium Act, the Declaration or these Bylaws or otherwise available at law or in equity for the collection of all unpaid amounts. In any action to foreclose the lien for common expense assessments, service charges, user fees, late charges, penalties, interest, attorneys' fees, or costs of collection against any owner of a unit, the Association may act, through its manager or the Board, in the same manner as any mortgagee of real property. The manager or the Board acting on behalf of the unit owners shall have the power to bid and acquire such unit at a foreclosure sale and to lease, mortgage, convey, or otherwise deal with the unit in its discretion. A suit to recover a money judgment for unpaid common expense assessments, service charges, user fees and penalties due to the Association, with interest and all costs and reasonable attorneys' fees, may be maintained without foreclosing upon or waiving the lien securing the same. Any lien created hereunder is extinguished unless action to enforce the lien is started within five (5) years after the full amount of the assessment becomes due.

### Section 6.3 Service Charges.

Service charges (other than common expenses assessments) may be assessed separately to each unit or group of units benefited thereby and shall be paid by the unit owner(s) within thirty (30) days of deposit in the U.S. Mail or hand delivery, and shall constitute a lien on the unit of the same status as a lien for common expenses set forth in Section 6.2 above.

### Section 6.4 Revised and Special Assessments.

A. If at any time the Board shall determine the amount of the common expense assessments to be inadequate, whether by reason of a revision in its estimate of expenses or income, the Board may adopt and deliver to the members at least thirty (30) days prior to the date on which it becomes effective, a revised estimated annual budget for the balance of such fiscal year and thereafter monthly common expense assessments shall be determined and paid on the basis of such revision.

B. The Board may, upon determining that circumstances exist that require immediate assessment of the members, make special assessments, not to exceed an amount equal to six (6) current monthly assessments for each unit, unless approved by the members, which special assessments shall be due and payable when delivered to the members.

### Section 6.5 Fiscal Year.

The fiscal year of the Association shall be such as may from time to time be established by the Board.

### Section 6.6 Capital Improvements.

The approval of sixty-seven percent (67%) in voting interest of the members shall be required to make a capital improvement to the common elements in an amount in excess of the aggregate assessments against all the members over the prior fiscal year, exclusive of service charges and user fees, and in such event the cost thereof shall be assessed to all unit owners as an assessment.

#### Section 6.7 Enforcement of Declaration and Bylaws.

Every unit owner shall pay to the Association promptly on demand all costs and expenses, including reasonable attorneys' fees and expenses incurred by or on behalf of the Association, whether or not an action is initiated, in collecting any delinquent assessments, service charges or fees due from such unit, foreclosing its lien for assessments, collecting any penalties imposed hereunder, or enforcing any provisions of the Declaration, these Bylaws, or the rules and regulations against such owner or any occupant of such unit.

#### Section 6.8 Rules and Regulations.

In order to assist the peaceful and orderly use and enjoyment of the units, common elements and limited common elements of the Condominium, the Board may from time to time adopt, modify, and revoke, in whole or in part, such reasonable rules and regulations governing the Condominium as it may deem necessary, including, but not limited to, methods and procedures for enforcing compliance with the Declaration and Bylaws. Such rules and regulations, upon adoption, and every amendment, modification, and revocation thereof, shall be sent promptly to each unit and shall be binding upon all members of the Association and all persons present on the Condominium.

### ARTICLE VII EXECUTION OF INSTRUMENTS

#### Section 7.1 Instruments Generally.

All checks, drafts, notes, vouchers, bonds, acceptances, contracts, deeds, lien notices, certificates, and all other instruments shall be signed or approved by the President or the Secretary or Treasurer, and in addition by any one or more officer(s), agent(s) or employee(s), all as the Board may designate, unless otherwise unanimously voted by the Board.

### ARTICLE VIII LIABILITY OF DIRECTORS AND OFFICERS

#### Section 8.1 Exculpation.

No director or officer of the Association shall be liable for acts or defaults of such director or any other director or officer, or for any loss sustained by the Association or any member thereof, unless the same has resulted from his or her own willful misconduct or gross negligence.

#### Section 8.2 Indemnification.

The Association shall indemnify any person who was or is threatened to be made a party against any actual, threatened, or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact he or she is or was an officer, director, agent or employee of the Association against all expenses including reasonable attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection therewith, excepting, however, such matters in which such person is finally adjudged to have acted with willful misconduct or gross negligence or absent a final adjudication thereof, excepting such matters in which the Board (excluding any interested director) determines any such person acted with willful misconduct or gross negligence. This right to indemnification shall be in addition to any other power of the Association to indemnify as permitted by law. The Association may also maintain insurance on behalf of any person who is or was a director, officer, agent or employee of the Association against any liability asserted against such director and incurred by him or her in such capacity or arising out of his or her status as such, whether or not the Association would otherwise have the power or duty to indemnify such director.

## ARTICLE IX AMENDMENT AND INTERPRETATION

### Section 9.1 Amendment.

Except where expressly provided to the contrary herein, these Bylaws may be amended, modified, or revoked in any respect from time to time by vote of sixty-seven percent (67%) or more in voting interest of the members of the Association at a meeting duly called for the purpose; PROVIDED, HOWEVER, that these Bylaws shall always contain those particulars which are required by the Maine Condominium Act, as amended from time to time to the extent applicable by law to this Condominium; and PROVIDED, FURTHER, that no modification of or amendment to the Bylaws shall be valid, until a certificate of the amendment is executed to evidence the propriety of such amendment or modification by the Secretary and President of the Association.

### Section 9.2 Conflict.

In the event of any conflict between these Bylaws and the provisions of the Declaration, the latter shall govern and apply.

# **BYLAWS OF WINDHAM VILLAGE UNIT 1 CONDOMINIUM ASSOCIATION**

## **ARTICLE I. CREATION AND APPLICATION**

**Section 1.01 Creation.** This corporation is organized under the Maine Nonprofit Corporation Act in connection with the submission of Property known as **WINDHAM VILLAGE UNIT 1 CONDOMINIUM** (the "Condominium") located in the Town of Windham, Maine to the Maine Condominium Act pursuant to the Declaration of Windham Village Unit 1 Condominium (the "Declaration") as recorded in the Cumberland County Registry of Deeds. The name of the corporation is **WINDHAM VILLAGE UNIT 1 CONDOMINIUM ASSOCIATION** (the "Association").

The term "Property" as used herein shall include the lands, buildings and all other improvements thereon (including the Units, the Common Elements, the Limited Common Elements, and all easements, rights and appurtenances belonging thereto) and all other property, real, personal or mixed, intended for use in connection therewith now or hereafter submitted to or governed by the Declaration.

**The Property is also subject to the Declaration of Condominium, Windham Village Master Condominium, dated \_\_\_\_\_, 2025, and recorded in the Cumberland County Registry of Deeds in Book \_\_\_, Page \_\_\_, as it may be amended or supplemented from time to time (the "Master Declaration"). The Master Declaration establishes the Windham Village Master Association (the "Master Association"), which maintains certain development-wide infrastructure and provides certain development-wide services for which the Association (and the Unit Owners) are responsible to pay a proportionate share of.**

Capitalized terms not otherwise defined in these Bylaws shall have the meanings as specified in the Condominium Act or the Declaration, and if not defined in the Act or the Declaration, then defined in the Master Declaration.

**Section 1.02 Application.** All present and future Unit Owners, mortgagees, lessees, licensees and occupants of the Units, their employees, guests, invitees, agents and customers, and any other persons who may enter upon the Property in any manner are subject to these Bylaws and to the Rules and Regulations, all as adopted, amended or altered from time to time by the Board of Directors of the Association (the "Board of Directors").

**Section 1.03 Office.** The principal office of the Association shall be located at [     ], or such other location as the Board of Directors shall determine.

**Section 1.04 Interpretation.** In the event of any conflict or discrepancy among the Declaration including the Plat and Plans, the Bylaws, and the Rules and Regulations, the provisions of the Declaration shall govern.

## **ARTICLE II. PURPOSES AND POWERS OF THE ASSOCIATION**

**Section 2.1 Purposes.** The purposes of the Association are to establish a nonprofit corporation pursuant to the Declaration, the Maine Nonprofit Corporation Act and the Maine Condominium Act

for the government, funding, operation, regulation and maintenance of the Condominium established under the Declaration.

Section 2.2 Powers. In addition to all the powers, authority and responsibilities granted to or imposed upon this Association by the Declaration and the laws of the State of Maine, specifically including those set forth or referred to in the Maine Condominium Act or the Maine Nonprofit Corporation Act all of which the Association shall have to the extent permitted by law and by the Declaration, the Association shall have the specific powers to, subject to the reserved rights of the Declarant:

- A. Adopt and amend Bylaws and Rules and Regulations;
- B. Adopt and amend budgets for revenues, expenditures and reserves, and to collect assessments from Unit Owners for Common Expenses and Service Charges, and also for certain services provided by the Master Association, including, but not limited to, the maintenance, repair and replacement of and plowing and removal of snow and debris from the Roads (and any improvements located therein, or road right of way including sidewalks, signs and wayfinding signs, traffic and center islands and the like), and stormwater and drainage improvements and facilities, the administration and enforcement of the Declaration and such other purposes as may be approved by the members or as provided herein;
- C. To maintain, repair and replace the Common Elements and Limited Common Elements and to take all actions required or appropriate to comply with Site Location of Development Act Amended Findings of Fact and Order # L-04332-87-I-A, made by the Department of Environmental Protection, State of Maine, dated July 26, 2021 and recorded in Book 40805, Page 253 (or any associated Order), including the expenses of inspections report to evaluate compliance with these requirements to be submitted annually to the Town;
- D. Hire and terminate managers and other employees, agents, and independent contractors;
- E. Institute, defend, or intervene in litigation, arbitration, or administrative proceedings in its own name on behalf of itself or two (2) or more Unit Owners on matters affecting the Condominium, and the Association shall be deemed to be the attorney-in-fact of each Unit Owner for such purposes;
- F. Make contracts, borrow money and incur liabilities;
- G. Regulate the use, maintenance, repair, replacement and modification of Common Elements, provided, however, that the use and allocation of the Limited Common Elements may not be changed without the consent of those Unit Owners affected;
- H. Cause additional improvements to be made as a part of the Common Elements, subject to the restrictions set forth herein;
- I. Acquire, hold, encumber and convey in its own name any right, title, or interest to real or personal property;
- J. Grant easements, leases, concessions, and licenses for public utilities and other facilities servicing or benefiting the Property through or over the Common Elements upon notice

to the Owners as set forth in Section 9.1;

- K. Impose and receive payments, fees, or charges for the use, rental, or operation of facilities located on the Common Elements;
- L. Impose charges and interest for late payment of Common Expense Assessments, Service Charges, fees and, after notice and an opportunity to be heard, impose reasonable penalties and fines for violations of the Declaration, the Master Declaration, Bylaws, and Rules and Regulations of the Association;
- M. Impose reasonable charges for the preparation and recordation of amendments to the Declaration or statements of unpaid Common Expense assessments and Service Charges or resale certificates furnished in accordance with the Maine Condominium Act;
- N. Provide for the indemnification of its officers and directors, and maintain directors' and officers' liability insurance;
- O. Pledge, assign and grant a security interest covering all revenues including regular and special assessments and service charges for the purpose of raising funds for repairs, renovations, improvements and associated costs and expenses with respect to the Common Elements, subject to the approval of a majority in interest vote of the Unit Owners;
- P. Exercise any other powers conferred by the Declaration, or these Bylaws, and the Rules and Regulations;
- Q. Exercise all other powers that may be exercised pursuant to the Maine Nonprofit Corporation Act and the Maine Condominium Act; and

The Board of Directors of the Association shall manage the Condominium and exercise all such powers on behalf of the Association, subject to the terms of these Bylaws, the Declaration and the Maine Nonprofit Corporation Act and the Maine Condominium Act.

Section 2.3 Nonprofit Status. The Association is not organized for profit and no property or profit thereof shall inure to the benefit of any person except in furtherance of the nonprofit purposes of the Association or in the course of acquiring, constructing or providing management, maintenance and care of the Condominium Property, or by virtue of a rebate of excess membership dues, fees, Common Expense assessments, or Service Charges.

### ARTICLE III. ASSOCIATION OF OWNERS.

Section 3.1 Membership. The members shall consist exclusively of all owners of Units in the Condominium created in accordance with the Declaration or, following termination of the Condominium, of all former Unit Owners entitled to the distribution proceeds or their heirs, successors and assigns. There shall be one class of members. Membership is transferable only as provided in the Declaration or these Bylaws. The membership of a Unit Owner shall terminate upon the conveyance, transfer or other disposition of his or her interest in the Unit accomplished in accordance with the Declaration, whereupon his or her membership and any interest in the assets of the Association shall automatically transfer to and be vested in the successor in ownership. Membership is otherwise non-transferable. A mortgage of a Unit or the grant of a security interest



therein as security for an obligation shall not operate to transfer membership until a foreclosure of the mortgage or security agreement. The Association may but is not required to issue certificates of membership.

Section 3.2 Annual Meeting. Meetings of the Unit Owners shall be held annually each successive year on the third Wednesday of April or if that day is a legal holiday, then on the first day thereafter which is not a holiday, provided that the Board of Directors shall have the authority to alter the annual meeting date in its discretion from time to time if it determines that another meeting date is more convenient or appropriate. The annual meeting and any special meetings shall be held at the Condominium's principal office or such other place as may be designated in the Notice of Meeting.

Section 3.3 Special Meetings. Special meetings of the Unit Owners may be held at any time upon the call of the Board of Directors, or upon the call of thirty percent (30%) or more in voting interest of the Unit Owners, which call shall state the purpose of the meeting. Upon receipt of such call, the Secretary, President or any other person designated by the Board of Directors shall promptly cause notices of the meeting to be sent to all Unit Owners. No business may be conducted at a special meeting except as stated in the notice of the meeting.

Section 3.4 Notice of Owners Meetings. A written notice of each meeting of the Unit Owners, stating whether it is an annual meeting or special meeting, the authority for the call of the meeting, the place and time of the meeting, and the items on the agenda (including the general nature of any proposed declaration or bylaw amendment(s), any budget proposal(s) or change(s) and any proposal(s) to remove an officer or Board Member) shall be sent at the direction of the President or Secretary or by another person designated by the Board of Directors or their designee at least ten (10) days, but not more than Sixty (60) days, before the date set for the meeting, provided that for meetings to consider the rejection of a budget or budget amendment notice shall be accompanied by a mailing of the budget summary if so required by Section 1603 103(c) of the Condominium Act as it may be amended. Such notice shall be given to each Unit Owner listed with the records of the Association as set forth below and to each Eligible Mortgage Holder, if any, and as required by the Declaration:

- A. By hand delivering it to the Unit Owner or leaving it at the Unit, or
- B. By mailing it, postage prepaid, addressed to the Unit Owner at the address of the Unit or any other address designated in writing by that Unit Owner with the records of the Association, or
- C. Notices may be sent by email or other types of electronic communications in compliance with the Condominium Act if specifically authorized by the Member, notices.

If notice is given pursuant to the provisions of this section, the failure of any Unit Owner to receive actual notice of the meeting shall not invalidate the meeting.

Section 3.5 Waiver of Notice. The presence of all the Unit Owners in person or by proxy, at any meeting shall conclusively establish the meeting's validity, unless any Owner shall object at the meeting to the non-compliance with this Article. Any meeting so held without objection shall be valid for all purposes, and at any annual meeting any general business may be transacted and any action may be taken.

Section 3.6 Order of Business for Owners Meetings. The order of business at all meetings of the Unit Owners shall be generally as follows, if applicable:

- A. Roll call.
- B. Proof of notice of meeting or waiver of notice.
- C. Review and approval of the minutes of preceding meeting.
- D. Reports of Officers.
- E. Report of Board of Directors.
- F. Report of committees.
- G. Election of the Board of Directors.
- H. Unfinished business.
- I. New business.
- J. Adjournment.

Section 3.7 Parliamentary Procedure. At all meetings of the Unit Owners or of the Board of Directors, Robert's Rules of Order as then amended or any similar provisions as may be adopted by the Rules and Regulations shall be followed, except that in the event of conflict of Robert's Rules of Order with these Bylaws or the Declaration or any applicable provisions of the Rules and Regulations, as the case may be, then the later documents shall prevail.

Section 3.8 Quorum. The presence in person or by proxy at the beginning of any meeting of the Association of the Unit Owners whose aggregate voting interest constitutes not less than twenty percent (20%) of the total voting interest therein shall constitute a quorum for the transaction of all business.

The Unit Owners present at a duly called or held meeting at which a quorum was once present may continue to do business at the meeting or at any adjournment thereof, notwithstanding the withdrawal of enough members to leave less than a quorum.

Section 3.9 Voting.

A. Any person, partnership, limited liability company, corporation, trust, or other legal entity or a combination thereof, owning any Unit (other than an interest held as security for an obligation) duly recorded in his or her or its name, which ownership shall be determined from the records of said Registry of Deeds, shall be a member of the Association, and either, in person or by proxy, shall be entitled to vote for each Unit so owned at all meetings of the Association.

B. Multiple owners of a Unit shall be deemed one member. If only one of the multiple owners of a Unit is present in person or by proxy at a meeting of the Association, he or she is entitled to cast all the votes allocated to that Unit. If more than one of the multiple owners are present, the votes allocated to that Unit may be cast only in accordance with the agreement of a majority in interest of the Unit Owners. There is presumed to be a majority agreement if any one of the multiple owners present casts the vote allocated to that Unit unless any of the other owners of the Unit promptly protests to the person presiding over the meeting.

C. Votes allocated to a Unit may be cast pursuant to a written and dated proxy duly signed by a Unit Owner and filed with the Secretary or the Secretary's designee. If a Unit is owned by more than one person, each owner of the Unit may vote or register protest to the casting of votes by the other owners of the Unit through a duly executed written proxy. A Unit Owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a

meeting of the Association. A proxy is not valid if it is not dated or purports to be revocable without notice, as determined by the Secretary or other person designated by the Board of Directors of the Association. A proxy shall automatically terminate eleven (11) months after its date, unless it specifies a shorter term. Written proxies, ballots and other records pertaining to voting by Owners shall be retained for one year after the election, action or vote to which they relate.

D. An executor, administrator, personal representative, guardian, or trustee may vote in person or by proxy at any meeting of the Association with respect to any Unit owned or held by him or her in such a capacity, whether or not the same shall have been transferred of record by a duly recorded conveyance. If the Unit has not been so transferred, he or she shall satisfy the secretary that he or she so holds the Unit.

E. The Declarant may exercise the voting rights pertaining to any Unit to which it retains title. No vote pertaining to a Unit owned by the Association may be cast, and the voting interest of such a Unit shall not be deemed to be outstanding in determining the presence of a quorum or the percentage of approval needed to act.

F. As specified in the Declaration, each Unit shall each have the number of votes allocated by a formula represented by a fraction wherein the numerator is the square footage of a Unit, and the denominator is the total square footage of Units in the Condominium which have been declared, subject to rounding in order to permit ease of administration, provided however that the percentage stated in Exhibit B of the Declaration (as it may be amended) shall control in any event. A "majority" vote means the affirmative vote of more than fifty percent (50%) of the voting interests.

G. At any meeting at which a quorum is present, the affirmative vote of a majority of the voting interest of those present shall determine any question except the election of Directors, unless a greater percentage vote is required by law, by the Declaration or by these Bylaws. For the purposes of amending the Declaration or these Bylaws, the percentage in interest shall be measured against the total voting interest as set forth in the Declaration, regardless of whether or not such Unit Owners are present.

H. Upon reasonable advance notice, Unit Owners may elect to attend any meeting of the Association via telephonic or internet speakerphone, or video or video conferencing software, at which they may hear and be heard by other Unit Owners, but Unit Owners wishing to attend in this manner shall be responsible for the costs of providing speakerphone or video services. The Association shall provide reasonable cooperation in arranging such services. The Board of Director's decision as to such matters shall be binding.

Section 3.10 Adjournment. Any meeting of the Association may be adjourned from time to time to such place and time as may be determined by the President subject to change by majority vote of the Unit Owners present, whether a quorum be present or not, without further notice of the time and place of adjournment beyond that given at the meeting if adjourned to a date which is less than thirty (30) days from the date of the meeting and if the time and place of the adjourned meeting are announced at the meeting at which the adjournment is taken. When any meeting is adjourned, for whatever reason, for thirty (30) days or more, notice of the adjourned meeting must be given. At the adjourned meeting, the Association may transact any business that might have been transacted at the meeting at which the adjournment was taken.

Section 3.11 Unanimous Action by Unit Owners without a Meeting. Any action required or permitted to be taken at a meeting of the Unit Owners (to the extent not otherwise precluded by law) may be taken without a meeting if written consents, setting forth the action so taken, are signed by all

the Unit Owners entitled to vote on such action and are filed with the Secretary or other person designated by the Board of Directors as part of the corporate records. Such written consents shall have the same effect as a unanimous vote of the Unit Owners.

#### ARTICLE IV. BOARD OF DIRECTORS.

Section 4.1 Number and Qualifications. The affairs of the Association shall be governed by a Board of Directors initially composed of three (3) natural persons appointed by the Declarant. Upon the expiration of the Declarant Control Period as defined in the Declaration, the members shall elect three (3) natural persons as directors (the “Directors”). The number of Directors may be increased, from time to time, by a Majority Vote of the Members, to not more than five (5) natural persons. A majority of directors shall be the owner or the spouse of an owner of a Unit, or if a Unit Owner is a corporation, limited liability company, partnership, trust or estate, then an officer, director, member, manager, partner, trustee, beneficiary, appointed personal representative, or designated agent thereof.

Section 4.2 Election and Term of Office and Resignation. Upon the expiration of the Declarant Control Period as defined in the Declaration, the initial Directors shall be elected as follows: one (1) for a term of three (3) years, one (1) for a term of two (2) years, and one (1) for a term of one (1) year. At the expiration of the initial term of office of each Director, his or her successor shall be elected to serve a term of three (3) years so that the terms remain staggered. Notwithstanding the foregoing, a director shall hold office until his or her successor has been elected and taken office. A Director who replaces a Director before his or her term expires shall serve out the remaining term of such Director.

A Director may at any time resign his/her office by a resignation in writing delivered to the President or Secretary. Such resignation shall be effective upon receipt, unless otherwise stated, and acceptance thereof shall not be necessary to make it effective unless it so states.

Section 4.3 Powers and Duties. The Board of Directors shall generally act on behalf of the Association, shall have all powers and duties necessary or appropriate for the administration of the affairs of the Association, and shall have all powers referred to in the Declaration, the Bylaws or otherwise provided under the Maine Condominium Act or the Maine Nonprofit Corporation Act, as either may be amended from time to time, except those matters which by law, by the Declaration or by these Bylaws are specifically reserved to the Unit Owners.

In accordance with the Maine Nonprofit Corporation Act, a Director shall discharge his or her duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and in a manner the Director reasonably believes to be in the best interests of the Association.

In discharging the Director’s duties, a Director is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by: one or more officers or employees of the Association or its management company whom the Director reasonably believes to be reliable and competent in the matters presented; legal counsel or a public accountant or a manager or other person as to matters the director reasonably believes are within the person’s professional or expert competence; or a committee of the Board of Directors of which the director is not a member, as to the matters within its jurisdiction, if the director reasonably believes the committee merits confidence.

Section 4.4 Other Duties. In addition to other duties imposed by these Bylaws or by duly adopted resolutions of the Unit Owners of the Association, the Board of Directors shall be responsible for the following:

- A. Election of the officers of the Association;
- B. Management and administration of the Condominium, the Association's property and the Common Elements, including the maintenance, repair and replacement thereof;
- C. Subject to the Declaration the determination and collection of assessments for Common Expenses, Limited Common Expenses, Special Assessments and Service Charges, and also for certain services provided by the Master Association, including, but not limited to, the maintenance, repair and replacement of and plowing and removal of snow and debris from the Roads, private alleys (and any improvements located therein, or road right of way including sidewalks, signs, center islands and the like) and on-street parking (unless accepted as public streets by the Town), Common Elements, Limited Common Elements, and stormwater and drainage improvements and facilities;
- D. Establishment of reserves for the maintenance, repair and replacement of Common Elements (including without limitation the Limited Common Elements) and for contingencies.
- E. Appointment and dismissal of the personnel and agents for the maintenance and operation of the Condominium, including without limitation the Common Elements, and to fix the terms of their engagement and their compensation and authority; and
- F. Designation of executive and other committees and appointment of committee members to serve at the pleasure of the Board.

Section 4.5 Manager or Management Agent, Employees, Generally. The Board of Directors may employ on behalf of the Association, a management agent or manager at a compensation established by the Board to perform such duties and services as the Board shall authorize including, but not limited to, the duties listed in Sections 4.4 and 6.2 of these Bylaws. All management contracts entered into during the Declarant Control Period shall permit termination without a penalty on thirty days' notice at any time with or without cause after the expiration of such period.

Section 4.6 Appointment and Vacancies. Until the expiration of the Declarant Control Period, the Declarant shall appoint replacement directors in the event of vacancies in the Board of Directors. Thereafter, a vacancy caused by the expiration of a Director's term, resignation, or the removal of a Director by a vote of the Unit Owners, or by the expiration of the Declarant Control Period shall be temporarily filled by vote of the remaining Directors until the replacement is elected by the Unit Owners at the then or next annual meeting, and provided that if the Unit Owners vote to remove a Director they may elect a replacement Director at that Owners' meeting without need to give express notice of such election. All such replacement Directors elected by the Owners shall serve for the remainder of the unexpired term of the former Director.

Section 4.7 Removal of Directors. At any regular meeting or special meeting duly called, any one or more of the Directors may be removed with or without cause by a two thirds (2/3) in interest vote of the Unit Owners. Any director whose removal has been proposed shall be given an opportunity to be heard at the meeting, but the Unit Owners' decision shall be final.

Section 4.8 Compensation. No compensation shall be paid to Directors or officers for their services as Directors or in any other capacity, unless a resolution authorizing such remuneration shall

have been adopted by the Unit Owners before or after the services are undertaken. Directors and officers shall be reimbursed for their out of pocket expenses reasonably incurred in connection with their services on the Board, as approved by vote of the Board of Directors.

Section 4.9 Annual Meeting. The annual meeting of the Board of Directors shall be held immediately following or within ten (10) days after the annual meeting of the Association; no further notice shall be necessary in order legally to constitute such meeting.

Section 4.10 Regular Meetings. Regular meetings of the Board of Directors (other than the annual meeting) may be held at such time and place as shall be determined, from time to time, by the Board. Notice of regular meetings of the Board of Directors shall be given to each Director, personally or by delivery to his or her Unit or by telephone or by email, at least three (3) days prior to the day named for such meeting.

Section 4.11 Special Meetings. Special meetings of the Board of Directors may be called by the President or upon the written request of a majority of the Directors then in office. Three (3) days' notice of special meetings shall be given to each Director personally or by delivery to his or her Unit, or by telephone or by email, which notice shall state the time, place and purpose of the meeting.

Section 4.12 Waiver of Notice by Board Members. Before or after any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board without objection shall be a waiver of notice by him or her of the time and place thereof. If all the Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 4.13 Required Notice of Board Meetings to Unit Owners. In accordance with the Maine Condominium Act, the Board of Directors shall give timely notice reasonably calculated to inform unit owners of the date, time and place of and topics proposed to be discussed at meetings of the Board of Directors, including without limitation the general nature of any proposed amendment to the Declaration, the Bylaws, or the Rules and Regulations, any budget changes and any proposal to remove an officer. The notice may be given by a posting in a prominent place in the Common Elements or elsewhere, by e-mail or by other means, but actual notice need not be delivered to each unit owner. Failure of a unit owner to receive notice does not invalidate any action taken by the Board of Directors at a meeting.

Section 4.14 Attendance at Board Meetings by Unit Owners. Unit Owners have the right to attend meetings of the Board of Directors, subject to reasonable rules established by the Board of Directors. In the discretion of the presiding officer and on such terms as he or she may establish, individual Unit Owners may speak at meetings of the Board of Directors.

The Board of Directors may restrict or prohibit attendance by Unit Owners and others during executive sessions. An executive session may be held only to:

- (i) Consult with the Association's attorney concerning legal matters;
- (ii) Discuss existing or potential litigation or mediation, arbitration or administrative proceedings;
- (iii) Discuss labor or personnel matters;
- (iv) Discuss contracts, leases and other commercial transactions to purchase or provide goods or services currently being negotiated, including the review of bids or proposals, if premature general knowledge of those matters would place the association at a disadvantage; or
- (v) Prevent public knowledge of the matter to be discussed if the Board of Directors determines that public knowledge would violate the privacy of any person.

A final vote or action may not be taken during an executive session.

Section 4.15 Board of Directors' Quorum/Attendance by Telephone/Internet. At all meetings of the Board of Directors, the presence at the beginning of a meeting of persons entitled to cast at least fifty percent (50%) of the votes of the Directors, including shall constitute a quorum for the transaction of business. The acts of the majority of the Directors present shall be the acts of the Board of Directors. If, at any meeting of the Board of Directors, a quorum is not present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Directors may attend any meeting via a telephonic or internet speakerphone, or video or video conferencing software, at which they may hear and be heard by other Directors, but directors wishing to attend in this manner shall be responsible for initiating the arrangement of such services reasonably in advance. The Association shall provide reasonable cooperation in arranging such services for Directors at its expense.

Section 4.16 Unanimous Action. Unless otherwise expressly provided by law, any action which may be taken at a meeting of the Directors may be taken without a meeting if all of the Directors sign written consents, setting forth the action taken or to be taken, at any time before or after the intended effective date of such action. Such consents shall be filed with the minutes of Directors' meetings and shall have the same effect as a unanimous vote.

## ARTICLE V. OFFICERS.

Section 5.1 Designation. The principal officers of the Association shall be a President, a Secretary and a Treasurer, of whom only the President need be elected from among the Directors. The Directors may in their discretion appoint a Vice President, an Assistant Treasurer, and an Assistant Secretary, and such other officers, none of whom need be Directors, as in their judgment may be appropriate.

Section 5.2 Election of Officers and Standard of Care. The principal officers of the Association shall be elected annually by the Board of Directors at the annual meeting and shall hold office until the first meeting of the Board of Directors following the next annual meeting of Unit Owners and until their successors are chosen and qualified; provided, however, that all officers and committee members shall hold office at the pleasure of the Board.

In accordance with the Maine Nonprofit Corporation Act, an officer shall discharge his or her duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner the officer reasonably believes to be in the best interests of the Association and its Unit Owners.

Section 5.3 Removal and Resignation of Officers. Upon a majority vote of the Board of Directors present at any regular meeting of the Board of Directors or at any special meeting of the Board of Directors called for such purpose, any officer may be removed, either with or without cause, and his or her successor elected. Any officer whose removal has been proposed shall be given an opportunity to be heard at the meeting, but the Board's decision shall be final.

Any officer may at any time resign his or her office by a resignation in writing delivered to the Association at its principal office or to the President or Secretary. Such resignation shall be effective upon receipt and acceptance thereof shall not be necessary to make it effective unless it so states.

Section 5.4 President. The President shall be the chief executive officer of the Association and shall be a Director. He or she shall preside at all meetings of the Association and of the Board of Directors. In his or her absence, a chairman pro tempore may be chosen by the Unit Owners or directors, as the case may be, to preside at a meeting. The President shall have all of the powers and duties which are incidental to the office of President of a Maine business corporation. The President shall also be the Association, Board of Directors and Condominium Unit Owners duly appointed and authorized representative at all meetings of the Master Association.

Section 5.5 Treasurer. The Treasurer shall be responsible for keeping financial records and accounts of all receipts and disbursements in books belonging to the Association. The Treasurer shall be responsible, subject to the direction of the Board of Directors, for the preparation and dissemination to the Unit Owners of all financial reports, budgets and notices required, and for the preparation and signing, if necessary, of all financial reports or tax returns required to be filed by the Association. The Treasurer shall have all of the powers and duties which are incidental to the office of treasurer of a Maine business corporation.

Section 5.6 Secretary. The Secretary shall have responsibility for the minutes of all meetings of the Board of Directors and of the Association (but may delegate the act of keeping minutes), shall give all notices as provided by these Bylaws, and shall have other powers and duties as may be incidental to the offices of Secretary, given him or her by these Bylaws or assigned to him or her from time to time by the Directors. If the Secretary or any assistant secretary or their designee shall not be present at any meeting, the presiding officer shall appoint a secretary pro tempore who shall keep the minutes of such meeting and record them in the books provided for that purpose. The Secretary shall be responsible for the filing of all reports and documents required to be filed by the Association with any governmental agency.

Section 5.7 Auditor. The Board of Directors may from time to time at any scheduled meeting appoint some person, firm or corporation engaged in the business of auditing, to act as auditor of the Association and to perform such audits, reviews and fiscal duties as may be requested by the Association.

Section 5.8 Amendments to the Declaration. The Secretary shall arrange for the preparation of amendments to the Declaration and the President and Secretary shall execute the certificate for recording on behalf of the Association.

## ARTICLE VI FISCAL AFFAIRS AND ADMINISTRATION.

### Section 6.1 Accounting and Records.

A. Books and accounts of the Association and income tax returns shall be kept under the direction of the Treasurer and in accordance with customary accounting principles and practices. Within ninety (90) days after the close of each fiscal year, the Association shall furnish its Unit Owners with a statement of the income and disbursements for such prior fiscal year and a balance sheet as of the close of that year.



B. In accordance with the Maine Condominium Act, the Association must retain the following records:

- (1) Records of receipts and expenditures affecting the operation and administration of the Association and other appropriate accounting records for the past six (6) years;
- (2) Minutes of all meetings of its Unit Owners and Board of Directors other than executive sessions, a record of all actions taken by the unit owners or Board of Directors without a meeting and a record of all actions taken by a committee in place of the Board of Directors on behalf of the Association;
- (3) The names of current Unit Owners in a form that permits preparation of a list of the names of all Unit Owners and the US Mail addresses at which the Association communicates with them, in alphabetical order showing the number of votes each Unit Owner is entitled to cast, and email addresses of Owners may be furnished only if the Unit Owner has consented;
- (4) Copies of its original or restated organizational documents and bylaws and all amendments to them and all rules currently in effect;
- (5) All financial statements and tax returns of the Association for the past three (3) years;
- (6) A list of the names and addresses of its current Board of Directors members and its current officers;
- (7) The Association's most recent annual report delivered to the Secretary of State;
- (8) Financial and other records sufficiently detailed to enable the Association to comply with section 1604-108 of the Maine Condominium Act;
- (9) Copies of current contracts to which the Association is a party;
- (10) Records of Board of Directors or committee actions to approve or deny any requests for design or architectural approval from Unit Owners; and
- (11) Ballots, proxies and other records related to voting by Unit Owners for one (1) year after the election, action or vote to which they relate.

C. Subject to the limitations set forth below and to the extent required by the Maine Condominium Act, all records retained by the Association must be available for examination and copying by a Unit Owner or the Unit Owner's duly authorized agent during reasonable business hours or at a mutually convenient time and location; and upon 10 days' notice in writing reasonably identifying the specific records of the Association requested.

Provided however that records retained by the Association may be withheld from inspection and copying to the extent that they concern:

- (i) Personnel, salary and medical records relating to specific individuals;
- (ii) Contracts, leases and other commercial transactions to purchase or provide goods or services currently being negotiated;
- (iii) Existing or potential litigation or mediation, arbitration or administrative proceedings;
- (iv) Existing or potential matters involving federal, state or local administrative or other formal proceedings before a governmental tribunal for enforcement of the declaration, Bylaws or Rules and Regulations;
- (v) Communications with the Association's attorney that are otherwise protected by the attorney-client privilege or the attorney work-product doctrine;
- (vi) Information the disclosure of which would violate any governmental law or

regulation, other than the Maine Condominium Act;

(vii) Records of an executive session of the Board of Directors; or

(viii) Individual unit files other than those of the requesting unit owner.

The Association may charge a reasonable fee for providing copies of records under this Section and for supervising the Unit Owner's inspection. The Association is not obligated to compile or synthesize information.

The right to copy records under this Section includes the right to receive copies by photocopying or other means, including copies through an electronic transmission if available upon request by the Unit Owner, but the Association may require the advance payment of the reasonable fee as set forth above.

Information and records provided pursuant to this Section may only be used in connection with the management of the Association and the duties, rights or responsibilities of Unit Owners, officers or Directors under this Act or the Association's governing documents, and may not be used for commercial purposes or for any other purpose not reasonably related to authorized uses. The recipient may be required to confirm that the records and information received will be used in compliance with these restrictions.

#### Section 6.2 Budget and Assessments.

A. The Board of Directors shall cause an annual budgets to be prepared based on its estimate of annual income and expenses and shall review and adopt said budgets annually. Within thirty (30) days of the Board's adoption of the proposed budget, the Board shall send a summary of such budget to each Unit Owner.

The budget shall be assessed to all Unit Owners and must be approved by a majority of all Directors.

The Board shall call a meeting of the Unit Owners to review the budget within ten (10) to thirty (30) days thereafter by giving notice accompanied by a summary of the budget; unless at that meeting the budget is rejected by Sixty-Seven percent (67%) in interest vote of all Unit, then the budget shall be deemed to have been ratified whether or not a quorum is present. Unless the budget is rejected, the Unit Owners shall pay the amounts specified in the proposed budget adopted by the Board.

As set forth in the Declaration and the Act, certain special assessments payable over a period extending beyond one fiscal year require the approval by a majority in interest vote of all the Unit Owners, and in the event of an emergency the Board of Directors may make special assessments in an amount not to exceed two months common charges without need for approval by the Unit Owners.

B. The budgets shall include the amount required by the Association to meet its expenses for each fiscal year or such other fiscal period as it deems appropriate, including but not limited to the following items:

- i. Management and administration expenses;
- ii. The cost of operation, repairs, maintenance, replacement, and improvements of the Common Elements and such Limited Common Elements and such parts of the Buildings or Units which the Association is responsible for the maintenance, repair and replacement of;
- iii. The cost of such insurance, bonds, services and utilities as may be furnished by the Association, other than such items for which a Service Charge is assessed;

- iv. The establishment and maintenance of adequate working capital and reserves including general operating reserves, reserves for contingencies, for losses not covered due to insurance deductibles for which the Association is responsible, and reserves for periodic maintenance, repair and replacement of the Common Elements and Limited Common Elements the Association is obligated to maintain, and the Roads, private roads, drive aisles, and stormwater and drainage improvements and facilities the Master Association is obligated to maintain, all to be held in a segregated fund in a Maine financial with an office in the State of Maine or in obligations of the United States of America; and
- v. Such other expenses of the Association as may be approved by the Board of Directors including operating deficiencies, if any, for prior periods.

The Board of Directors shall have the power to expend funds and incur expenses that are reasonably anticipated to cause the aggregate amount of all such expenditures including contributions to reserves, not to exceed 10% of the total annual budget, with any greater amounts requiring the ratification of a new budget by the Unit Owners except in an emergency.

C. Until an annual budget is adopted by the Board, the Unit Owners shall continue to pay that monthly amount of Common Expense assessments and Service Charges which had been previously established; any delay or failure to estimate, to deliver or to adopt such budget shall not waive or release such obligation. The Association may at its option send periodic statements to Unit Owners showing the amount of Common Charges, special assessments and Service Charges due, but each Unit Owner shall pay his or her Common Expense assessments and Service Charges promptly when due regardless of whether such a statement is sent.

D. Each Unit Owner shall be personally responsible to pay his or her share of Common Charges and assessments without setoff or deduction, which shall be an amount equal to the applicable Association budgets, net of other income and Service Charges as defined herein, multiplied by his or her respective common expense liability as set forth in Section 3.4 and Exhibit B of the Declaration. If the Board of Directors reasonably determines that any member of the Association does not directly or indirectly benefit from a particular service provided by the Association (or benefits less than other members from a particular service), then it has the discretion allocate Assessments for such service based upon the amount of benefit received by each member.

Each Unit Owner shall become liable to the Association, and a lien shall arise against his or her Unit for his or her entire fractional share of the Common Expense assessments at the commencement of the pertinent fiscal period. Each Unit Owner may pay his or her share of the Common Expense assessments in monthly installments on or before the first day of each and every month during such period; provided, however, that if any such installment is not paid when due, then if not paid upon Twenty (20) days written notice of default, the entire remaining balance thereof shall immediately become due and payable in full if so directed by the Board of Directors.

E. If any Unit Owner shall fail or refuse to pay to the Association when due his or her share of the Common Expense assessments or any other Service Charges, user fees and penalties, fines, thereafter the amount thereof shall bear interest at the rate of Eighteen percent (18%) per annum or such other interest rate and late charges as may be set by vote of the Board prior to the date on which the payment came due. Such Common Expense assessments and Service Charges with such late charges as may be determined by the Board of Directors, interest and all costs of collection, including reasonable attorneys' fees, shall constitute a lien on the Unit of such Unit Owner. Recording of the Declaration constitutes record notice and perfection of the lien for Common Expense assessments, Service Charges, user fees, including penalties, fines, late charges, interest and costs of collection.

The Association may record a notice from time to time stating the amount and nature of the lien signed by an officer or Board Member of the Association or by an agent authorized by the Board of Directors but such recorded notice is not necessary to establish or perfect the lien.

F. If such payments are not received within thirty (30) days after they become due, the Board shall be entitled to exercise and enforce any and all rights and remedies provided in the Maine Condominium Act, the Declaration or these Bylaws or otherwise available at law or in equity for the collection of all unpaid amounts and, if available, all possessory remedies against the delinquent Owner's Unit under the Forcible Entry and Detainer Laws of Maine as amended from time to time. The delinquent Unit Owner shall be required to pay to the Association a reasonable rental for such Unit until sale or foreclosure. In any action to foreclose the lien for Common Expense assessments, assessments, Service Charges, user fees, late charges, penalties, fines, interest, and costs of collection including reasonable attorneys' fees against any owner of a Unit, the Association may act through its manager or Board of Directors in the same manner as any mortgagee of real property. The manager or Board of Directors acting on behalf of the Unit Owners shall have the power to bid and acquire such Unit at a foreclosure sale and to lease, mortgage, convey, or otherwise deal with the Unit. Suit to recover a money judgment for unpaid Common Expense assessments, assessments, Service Charges, user fees and penalties, fines due to the Association, with interest and all costs and reasonable attorneys' fees, may be maintained without foreclosing upon or waiving the lien securing the same.

Pursuant to the Maine Condominium Act, the lien is extinguished unless action to enforce the lien is started within Five (5) years after the full amount of the assessment becomes due.

Section 6.3 Service Charges. Service charges (other than common expenses) may be assessed separately to any Unit Owner, or group of owners of such Units benefited thereby, and shall be paid, unless otherwise established by the Board of Directors, by the Unit Owner within fifteen (15) days of deposit in the U. S. Mail or hand delivery, and shall constitute a lien on the Unit of the same status as a lien for Common Expense assessments set forth in Section 6.2.

#### Section 6.4 Revised, Emergency and Special Assessments.

A. Revised Assessments. If at any time the Board shall determine the amount of any of the budgets is inadequate, whether by reason of a revision in its estimate of expenses or income, the Board may adopt and deliver to the Unit Owners at least thirty days prior to the date on which it becomes effective, a revised estimated annual budget for the balance of such fiscal year and shall call a meeting of the Unit Owners to review the budget within ten (10) to thirty (30) days thereafter by giving notice accompanied by a summary of the budget, all subject to the rights of Unit Owners to reject such amendment by a two thirds (2/3) in interest vote at a meeting of said Unit Owners called within such 30 day period.

Upon determining that an emergency exists which requires the immediate assessment of the Unit Owners, the Board may make a one-time additional Common Expense assessment, not to exceed an amount equal to two (2) months current regular Common Expense assessment for each Unit unless a greater amount is ratified by the Unit Owners in accordance with normal budget procedures, which shall be due and payable when delivered to the Unit Owners.

In order to fund significant improvement, repair or renovation projects and associated costs, the Board of Directors may make special assessments for such Common Expenses or Limited Common Expenses payable either in a single installment or payable in installments over a period of months and/or years, all on such further terms and conditions and such interest rate as may be approved by

the Board of Directors, subject to the affirmative approval of a majority in interest of all Unit Owners if payments on the Special Assessment extend beyond the current fiscal year ("Special Assessment").

Section 6.5 Fiscal Year. The fiscal year of the Association shall be such January 1 to December 31 or as may from time to time be established by the Board of Directors.

Section 6.6 Capital Improvements/Pledge. The approval of a majority in interest of the Unit Owners present in person or by proxy and voting at a duly called meeting of the Association shall be required to (i) make any new capital improvements to the Common Elements which cost an amount in excess of Thirty-five percent (35%) of the aggregate Common Expense assessments against the Unit Owners during the prior fiscal year, exclusive of Service Charges, and (ii) to approve the Board of Directors' exercise of its power to pledge, assign and grant a security interest covering all revenues including Common Expense assessments and Service Charges in order to raise funds for repairs. Renovations, repairs, replacements and associated costs and expenses with respect to the Common Elements shall not be considered improvements.

Section 6.7 Use of Units. All Units shall be utilized in accordance with the provisions of the Declaration, Bylaws, and Rules and Regulations.

Section 6.8 Enforcement of Declaration and Bylaws. Every Unit Owner shall pay to the Association promptly on demand all costs and expenses, including reasonable attorneys' fees and expenses incurred by or on behalf of the Association, in collecting any delinquent Common Expenses, Limited Common Expenses, Special assessments, Service Charges, damages or fees due from such Unit, foreclosing its lien securing the foregoing, collecting any penalties, fines imposed hereunder, or enforcing any provisions of the Declaration, these Bylaws, or the Rules and Regulations against such owner or any occupant of such Unit.

Section 6.9 Rules and Regulations. In order to assist the peaceful and orderly use and enjoyment of the Condominium, the Board of Directors may from time to time adopt, modify, and revoke, in whole or in part, such further reasonable rules and regulations governing the Condominium as it may deem necessary, including, but not limited to, methods and procedures for enforcing compliance with the Declaration and Bylaws. Such Rules and Regulations upon adoption, and every amendment, modification, and revocation thereof, shall be sent promptly to each Unit Owner and shall be binding upon all members of the Association and all persons present on the Condominium. Such Rules and Regulations may not contradict the Declaration.

Section 6.10 Right of Entry. Upon such reasonable prior notice as is possible under the circumstances, the manager and any person authorized by the Board of Directors shall have the right to enter any Unit in case of any emergency originating in or threatening such Unit or adjoining Common Elements whether or not the Unit Owner or occupant is present at the time, and upon reasonable prior notice to enter any Unit at reasonable times for the purpose of performing authorized installations, alterations, or repairs to the Common Elements thereon or accessible therefrom.

Section 6.11 Title. Every Unit Owner shall promptly record in the Registry of Deeds the deed, assignment, or other conveyance to him or her of his or her Unit or other evidence of his or her title thereto and file such evidence of his or her title with the Association, and the Secretary shall maintain such information in the records of the Association.

Section 6.12 Insurance and Fidelity Bonds.

A. The Association shall maintain insurance as required by the Declaration and such other insurance as the Board of Directors of the Association may determine is appropriate.

B. It shall be the responsibility of each Unit Owner to procure adequate insurance covering the contents of his or her Unit and any deductible for damage to the Unit interior, and any appliances, fixtures, betterments or improvements thereto installed by the Unit Owner unless insured through the Association's policy, all as further appears in and subject to the Declaration.

ARTICLE VII.  
SALE, LEASE, RENTAL OR OTHER TRANSFER OF A UNIT

Section 7.1 Binding Effect. All subsequent sales, leases or other transfers of a Unit by a Unit Owner shall be subject in all respects to the Declaration, Bylaws, and Rules and Regulations of the Condominium.

ARTICLE VIII.  
EXECUTION OF INSTRUMENTS.

Section 8.1 Instruments Generally. All checks, drafts, notes, vouchers, bonds, acceptances, contracts, deeds, lien notices, certificates, and all other instruments shall be signed or approved by the President or the Secretary or Treasurer, and in addition/or by any one or more officer(s), agent(s) or employee(s), all as the Board of Directors may designate, unless otherwise approved by the Board of Directors.

ARTICLE IX.  
GENERAL ADMINISTRATION

Section 9.1 Easements, Etc. The Association is authorized and empowered to grant such easements, rights-of-way, leases and licenses for sewer lines and sewage disposal facilities, water lines, electrical cables, telephone cables, television cables and antennas, gas lines, storm drains, underground conduits, fire escapes and alarms, such other purposes related to the provision of public services, and utilities to the Condominium and for recreational purposes as may be considered desirable, necessary or appropriate by the Board of Directors for the orderly maintenance, improvement and preservation and enjoyment of the Common Elements or for the preservation of the health, safety, convenience and welfare of the Unit Owners of the individual Units upon at least Thirty (30) days' notice to the Unit Owners unless a special meeting of the Unit Owners is called within such period and the Unit Owners vote to reject such grant. No such rights may be created through any Unit without the written consent of the Unit Owners thereof and no such easement shall materially impair the use and enjoyment of the Condominium.

ARTICLE X.  
LIABILITY OF DIRECTORS AND OFFICERS.

Section 10.1 Exculpation. No Board Member or officer of the Association shall be personally liable for acts or defaults of himself, herself or any other officer or member, or for any loss sustained by the Association or any member thereof, unless the same has resulted from his or her own willful misconduct or recklessness.

Section 10.2 Indemnification. The Association shall indemnify any person who was or is threatened to be made a party against any actual, threatened, or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact he or she is or was an officer, Board Member, agent or employee of the Association against all expenses including

reasonable counsel fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection therewith, excepting, however, such matters in which such person is finally adjudged by a court of competent jurisdiction to have acted with willful misconduct or recklessness towards the Association or absent a final adjudication thereof, and also excepting such matters in which the Board of Directors(excluding any interested Directors) determines any such person acted with willful misconduct or recklessness. This right to indemnification shall be in addition to any other power of the Association to indemnify as permitted by law. The Association may also maintain insurance on behalf of any person who is or was a Board Member, officer, agent or employee of the Association against any such liability asserted against him or her and incurred by him or her in such capacity or arising out of his or her status as such, whether or not the Association would otherwise have the power or duty to indemnify him or her.

Section 10.3 Claims. Claims against the Association, the Board of Directors or the officers, employees or agents thereof in their respective capacities as such or the Condominium as a whole shall be directed to the Board of Directors of the Association, which shall promptly give written notice thereof to the Unit Owners and the Eligible Mortgage Holders and the Mortgagees of Units, and such complaints shall be defended by the Association. The Unit Owners shall have no right to participate in such defense other than through the Association.

## ARTICLE XI. BYLAWS.

Section 11.1 Amendment. These Bylaws may be amended, modified, or revoked in any respect from time to time by vote of Sixty-Seven percent (67%) or more in voting interest of the Unit Owners of the Association at a meeting duly called for the purpose; PROVIDED, HOWEVER, that these Bylaws shall always contain those particulars which are required by the Maine Nonprofit Corporation Act, the Maine Condominium Act, as amended from time to time to the extent applicable by law to this Condominium; and PROVIDED, FURTHER, that no modification of or amendment to the Bylaws shall be valid, until a certificate of the amendment is executed to evidence the propriety of such amendment or modification by the Secretary and President of the Association.

### Section 11.2 Interpretation.

The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability or effect of the balance of these Bylaws.

The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of these Bylaws, or the intent of any provision thereof.

The use of the masculine gender in these Bylaws 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.

No restriction, condition, obligation or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

In the event of any conflict between these Bylaws and the provisions of the Declaration or the Maine Nonprofit Corporation Act or the Maine Condominium Act, the latter shall govern and apply.

[end of document]

**AFTER RECORDING RETURN TO:**

Nicholas J. Morrill, Esq.  
Jensen Baird  
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P.O. Box 4510  
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**DECLARATION OF WINDHAM VILLAGE UNIT 1 CONDOMINIUM**

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# DECLARATION OF WINDHAM VILLAGE UNIT 1 CONDOMINIUM WINDHAM, MAINE

THIS DECLARATION OF WINDHAM VILLAGE UNIT 1 CONDOMINIUM ("Declaration") is executed by **WINDHAM VILLAGE APARTMENTS LLC**, a Maine limited liability company ("Declarant"), pursuant to the Maine Condominium Act, chapter 31 of Title 33 of the Maine Revised Statutes of 1964 as amended ("Condominium Act").

## ARTICLE 1 CREATION OF CONDOMINIUM

**§1.1 Submission of Property.** The Declarant as the owner of the land and buildings located at Roosevelt Trail in the Town of Windham, County of Cumberland and State of Maine, being Unit 1 (the "Property") in a certain Declaration of Condominium, Windham Village Master Condominium, dated \_\_\_\_\_, 2025, and recorded in the Cumberland County Registry of Deeds in Book \_\_\_\_, Page \_\_\_\_, (the "Master Condominium"), and HEREBY SUBMITS the Property, together with all easements, rights, privileges and appurtenances thereto, including such ancillary rights granted to Property via the Master Condominium, to the Condominium Act in accordance with this Declaration, and establishes a condominium as defined in Section 1601-103(7) of the Condominium Act known as Windham Village Unit 1 Condominium ("Condominium").

The name of the Unit Owners' association is Windham Village Unit 1 Condominium Association, a Maine nonprofit corporation (the "Association") formed under the Maine Non-Profit Corporation Act, 13-B M.R.S.A. Section 101 et seq.

The Condominium consists of the Property described in **Exhibit A**. Pursuant to this Declaration and the Act, the Declarant initially creates [ ] residential condominium units (individually, a "Unit" and collectively, the "Units"), which Units are identified as Units [ ] located in Building (defined below), together with associated Limited Common Elements.

Further, pursuant to this Declaration, the Declarant reserves various Development Rights, Special Declarant Rights and easements, including without limitation the right to physically construct and legally create up to a total of forty-eight (48) Units located in four (4) Buildings consisting of Building [ ], Building [ ], Building [ ], and Building [ ] (individually, a "Building" and collectively, the "Buildings"), all on the real estate described in **Exhibit A**, together with appurtenant improvements as Common Elements and Limited Common Elements, and grant easements to third parties.

**§1.2 Applicability.** This Declaration shall govern the Property. All present and future owners, occupants and tenants, their guests, licensees, invitees, employees, agents, and any other person entering on the Property shall be subject to this Declaration, the Bylaws of the Association and to such Rules and Regulations of the Association, all of which shall be deemed to be covenants running with the land, and shall bind any person having at any time any interest

in or entering upon the Property.

**§1.3 Defined Terms.** Capitalized terms not otherwise defined in this Declaration or on the Plat and Plans shall have the meanings specified in the Condominium Act.

**§1.4 Interpretation.** In the event of any conflict or discrepancy between this Declaration, the Plat and Floor Plans, the Bylaws, and the Rules and Regulations, the foregoing documents shall control in accordance with the order of priority in which they are listed, and the Floor Plans shall control over the Plat. If any provision of this Declaration, the Plat and Plans, the Bylaws or the Rules and Regulations conflicts with any applicable laws, including, but not limited to, the Condominium Act, then the Condominium Act shall be deemed controlling. In the event of any such conflict, the validity of the remainder of this Declaration, the Plat and Plans, the Bylaws and Rules and Regulations, and the application of any such provision, section, clause, phrase, or word in other circumstances shall not be affected thereby.

## **ARTICLE 2 DESCRIPTION OF PROPERTY**

**§2.1 Description of the Property.** A legal description of the Property included in the Condominium is set forth in **Exhibit A**.

The location and dimensions of the Property included in the Condominium are depicted on the “\_\_\_\_\_” made by Owen Haskell, Inc., dated \_\_\_\_\_, 202\_\_, revised through \_\_\_\_\_, 202\_\_, and recorded in the Cumberland County Registry of Deeds in Plan Book \_\_\_\_\_, Page \_\_\_\_ (the “Plat”).

**§2.2 Location and Dimensions of Buildings and Units.** The term “Building” means any building erected or to be erected on the Property containing one or more Units, as well as other improvements comprising a part of a building or intended to be used for purposes incidental to the use of a Building.

The proposed areas in which Buildings and other improvements which may be erected on the Property, including Common Elements, and Limited Common Elements are shown on the Plat. The proposed location, dimensions and finish floor elevations of the Buildings, together with appurtenant Limited Common Elements, are depicted on the floor plans entitled “\_\_\_\_\_” made by Owen Haskell, Inc., dated \_\_\_\_\_, 202\_\_, revised through \_\_\_\_\_, 202\_\_, and recorded in the Cumberland County Registry of Deeds in Plan Book \_\_\_\_\_, Pages \_\_\_\_\_ (the “Plans” or “Floor Plans”).

The proposed location and dimensions of each Building and Units are subject to change by the Declarant until such time as each Building and Unit are legally created, and such improvements need not be built or may be built with configurations and locations different than those shown on the Plat and Plans, as further appears in Article 5 below.

**§2.3 Recorded Plat and Plans.** The original Plat and Plans and any amendments thereto

shall be recorded with this Declaration in the Cumberland County Registry of Deeds.

**§2.4 Condominium Documents.** "Condominium Documents" means this Declaration, the Plat, the Plans, the Bylaws of the Association, and the Rules and Regulations adopted by the Board of Directors, and any amendments to any of the foregoing adopted from time to time.

### **ARTICLE 3 CONDOMINIUM UNITS**

**§3.1 Creation of Units.** Initially Units [ ] located in Building [ ], together with their associated Limited Common Elements, are created under this Declaration.

The Declarant has the right to create up to a total of forty-eight (48) Units located in four (4) Buildings consisting of Building [ ], Building [ ], Building [ ], and Building [ ] (individually, a "Building" and collectively, the "Buildings"), all on the real estate described in Exhibit A, together with appurtenant improvements as Common Elements and Limited Common Elements, and grant easements to third parties.

For each Building and Unit subsequently created pursuant to this Declaration, its Allocated Interests shall be set forth in an amendment to **Exhibit B**, and a description of such Unit including each Unit's identifying number (and the identifying number of the Building containing the Unit), the locations and dimensions of the vertical boundaries and horizontal boundaries of each Unit, the Common Elements to which the Unit has direct access, and any other information necessary to identify the Unit shall be shown on the Condominium Plans

**§3.2 Description of the Units.** "Unit" means a part of the Property designated for separate ownership or occupancy which has a direct exit to Limited Common Elements and Common Elements. For each Unit, the identification number and approximate area are shown on the Plat and Plans of the Property as amended from time to time. Any internal room configuration shown on the Plans is illustrative only, and is not binding on an owner, except that the structural support of the Building must be preserved.

Each Unit includes the following items:

- (a) All interior partitions (excepting those portions thereof which are load-bearing) and interior doors wholly within the Unit;
- (b) Finish flooring, floor coverings, carpeting and the like, and finish wall and ceiling coverings (including paint, wallpaper, furring, gypsum board, moldings, and any other materials constituting any part of the finished surfaces thereof);
- (c) Windows and doors providing access to the Common Elements including their locks, hardware, glass, thresholds and sills;
- (d) Plumbing, kitchen and bathroom fixtures, kitchen appliances, heating and ventilating equipment, bathroom exhaust fans, dryer ducts, electric intercom systems, smoke detectors and the components thereof serving only a single Unit, if any, even if

located outside of a Unit's boundaries, and;

- (e) Electrical wiring, equipment outlets and lighting devices and fixtures and from the point where the feed wire enters the Unit's circuit breaker distribution box inwards, and portions of water and sewer utility lines, pipes and equipment serving only that Unit, all regardless of whether or not located within its general boundary lines as herein described.

A Unit generally does not include: the exterior walls, the roof, rafters and foundation, land; the pipes, wires, conduits, flues, ducts, pipes, or other heating and utility lines running through a Unit which serve more than one Unit or which serve the Common Elements or which serve another Unit.

Each Unit and the Common Elements shall have any easement for lateral and subjacent support from every other Unit and the Common Elements, and shall have the easement for encroachments established under Section 1602-114 of the Condominium Act. In addition, each Unit Owner has an unrestricted, perpetual right of ingress and egress to his or her Unit, which automatically transfers with a transfer of title to the Unit. Any conveyance, encumbrance, judicial sale, or other transfer (whether voluntary or involuntary) of an interest in the Common Elements shall be void unless the Unit to which that Common Element interest is allocated is also transferred.

**§3.3 Unit Boundaries.** The boundaries of each Unit subsequently created under this Declaration shall be shown on the Plat and Plans, and shall consist of:

(a) *Horizontal Boundary:* The upper and lower boundaries of each Unit are generally the following boundaries extended to an intersection with the vertical (perimeter) boundaries:

1. Upper Boundary: The planes at the lower surfaces of the ceiling joists, including the upper (outside) side of the gypsum board of the ceiling and any other materials constituting any part of the finished surfaces thereof, if any, extending to the intersection with the vertical boundaries.

2. Lower Boundary: The horizontal plane at the upper surface of the undecorated surface of the subflooring or floor slab extending to the intersection with the vertical boundaries.

(b) *Vertical Boundaries:* The vertical boundaries of each Unit shall be the vertical planes at the stud line at the exterior or outer-most surface of the gypsum-board, sheetrock, or other wall materials forming its exterior or common walls, extended to the intersections with each other and with the horizontal boundaries.

(c) *Interior Finishes.* The Unit shall include all wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, wallpaper, carpeting, finished flooring and any other materials constituting any part of the finished surfaces thereon located within the boundaries of the Unit.

(d) *Interior Space.* All other spaces, interior partitions and other fixtures and

improvements within the boundaries of a Unit are a part of the Unit.

(e) *Relocation.* Relocation of boundaries between Units is permitted by amendment to the Declaration in compliance with the provisions of the Condominium Act. The subdivision of Units is not permitted by any person, except the Declarant or any Successor Declarant.

**§3.4 Allocated Interests.** The term "Allocated Interests" means the Common Element Interest, the Common Expense Liability and the voting rights in the Association allocated to each Unit pursuant to this Declaration. The term "Common Element Interest" means the percentage of undivided interest in the Common Elements appurtenant to each Unit. The term "Common Expense Liability" means the allocation to each Unit of the respective liability for Common Expenses. Generally the Common Expense Liability allocated to a Unit is a percentage equal to the Common Element Interest appurtenant to such Unit. The Allocated Interests of each Unit shall be set forth in **Exhibit B**.

The number of votes, and percentage of each Unit's Common Element Interest and Common Expense Liability is allocated by a formula represented by a fraction wherein the numerator is the square footage of a Unit, and the denominator is the total square footage of Units in the Condominium which have been declared, subject to rounding in order to permit ease of administration, provided however that the percentage stated in **Exhibit B** (as it may be amended) shall control in any event.

**§3.5 Alterations by Unit Owner.** Subject to this Declaration, the Bylaws and the Rules and Regulations of the Association as amended from time to time, a Unit Owner may make nonstructural improvements and alterations within the interior of the Unit. However, no Unit Owner may make any improvements or alterations or do any work whatsoever which would impair the structural integrity or mechanical systems, or the walls separating units or life safety systems of a Building, lessen the support of any portion of the Condominium, or jeopardize the soundness or safety of the Property.

No Unit Owner shall alter any of the Common Elements or paint or otherwise change the appearance of the Common Elements (including without limitation the Limited Common Elements) or paint or otherwise change the exterior appearance of the Unit (including, but not limited to, (i) the exterior surfaces of doors leading to or facing or (ii) the interior or exterior surfaces of windows facing a Common Element or a Limited Common Element) or any other portion of the Condominium, without the prior written approval of the Board of Directors of the Association.

**§3.6 Development Right to Install Optional Limited Common Element Improvements.** Until all Units which may be created hereunder have been conveyed to third parties or such earlier time as may be elected by the Declarant by written notice duly recorded, the Declarant shall have the right to designate additional Limited Common Element areas immediately adjoining the Unit and to improve all the Limited Common Element areas immediately adjoining the Unit with sunspace, porch, landscaping, deck, patio, hardscape, and similar improvements in such areas attached to the outside of a Unit, which may include the

removal and alteration of any intervening partition and the creation of apertures therein for passage back and forth between the Unit and the Limited Common Element.

No assurances are given with regard to the order of exercise of this development right, and the exercise of this development right for any Unit constituting a part of the Property does not require its exercise elsewhere. Upon the improvement of the area, the Allocated Interests will not be reallocated in accordance with Section 3.4. The Declarant shall prepare and record an amendment to the Declaration and Plans to conform to the requirements of Sections 1602-109 and 1602- 110 of the Condominium Act. The exercise of such rights is subject to the following limitations:

- i. The improvements shall not impair the structural integrity, mechanical systems or supports of the buildings.
- ii. The improvements shall be consistent with the architectural design, construction materials and quality of construction of the adjoining building;
- iii. The improvements may be built only in the adjoining Limited Common Element areas shown on the Plans as they may be amended;
- iv. The Unit Owner shall be fully responsible for the maintenance, repair, insurance and replacement of such improvements in good condition and repair at the Unit Owner's expense, maintaining a neat and attractive appearance at all times; and
- v. Only the Declarant may exercise the rights under this Section, which must be exercised no later than thirty (30) years from the date of recording of this Declaration.

Any such Unit Owner or his respective heirs, mortgagees or assigns, may at any time revoke such election to maintain such improvements by an instrument duly executed and duly recorded, and thereafter may seal up passageways and/or remove the improvements, and/or install a permanent wall, floor ceiling or other partitions, at all times preserving the structural integrity of the building. The Unit Owner shall maintain replace and repair the improvements at his sole expense and shall insure the improvements at his expense. The Unit Owner may request the Association to perform maintenance and repairs, the expense of which shall be assessed as a Service Charge, all subject to the agreement of the Association in its discretion, which shall become binding only by a written acceptance signed by an authorized officer thereof.

#### **ARTICLE 4**

#### **COMMON ELEMENTS, LIMITED COMMON ELEMENTS**

**§4.1 Common Elements.** The term "Common Elements" means the entire Property other than the Units, and includes:

- i. All Common Elements and Limited Common Elements benefiting or allocated to the Property in the Master Condominium; and



- ii. The land, together with the benefit of and subject to all the accompanying rights and easements described in Exhibit A, Stillwater Drive, the outdoor amenity area, pedestal mounted cluster mailboxes, benches and trash receptacles, project identification signs, retaining walls, guardrails, landscaping, hardscaping, vegetation, trees, snow storage areas, bicycle racks, paved access drive aisles, private access drives, and adjacent sidewalks;
- iii. The foundations, roof, exterior walls, rooftop solar panels, and all structural and load bearing portions of the Buildings;
- iv. The ninety-six (96) surface parking spaces, including handicapped parking spaces; provided, that, the Declarant reserves the right to allocate some or all of the surface parking spaces (not including handicapped spaces) as a Limited Common Element exclusive to the Building in which they exist, and/or individual Units located within such Building; and
- v. All utility lines, pipes, wires, electrical and transmission wires and conduits, any life safety systems, distribution pipes, pumping station, stormwater and drainage system facilities, radon mitigation systems, and water and sewer utility lines which serve more than one Unit or which serve the Common Elements (excepting lines and equipment owned by public and municipal utilities or installed pursuant to easements serving other persons); and
- vi. All other parts of the property necessary or convenient to its existence, maintenance and safety or normally in common use, except as otherwise expressly provided in this Declaration.

Stillwater Drive, and the paved access drive aisles and private access drives are subject to reserved perpetual easements in favor of the Association, all Unit Owners, the Declarant, the Master Condominium, the Windham Village Master Condominium Association, and all unit owners of the Master Condominium, and each of the foregoing parties invitees, employees and contractors, for passage on foot and by motor vehicle, and, with respect to the Declarant under this Declaration (or the declarant under the Master Condominium), for the exercise of the Declarant's Development and Special Declarant Rights.

Responsibilities for the maintenance and use of the Common Elements are governed by Article 7 below.

**§4.2 Limited Common Elements.** The term "Limited Common Elements" means those portions of the Common Elements where the exclusive use is reserved to one or more, but fewer than all, of the Units in accordance with this Declaration. Limited Common Elements, consist of the following:

- i. Water, sewer or other utility lines, water heaters, electrical circuit breaker boxes and other fixtures designed to serve a single Unit but which are not a defined part

of the Unit are Limited Common Elements allocated exclusively to that Unit;

- ii. Exterior patios and the land underneath them, other open space areas now or hereafter shown and assigned as Limited Common Elements on the Plat and Plans;
- iii. Exterior doors, screen and storm doors, garage doors, exterior windows and their screens and frames, glass, tracks, hardware, locks, screens, flanges, sills and all other components of prefabricated doors and windows;
- iv. Any other patios, porches, decks, steps, movable shutters, exterior stairs and steps, stoops, thresholds, chimney if any, and any other fixture designed to serve a single Unit but located outside its Unit boundary, either as presently or hereafter built in accordance with this Declaration or shown on the Plat and Plans adjacent to a Unit and which is not defined as a part of the Unit as set forth above; and
- v. The portions of the Property shown on the Plat and Plans or as described as Limited Common Elements pursuant to Section 1602-102(2) and (4) of the Condominium Act.

The Declarant reserves the right to create and assign additional Limited Common Elements within Common Elements to a specific Unit pursuant to an amendment to this Declaration, a deed conveying a Unit, or an instrument executed in the same manner as a deed. The allocation of Limited Common Elements may not be altered except in compliance with the Condominium Act, and with the written consent of the Owners and Mortgagees of record of the Units affected by the reallocation of Limited Common Elements. The power to create and initially assign Limited Common Elements is exclusively held by the Declarant.

**§4.3 Common Elements to Remain Undivided.** The Common Element Interest of a Unit shall be inseparable from each Unit, and any conveyance, lease, devise or other disposition and any mortgage or other encumbrance of any Unit shall include the Common Element Interest, whether or not expressly referred to in the instrument making such transfer. The Common Elements shall remain undivided and no action for partition or division of any party shall be permitted, unless otherwise provided by law and permitted by this Declaration.

**§4.4 Exterior Improvements/Connection of Adjoining Units and Limited Common Elements.**

A. Conditions Precedent. If the record owner(s) of the subject Unit(s) affirmatively elect, upon application to and subject to the written approval of the Board of Directors of the association based on each owner's compliance with the standards set forth hereinafter, with prior notice to any abutting Units, all to be evidenced by a recorded instrument duly executed and acknowledged setting forth the requirements itemized below, then:

- (i) that portion of the Common Elements located between the boundary lines of adjoining Units or located between a Unit and an adjoining Limited Common Element (with the

consent of any other Units sharing the same), may be thereby subjected to an easement in favor of each such Unit respectively running to the midpoint of the space between each Unit or to the Limited Common Element for the removal and alteration of any intervening partition and the creation of apertures therein for passage back and forth between the two Units or to the Limited Common Element and construction of improvements on the Limited Common Element area; and

(ii) for the installation of doors, windows, skylights and frames thereto subject to the following limitations and requirements, compliance with which shall be as specified and approved by the Board of Directors in their discretion prior to construction:

- (a) The improvements shall be of first quality, permanent construction and shall be compatible with the architectural design of existing buildings and structures;
- (b) Each application shall include detailed plans prepared by a licensed architect or engineer of the proposed construction and a copy of any agreement between the Unit Owner and contractors for the proposed project;
- (c) Exterior improvements may be built only in the Limited Common Element locations;
- (d) The Board shall determine whether the abutting Unit Owners approve or disapprove of the proposed construction. The Board shall fully consider the position of abutting Unit Owners. However, the Board may approve or disapprove a particular application notwithstanding the abutters' position based upon a full consideration of the application and the impact that the proposed construction will have upon the entire Property;
- (e) The Unit Owner shall preserve and maintain the structural integrity and architectural style, the mechanical and utility systems, and the support of all portions of the Property, shall strictly comply with all fire, building code and other governmental laws, ordinances and requirements and shall provide the Board of Directors with plans and evidence that the proposed construction complies with such requirements prior to starting any work;
- (f) The Unit Owner shall be responsible for the construction of the improvements in accordance with the Plans, this Declaration, and the Bylaws and shall preserve and maintain the structural integrity and architectural style, the mechanical and utility systems, and the support of all portions of the Property; and shall strictly comply with all fire, building code and other governmental laws, ordinances and requirements. The Unit Owner shall be solely responsible for any contractual obligations and charges incurred to any installers, workmen or suppliers, and shall advise said persons of Unit Owner's responsibilities;
- (g) The Unit Owner shall provide the Association with evidence that all contractors have general liability and automobile insurance, and worker's compensation if applicable, in an amount satisfactory to and naming the Association as an additional insured;

- (h) The Unit Owner shall indemnify and hold the Association harmless from any mechanic's or materialman's liens and to perform all work hereunder at the sole cost and expense of the Unit Owner in a good and workmanlike manner and so as to minimize any inconvenience to other Unit Owners;
- (i) Unit Owner shall pay such expenses as may be determined by the Association in reviewing any application under and enforcing this Section, including any expenses and legal costs incurred by the Association in correcting any defective work or in enforcing compliance with this Agreement;
- (j) Unit Owner shall indemnify and hold harmless the Association, its Board of Directors and officers, other Unit Owners, their guests, invitees and family members from any loss or damage which may be incurred on account of the installation of the improvements in violation of this Section even if not due to the negligence and fault of Owner, including reasonable attorney's fees and expenses; and
- (k) The Unit owner shall be fully responsible for the maintenance, repair, insurance and replacement of such improvements in good condition and repair at the Unit Owner's expense in a neat and attractive appearance, which may be charged to the Unit owner as a Limited Common Expense or Service Charge based on such methodology as the Board may approve.

The Association may require a cash bond or other assurances of compliance with the foregoing standards. During construction the Unit Owner shall provide builder's risk insurance at the cost of the Owner and shall name the Association as an additional insured. The Unit Owners shall be strictly liable for any resulting damage caused by defective construction of the improvements, including without limitation post construction rot and water damage to the Unit and other Common Elements.

B. Post Completion. Upon completion of the improvements in accordance with this Section and occupancy, the Unit Owner shall be fully responsible for the costs of maintenance, repair, insurance and replacement of such improvements at the Unit Owner's expense in a neat and attractive appearance.

Upon completion of the improvements in accordance with this Section and occupancy, the Association shall provide exterior maintenance and repairs to the same extent as the Common Element improvements but at the cost of the Unit Owners, and shall obtain hazard insurance on the improvements under the Association's master insurance policy (see Article 10 below), the expense of which shall be assessed as a Limited Common Expense or Service Charge, as the Executive Board may approve in accordance with Article 6 of this Declaration or as may be set forth in a separate recorded Agreement between the Unit Owner and the Association if required by the Executive Board, which agreement shall control in the event of any conflict with this Section that cannot be otherwise resolved. The Unit Owner shall provide all interior maintenance.

C. Revocation. Any such Unit Owner or his or her respective heirs, mortgagees or

assigns, may at any time revoke such election by instrument duly executed and acknowledged served on the other such owners and duly recorded, and thereafter may remove the improvements, seal up passageways and/or remove the stairs, doors and their frames, and/or install a permanent wall, floor ceiling or other partitions, at all times preserving the structural integrity, the mechanical and utility systems and support of all portions of the Property. Nothing contained herein shall be deemed to merge or otherwise affect the separate identity, configuration or the boundaries of said Units.

## **ARTICLE 5 DECLARANT'S RIGHTS; BUILDING PHASING**

**§5.1 Declarant Rights.** The Declarant reserves the rights:

(a) Until the construction, marketing and sale of all Units and the Common Element is completed, including any future Units which may be created hereunder, to locate in the Common Elements and Units of the Property, even though not depicted on the Condominium Plat and Plans, and grant and reserve easements, licenses and rights-of-way for the installation, maintenance, repair, replacement and inspection of solar panel systems, public utility lines, wires, pipes, conduits and facilities servicing or burdening the Property including, but not limited to, water, electric, telephone, cable television, fuel, sewer, and surface and subsurface drainage, provided however that no such easement shall be effective until of record, that no such easements or license may be granted through Units sold by Declarant to third party who is not a successor Declarant and that the Common Elements shall be promptly restored upon installation and repair;

(b) Until the construction, marketing and sale of all Units and the Common Element is completed, including any future Units which may be created hereunder, to connect with and make use of utility lines, wires, pipes and conduits located on the Property for construction and sales purposes, provided that the Declarant shall be responsible for the cost of services so used;

(c) Until the construction, marketing and sale of all Units and the Common Element is completed, including any future Units which may be created hereunder, to use the Common Elements for ingress and egress, for the construction, reconstruction, maintenance, repair, renovation, replacement or correction of the Units or Common Elements including without limitation the movement and temporary storage of construction materials and equipment, the right of vehicular and pedestrian access, the right to park motor vehicles, and for the installation of signs and lighting for sales and promotional purposes;

(d) *Reserved;*

(e) Until the construction, marketing and sale of all Units is completed, including any future Units which may be created hereunder, to operate and relocate construction, sales, leasing and management offices, to permit prospective tenants, purchasers, lenders, appraisers, and others to visit the offices and use the Common Elements and to use unsold Units and the Common Elements for construction, sales, leasing and display purposes;

(f) Appoint and remove members of the Board of Directors and Officers of the Association in accordance with Section 6.2 of this Declaration;

(g) Until the construction, marketing and sale of all Units and the Common Elements is completed, including any future Units which may be created hereunder, to approve of the creation of easements and improvements in accordance with the Declaration in accordance with the standards set forth therein;

(h) Until the expiration of any applicable warranty established by law or agreement, the Declarant, its contractors, agents and employees shall have the right of entry into a Unit and the Common Elements to perform warranty-related work, whether for the benefit of than Unit or any other Unit;

(i) Until the construction, marketing and sale of all Units is completed, including any future Units which may be created hereunder, to grant easements for public utilities running over, through or under the Common Elements;

(j) Until thirty (30) years from the date of the recording of this Declaration to grant easements for all purposes from time to time for the benefit of third parties including affiliates of the Declarant, including easements for access, utilities, drainage, excavation, alternation of the surface of the earth, connection to utility and sewer lines, and the installation, use, maintenance, repair and replacement of utility lines, poles, conduits, facilities and equipment, pavement, culverts, drainage ditches and swales;

(k) Those rights established under Sections 3.6 and 4.1(iv) of the Declaration;

(l) Those rights established under the Condominium Act.

**§5.2 Building Phasing.** Developer reserves the following rights, but not the obligation, until thirty (30) years from the date of the recording of this Declaration:

To legally create and construct up to a total of forty-eight (48) Units located in four (4) Buildings consisting of Building [ ], Building [ ], Building [ ], and Building [ ], Building 2 on the real estate described in Exhibit A, together with associated Limited Common Elements, and related improvements, all pursuant to Section 1602-110 of the Condominium Act.

The Declarant shall have the continuing right but not the obligation to legally create the Units as “Building Stages.” Each Building Stage shall consist of a Building, and the Units, and initially the Declarant has determined that the first Building Stage shall consist of Building [ ], and each of the Units located within Building [ ], all as identified in Section 3.1 above. Upon the creation of each Building Stage, including the Units located in or serving such Building Stage, they shall be fully integrated into the Condominium as if this Declaration had been originally executed and recorded containing the additional Building Stage, the Units, and the Allocated Interests of the Units shall be reallocated in accordance with the formulas set forth in this

Declaration and as more particularly set forth in the amendment adding said Units.

Declarant need not physically construct or add Building [ ], Building [ ], or Building [ ], or any Units located within said Buildings, other than those described in Section 3.1 above, or said Limited Common Elements to the Condominium and hence said Building [ ], Building [ ], or Building [ ], any Units located within said Buildings, other than those described in Section 3.1 above, and Limited Common Elements NEED NOT BE BUILT. The Declarant must exercise its right hereunder within thirty (30) years of the recording of this Declaration.

To exercise any rights under this Section, the Declarant shall prepare, execute and record an amendment to the Declaration pursuant to the Condominium Act, which amendment may include a revised Condominium Plat and Plans as required by the Condominium Act to the extent not previously recorded. Said amendment shall become effective upon recording without need for the consent of any other person.

**§ 5.3 Restrictions.** The exercise of Development Rights shall be subject to the following restrictions:

- i) No changes shall be made by the Declarant or any other person to the road, utility, drainage, stormwater maintenance improvements or any other improvements located in the Common Elements forming part of the Property (whether located on land owned in fee or easement areas) required in order to comply with the Town of Windham and Maine Department of Environmental Protection's applicable requirements, unless such changes are first approved by applicable governmental bodies with jurisdiction; and
- ii) No changes shall be made to the site or subdivision approvals from the of Town of Windham Planning Board, unless any applicable approval is received to the extent applicable.

**§5.4 Assignment.** All or any part of the rights, powers or reservations of Declarant contained in this Declaration may be assigned by Declarant from time to time to any person(s) or entity(ies) which will assume the duties and obligations of Declarant related to the rights, powers or reservations assigned. Upon the recording of an assignment of such rights, powers or reservations pursuant to which the assignee assumes the duties and obligations of Declarant related thereto, the assignee shall become a successor Declarant as to such rights, powers or reservations assigned and shall have the same rights and powers and be subject to the same duties and obligations as are given to and assumed by Declarant herein, and Declarant shall be relieved from all liability with respect to the rights, powers, reservations, duties and obligations hereunder which are assumed by the assignee.

### **§5.5 Amendment, Waiver, Etc.**

ARTICLE 5 and Section 4.4 shall not be amended or waived nor shall any Bylaws or Rules and Regulations be adopted or amended which may infringe on the foregoing without the

consent of the Declarant duly recorded in said Registry of Deeds.

The rights and benefits of ARTICLE 5 and all other rights of Declarant set forth in this Declaration, the Bylaws or otherwise, as amended from time to time, may be transferred in whole or part by recorded instrument specifically referring to this Section and executed by Declarant and its successor or assignee.

The Declarant shall have the right to waive the Development and Special Declarant Rights reserved hereunder in whole or part by a written instrument provided that such waiver shall only be effective upon recording in said Registry of Deeds and such waiver shall be subject to the limitations of Section 1603-103(d) of the Act regarding Declarant Control of the Association.

## **ARTICLE 6 CONDOMINIUM ASSOCIATION**

**§6.1 The Association.** The term "Association" as used in this Condominium Declaration" means the association of the Unit Owners organized pursuant to Section 1603-101 of the Condominium Act as a nonprofit corporation under the Maine Nonprofit Corporation Act. The membership of the Association at all times shall consist exclusively of all Condominium Unit Owners, or in the event of a termination of the Condominium as provided in the Condominium Act, of all former Unit Owners entitled to distributions of proceeds, or their heirs, successors or assigns. Persons having an interest in a Unit solely as security for an obligation shall not be considered Members.

The Association shall have all the powers granted pursuant to its Bylaws, the Condominium Act, and the Maine Nonprofit Corporation Act.

Each Unit Owner shall automatically become a Member of the Association, which membership shall continue as long as she or he continues as a Unit Owner, and upon the termination of the interest in the Condominium, his or her membership and any interest in the assets of the Association shall be automatically transferred and inure to the next Unit Owner or Owners succeeding him or her in interest.

### **§6.2 Board of Directors Powers; Declarant Control Period.**

A. General. Except as otherwise provided in Section 1603-103(b) of the Condominium Act, in this Declaration, the Board of Directors may act on behalf of the Association and shall have all of the powers necessary or appropriate for the administration of Association.

B. Declarant Control Period. During the Declarant Control Period, the Board of Directors shall be composed of three (3) natural persons. The term "Declarant Control Period" means the period which extends from the date of the recording of this Declaration until the earlier of (a) seven (7) years following the conveyance of the first Unit to a Purchaser, (b) sixty (60) days after the conveyance of seventy-five percent (75%) of all Units, including any future Units which may be created hereunder, other than a conveyance to a successor Declarant, or (c)



at such earlier date as the Declarant in its sole discretion shall specify. Prior to the expiration of the Declarant Control Period, a transition meeting of the Association and a transition election shall be held at which all of the members of the Board of Directors and officers of the Association appointed by the Declarant shall resign, and the Unit Owners, including the Declarant if the Declarant owns any Units, shall thereupon elect a Board of Directors to act in the place and stead of those resigning.

By written notice duly recorded in said Registry of Deeds specifically referring to this Section, the Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board of Directors prior to the termination of the Declarant Control Period, but in that event the Declarant may require, for the duration of the Declarant Control Period that specified actions of the Association or Board of Directors, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before such action can become effective.

During the Declarant Control Period the Declarant shall have the right to appoint, remove and replace from time to time any and all members of the Board of Directors and officers of the Association. The directors and Voting Representatives appointed by the Declarant need not be Unit Owners.

C. Owner Control and Voting. Following the expiration of Declarant Control Period, the affairs of the Association shall be governed by Board of Directors composed initially of three (3) natural persons (the “Directors”), pursuant to the terms of the Bylaws of the Association.

A majority of the Members at the Board of Directors shall be Unit Owners or spouses of Unit Owners or in the case of a Unit Owner which is a corporation, limited liability company, partnership, trust or estate or other legal entity, a designated agent thereof.

**§6.3 Rules and Regulations.** The Board of Directors shall have the power from time to time to adopt, amend and enforce Rules and Regulations relative to the operation, use and occupancy of the Units and the Common Elements, consistent with the provisions of this Declaration, Bylaws and the Condominium Act including, but not limited to, the appointment of such committees and the enactment and enforcement of such enforcement procedures and penalties for violations as the Board of Directors shall deem appropriate. Any such Rules and Regulations shall be adopted or amended, by means of appropriate resolutions duly approved by the Board of Directors after first giving the Unit Owners notice and an opportunity to be heard but the failure of a Unit Owner to receive notice shall not affect the validity of the Rules and Regulations. Notice of such Rules and Regulations and any amendment thereto shall be sent to each Unit Owner or occupant of a Unit promptly after the adoption thereof, and they shall bind all Unit Owners, their heirs and assigns, any all tenants, invitees, guests and other persons entering upon the Property.

## **ARTICLE 7 FINANCIAL MATTERS**

**§7.1 Common Expenses, Limited Common Expenses and Service Charges.** The term “Common Expenses” include, but are not limited to, such costs and expenses established by the Condominium Act, by this Declaration, by the Bylaws, or by the Board of Directors in connection with the administration, operation, maintenance and repair of the Condominium and the Property, the supply of utility services, the establishment of reserves, and the rendering to Unit Owners of all related services, as assessments for Common Expenses, Limited Common Expenses, Special Assessments, and Service Charges and all amounts due to the Association, including all of the Property’s obligations under the Master Declaration.

The term "Limited Common Expenses" mean the Common Expenses associated with the maintenance, repair or replacement of a Limited Common Element, which may be assessed against the Unit(s) to which the appurtenant Limited Common Element is assigned in proportion to the relative Common Expense Liabilities of such Unit(s), all as the Board of Directors may periodically establish and determine. If all Units have substantially similar Limited Common Elements, then the Board of Directors may determine that all Units shall pay such expenses in accordance with their liability for Common Expenses.

The term “Service Charges” shall mean charges for services benefiting fewer than all the Units, which are assessed exclusively against the Unit or Units benefited in accordance with the use of such services as permitted by Section 1603-115(c) of the Condominium Act and the Bylaws.

All expenses for the administration, operation, maintenance and repair of the Condominium and the Property shall be borne by the Unit Owners by means of assessments as set forth herein and by all other persons liable in accordance with this Declaration.

**§7.2 Allocation and Payment of Common Element Expenses.** The total amount of Common Expenses shall be assessed to the Units as follows:

(a) The Common Expenses that are not otherwise assessed as Limited Common Expenses or Service Charges shall be assessed against all the Units in proportion to the relative Common Expense Liabilities as set forth herein.

(b) If the Board of Directors determines that a Limited Common Expense benefits more than a single Unit in a manner which is uniquely disproportionate in relation to the general relative Common Expense Liabilities among all Units, then such Limited Common Expense may then be assessed solely against the benefited Units benefited in proportion to the relative Common Expense Liabilities of such Units as among themselves, all as the Board of Directors may periodically determine in its discretion. If a Limited Common Expense only benefits a single Unit as the Board of Directors may periodically determine in its discretion, that Limited Common Expense may then be assessed solely against the Unit benefited.

(c) For electricity, telephone, internet data in excess of that provided by the Association, cable television services, water, and sewer serving each Unit, each Unit Owner shall promptly pay the bills for such services consumed or used in his or her Unit.

(d) The expenses of electricity serving the Common Elements, water, and sewer, if not separately metered, shall be assessed to each Unit as a Common Expense, subject of the option of the Association to sub-meter and then separately charge for water and/or sewer services, and propane centrally supplied to the Units as Service Charges. At the election of the Board of Directors, the expense of capital improvements, major repairs or renovations to the water and sewer supply systems may be assessed either as a Common Expense or as a Service Charge.

(e) Common Expenses, Special Assessments, Service Charges and penalties, fines, interest and costs of collection and enforcement including reasonable attorneys' fees, all as provided in the Condominium Act, the Declaration, Bylaws and the Rules and Regulations.

(f) In order to fund significant improvement, repair or renovation projects and associated costs as the Board of Directors may approve, the Association may make special assessments for such Common Expenses or Limited Common Expenses payable either in a single installment or payable in installments over a period of months and/or years, all on such further terms and conditions and such interest rate as may be approved by the Board of Directors ("Special Assessments"). If any portion of the Special Assessments is due *after* the end of the Association's current budget year, then the affirmative approval of a majority in interest of all the Unit Owners shall be required. If the Special Assessments due in full *prior* to the end of the Association's current budget year, the normally applicable Unit Owners' budget ratification requirements shall apply, except as otherwise provided below.

If the amount of a proposed Special Assessment does not exceed two (2) months regular common charges and the Board determines that the Special Assessment is necessary to meet an emergency, the Executive Board may make the Special Assessment immediately in accordance with the terms of the Board's vote, without need for budget ratification by the Unit Owners.

(g) Until such time as the Association makes a Common Expense Assessment, the Declarant is responsible for all Common Expenses, Limited Common Expenses and Services Charges, but need not establish any reserves. In any event no later than sixty (60) days after the first Unit is conveyed, all Unit owners including the Declarant shall commence paying monthly Common Expense assessments, and Service Charges, if applicable, to the Association for all Units which have been legally created and submitted to the Condominium. The Declarant may contribute goods and services in kind for the benefit of the Association, which shall be credited to its obligation to pay Assessments.

**7.3 Service Charges.** The Association shall have the express power to separately assess a Unit and the owner thereof as a "Service Charge" for services rendered or to be rendered to that Unit or its Limited Common Elements, and for the costs of water and sewer and propane fuel and propane system operation, maintenance, repair and replacement, if any, which are not separately billed by the propane supplier. Such Service Charge assessments shall constitute a lien on the

Unit with the same status as a lien for Common Expense Liability assessments under the Condominium Act, this Declaration and Bylaws, which lien for Service Charges may be foreclosed in like manner as a mortgage on real estate. The recordation of this Declaration constitutes record notice of the lien. Service Charges shall include without limitation:

- (i) If a Unit Owner, members of his or her family, guests or tenants requests the Association or its agent to perform repair and maintenance work on his or her Unit or its Limited Common Elements, or damages the Common Elements or safety systems or fails to perform maintenance and repair work required, the expense thereof as determined by the Board of Directors or its designee may be assessed as a Service Charge;
- (ii) Fees, if any, which may be established by the supplier for the delivery, consumption and maintenance of water, and sewer, propane and/or other utility services and equipment. Water and sewage services supplied to each Unit, if not separately metered and billed by the public utility supplier, may be measured separately by such methods and systems established by the Board of Directors in their discretion. At the election of the Board of Directors, the expense of maintenance and repair, capital improvements, major repairs or renovations to the water and sewer systems may be assessed either as a Common Expense or as a Service Charge;
- (iii) Fees, if any, which may be established by the Board of Directors, for cable television, internet and telephone services and equipment, if not separately billed by the utility supplier; and
- (iv) Increases in the Association's insurance premiums for permanent building improvements and betterments to Units or the Limited Common Elements installed by Unit Owners and insured at the request of the Unit Owner with the Association's hazard insurance carrier, as determined by the Board of Directors.

**§7.4 Borrowing and Pledge.** The Board of Directors shall have power to borrow and to pledge, assign and grant a security interest covering all Association revenues including Assessments for Common Expenses, Limited Common Expenses, Special Assessments, and Service Charges in order to raise funds for repairs, renovations, improvements and associated costs and expenses with respect to the Common Elements and related charges. The exercise of such power is subject to the approval of a majority in interest vote of the unit owners as required by the Maine Condominium Act.

#### **§7.5 Payment of and Lien for Assessments, Service Charges, Fines, Etc.**

Each Unit Owner shall pay to the Association or its designee the following amounts: (i) on the first day of each month or on such other date and intervals that the Board of Directors may determine, one-twelfth (1/12<sup>th</sup>) of the common charges for Common Expenses including Limited Common Expenses, and Service Charges, and provided that revised Common Expenses including revised Limited Common Expenses shall be paid over such intervals over the remainder of the fiscal year and Special Assessments shall be paid in accordance with the terms

of the approval of Special Assessments; (ii) all Special Assessments and any other sums duly levied against the Unit pursuant to this Declaration, the Bylaws, the Rules and Regulations or the Condominium Act which are assessed against Unit Owners; and (iii) fines, penalties and fees as provided by this Declaration, the Bylaws, the Rules and Regulations or the Condominium Act, all interest and late charges and legal fees and other costs of collection thereof.

Each Unit Owner shall pay his or her share of assessments for Common Expense assessments, Limited Common Expense assessments, Special Assessments and Services Charges without setoff or deduction.

All amounts levied against each Unit for Common Expense assessments, Limited Common Expenses, Service Charges, any Special Assessments, other sums duly levied against the Unit pursuant to this Declaration, the Bylaws, the Rules and Regulations, or the Act, all interest and late charges, all legal fees and other costs of collection, enforcement and foreclosure thereof, and all fines, penalties and fees as provided in this Declaration or the Bylaws or the Rules and Regulations: (i) shall constitute the personal liability of the Owner of the Unit so assessed; and (ii) shall, until fully paid, constitute a lien against the Unit in favor of the Association as provided in Section 1603-116 of the Condominium Act.

Recording of the Declaration constitutes record notice and perfection of the lien for Common Expense assessments, Limited Common Expense assessments, Special Assessments, and Services Charges, other sums duly levied against the Unit Owners pursuant to this Declaration, the Bylaws, the Rules and Regulations, or the Act, including penalties, fines, late charges, interest and costs of collection, enforcement and foreclosure. The Association may record a notice from time to time stating the amount and nature of the lien signed by an officer or director of the Association or by an agent authorized by the Board of Directors but such recorded notice is not necessary to establish or perfect the lien. The lien is extinguished unless action to enforce the lien is started within five (5) years after the full amount becomes due if so limited by the Condominium Act, but the Unit Owner shall remain personally liable.

Such lien is prior to all other liens and encumbrances on a Unit except (a) liens and encumbrances recorded before the recordation of this Declaration, (b) to the extent required by the Maine Condominium Act, a first priority mortgage recorded before or after the date on which the assessment sought to be enforced becomes delinquent, and (c) statutory liens for real estate taxes and other governmental assessments or charges against the Units; provided, however, that such lien is not subject to the provisions of 14 M.R.S.A. Section 4651 and 18-A M.R.S.A. Section 2-201, et seq., as they or their equivalents may be amended or modified from time to time.

(b) If any Unit Owner shall fail or refuse to pay to the Association when due his or her share of the Common Expense assessments, Limited Common Expense assessments, Special Assessments, and Services Charges, user fees, fines or penalties, thereafter the amount thereof shall bear interest at the rate of Eighteen percent (18%) per annum or such other rate as may be set by vote of the Board prior to the date on which the payment came due. Such amounts with such late charges in such amount as may be determined by the Board of Directors, interest and

all costs of collection, including reasonable attorneys' fees, shall constitute a lien on the unit of such Unit Owner. Unless otherwise determined by the Board, a late charge shall apply when any payment due to the Association is more than thirty (30) days past due, which late charge shall be immediately due and payable. If such late charges and Common Charges, Limited Common Charges and Services Charges are not paid within thirty (30) days of when they were due, then interest shall be charged on all past due amount calculated retroactively back to the date when originally due.

(c) If such payments are not received within ninety (90) days after they become due, the Board shall have the power to exercise and enforce any and all rights and remedies provided in the Maine Condominium Act, this Declaration or these Bylaws or otherwise available at law or in equity for the collection of all unpaid amounts and, if available, all possessory remedies against the delinquent owner's unit under the Forcible Entry and Detainer Laws of Maine, as amended from time to time; in such event the Association may suspend any right or privilege appurtenant to the Unit including without limitation parking and voting rights and the prohibition of the use of the Common Elements, but the Association may not deny all means of access to the Unit or withhold services provided to a unit or a unit owner by the Association if the effect of withholding the service would be to endanger the health, safety or property of any person. The delinquent unit owner or other occupant shall be required to pay to the Association a reasonable rental for such unit until sale or foreclosure.

(d) In any action to foreclose the lien for Common Expense assessments, Limited Common Expense assessments, Special Assessments, and Services Charges, other sums duly levied against the Unit pursuant to this Declaration, the Bylaws, the Rules and Regulations, or the Act, late charges, penalties, interest, and costs of collection, foreclosure and enforcement including reasonable attorneys' fees, the Association may act through its manager or Board of Directors in the same manner as any mortgagee of real property. The manager or Board of Directors acting on behalf of the Unit Owners shall have the power to bid and acquire such Unit at a foreclosure sale and to lease, mortgage, convey, or otherwise deal with the Unit. Suit to recover a money judgment for unpaid Common Expense assessments, Service Charges, Special Assessments, user fees, fines, penalties and all other amounts due to the Association, with interest and all costs and reasonable attorneys' fees, may be maintained without foreclosing upon or waiving the lien securing the same.

(e) If for any reason the Association revises its annual budget and as a result the Common Expenses or Limited Common Expenses are increased, then commencing on the next day assessments are due, each Unit Owner shall pay to the Association or its authorized representative such revised Common Expenses.

If any assessment is payable in installments, upon a default by such Unit Owner in the timely payment of any two (2) installments in any fiscal year, the maturity of the remaining total of the unpaid installments may be accelerated at the option of the Board of Directors, and the entire balance of the assessment may be declared by the Board of Directors to then be due and payable in full.

(f) The liens for assessments described herein may be enforced and foreclosed by the Association in like manner as a mortgage on real estate as provided in the Condominium Act, or by any other means presently or hereafter provided by law or in equity. A suit to recover a money judgment for unpaid assessments, interest, fines, penalties, and costs of collection may be maintained against the Unit Owner personally without foreclosing or waiving the lien securing such assessments, and a foreclosure may be maintained notwithstanding the pendency of any suit to recover a money judgment.

Upon a default in the payment of any amount due the Association or a violation of any provision of the Condominium Act, this Declaration, the Bylaws, or the Rules and Regulations of the Association, which violation continues after reasonable notice from the Association to the Unit Owner, then that Unit and its occupants may be excluded from the use and enjoyment of any and all of the Common Elements not essential to access to the Unit may be suspended and services may be withheld in accordance with Rules and Regulations adopted by, in addition to all other remedies available to the Board of Directors but the right to physically gain access the Unit shall not be suspended and the Association may not withhold services provided to a Unit or a Unit Owner if the effect of withholding the service would be to endanger the health, safety or property of any person.

**§7.6 Liability/Resale Certificate.** Multiple owners of a Unit shall each be jointly and severally liable for all Common Expenses, Limited Common Expenses, Special Assessments, Service Charges, interest, fees, penalties and costs of collection. In the transfer of a Unit, the grantee(s) of such Unit shall be jointly and severally liable with the grantor for all unpaid Common Charges, assessments and Service Charges, penalties, fees, interest and costs of collection outstanding at the time of the grantor's transfer, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore. A grantee receiving a conveyance of a Unit shall not be prevented from exercising any right to recover from the grantor such amounts paid for those Common Expense assessments, Service Charges, etc. arising prior to the conveyance.

A grantee or proposed purchaser for a Unit under a purchase and sale contract may obtain a statement from the Association setting forth the amount of the then outstanding unpaid common charges, assessments and Service Charges, late fees, interest and costs of collection against the Unit and such other items required by the Condominium Act, upon payment of such fee as may be established from time to time by the Board of Directors. The Association has no obligation to subsequently update the information contained in such statement. The grantee shall not be liable for, and the Unit conveyed shall not be subject to a lien for any unpaid amounts due from the grantor before the statement date in excess of the amount set forth in the statement as of its effective date except interest, late fees and costs of collection accruing thereafter.

**§7.7 Initial Working Capital Fund.** A segregated working capital fund for the Association shall be established into which each Unit purchaser shall pay the Association an amount equal to two (2) months common charges per Unit, at the time of initial transfer of title from the Declarant other than transfers to a successor Declarant. Such fund shall be held in a

segregated account, owned by and in the name of the Association, established at a Maine financial institution insured by the Federal Deposit Insurance Corporation or other equivalent federally sponsored insurance. Such funds shall be used for such purposes as may be established by the Board of Directors from time to time, including without limitation the funding of repairs, improvements, reserves and operating deficits.

No purchaser shall be entitled to a refund of such monies from the Association upon any subsequent transfer of a Unit.

**§7.8 Budget.** A proposed budget or any amendment to the budget adopted by the Association's Board of Directors shall be deemed to be ratified by the Unit Owners unless rejected by a two thirds (66 2/3%) in interest vote of all Unit Owners, whether or not a quorum is present.

Within thirty (30) days after the Board's adoption of any proposed budget or amended budget, the Board of Directors shall provide a summary of the budget to all the Unit Owners, and shall set a date for a meeting of the Unit Owners to consider ratification of the budget not less than ten (10) nor more than thirty (30) days after mailing of the summary. In the event the proposed budget is rejected, the periodic budget last ratified by the Unit Owners shall be continued until such time as the Unit Owners ratify a subsequent budget proposed by the executive board.

The Board of Directors shall have the power to expend funds and incur expenses out of the reserves even if not set forth in the budget but if the amount of such reserve expenditures may be reasonably anticipated to cause the aggregate amount of all such expenditures to exceed ten percent (10%) of the budget (including contributions to reserves) then such expenditure shall require budget ratification by the Unit Owners in accordance with the requirements set forth above.

The requirements for the adoption and Unit Owners' approval of Special Assessments are set for in Subsection 7.2(g) above.

## **ARTICLE 8 MAINTENANCE AND USE**

**§8.1 General Maintenance Responsibilities.** The Units and Common Elements shall be generally maintained and repaired by each Unit Owner and the Association in accordance with the provisions of Sections 1603-107(a) and 1603-115 of the Condominium Act except as otherwise provided herein.

**§8.2 Maintenance of Common Elements.** Generally the Association shall be responsible for the maintenance, repair and replacement of the Common Elements, including but not limited to landscaping, lawn care, sewer, snowplowing of the parking areas, and surface parking spaces that are Common Elements or Limited Common Elements, area and street lighting and trash pickup (unless provided by the municipality or the Windham Village Master



Condominium Association) and, all as determined by the Board of Directors.

If such repair or replacement of the Common Elements shall be necessitated by the negligence, neglect or misconduct of fewer than all of the Unit Owners, such cost shall be assessed to the Unit Owners responsible as a Service Charge.

### **§8.3 Maintenance of Windows, Doors and other Limited Common Elements.**

Generally the Association shall maintain, repair and replace the Limited Common Elements, all as determined by the Board of Directors; provided, however, that each Unit shall be responsible for providing the ordinary maintenance and repair of individual Limited Common Element windows, doors, sliding patio doors, screens, storm windows and doors, and their components consisting of window and door locks, glass, slides, hinges, tracks, knobs, automatic openers, and hardware, together with the painting of the interior surfaces of the exterior windows and doors, the washing of interior and exterior glass surfaces, and maintaining the sewer line leading from the Unit to the point where it connects to the common line, but the Association may elect to provide ordinary maintenance and repair services for such components, assessing the Units therefore as a Limited Common Expense assessment, a Service Charge or as a part of the general Common Expense assessments.

Each Unit Owner shall provide the ordinary cleaning of the interior and exterior glass surfaces of door and window glass, the repair of broken glass and screens, and the removal of snow and ice from the patio, porch and deck, or Limited Common Elements appurtenant to the Unit, but the Association may elect to provide such services and assess the Units therefore as a Service Charge or as a part of the general Common Charges.

The Association shall be responsible for the painting of the exterior finishes of exterior doors, windows (excluding window glass) and gutters, downspouts, exterior window and door caulking, and chimney flashing, and shall be responsible for carrying out the replacement of the entire window and door assemblies.

The Association may assess the costs of maintenance, repair and replacement of the doors, windows and other Limited Common Expenses applicable to the particular Unit(s) to which they are appurtenant if the item giving rise to the expense shall be disproportionately for the benefit of such Unit(s) only, as may be determined from time to time by the Board of Directors in its discretion.

If such repair or replacement of the Limited Common Elements shall be necessitated by the acts, omissions, negligence, neglect or misconduct of fewer than all of the Unit Owners, in which case such cost shall be assessed to the Unit Owners responsible as a Service Charge, as determined by the Board of Directors.

**§8.4 Maintenance of Unit/Repair Responsibility.** Each Unit Owner shall keep and maintain his or her Unit and its equipment, appliances and appurtenances in good order, condition and repair and in a neat, clean and sanitary condition, whether such maintenance and repair shall be structural or non-structural. Each Unit Owner shall maintain, repair and replace

the exterior lights and light bulbs controlled from inside the Units, the doorbells, and the vents and ducts which serve their Unit exclusively.

Each Unit Owner shall do all redecorating, painting and varnishing of the Unit interior which at any time may be necessary to maintain the good appearance and condition of such Unit. The Unit Owner shall clean the interior and exterior glass surfaces of windows, maintain all interior finishes and trim on doors and windows, repair broken or damaged glass, including the cleaning and repair of glass and the ordinary maintenance and repair of screens, locks, hinges, tracks, and knobs, but the Association shall provide routine painting of the exterior finishes of exterior doors and windows (excluding window glass).

For Units with exterior accessories and improvements, if any, installed by or at the request of the Unit Owner or any prior Unit Owner as set forth in Sections 3.5 and 4.4, such items shall be maintained, repaired and replaced by the Association but each Unit Owner shall pay the Association for its costs of maintaining, repairing and replacing such items as a Limited Common Expense.

No Unit Owner shall deposit any trash, dirt, debris or other substance from the Unit onto the Common Elements or Limited Common Elements, except in designated trash disposal areas.

Only ordinary household waste in normal quantities shall be deposited into the sewage system. No person shall pour any grease, paint, solvents, oil or non-household chemicals or other substances which may be identified in the Rules and Regulations into the sewage system or storm drains.

The Board of Directors may adopt Rules and Regulations requiring the Unit Owners periodically to replace water heaters and washing machine hoses.

Each Unit Owner shall be responsible for all damage to his or her Unit, to any other Units or to the Common Elements resulting from his or her failure or negligence to make any of the repairs required by this Article. Each Unit Owner shall perform his or her responsibilities in such manner as shall not unreasonably disturb or interfere with the other Unit Owners. Each Unit Owner shall promptly report to the Board of Directors or the managing agent any defect or need for repairs for which the Association is responsible.

To the extent that any damage to a Unit is covered by the Association's insurance, the Unit Owner shall be responsible for (i) payment of any insurance deductible (or such other amount established by the Rules and Regulations), with respect to the Unit, and (ii) for uninsured damage to his or her Unit or to any Common Element for which the Unit Owner is otherwise responsible due to the fault or negligence of the Unit Owner.

**§8.5 Liability of Owner.** Each Unit Owner shall be liable, and the Association shall have a lien against his or her Unit for all costs of maintaining, repairing or replacing any portion of such Owner's Unit, any other Unit or of the Common Elements including Limited Common Elements to the extent that such costs are caused by or attributable to such Unit Owner's

wrongful or negligent act, neglect, omission or carelessness or by that of such Unit Owner's guests, employees, agents, lessees, invitees, or their pets. The Association shall have the right to repair any damage so caused, to cure or correct the cause of the damage and to maintain or replace such damaged Unit or Common Element to the extent the Association deems necessary and appropriate all at the Unit Owner's expense. Such liability shall include any increase in insurance rates occasioned by uses, misuse, occupancy, or abandonment of any Unit or its appurtenances. Nothing herein contained, however, shall be construed to modify any waiver by insurance companies of rights of subrogation against such Unit Owner.

**§8.6 Use and Occupancy Restrictions.** Each Unit, and its associated Limited Common Elements shall be occupied and used subject to the following restrictions:

(a) *Units.* No Unit shall be used or occupied for any purpose other than a single family residence with only one complete set of housekeeping facilities, provided, however, that an occupant of a Unit may conduct business activities within the confines of such Unit so long as no signs are displayed, the Unit is not used for meeting with customers or third parties and there is no noticeable increase in deliveries, all except as otherwise permitted by the Board of Directors in its discretion.

Further provided that nothing in this Declaration or the Bylaws shall be construed to prohibit the Declarant from exercising any easements and Special Declarant Rights and Development reserved by the Declarant, including without limitation promotional, marketing, sales office or display purposes, sales of Units and for customer service purposes, or from leasing Units owned by Declarant as provided in this Declaration.

(b) *Reserved.*

(c) *Reserved.*

(d) *Maximum Number of Unit Occupants.* The Executive Board may adopt and amend Rules and Regulations governing the maximum number of persons who may occupy a Unit.

(e) *Insurance.* No activities shall be carried on or materials used or kept in any Unit or in any of the Common Elements that will increase the rate of insurance for the Property, or any part thereof, without the prior written consent of the Board of Directors. No Unit Owner shall permit anything to be done or kept in his or her Unit or in the Common Elements which will result in the cancellation of insurance on the property, or any part thereof, or which would be in violation of any law, regulation or administrative ruling. No waste may be committed on or to the Common Elements.

(f) *Nuisance/Hazard/Illegal uses.* No Unit shall be used so as to create a nuisance, hazards, or an unreasonable interference with the peaceful enjoyment of any other Unit or the Common Elements or to carry on any illegal activities.

No owner or occupant of any Unit shall carry on, or permit to be carried on, any practice

which unreasonably interferes with the quiet enjoyment and proper use of another Unit or the Common Elements by the Unit Owner or occupant of any other Unit, or which creates or results in a hazard on the Property.

No immoral, improper, offensive, or unlawful use shall be made of the Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed.

(g) *Pets and Animals.* Except for household pets permitted below, the maintenance, keeping, boarding and/or raising of animals, including without limitation laboratory animals, livestock, poultry or reptiles of any kind, regardless of number, is prohibited within any Unit or upon the Common Elements. Dogs, cats and other ordinary household pets may be kept in a Unit, subject to such additional and more restrictive Rules and Regulations as established from time to time by the Board of Directors, and to local and state ordinance, statutes and regulations, and ordinances. In any event all pets and animals shall be restrained so as not to become noisome, bothersome or offensive to other persons, as determined by the Board of Directors.

No dogs shall be permitted outside of a Unit except on a leash directly attended by a responsible person or except of “off-leash” area(s), if any, that may be designed from time to time by the Board of Directors. Pet owners shall promptly clean up the droppings left by their pets which shall be disposed of in such manner as may be prescribed in Rules and Regulations.

The Association shall have the power to further regulate and restrict the keeping of pets and animals under Rules and Regulations of the Association as promulgated or amended from time to time.

In the event of repeated, significant violations of the Condominium Documents by a pet or animal that interfere with the safety and quiet enjoyment of the Property notwithstanding prior notices thereof, to the Unit Owner Upon notice and opportunity to be heard, the Board of Directors may expel any offending pets and animals from the Property.

(h) *Fire Safety and Noise Control.* No person shall impair or remove or alter the any acoustical, sound-deadening, or fire-resistant material or smoke detector from the walls, floors or ceilings of a Unit without replacing the same with materials of equal or greater such qualities after securing proper written permission from the Executive Board.

(i) *Trash.* Trash, garbage and other waste shall be kept only in sanitary containers and shall be disposed of in such manner as may be prescribed in Rules and Regulations established by the Board of Directors.

(j) *Personal Property.* No articles of personal property belonging to any Unit Owner shall be stored in any portion of the Common Elements.

(k) *Electrical.* No Unit Owner shall overload the electrical wiring in the Condominium. No Unit Owner shall operate any machinery, appliances, accessories or equipment in such a

manner as to cause, in the judgment of the Board of Directors, as appropriate, an unreasonable disturbance or make any alterations, repairs or modifications to or connection with the electrical or plumbing systems without the prior written consent of the Board of Directors, as appropriate.

Additional major appliances, including without limitation hot tubs, generators and furnaces and permanently installed space heaters may not be installed in a Unit or Limited Common Elements except with the prior written consent of the Board of Directors.

(l) *Governmental Requirements.* All Unit Owners, Unit Occupants, their families, guests, and invitees shall comply with and conform to all applicable laws and regulations of the State of Maine and of the United States, and all ordinances, rules and regulations of the Town of Windham. A Unit Owner shall hold the Association and other Unit Owners harmless from all fines, penalties, costs and prosecutions for the violation thereof or noncompliance therewith.

(m) *Water and Sewer.* The sewer system shall be used only for ordinary household purposes. Since the water supply depends in part on the forces of nature, the Association shall not be responsible for any insufficiency or failure of water supply or the purity thereof, even if due to the alleged negligence or fault of the Association.

(n) *Heat.* Every Unit Owner must at his or her own expense maintain heat in their Unit at levels sufficient to protect the Common Elements from damage. Further, for any Unit, the heat must be set at a minimum level as set forth in the Rules and Regulations, if any, but in any event not less than 55° F. In the event the Board of Directors or its agents learn that the heat in a Unit is, in its opinion, insufficient, and if the Board of Directors or its agents cause the heat in the Unit to be increased in a good faith attempt to prevent damage to the Unit, other Units or Common Elements, the Unit Owner shall be solely liable for any increase in the utility costs associated with the increased heat.

(o) *Water Heaters, Hoses and Vents.* The Association may adopt Rules and Regulations requiring the periodic replacements of or specifying the types of water heaters and washing machine hoses. No exhaust fans shall be vented directly into the attic areas and all such fans must vent directly into the open air.

(p) *Smoking Prohibition.* Smoking shall be prohibited everywhere on the Property including without limitation, (i) within the Units, (ii) within the Common Elements of the buildings in which the Units are located, including without limitation the lobbies, hallways, elevators, and stairways, and (iii) the walks, lawn, parking areas, grounds and all other portions of the Common Elements and Property. No owner or any other person shall Smoke or permit Smoking by any occupant, agent, tenant, invitee, guest, friend, family member, visitor or any other person in violation of this Section or the Rules and Regulations.

(i) Definition of Smoking. The term “Smoking” shall include carrying, burning, or otherwise handling or controlling any lit or smoldering product containing tobacco, cloves, marijuana, or similar or related products, including but not limited to cigarettes, cigars, pipes, and devices which simulate tobacco smoking, sometimes known as

“electronic nicotine delivery systems” or “e-cigarettes.” The term “Smoke” shall include all the products and residue of Smoking.

(ii) Rules. The Board may adopt Rules and Regulations in order to implement or clarify the provisions of this Section.

(iii) Enforcement. Any person complaining of a Smoking violation shall provide a written statement of the particulars of the violation to the managing agent designated by the Board. When so advised to a possible violation of these provisions, the Unit owner and if appropriate the tenant or other occupants shall be sent a written notice and advised as to whether a hearing will be held by the Board to consider the violation. If the alleged violator is a tenant or other occupant, a copy of the notice will be sent to the Unit owner. At the hearing if the Board receives testimony that it deems creditable that smoke is emanating from a Unit or from an occupant of a Unit, then the burden of proving that Smoking did not occur shall shift to the Unit Owner and its occupants.

If, at the conclusion of the hearing, the Board determines in its discretion that a material Smoking violation has occurred, the then Board may impose a charge of up to \$100.00 for each single occurrence, in addition to all other rights and remedies of the Association. Upon a second Smoking violation, the charge for each incident constituting a violation shall increase to \$250 per incident in addition to all other rights and remedies of the Association including the recovery of its legal expenses.

The Board may exercise its judgment in deciding whether or not to hold a hearing or to pursue an alleged violation of this Section. If the Board declines to take action, then upon 30 days’ written notice to the Board a Unit owner shall then have the option to sue the Unit owner or occupant alleged to be violating this Section in order to seek specific performance of the provisions of this Section, but such person shall not be entitled to recover legal expenses. Provided however that any decision of or settlement entered into by the Board with respect to Smoking shall be binding on all Owners.

**§8.7 Use of Common Elements.** Subject to this Declaration, the Bylaws, or the Rules and Regulations adopted from time to time by the Board of Directors pursuant to its powers, each Unit Owner, occupant, tenant, guest, visitor and invitee may use the Common Elements in common with all other Unit Owners and their occupants, tenants, guests, visitors and invitees, in accordance with the single family residential purposes for which they are intended, without hindering or encroaching upon the lawful rights of the other Unit Owners, upon the following terms:

(a) *Motor Vehicles*. Passenger vehicles and trucks may be kept or stored on the Property, as well as any other type of vehicle not prohibited by applicable ordinances of the Town of Windham. Vehicles must be in operable condition and fully licensed and inspected for operation on public highways. No motorized vehicles shall be used on the Property, except within the parking areas shown on the Condominium Plat. Parking is further regulated in Section 8.8 below.

(b) *Exterior Alterations.* Except with the written consent of the Board of Directors or as otherwise expressly provided in this Declaration, Bylaws, or the Rules and Regulations, no person shall (i) construct or maintain any antennas, dishes, wires, cables, fences, decks, steps, signs, canopies, lights, awnings, clotheslines or other structures in the Common Elements, nor (ii) plant, trim, cut or remove vegetation, trees or shrubs, nor (iii) materially alter the grading or landscaping, nor (iv) install any window covering that has anything other than a solid white backing, nor (v) do any other thing which affects the appearance from the exterior of the Common Elements including without limitation the Limited Common Elements. The Board shall have the authority to adopt Rules and Regulations regarding such matters including without limitation water shut offs, propane systems and items placed on the interiors of glass windows and doors that are visible from the Common Elements.

The Board of Directors may in its discretion designate areas in which Unit Owners may plant flowers and annuals based on plans specifically approved by the Board and subject to the obligation of the Unit Owner to maintain such items in good condition and repair, failing which they may be removed by the Association at the Unit Owner's expense.

(c) *Signs.* No signs of any character shall be erected, posted or displayed from any Unit, Common Element or Limited Common Element without the prior written approval of the Board of Directors, except for such signs as may be posted by the Declarant for the promotional or marketing purposes as permitted herein or as permitted by the Condominium Documents. The Board of Directors may also erect or authorize directional, speed control, safety, anti-solicitation, and identifying sign(s) listing the name and location of each occupant of the Units. Notwithstanding the foregoing, signs displayed from a Unit supporting or opposing a candidate for public office or a referendum question during the period from 6 weeks prior to the date that a primary or general election or special election is held regarding that candidate or referendum question to one week after the election for that political candidate or vote for that referendum question is held, are permitted.

(d) *Obstruction/Storage.* No Unit Owner shall obstruct any of the Common Elements, another Unit's Limited Common Elements, nor shall any Unit Owner place or store anything on any of the Common Elements except those areas designated for parking by the Condominium Documents or as permitted by the Board of Directors pursuant to the Rules and Regulations.

(e) *Responsibility.* Neither the Board of Directors, the Association, nor any Unit Owner, nor the Declarant shall be considered a bailee of any personal property stored on the Common Elements or Limited Common Elements (including vehicles parked on the Common Elements), whether or not exclusive possession of the particular area is given to a Unit Owner for storage or parking purposes. None of them shall be responsible for the security of such personal property or for any loss or damage thereto, whether or not due to negligence, except to the extent covered by insurance in excess of any applicable deductible.

**§8.8 Parking.** Motor vehicles may be parked only in those portions of the Common Elements or Limited Common Elements designated from time to time by the Board of Directors

for parking spaces.

No parking shall be permitted in areas posted against parking by the Board of Directors, nor shall any person park so as to block access to another Unit Owner's surface parking space.

Other than the spaces which the Board of Directors may allocate from time to time or as specified above, any Common Elements designated as spaces for parking shall be used by the Unit Owners on "first come, first served" basis, except as the Board of Directors may otherwise determine or as otherwise provided in the Condominium Documents.

All vehicles must be in operable condition and fully licensed and insured for operation on public highways. No inoperable vehicles may be kept or parked or stored on the Property.

No unattended vehicle shall at any time be left in such a manner as to impede the passage of traffic or to impair access to parking areas. Parking areas and Common Elements shall at all times be kept free of unreasonable accumulations of debris or rubbish of any kind and no junk or derelict vehicles or other vehicle on which current registration plates are not displayed shall be kept upon any of the Common Elements. Vehicle repairs, other than ordinary light maintenance, are not permitted on the exterior areas of the Property. Owners may be required to move vehicles in order to facilitate snow plowing.

The Board of Directors may adopt such Rules and Regulations as it deems necessary or appropriate to further regulate and restrict parking, the use and storage of motor vehicles generally, and to adopt fines for noncompliance with this Section 8.8 or the Rules and Regulations governing parking.

### **§8.9 Leasing and Renting**

(a) No Unit may be leased for transient purposes and no Unit may be leased for a period of less than six (6) months except at the discretion of the Board of Directors. No portion of any Unit (other than the entire Unit) shall be leased for any period. No unit owner shall rent or lease a Unit other than in accordance with a written form of lease with a copy of the Rules and Regulations of the Association attached which contains the following provisions, which shall automatically be incorporated into every lease, rental, license and every other form of rights to occupy a Unit (collectively sometimes referred to herein as "Lease"):

- (i) The tenant and all other guests, occupants of each Unit shall comply with the Declaration, the Bylaws, and the Rules and Regulations of the Association, and a failure to comply constitutes a default under the Lease and any other rights to occupy a unit;
- (ii) The Board of Directors has the power to terminate the Lease and/or to bring summary proceedings to evict all tenants, guests or other occupants in the name of the Unit Owner after thirty (30) days prior written notice to the Unit Owner in the event of an uncured default by any tenant, guest or other occupant of a Unit in the performance of the Lease or this subsection, but that no notice period need be



given in the event of a threat to personal safety or property; and

- (iv) In the event that the payment of Common Expenses, Limited Common Expenses, Assessments, Service Charges and/or other amounts due to the Association becomes more than ninety (90) days past due, the Association may require the tenant or other occupant to pay directly to the Association the rent on the Unit in an amount of up to the balance of current and delinquent Common Expenses and other unpaid amounts outstanding, subject to the rights of any recorded first mortgage or Eligible Mortgage Holder which has exercised an assignment of rents. The Association's notice to the tenant or other occupant shall be conclusive and binding on the tenant and occupants as to the obligation to pay the rent directly to the Association and as to the amount of Common Expenses and other amounts due. The Unit Owner shall have ten (10) days after such notice is sent to file an objection with the Board of Directors, which objection must be in writing and signed under oath under the pains and penalties of perjury, must contain a short and plain statement of any alleged errors by the Association, and shall include copies of cancelled checks or other written evidence of objection or miscalculation of the amounts due. The Unit Owner must state what amounts, if any, which the Unit Owner admits is owed to the Association.

Every Lease shall be in writing with a copy of the Rules and Regulations of the Association attached. The foregoing provisions shall be deemed to be automatically incorporated into every Lease and the terms of any tenancy or other agreement for the occupancy of a Unit.

Each Unit owner of a Unit shall, promptly following the execution of any written lease of a Unit, forward a true copy thereof to the management company for the Association, and shall provide vehicle information, including make, model, and license plate number of each tenant.

The foregoing provisions of this paragraph (a) shall not apply to an institutional lender in possession of a Unit as a result of foreclosure, judicial sale or a proceeding in lieu of foreclosure.

(b) In the event a tenant, guest or other occupant of a Unit fails to comply with the provisions of this Declaration, the Bylaws, the Rules and Regulations or the Lease and tenancy, then, in addition to all other remedies which it may have, the Association may notify the Unit Owner of such violation(s) and demand that the same be remedied through the Unit Owner's efforts within a reasonable time after such notice in the judgment of the Board of Directors, recognizing that no notice period need be given in the event of a threat to personal safety or property.

If such violation(s) is(are) not remedied within said period if applicable, then the Unit Owner shall at his or her own cost and expense immediately institute and diligently evict all tenants, guests or other occupants of the Unit on account of such violation(s). In the event the Unit Owner fails to so act promptly, then the Board of Directors shall have the right, but not the duty, to institute and prosecute such eviction as attorney-in-fact for the Unit Owners and at the

Unit Owner's sole cost and expense, including all legal fees and costs incurred. Said costs and expenses shall be due and payable upon demand by the Association and shall be deemed to constitute a lien on the particular Unit involved, and collection thereof may be enforced by the Board of Directors in the same manner as the Board of Directors is entitled to enforce collection of Common Expenses and all other amounts due to the Association.

The Declarant shall have the right to operate any Units (even if not then created as Units) owned by the Declarant as a rental property, and may establish and maintain offices, signs and other accouterments normally used in the operation of rental properties in the Declarant's discretion. Such rental operations shall be for the benefit of the Declarant; neither the Association nor any Unit Owner shall have any interest or right in the profits and losses from such operations.

**§8.10 No Liability of Association.** The Association shall not be liable for the failure of water supply, sewage disposal and storm water systems, electricity, telephone, or other services to be obtained by the Association or paid for out of the Common Expense or Service Charge funds, or for injury or damages to persons or property caused by the elements or by the owner of any Unit or by any other person, or resulting from water which may leak or flow from any portion of the Common Elements or Limited Common Elements, from within the Unit, or from another Unit or from any roof, wire, pipe, drain, conduit, appliance, fixture or equipment, even if due to the alleged fault or negligence of the Association, provided that this shall not impair the scope of any insurance coverage provided by the Association.

The Association shall not be liable to the Unit Owner for loss or damage, by theft, or otherwise, of property which may be stored upon or in any individual Unit or in any of the Common Elements even if due to the alleged fault or negligence of the Association.

No reduction, set-off, diminution or abatement of assessments for Common Expenses or Service Charges, shall be claimed or allowed for the expense, damage or discomfort arising from the making of repairs or improvements to the Common Elements or facilities or to any Unit, or from any action taken by the Association to comply with any law, ordinance, or order of any other governmental authority.

## **ARTICLE 9 EASEMENTS**

**§9.1 Utilities, Pipes and Conduits.** Each Unit Owner shall have an easement, in common with all other Unit Owners, to use all pipes, wires, ducts, cables, conduits, public utility lines and other Common Easements serving his or her Unit and located in any of the other Units. Each Unit shall be subject to an easement in favor of other Unit Owners to use the pipes, ducts, cables, wires, conduits, public utility lines and other Common Elements serving such other Units and located in such Unit. The Association shall have the right to grant to third parties additional permits, licenses and easements over and through the Common Elements for utilities, ways, and other purposes reasonably necessary or useful for the proper maintenance and operation of the Condominium.

**§9.2 Access.** Subject to the terms of this Declaration, the Bylaws and the Rules and Regulations, each Unit Owner shall have an easement in common with all other Unit Owners to use the Common Elements as a means of access to and from his or her Unit. In the event that a Unit is not in good standing in the payment of all amounts due to the Association and in the performance of other obligations under this Declaration, then the rights to use all or any portion of the Common Elements may be suspended and services may be withheld in accordance with Rules and Regulations adopted by the Board of Directors but the right to physically gain access the Unit shall not be suspended and the Association may not withhold services provided to a Unit or a Unit Owner by the Association if the effect of withholding the service would be to endanger the health, safety or property of any person.

**§9.3 Association Access to Units.** Upon such notice as may be reasonable at the time, the Association and its officers and directors and such persons as may be authorized by the Board of Directors shall have the right of access to each Unit as provided in Section 1603-107(a) of the Condominium Act for the inspection, maintenance, repair or replacement of the Common Elements and Limited Common Elements located in the Unit or accessible from the Unit or for making any addition or improvements thereto; or to make repairs to any Unit, the Common Elements or the Limited Common Elements if such repairs are reasonably necessary for public safety or to prevent damage to any other Unit, the Common Elements or the Limited Common Elements; or to abate any violation of law, orders, rules or regulations of the Association or of any governmental authorities having jurisdiction thereof. In case of an emergency, such right of entry shall be immediate, whether or not the Unit Owner is present at the time.

Keys (including electronic keys and key cards) to locked entry doors to every Unit, and any other locked door within the Unit where integral utility or other Common Element or Limited Common Element systems are housed, shall be provided to the Association in order to allow access by the Association and under the direct supervision of the Association's management company as may be authorized by the Board of Directors. Prior notice to and approval by the Board of Directors shall be obtained prior to any Unit Owner changing their locks. If such keys are not provided, the Association and its agents shall have no liability for any damage to doors and/or windows created by gaining entry into a Unit in the event there is a reasonable belief that circumstances exist for which entry is authorized.

**§9.4 Encroachments.** Each Unit and the Common Elements are subject to an easement for structural and lateral support in favor of every other Unit. If any portion of the Common Elements or Limited Common Elements hereafter encroach upon any Unit, or if any Unit hereafter encroaches upon any other Unit or upon any portion of the Common Elements or Limited Common Elements, as a result of settling or shifting of any building in which they are located, other than as a result of the willful or negligent act or omission of the owner of the encroaching Unit or of the Association in the case of encroachments by the Common Elements or Limited Common Elements, then a valid easement for the encroachment and for the maintenance of the same shall exist. In the event that a building is partially destroyed as a result of fire or other casualty or as a result of a taking by eminent domain or by deed in lieu of condemnation and is subsequently rebuilt, encroachments due to such rebuilding shall be permitted, and valid easements appurtenant thereto shall exist.

**§9.5 Ancillary Easements through Common Elements.** The Common Elements (including, but not limited to, the Limited Common Elements) adjacent to a Unit are subject to the following easements in favor of the adjacent Unit:

- (i) For the installation, repair, maintenance, use, removal and/or replacement of pipes, ducts, heating and air conditioning systems, electrical, data, cable television, telephone and other communication wiring and cables and all other utility lines and conduits which are a part of or serve any Unit and which pass across or through a portion of the Common Elements.
- (ii) For the installation, repair, maintenance, use, removal and/or replacement of lighting fixtures, electrical receptacles, panel boards and other electrical installations which are a part of or serve any Unit but which encroach into a part of a Common Elements adjacent to such Unit; provided, however, that the installation, repair maintenance, use, removal or replacement of any part of the Common Elements shall not adversely affect either the thermal, fire safety or acoustical character of the Building or impair or structurally weaken the Building.
- (iii) For driving and removing nails, screws, bolts and other attachment devices into the Unit side surface of the studs which support the sheet rock or plaster perimeter walls bounding the Unit, the bottom surface of joists above the Unit and the top surface of the floor joists below the floor of a Unit to the extent such nails, screws, bolts and other attachment devices may encroach into a part of a Common Element adjacent to such Unit; provided, however, that any such action will not unreasonably interfere with the common use of any part of the Common Elements, or adversely affect either the thermal, safety, or acoustical character of the buildings or impair or structurally weaken the Buildings.

**§9.6 Third-Party Easements.** The Property, Common Elements (including, but not limited to, the Limited Common Elements) and Units are benefited and/or burdened by certain rights, easements, restrictions, covenants and conditions described in Exhibit A below, and in

such other instruments of record in the Cumberland County Registry of Deeds which affect the Property, Common Elements (including, but not limited to, the Limited Common Elements) and Units.

## **ARTICLE 10 RIGHTS OF MORTGAGE LENDERS ON UNITS**

**§10.1 Right to Mortgage.** Each Unit Owner shall have the right to mortgage or encumber his or her own respective Unit together with its appurtenant Allocated Interests. Except as provided by Section 1603-112 of the Condominium Act, a Unit Owner may not mortgage or encumber the Common Elements in any manner except as a component of the Allocated Interests appurtenant to his or her Unit.

**§10.2 Identification of Mortgagee.** Upon request of the Board of Directors, each Unit Owner who mortgages his or her Unit shall notify the Board of Directors in writing of the name and address of his or her Mortgagee(s).

**§10.3 Mortgage Foreclosure and Dispositions.** Any holder of a first mortgage covering a Unit which obtains title to the Unit pursuant to a foreclosure or other exercise of the remedies provided in the Mortgage or through deed in lieu of foreclosure after written notice of default which deed identifies the circumstances classifying it as such a deed shall, to the extent required under the Maine Condominium Act, take title to the Unit with its appurtenant Allocated Interests, free of any claims for unpaid assessments for Common Expenses, Service Charges, late fees, interest and costs levied against such Unit which accrued prior to the acquisition of title to such Unit by the Mortgagee, other than the proportionate share of the Common Expenses which become due and payable from and after the date on which the Mortgagee shall acquire title to the Unit through a completed foreclosure or deed in lieu of foreclosure.

In the event the Association adopts any right of first refusal or purchase option arising in the event of the sale or transfer of a Unit, it shall not impair the right of an institutional mortgage lender to foreclose its mortgage, to accept a deed in lieu of foreclosure after written notice of default which deed identifies the circumstances classifying it as such a deed, or to dispose or lease a Unit so acquired.

**§10.4 Eligible Mortgage Holder.** "Eligible Mortgage Holder" means the holder of record of a recorded first Mortgage encumbering a Unit (a "Mortgage").

Eligible Mortgage Holders shall have all rights specified in the Condominium Act. The Board shall cause notice to be sent to the Eligible Mortgage Holders (and any insurers or guarantors of such mortgages identified in the request), if any, of any one or more of the following events affecting the mortgaged Unit(s):

- i. Default in the payment of Assessments, Service Charges, or other amounts due the Association which continues for Sixty (60) days or as required by the Condominium Act;

- ii. Default or violation of the Condominium Documents, or any proceedings by the Association relating thereto;
- iii. The expiration, cancellation or material modification of insurance required to be maintained under the Declaration or Bylaws of the Association;
- iv. A material amendment to the Declaration requiring the consent of Eligible Mortgage Holders;
- v. Termination of the Condominium pursuant to Section 1602-118 of the Condominium Act;
- vi. Change in the Allocated Interests of a Unit, voting rights, a change in Unit boundaries or the subdivision of a Unit;
- vii. The merger or consolidation of the Condominium with another condominium;
- viii. The conveyance or subjection to a security interest of any portion of the Common Elements;
- ix. The lapse, cancellation or material modification of any insurance policy maintained by the Association or any use of any hazard insurance proceeds other than for repair or restoration of the Property; and
- x. Any condemnation or casualty loss that affects either a material portion of the Property, or the Unit securing the mortgage of any Eligible Mortgagee.
- xi. Such other events specified in the Condominium Act.”

The terms of this Amendment shall be fully incorporated into the Declaration as if they had been originally established in the Declaration. Except as specifically corrected, clarified and amended herein, the Declaration as recorded shall remain unchanged, and in full force and effect. The Declarant hereby continues to reserve all Development, Declarant and Special Declarant Rights established in the Declaration, and the Act.

**§10.5 Mortgagee Approval Rights.** For a material amendment to the Declaration or any of the actions specified below but subject in any event to the provisions of the Condominium Act, an Eligible Mortgage Holder who has duly qualified as such by properly registering with the Association in accordance with the Condominium Act and Section 10.4 above shall have the right but not the obligation in place of the Unit Owner to cast the votes allocated to that Unit or give or withhold any consent required of the Unit Owner for such action by delivering written notice to the association with a copy to the Unit Owner prior to or at the time of the taking of the proposed action, which notice shall be sent by prepaid United States mail, return receipt requested, or by delivery in hand. Failure of the Eligible Mortgage Holder to so exercise such rights shall constitute a waiver thereof and shall not preclude the Unit owner from exercising such right. An amendment affecting any of the following is considered material:

- i. Voting rights in the Association;
- ii. Change in percentage liability for Common Expenses, assessment liens for Common Expenses, priority of assessment liens, or the subordination of assessment liens, or increases in the assessments of more than 25% over the prior year;
- iii. Reduction in reserves for maintenance, repair and replacement of Common Elements;
- iv. Responsibility for maintenance and repairs;
- v. Reallocation of pro rata interests in the Common Elements, the Limited Common Element or rights to their use;
- vi. Alteration of the definitions of the boundaries of any Unit, including the partition or subdivision of a Unit;
- vii. Convertibility of Units into Common Elements or vice versa;
- viii. Expansion or contraction of the Condominium, or the addition, annexation or withdrawal of property to or from the Condominium;
- ix. Hazard insurance or fidelity bond requirements;
- x. Imposition of any further restrictions on the leasing of Units;
- xi. Imposition of any restrictions on a Unit Owner's right to sell or transfer his or her Unit;
- xii. A decision by the Association to establish self-management when professional management had been required previously by an Eligible Mortgage Holder or by this Declaration or the Bylaws;
- xiii. Restoration or repair of the Property (after damage or destruction, or partial taking by eminent domain or condemnation) in a manner other than that specified in this Declaration;
- xiv. Any action to terminate the Condominium after substantial damage destruction or condemnation occurs;
- xv. Any provisions of this Article and any other provision of this Declaration expressly benefits mortgage holders, insurers or guarantors; or
- xvi. Any provisions of this Article.

When Unit Owners are considering termination of the Condominium for reasons other than substantial damage, destruction or taking by eminent domain of the Condominium, the Eligible Mortgage Holders representing at least Sixty-seven percent (67%) of the votes of Units subject to mortgages held by Eligible Holders must agree.

If required by Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Veterans' Administration, the Federal Housing Administration or other recognized institutional mortgage programs for mortgaged units, amendments of a material adverse nature or a decision to terminate the legal status of the Condominium after substantial destruction or condemnation occurs must be agreed to by Fifty-one percent (51%) of the votes of Units that are subject to such mortgages they hold which are qualified as Eligible Mortgage Holders.

Approval shall be presumed when an Eligible Mortgage Holder or other mortgagee is sent a written request for approval of a proposed amendment by registered or certified mail, return receipt requested, and then fails to submit a response within 60 calendar days after the notice is received.

**§10.6 Mortgagee Priority.** No provision of the Condominium Documents shall be deemed or construed to give a Unit Owner, or any other person, priority over the rights of any Eligible Mortgage Holder under its mortgage in the case of a distribution of insurance proceeds or condemnation awards for losses to or taking of Units, Common Elements, or both.

**§10.7 Records.** An Eligible Mortgage Holder may examine the books, records and accounts of the Association at reasonable times. The Association shall maintain current copies of this Declaration, the Association's articles of incorporation, Bylaws, and other Rules and Regulations concerning the Condominium as well as its own books, records, and financial statements available for inspection by Unit Owners or by any Eligible Mortgage Holder, insurers, and guarantors of first mortgages that are secured by Units available during normal business hours. Upon written request, any Eligible Mortgage Holder may obtain an audited statement of the Association's fiscal affairs prepared by an independent certified public accountant once the Condominium has been established for a full fiscal year, which preparation shall be prepared at the Eligible Mortgage Holder's expense.

## **ARTICLE 11 INSURANCE**

**§11.1 General.** No later than the date of the first conveyance of a Unit to a person other than the Declarant, the Association shall obtain and maintain as a Common Expense the policies of insurance described below to the extent such policies shall be reasonably available as determined by the Board of Directors. If such insurance is not maintained, then the Association shall give written notice thereof to the Unit Owners and the Eligible Mortgage Holders, if any. To the extent that such insurance subsequently becomes unavailable, the Association shall obtain such comparable insurance as may be reasonably available.



The Board of Directors is hereby irrevocably appointed as attorney-in-fact for each Unit Owner and for each Mortgagee and Eligible Mortgage Holder and for each owner of any other interest in the Property, for purchasing and maintaining the insurance, for the collection and disposition of any insurance, including distribution pursuant to Section 1603-113(c) of the Condominium Act, for the negotiation of losses and execution of releases of liability, and for the execution of all documents, and performance of all other acts necessary to accomplish these purposes.

**§11.2 Property and Casualty Insurance Coverage, Deductible and Exclusions.** The Association shall obtain and maintain in effect a broad "special form" fire and casualty insurance policy covering the Property with extended coverage, vandalism, malicious mischief, windstorm, debris removal, cost of demolition and water damage endorsements, subject to the exclusions and limitations as may be set forth in such policies, issued by an insurance company authorized to do business in the State of Maine (which company shall also meet the ratings requirements of the Federal National Mortgage Association), insuring as a single entity the entire Property including the Common Elements, the Limited Common Elements, the Units, and the fixtures, supplies and common personal property belonging to the Association, *excepting* the land, foundations, excavations, and other similar items customarily excluded from property insurance policies and also *excepting* furniture, furnishings or other personal property supplied or installed by Unit Owners. The policy shall cover the interests of and name as insureds the Association, the Board of Directors, and all Unit Owners and their Mortgagees as their insurable interests may appear.

Such blanket or master insurance policy shall be in an amount equal to one hundred percent (100%) of the then current full replacement cost of the insured Property (exclusive of the land, excavations, foundations and other similar items and perils customarily excluded from such coverage), without deduction for depreciation, but subject to such exclusions and limitations as may be set forth therein. Such insurance policy may, at the option of the Board of Directors, contain such deductible as the Board of Directors shall reasonably deem appropriate but not to exceed the lesser of \$10,000 or one (1) percent of the policy's face amount. Unless otherwise established under Rules and Regulations adopted by the Board of Directors from time to time, a Unit Owner shall be responsible for the expense of repair of damage to his or her Unit in the amount of the Association's insurance deductible. The Association shall not be responsible for the costs of repair of uninsured damage to the Unit in the amount of the insurance deductible or due to exclusions and limitations in the Association's insurance coverage unless otherwise required by the Condominium Act.

Such property and casualty insurance policy shall also include the following provisions:

(i) The following endorsements or their equivalent: (a) "no control," meaning that coverage shall not be prejudiced by any act or neglect of any occupant or Unit Owner or their agents, when such act or neglect is not within the control of the Association or the Unit Owners collectively, nor by any failure of the Association or the Unit Owners collectively, to comply with any warranty or condition with regard to any portion of the Condominium over which the Association or the Unit Owners collectively, have no

control; (b) "Construction Code Endorsement" or "increased cost of construction," (c) "agreed amount" or elimination of co-insurance clause; and (d) "inflation guard," when it can be readily obtained.

(ii) That any "no other insurance" clause shall expressly exclude individual Unit Owners' policies from its operation, so that the physical damage policy purchased by the Board of Directors shall be deemed primary coverage and any individual Unit Owners' policies shall be deemed excess coverage and/or deductible and excluded perils coverage, and in no event shall the insurance coverage obtained and maintained by the Board of Directors hereunder provide for or be brought into contribution with insurance purchased by individual Unit Owners or their Mortgagees;

(iii) The recognition of any Insurance Trust Agreement whereby the Board of Directors may designate in writing an Insurance Trustee to hold any insurance proceeds in trust for disbursement, as provided in Section 12.3 below; and

(iv) A standard "mortgagee clause" which shall: (a) provide that any reference to a mortgagee in such policy shall mean and include all holders of mortgages of any Unit, in their respective order and preference, whether or not named therein; (b) provide that such insurance as to the interest of any mortgagee shall not be invalidated by any act or neglect of the Unit owners or any persons acting under any of them; and (c) waive any provision invalidating such mortgagee clauses by reason of the failure of any mortgagee to notify the insurer of any hazardous use or vacancy.

Subject to the foregoing, the Association's insurance coverage will include betterments and improvements to a Unit installed after the original construction, but Unit Owners who arrange for the newly installed improvements should report betterments and improvements to the Association so that it may maintain adequate insurance and the Executive Board may elect to assess the increased property insurance premiums resulting from such improvements to the Owners of such Units and Limited Common Elements.

**§11.3 Casualty Losses, Adjustment and Payment; Insurance Trustee.** Any loss covered by the insurance policy maintained by the Association shall be adjusted with the Association acting through its Board of Directors, but the insurance proceeds shall be payable to the Insurance Trustee designated for that purpose, if any, as provided in the Condominium Act and otherwise to the Association, and not to any Mortgagee. Any affected Unit Owner shall have ten (10) business days after receiving notice of the Association's proposed settlement with an insurance carrier in which to dispute the amount and terms of settlement with respect to his or her Unit; if the Unit Owner objects then the Association may elect to assign such Unit damage claim to the objecting Unit Owner and its mortgagee without further liability to the Unit Owner so that the Association may settle the balance of the claim and fund repairs for the benefit of the non-objecting Unit Owners.

The Insurance Trustee or the Association as applicable shall hold any insurance proceeds in trust for Unit Owners, Mortgagees and other lien holders as their interests may appear. The

Board of Directors shall cause the Association's fidelity insurance coverage is at least equal to 100% of the amount of the insurance proceeds for the faithful performance of the duties as insurance trustee before it shall be entitled to receive such proceeds. Subject to the provisions of this Article, the Bylaws and Section 1603-113(e) of the Condominium Act, the proceeds shall be disbursed first for the repair or restoration of the damage to the Common Elements and then to the Units forming a part of the Property. If only Units are affected by the insured casualty or if the insurance proceeds are insufficient to cover all damages to the Units, then the available insurance proceeds shall be divided in proportion to the total loss among the affected Units. Unit Owners, Mortgagees and other lien holders are not entitled to receive payment of any portion of the proceeds, unless either (i) there is a surplus of proceeds after the damaged Common Elements and Units have been repaired or restored, or (ii) the decision has been made not to repair or restore the damage as provided in Section 1603-113(h) of the Condominium Act, or (iii) the Condominium is terminated in whole or part.

**§11.4 Liability Insurance.** The Board of Directors shall obtain and maintain, as a Common Expense, comprehensive general public liability insurance (including medical payments insurance) and property damage insurance in such limits as the Board may from time to time determine, insuring each Board of Directors member, the managing agent, and each Unit Owner against any liability to the public or to the Unit Owners (and their invitees, agents and employees) covering all occurrences commonly insured against for death, bodily injury or property damage, arising out of the maintenance, ownership or use of the Common Elements, and for any legal liability resulting from suits or actions related to employment contracts to which the Association is a party. Such insurance shall be issued on a comprehensive liability basis and shall contain: (i) a cross liability endorsement, under which the rights of a named insured under the policy shall not be prejudiced with respect to his or her action against another named insured; (ii) hired and non-owned vehicle coverage; (iii) a "severability of interest" endorsement, which shall preclude the insurer from denying liability to a Unit Owner because of negligent acts of the Association or of another Unit Owner; and (iv) a broad form liability extension endorsement including "personal injury," contractual liability, and other coverage commonly included in such broad form endorsement. The Board of Directors shall review such limits once each year, but in no event shall such insurance be less than two million dollars (\$2,000,000.00) covering all claims for bodily injury or property damage arising out of one occurrence.

**§11.5 Additional Required Provisions.** All insurance policies required to be carried by the Association under this Article shall in addition contain the following provisions or features:

- i. The insurer waives any right to claim by way of subrogation against the Association, the Board of Directors, the managing agent or the Unit Owners, and their respective agents, employees, guests and, in the case of the Unit Owners, the members of their households;
- ii. The Declarant, so long as the Declarant shall own any Unit, shall be protected by all such policies as a Unit Owner;
- iii. Each Unit Owner is an insured person under the policy with respect to liability arising

out of the ownership of an undivided interest in the Common Elements or membership in the Association;

- iv. The insurer waives its right to subrogation under the policy against any Unit Owner or members of his or her household;
- v. No act or omission by any Unit Owner, unless acting within the scope of his or her authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and
- vi. If at the time of a loss under the Association's policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy provides primary insurance except with respect to any applicable deductible or excluded perils and special coverage limitations.

**§11.6 Other Insurance.** The Board of Directors shall obtain and maintain as a Common Expense:

- (i) To the extent reasonably available, "directors and officers" liability insurance, to satisfy the indemnification obligations of the Association;
- (ii) Workers' compensation insurance, if and to the extent necessary to meet the requirements of law;
- (iii) Flood insurance if any or all of the Property is located in a special flood hazard area in an amount equal to the greater of 100% of the insurable value of the Property or the maximum coverage available under the appropriate national flood insurance Administration program. The Board may elect to purchase additional excess flood insurance coverage; and
- (iv) A blanket or master policy shall be obtained which includes a maximum deductible of one percent (1.00%) of the policy face amount but not to exceed \$10,000 unless approved by the Unit Owners; and
- (v) Fidelity insurance covering those employees of the Board of Directors and those agents and employees hired by the Board of Directors who handle Condominium funds, in amounts as determined by the Board of Directors; and
- (vi) Such other insurance as the Board of Directors may determine, or as may be requested by a majority of the Unit Owners or as may be required by Federal National Mortgage Association guidelines or any similar replacement national secondary mortgage market guidelines (including, without limitation, fidelity bond coverage).

**§11.7 Memoranda and Cancellation.** All insurers that shall issue an insurance policy or policies under this Article shall issue certificates or memoranda of insurance to the Association, and, upon request, to any Unit Owner or Mortgagee.

All such insurers issuing the policy may not cancel, substantially modify, or refuse to renew such policy or policies until ten (10) days, and in the case of non-payment ten (10) business days, after notice of the proposed cancellation of non-renewal has been mailed to the Association, the managing agent, each Unit Owner and each Mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

**§11.8 Owner's Separate Insurance.** Each Unit Owner should investigate and obtain at his or her own expense, a personal condominium insurance policy (for example, form type HO-6 as established by Insurance Services Office, Inc.) for damage to his or her Unit and personal property in the Unit for his or her own benefit including without limitation coverage for such portion of the deductible of the Association's deductible as the Owner may desire, for any special loss assessments made by the Association and for his or her personal liability; Each Unit Owner should also consider obtaining at his or her own expense coverage for loss of use and/or lost rental income. Provided, however, that no Unit Owner shall be entitled to exercise his or her right to acquire or maintain such insurance coverage which would decrease the amount which the Association on behalf of all Unit Owners may realize under any insurance policy maintained by the Association, or to cause any insurance coverage maintained by the Association to be brought into contribution with insurance coverage obtained by a Unit Owner. All such Unit Owner's policies shall contain waivers of subrogation in favor of the Association.

Each Unit Owner should notify the Board of Directors in writing of all betterments, upgrades and improvements made by the Unit Owner to his or her Unit; provided, however, that this sentence shall not be construed as an authorization to Unit Owners to make structural improvements to Units otherwise than in accordance with this Declaration, the Bylaws and Rules and Regulations promulgated by the Board of Directors.

Neither the Association nor its officers, directors, agents and managers shall have responsibility for ascertaining whether or not the Unit Owner maintains such personal insurance in effect, or whether all betterments, upgrades and improvements have been properly reported.

Notwithstanding any other provision of this Declaration, during the period a building or other associated improvements are under construction prior to the creation of Units therein, the Declarant shall be responsible for procuring casualty insurance on the building and the proceeds of such insurance shall be the exclusive property of the Declarant and its mortgagee.

## **ARTICLE 12 DAMAGE OR DESTRUCTION.**

**§12.1 Repair.** Any portion of the Property damaged or destroyed by a casualty shall be repaired or replaced promptly by the Association unless:

- i. The Condominium is terminated;
- ii. Repair or replacement would be illegal under any state or local health or safety statute or ordinance; or
- iii. One Hundred percent (100%) in interest of the Unit Owners vote not to rebuild,

including every owner of a Unit or Limited Common Element which would not be rebuilt, and including the consent of the Eligible Mortgage Holders as required herein.

The cost of repair or replacement in excess of insurance proceeds and reserves or not covered by insurance shall be a general Common Expense, provided that the owners of the damaged Unit shall be responsible for the costs of the repair of damage to the Unit not covered by the insurance deductible, prorated among all damaged Units if multiple Units are damaged, or such other amount established by the Rules, and for the cost of damage which is uninsured due to damage from water leaks and seepage originating from within their Unit or due to failure to maintain heat, and also for the costs of repairing damage to betterments, upgrades or other improvements unless insured under the Association's policy. For improvements in the basement or other below grade areas, such improvements are at the sole risk of the Owner; the Association shall have no responsibility for the maintenance and repair of such improvements or for mold, water intrusion or damage to such improvements.

**§12.2 Application of Insurance Proceeds.** If the entire Property is not completely repaired or replaced:

- i. the insurance proceeds attributable to the damaged Units and Common Elements shall be used to restore the damaged areas to a condition compatible with the remainder of the Condominium;
- ii. the insurance proceeds attributable to Units which are not rebuilt, including without limitation the interest in the Common Elements and in the Limited Common Elements, shall be distributed to such Unit Owners and their mortgagees; and
- iii. the remainder of the proceeds shall be held in trust to be distributed to the Unit Owners and their mortgagees in accordance with the Condominium Act.

Any loss covered by such insurance shall be adjusted with the Association, which shall exclusively represent all Unit Owners in any proceedings, negotiations, settlements or agreements. The insurance proceeds shall be paid to the Association as trustee for the Unit Owners and lien holders as their interests may appear. Mortgagees' liens shall transfer in order of priority to the insurance proceeds. Notwithstanding the provisions of this Section, Article 13 of the Declaration governs the distribution of insurance proceeds if the Condominium is terminated. If the Unit Owners vote not to rebuild any Unit, that Unit's percentage interest in the Common Elements shall be automatically reallocated to the then remaining Units in proportion to their percentage interests prior to the reallocation, and the Association shall promptly prepare, execute and record an amendment to the Declaration reflecting the reallocation. Unless a Unit Owner has requested and received written confirmation from both the Association and the Association's hazard insurance carrier of optional insurance coverage for the owner's permanent improvements and betterments within the Unit, the Unit Owner shall be responsible for the expense of repair or replacement.

Notwithstanding any other provision of this Declaration, during the period a Unit is under construction prior to the creation as a Unit and the time the Unit commences paying common

charges, the Declarant shall be responsible for procuring casualty insurance on such Unit and the proceeds of such insurance shall be the exclusive property of the Declarant and its mortgagee.

**§12.3 Utility Services/Limitation of Liability.** Except to the extent otherwise required by law, the Association shall not be liable for the failure of water supply, sewage disposal systems, drainage, electricity, data, telephone, or other services to be obtained by the Association or for injury or damages to persons or property caused by the elements or by the owner of another Unit or by any other person, or resulting from electricity, water, snow or ice which may leak, fall or flow from or settle from another Unit or any portion of the Common Elements or Limited Common Elements or from any roof, wire, pipe, drain, conduit, appliance or equipment, even if due to the alleged fault or negligence of the Association, but these provisions shall not limit the liability of another owner or person to the damaged party nor limit the scope of insurance coverage. The Association shall not be liable to the owner of any Unit for loss or damage, by theft or otherwise of property which may be stored upon or in any individual Unit or in any of the Common Elements.

No set-off, diminution or abatement of assessments for Common Expenses, Limited Common Expenses, Special Assessments or Service Charges, shall be claimed or allowed for the expense, damage or discomfort arising from the making of repairs or improvements to the Common Elements or facilities or to any Unit, or from any action taken by the Association to comply with any law, ordinance, or order of any other governmental authority.

## **ARTICLE 13 TERMINATION OF CONDOMINIUM**

**§13.1 Termination.** In accordance with the Condominium Act, the Condominium may be terminated in whole or part with the agreement of the Unit Owners to which at least eighty percent (80%) of the Votes in the Association are allocated, and that percentage of Eligible Mortgage Holders required herein and the Condominium Act. Termination shall not bar the subsequent resubmission of the Property to the Condominium Act.

**§13.2 Effect of Termination.** Upon removal of the Property from the Condominium Act, the Unit Owners shall hold the Property and any proceeds thereof as tenants in common in accordance with the Condominium Act and subject to the Condominium Act with any mortgages or liens affecting a Unit to attach in order of priority against the resulting interest.

## **ARTICLE 14. EMINENT DOMAIN.**

**§14.1 Acquisition of Unit(s).** If a Unit is acquired by eminent domain, to the extent the award is paid to the Association or is controlled by this Declaration or the Association, the award shall be applied to compensate the Unit Owner and his or her mortgagee(s), if any, for the Unit and its percentage interest in the Common Elements, whether or not any Common Elements are acquired. Upon acquisition of the Unit, its Allocated Interests shall be automatically reallocated to the remaining Units in proportion to their respective Allocated

Interests before the taking, and the Association shall promptly prepare, execute, and record an instrument reflecting the reallocations.

If part of a Unit is acquired by eminent domain, to the extent the award is paid to the Association or is controlled by this Declaration or the Association, the award shall be applied to compensate the Unit Owner and his or her mortgagee(s), if any, for the reduction in value of the Unit and its interest in the Common Elements, whether or not any Common Elements are acquired. Upon such acquisition, (i) that Unit's Allocated Interests shall be reduced in proportion to the reduction in the size of the Unit, and (ii) the portion of the Allocated Interest divested from the partially acquired Unit shall automatically be reallocated to that Unit and the remaining Units in proportion to their respective Allocated Interests, with the partially acquired Unit participating in the reallocation on the basis of its reduced Allocated Interests.

**§14.2 Acquisition of Common Elements.** If part of the Common Elements are acquired by eminent domain, the Association shall be entitled to payment of the award, subject, however, to the Condominium Act; generally the portion of the award attributable to the Common Elements taken shall be distributed to the Unit Owners and their mortgagee(s) in accordance with the Condominium Act, unless the Association rebuilds or acquires comparable elements. Any portion of an award attributable to the acquisition of a Limited Common Elements or as may otherwise benefit the Condominium as determined by a Court of competent jurisdiction must be equally divided among the owners of the Units to which that Limited Common Element was allocated at the time of acquisition in proportion to their interests in the Common Elements.

**§14.3 Rights of the Association and Mortgage Holders.** In the event of a proposed acquisition by eminent domain, the Association shall have the right but not the obligation to act and to intervene on behalf of Unit Owners. Nothing contained in this Declaration, the Bylaws or any rule or regulation adopted by the Association, however, shall entitle any Unit Owner or other person to priority over a first mortgagee of a Unit pursuant to its mortgage instrument in the right to receive eminent domain awards for the taking of Units and/or Common Elements.

## **ARTICLE 15 AMENDMENTS**

**§15.1 General.** Certain amendments to this Declaration may be made unilaterally by the Declarant in accordance with this Declaration and the Condominium Act.

In addition, certain amendments may be unilaterally executed and recorded by the Association as described in Condominium Act Sections 1601-107, Eminent Domain, 1602-108(c), Allocation of Limited Common Elements, 1602-112(a), Relocation of Boundaries Between Adjoining Units, 1602-113, Subdivision of Units and 1602-117(a), Amendment of Declaration, and certain amendments to this Declaration may be made by certain Unit Owners under Sections 1602-108(b), Reallocation of Limited Common Elements, 1602-112(a), Relocation of Boundaries Between Adjoining Units, 1602-113(b), Subdivision of Units, or



1602-118(b) of the Condominium Act.

Otherwise subject to the other provisions of this Declaration and of the Condominium Act, this Declaration and the accompanying Plats and the Plans may be amended as follows:

- (a) *Before Any Conveyance.* Prior to the conveyance of any Unit by the Declarant to a third party purchaser (other than as security for an obligation), the Declarant shall have the right to unilaterally amend and re-amend this Declaration in any manner that the Declarant may deem appropriate.
- (b) *After First Conveyance.* After the first conveyance of Unit by a Declarant to a third party purchaser, the terms of the following procedures shall apply to an amendment of this Declaration:
  - (i) *Development and Special Declarant Rights.* Notwithstanding any other provision of this Declaration, the Declarant acting unilaterally may record amendments to this Declaration which result from the exercise of Development and Special Declarant Rights pursuant to this Declaration and/or the Act.
  - (ii) *Proposal and Notice.* An amendment to the Declaration may be proposed by either by the Board of Directors or by Unit Owners holding at least ten (10) percent of the votes in the Association. Notice of the subject matter of a proposed amendment, including the proposed text thereof, shall be included in the notice of any meeting in which a proposed amendment is to be considered, and such notice shall be given to all Unit Owners and all eligible Mortgage Holders.
  - (ii) *Approval.* The amendment shall be adopted if it receives the affirmative vote or written consent of Sixty-seven percent (67%) or more of the total percentage in interest of all votes in the Association (or such lesser percentage as set forth in §1602-117 of the Maine Condominium Act, as may be amended) in all cases and such Eligible Mortgage Holders, if any, as may be required herein. Unit Owners and mortgagees may express their approval in writing or by proxy. Provided however that no amendment may change the class of uses to which a Unit may be put without the unanimous consent of the Unit Owners. Except as specifically provided to the contrary in this Declaration or the Act, no amendment may alter the boundaries of a Unit or the Allocated Interests allocated to a Unit without the unanimous consent of all affected owners.
  - (iii) *By Written Agreement.* In the alternative, an amendment may be made by an agreement signed by the record owners of Units to which are allocated one hundred percent (100%) of the Units in the manner required for the execution of a deed and acknowledged by at least one of them, together with any required approval by Eligible Mortgage Holders, and such amendment shall be effective when certified and recorded as provided below.

**§15.2 Proviso; Consent of Declarant.** No amendment of this Declaration shall make any change which would in any way affect any of the rights, privileges, powers and options of the Declarant, its successors or assigns, unless the Declarant shall approve such amendment.

**§15.3 Notice, Execution and Recording.** After each amendment to this Declaration adopted by the Association pursuant to this Article has been recorded, notice thereof shall be sent to all Unit Owners and to all Eligible Mortgage Holders, but failure to send such notices shall not affect the validity of such amendment. A certificate of each such amendment shall be executed and acknowledged by such officer(s) or director(s) of the Association designated for that purpose by the Bylaws. The amendment shall be effective when such certificate and copy of the Amendment are recorded.

**§15.4 Notice and Challenge.** No action to challenge the validity of an amendment to this Declaration adopted by the Association may be brought more than one (1) year after such amendment is recorded.

## **ARTICLE 16 GENERAL PROVISIONS**

**§16.1 Enforcement.** A failure to comply with this Declaration, the Bylaws, and the Rules and Regulations adopted pursuant thereto shall entitle the Association to (a) take court action, including without limitation suit for injunctive relief, and/or (b) take such further action as permitted under the Governing Documents, (c) to impose fines and penalties in accordance with the Rules and Regulations adopted from time to time, and/or (d) enter the Unit or Common Elements in which such violation or breach exists and summarily to abate and cure the violation at the expense of the Unit Owner, and the Board of Directors shall not be deemed guilty in any manner of trespass when enforcing these terms. The exercise of any one remedy shall not preclude the exercise of other remedies provided by law, the Condominium Act, this Declaration or in the Bylaws. In any such enforcement action or proceeding the Association shall be entitled to recover the costs of the proceeding, including reasonable attorney's and paralegal's fees and expenses all with interest at the rate of 18% per annum.

A delay or failure of the Board of Directors to enforce any covenant, restriction or other provision of this Declaration, the Condominium Act, the Bylaws, or the Rules and Regulations adopted pursuant thereto, shall not constitute a waiver of the right to do so thereafter.

**§16.2 Units Not Yet Separately Assessed.** In the event that for any year real estate taxes are not separately taxed and assessed to each separate Unit Owner but are taxed on the Property as a whole, then each Unit Owner shall pay his proportionate share thereof in accordance with his respective Common Expense Liabilities.

**§16.3 Conflict.** If any provision of this Declaration, the Bylaws, or the Rules and Regulations conflicts with any applicable laws, including, but not limited to, the Condominium Act, then the laws shall be deemed controlling; but the validity of the remainder of this Declaration, the Bylaws, and Rules and Regulations, and the application of any such provision,

section, clause, phrase, or word in other circumstances shall not be affected thereby.

**§16.4 Severability.** The invalidity of any provision of this Declaration shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this Declaration, and in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

**§16.5 Waiver.** No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same irrespective of the number of violations or breaches which may occur.

**§16.6 Captions.** The headings in this Declaration are for purposes of reference only, and shall not limit or otherwise affect the meaning hereof. The table of contents is attached to this Declaration for purposes of reference and convenience only, and shall neither limit nor otherwise affect the meaning of this Declaration. References in this Declaration to Articles, and Schedules without references to the document in which they are contained are references to this Declaration. Schedules are attached to and incorporated by reference into this Declaration.

**§16.7 Gender, Number, Etc.** The use of the singular number in this Declaration shall be deemed to include the plural, the plural the singular, and the use of any one gender shall be deemed applicable to all genders.

**§16.8 Power to Interpret.** Any dispute or disagreement with any person other than the Declarant with respect to interpretation or application of this Declaration or the Bylaws or the Rules and Regulations shall be determined by the Board of Directors, which determination shall be final and binding on all parties.

**§16.9 Disputes with Declarant and Arbitration.** In any dispute between one or more Unit Owners and the Declarant regarding the Common Elements, the Board of Directors shall act for the Unit Owners, and any agreement with respect thereto by the Board of Directors shall be conclusive and binding upon the Unit Owners.

All claims, disputes and other matters in question between the Declarant, on the one hand, and the Association or any Unit Owner(s), on the other hand, arising out of or relating to a Unit, the Common Elements, the Limited Common Elements, this Declaration, the Bylaws, the Rules and Regulations, or the deed to any Unit or the breach thereof, or the course of dealing between any Unit Owner, the Association and the Declarant, except for claims which have been waived by the acceptance of a deed, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining unless the parties mutually agree otherwise in writing. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance applicable law in any court having jurisdiction thereof.

## ARTICLE 17

## NOTICES

### §17.1 Notices.

(a) *To Unit Owners.* All notices, demands, bills and statements or other communications affecting the Condominium shall be given to Unit Owners by the Association in writing and shall be delivered in hand, delivered to the Unit, or sent by United States mail, postage prepaid, or if the Unit Owner consents, by electronic mail. Regular monthly common dues statements may be electronically mailed and do not need to be sent by United States mail. If such notification is of a default or lien, then it shall be sent by registered or certified United States mail, return receipt requested, postage prepaid, addressed to the Unit Owner at the address which the Unit Owner shall designate in writing and filed with the Secretary of the Association, or if no such address is so designated, the address of the Unit of such Unit Owner who is the record owner thereof.

(b) *Notice to the Association.* All notices, demands, statements or other communications affecting the condominium given by the Unit Owners to the Association shall be in writing, and shall be deemed to be delivered personally, securing a written receipt therefore, or sent by United States mail, postage prepaid, return receipt requested, addressed to the Association at the principal office of the managing agent, if any, and to the Secretary of the Association at the Secretary's address.

(c) *Notice to Eligible Mortgage Holder.* All notices, demands, statements or other communications affecting the Condominium given by the Association to any Eligible Mortgage Holder shall be in writing and shall be delivered personally, securing a written receipt, or sent by United States mail, postage prepaid, addressed to the Eligible Mortgage Holder at the address identified pursuant to the notice given to the Association when it became an Eligible Mortgage Holder.

[SIGNATURE PAGE TO FOLLOW]

WITNESS its hand and seal as of \_\_\_\_\_, 2025.

WINDHAM VILLAGE APARTMENTS LLC

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Name:  
Its:

STATE OF MAINE  
COUNTY OF CUMBERLAND, ss. \_\_\_\_\_, 2025

Personally appeared before me the above-named \_\_\_\_\_, \_\_\_\_\_ of  
Windham Village Apartments LLC, and acknowledged the foregoing Declaration to be his free  
act and deed in his said capacity, and the free act and deed of Windham Village Apartments  
LLC.

\_\_\_\_\_  
\_\_\_\_\_  
Maine Attorney at Law | Notary Public  
Name:  
Commission Expiration:

EXHIBIT A  
[Legal Description]

A certain lot or parcel of land located in the Town of Windham, County of Cumberland and State of Maine, being more particularly described as follows:

**Unit 1** located in the Windham Village Master Condominium situated in the Town of Windham, County of Cumberland and State of Maine, established under the Declaration of Condominium of Windham Village Master Condominium, dated \_\_\_\_\_, 2025, and recorded in the Cumberland County Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_, (the "Master Condo Declaration"), and as shown on the condominium plat entitled "\_\_\_\_\_" made by Owen Haskell, Inc., dated \_\_\_\_\_, 2025, and recorded in the Cumberland County Registry of Deeds in Plan Book \_\_\_\_\_, Page \_\_\_\_\_ (the "Master Condo Plat").

Said Unit, and such Unit's undivided interest in the Common Elements of the Condominium, and the Limited Common Elements appurtenant thereto, are conveyed TOGETHER WITH and SUBJECT TO the following matters of record:

1. The terms, provisions, rights and easements set forth or referred to in the Maine Condominium Act, the Master Condo Declaration, the Master Condo Plat, the Bylaws, and Rules and Regulations (if any), of the Windham Village Master Condominium Association;
2. Rights and easements granted to Central Maine Power Company and New England Telephone and Telegraph Company by C. Harlan Chaplin and Lottie M. Chaplin in an instrument dated November 17, 1971 and recorded in Book 3211, Page 575.
3. Rights and easements granted to Central Maine Power Company by George C. Shaw Company in an instrument dated November 20, 1978 and recorded in Book 4371, Page 163.
4. Site Location Order Request for Transfer Findings of Fact and Order #59-4332-05250, made by the Department of Environmental Protection, State of Maine, dated January 30, 1979 and recorded in Book 4381, Page 328, as affected by a Site Location of Development Act Transfer Findings of Fact and Order # L-04332-23-E-T, made by the Department of Environmental Protection, State of Maine, dated August 16, 2011 and recorded in said Registry of Deeds in Book 38428930, Page 24, as affected by a Site Location of Development Act Transfer Findings of Fact and Order # L-04332-23-G-T, made by the Department of Environmental Protection, State of Maine, dated July 26, 2021 and recorded in Book 38487, Page 107, as affected by a Conditions of Partial Transfer (approval) of Windham Village Apartments, LLC, Board Order # L-4332-23-A-X made by the Department of Environmental Protection, State of Maine, dated November 29, 2023 and recorded in Book 40502 Page 162, as affected by a Site Location of Development Act Amended Findings of Fact and Order # L-04332-87-I-A, made by the Department of Environmental Protection, State of Maine, dated July 26,

2021 and recorded in Book 40805, Page 253.

5. Taking for purposes of Land, drainage and grading rights described in Notice of Layout and Taking by The State of Maine Department of Transportation for State Highway "113" (State Route #35) dated April 30, 1986 and recorded in Book 7175, Page 195; as affected by that certain Supplemental Notice of Taking dated December 2, 1986 and recorded in Book 7532, Page 337.
6. Terms and conditions affecting rights and easements in a 50 foot wide strip reserved by Shaw's Realty Co., in a Deed The Howland Corporation dated February 27, 1987 and recorded in Book 7664, Page 246; as corrected and re-recorded in Deed July 31, 1987 and recorded in Book 7995, Page 319.
7. Terms and conditions and rights and easements as set for in a Deed to Standby Corp. III from J & L Associates, dated February 13, 1989 and recorded in Book 8696, Page 151.
8. Terms, conditions, rights and easements (other than the appurtenant rights and easements) set forth in a Deed from Shaw's Realty Co. to the Town of Windham dated November 20, 1995 and recorded in Book 12331, Page 88.
9. Rights and easements granted to C M P Natural Gas, LLC by Shaw's Realty Co. in an instrument dated August 23, 1999 and recorded in Book 15043, Page 311.
10. Terms, conditions, restrictions, dedications, easements, conveyances, Right of Ways, Boundary Lines, and Lot Lines shown on a plan entitled Relieve Road, Route 35, North Windham, Maine, by William J. Doucet, P.L.S. 2263, dated June 7, 1995, and revised through November 10, 1995 and recorded in Plan Book 196, Pages 17 and 18, as affected by a Notice of Expiration of Subdivision Approval by the Town of Windham, dated February 8, 1999, and recorded in Book 14562, Page 334.
11. Use restrictions as contained in a Lease by and between California State Teachers' Retirement System, Landlord, and Shaw's Supermarkets, Inc., as Tenant, a Memorandum and Notice of which is dated as of June 1, 2000 and recorded on June 5, 2000 in Book 15511, Page 338.
12. Use restrictions as contained in a Lease by and between California State Teachers' Retirement System, Landlord, and Staples The Office Superstore East, Inc., as Tenant, a Memorandum of which is dated as of June 12, 2001 and recorded on July 3, 2001 in Book 16485, Page 92.
13. Terms, conditions, rights and easements (other than the appurtenant rights and easements) as set forth in that certain Easement Agreement, dated as of April 2, 2002, by and between California State Teachers' Retirement System, as Grantor, and Gorham Savings Bank, as Grantee, recorded on April 2, 2002 in Book 17490, Page 269.

14. Rights, easements, restrictions, terms and conditions as described in that certain Easement, dated as of December 9, 2002, by California State Teachers' Retirement System, as Grantor, and Maine Natural Gas Corporation, as grantee, recorded on December 30, 2002 in Book 18623, Page 164.
15. Notice of Layout and Taking by the State of Maine Department of Transportation against SP Windham Owner LLC, et al dated February 19, 2020 and recorded in Book 36541, Page 345.
16. Such state of facts as shown on the "First Amended Subdivision Shaw's Commercial Subdivision: Windham Village Apartments, 770 Roosevelt Trail, Windham, Maine" made for Windham Village Apartments LLC by Owen Haskell, Inc., dated February 5, 2024 and recorded in the Cumberland County Registry of Deeds in Plan Book 224, Page 52.
17. Easement Deed from Windham Village Apartments LLC to Portland Water District, dated June 25, 2024 and recorded in the Cumberland County Registry of Deeds in Book 40854, Page 33, as affected by a Corrective and Confirmatory Easement Deed, dated October 8, 2024 and recorded in Book 41043, Page 134.
18. Septic Field and Nitrate Easement Agreement by and between Windham Village Apartments LLC and B33 Windham II LLC, dated June 27, 2024 and recorded in Book 40857, Page 273.
19. Easement Agreement by and between Windham Village Apartments LLC and B33 Windham II LLC, dated June 27, 2024 and recorded in Book 40857, Page 290.



EXHIBIT B  
[Allocated Interests]

[illegible]

**100%**

**100%**