



September 4, 2018

Amanda Lessard, Town Planner  
Town of Windham  
8 School Road  
Windham, ME 04062

**Re: Supplemental Information  
River Road Condominium – Minor Subdivision Plan Application  
RMills, LLC - Applicant**

Dear Amanda:

Please find enclosed the following additional information pertaining to the above referenced project:

- Draft Condominium Declaration
- Building Elevation Drawings
- Legal Opinion of status of former right-of-way over property

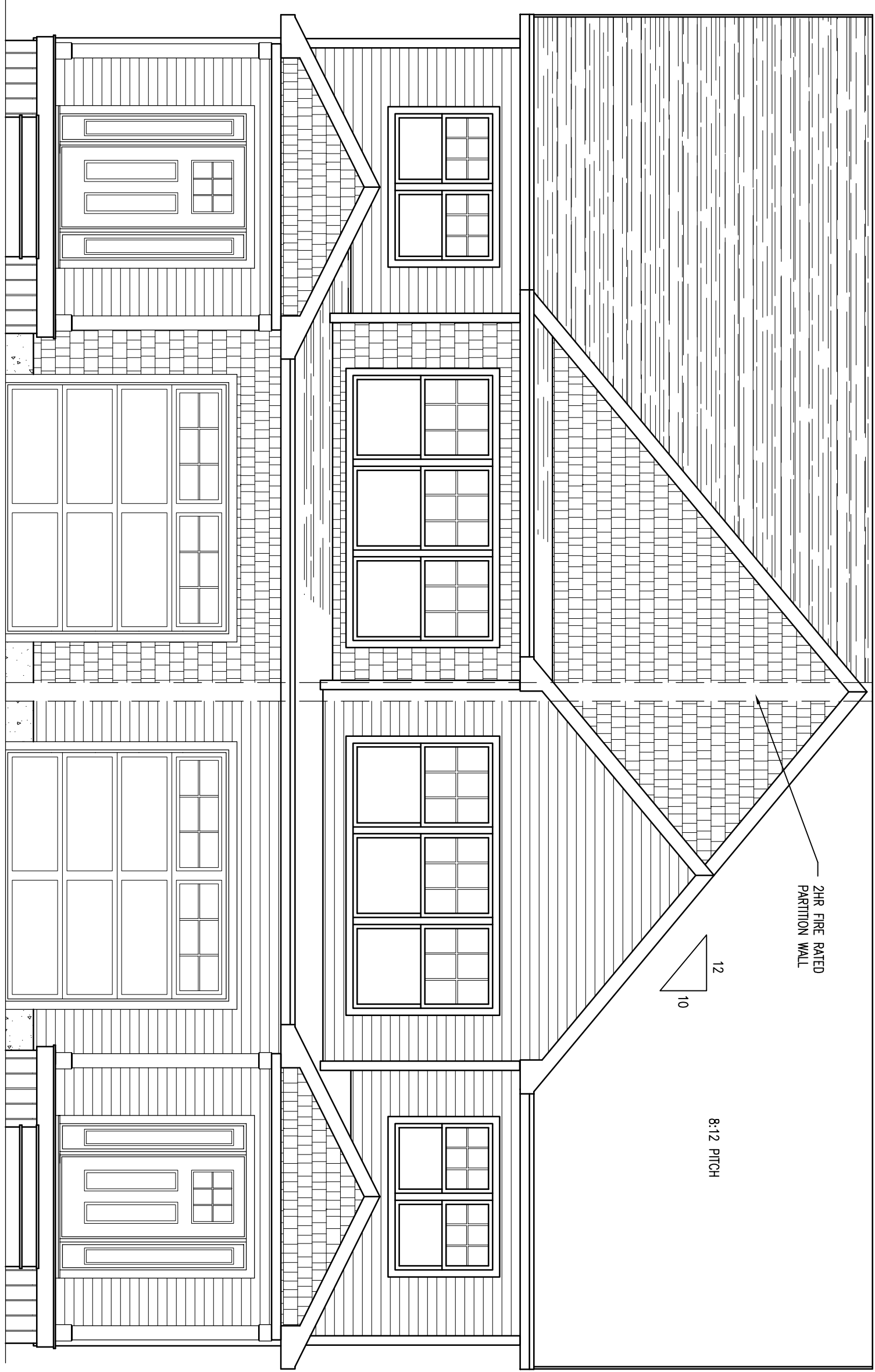
Upon your review of this information, please let us know if you have any questions or require any additional information.

Sincerely,

DM ROMA CONSULTING ENGINEERS

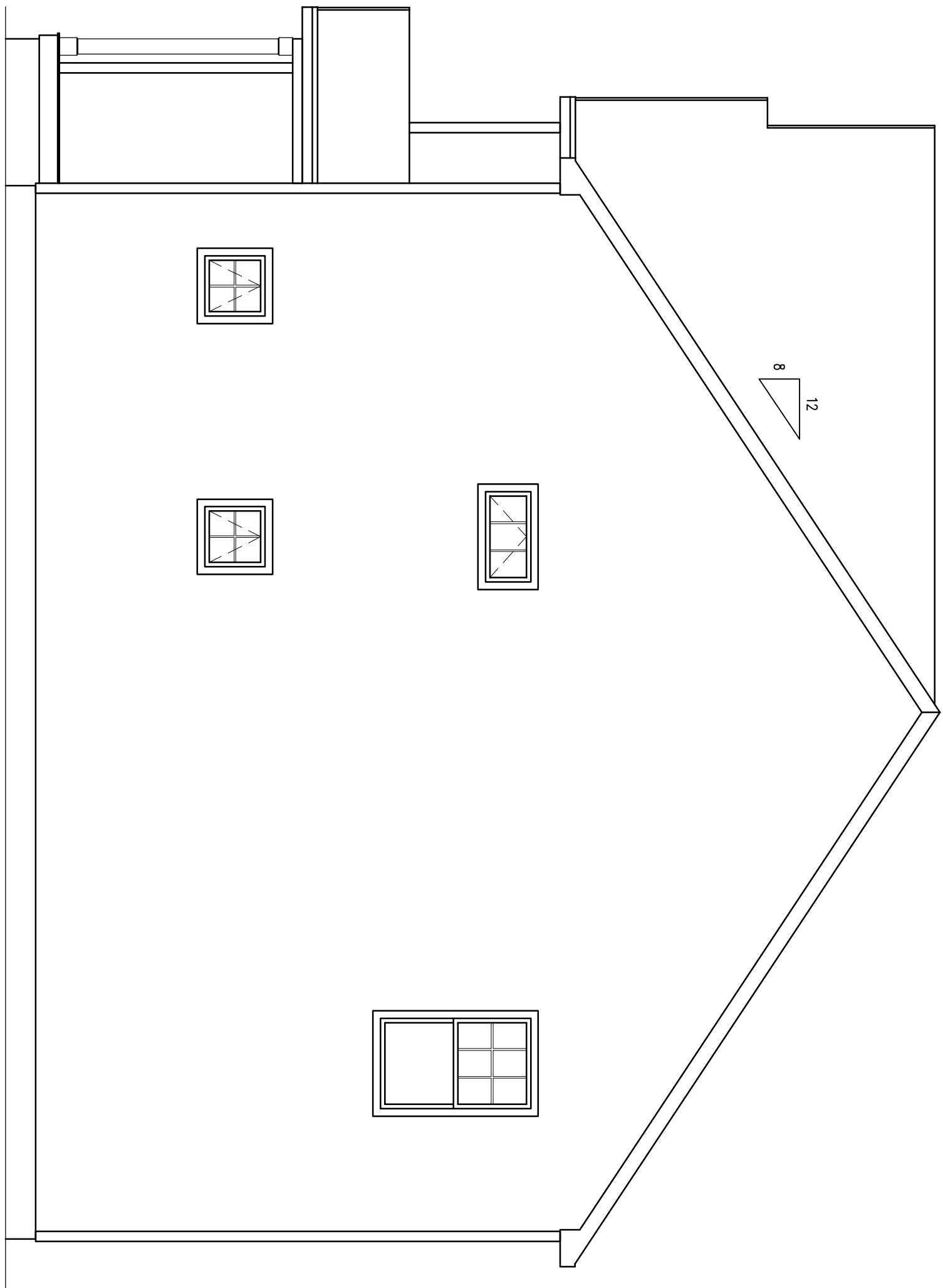
*Dustin Roma*

Dustin M. Roma, P.E.  
President



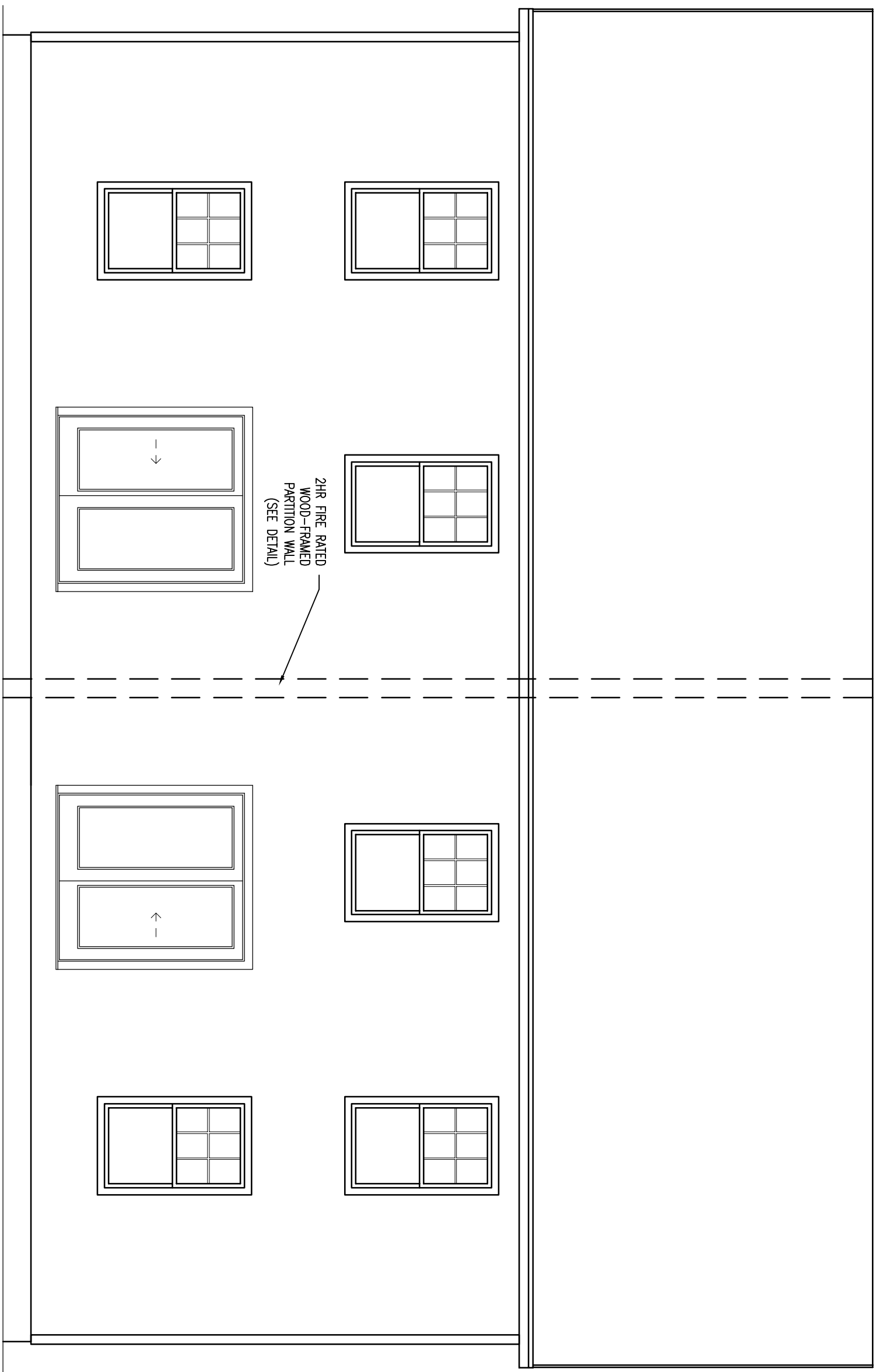
FRONT ELEVATION  
1/4" = 1'-0"

CONSTRUCTION NOTE:  
CONTRACTOR IS TO VERIFY GRADE AND ALL DIMENSIONS IN FIELD BEFORE CONSTRUCTION. DESIGN SHOWN MAY DIFFER FROM ACTUAL FINISHED CONSTRUCTION. FINAL MATERIALS, WINDOW/DOOR LOCATIONS AND SIZES, TO BE DETERMINED PER OWNER/CONT. SITE CONDITIONS, AND/OR LOCAL CODES.



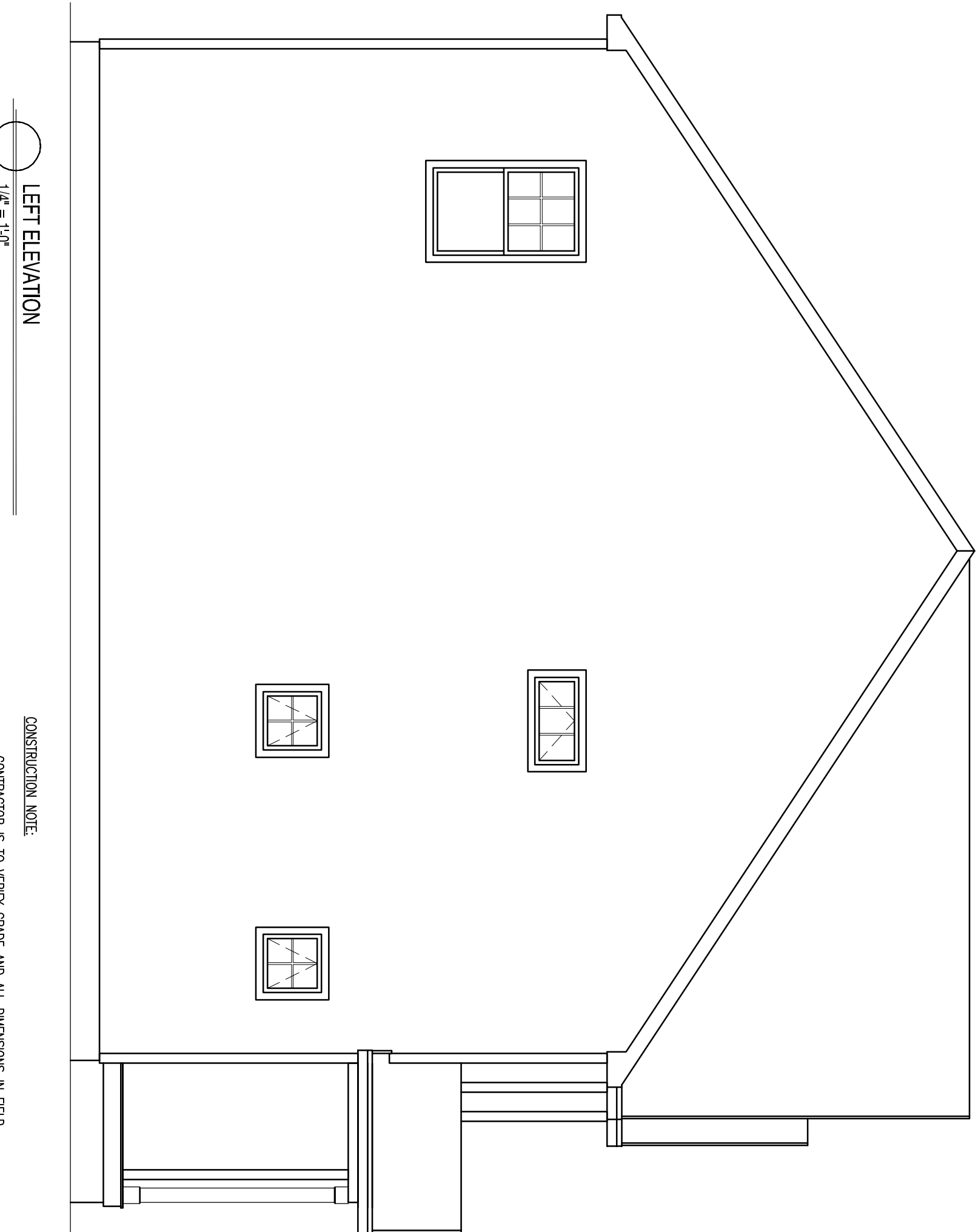
RIGHT ELEVATION  
1/4" = 1'-0"

CONSTRUCTION NOTE:  
CONTRACTOR IS TO VERIFY GRADE AND ALL DIMENSIONS IN FIELD BEFORE CONSTRUCTION. DESIGN SHOWN MAY DIFFER FROM ACTUAL FINISHED CONSTRUCTION. FINAL MATERIALS, WINDOW/DOOR LOCATIONS AND SIZES, TO BE DETERMINED PER OWNER/CONT. SITE CONDITIONS, AND/OR LOCAL CODES.



REAR ELEVATION  
1/4" = 1'-0"

CONSTRUCTION NOTE:  
CONTRACTOR IS TO VERIFY GRADE AND ALL DIMENSIONS IN FIELD BEFORE CONSTRUCTION. DESIGN SHOWN MAY DIFFER FROM ACTUAL FINISHED CONSTRUCTION. FINAL MATERIALS, WINDOW/DOOR LOCATIONS AND SIZES, TO BE DETERMINED PER OWNER/CONT. SITE CONDITIONS, AND/OR LOCAL CODES.



LEFT ELEVATION  
1/4" = 1'-0"

CONSTRUCTION NOTE:  
CONTRACTOR IS TO VERIFY GRADE AND ALL DIMENSIONS IN FIELD BEFORE CONSTRUCTION. DESIGN SHOWN MAY DIFFER FROM ACTUAL FINISHED CONSTRUCTION. FINAL MATERIALS, WINDOW/DOOR LOCATIONS AND SIZES, TO BE DETERMINED PER OWNER/CONT. SITE CONDITIONS, AND/OR LOCAL CODES.

## River Road Estates Elevations Windham, ME



DRAWINGS ARE PROVIDED FOR INFORMATIONAL/PERMITTING PURPOSES ONLY. IF USED FOR CONSTRUCTION, THE CONTRACTOR ASSUMES ALL RESPONSIBILITY FOR LOCAL CODE COMPLIANCE. ALL DRAWINGS, PLANS, SKETCHES ECT. ARE PROVIDED TO OUR CLIENTS BASED UPON INFORMATION PROVIDED BY THE CLIENT AND DRAWN IN ACCORDANCE WITH COMMON BUILDING PRACTICES AND LOCAL CODES. NONE OF THE EMPLOYEES OF DRAFTING & DESIGN ME, LLC ARE REGISTERED ARCHITECTS, ENGINEERS OR LAND SURVEYORS. ALL DIMENSIONS AND SPECIFICATIONS SHOULD BE VERIFIED BY CLIENT, CONTRACTOR, ARCHITECT AND/OR CODE OFFICER BEFORE ACTUAL CONSTRUCTION BEGINS. IF DIMENSIONS AND SPECIFICATIONS ARE NOT VERIFIED BY CLIENT AND/OR CONTRACTOR BEFORE ACTUAL CONSTRUCTION BEGINS DRAFTING & DESIGN ME, LLC WILL BE HELD HARMLESS. DRAFTING & DESIGN ME, LLC ASSUMES NO LIABILITY FOR CHANGES AND/OR REVISIONS MADE TO PLAN BY CLIENT AND/OR CONTRACTOR

### Revisions:

06/09/08

•

Date : 08/20/18  
Scale : 1/4"=1'-0"  
Drawn By: JTM  
Project: 0072718  
Sheet Number:





Michael L. Lane  
mlane@preti.com  
Direct Dial: 207.791.3286

September 4, 2018

**Via Email: [bucknico03@yahoo.com](mailto:bucknico03@yahoo.com)**

R. Bryan Mills  
13 Victoria Lane  
Windham, ME 04062

**RE: Property of RMills, LLC**

Dear Bryan:

You have asked whether the property of RMills, LLC described in the deed from Timothy R. Dolby, Personal Representative of the Estate of Lydia R. Peters to Stephan C. Loura and Richard L. Plummer, dated June 24, 2015, recorded in the Cumberland County Registry of Deeds (the "Registry") in Book 32426, Page 10 (the "Property") is burdened by any rights of way or easements. After research in the Registry and reviewing the relevant deeds and plans, I conclude that there are no such easements or rights of way. In other words, the Property is free from any record encumbrance.

Let me summarize title to the Property:

1. In 2006, the parcel depicted in green on the enclosed plan entitled "Final Major Subdivision Plan of Powder House Subdivision, River Road, Windham, ME" dated July 6, 2006, recorded in the Registry in Plan Book 208, Page 31 (the "Plan"), was conveyed by deed from Lydia R. Peters to Peter J. Busque, dated January 13, 2006, recorded in the Registry in Book 23714, Page 252.
2. Simultaneously, the parcel depicted in red on the Plan was conveyed by deed from Lydia R. Peters to Busque Construction Co., Inc. ("Busque"), dated March 23, 2015, recorded in the Registry Book 23714, Page 254.
3. Later that year, Busque Construction Co., Inc. obtained Planning Board approval (the "Approval") for a development on its property outlined in red and green on the Plan. The Approval lapsed if substantial construction of the development did not occur within two (2) years.
4. On March 23, 2015, the Approval was vacated and terminated. Any rights bestowed upon the owner of the red and green parcels depicted on the Plan by virtue of that Approval were terminated and thereafter of no force and effect.
5. At no time did Busque obtain title to the parcel depicted in blue on the Plan, which RMills, LLC owns by virtue of the deed from R. Bryan Mills to RMills, LLC, dated April 6, 2018, recorded in the Registry in Book 34761, Page 152.



September 4, 2018

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6. Reviewing the Plan, one can only assume that Busque and the Planning Board intended for the development to be accessible via Musket Drive; however, how either Busque or the Planning Board thought this was possible is beyond me. For starters, at the time of the Approval the blue lot was owned by Lydia Peters and I found no instrument in the Registry whereby she granted Busque an easement or any rights across the blue lot. Nor was Ms. Peters a co-applicant or joined in the Approval in any way. Lastly, between the red and blue parcels lies an approximately 300-foot strip of land owned by CMP. I did not find any grant from CMP to Busque of any right to cross this strip of land. Perhaps the expectation in 2007 was that Busque was going to obtain easements from CMP and Peters, thereby providing the access that is depicted on the Subdivision Plan, but nothing of that sort occurred.

In conclusion, RMills, LLC's property is not burdened by an easement or Muskie Drive.

Sincerely yours,



Michael L. Lane

MLL:gkl

Enclosure



# NET RESIDENTIAL AREA CALCULATION

TOTAL AREA OF PARCEL: 22.10 AC.  
- UETLANDS: -1.92 AC.  
- RIGHT-OF-WAY: -1.80 AC.  
- SLOPED GREATER THAN 25%: -0.95 AC.  
NET RESIDENTIAL AREA: 17.76 AC.  
17.76 AC. x 43,560 SF/AC. = 774,332.16 SF. PER LOT: 5,490 LOTS ALLOWED  
TOTAL NUMBER OF PROPOSED LOTS: 14 LOTS

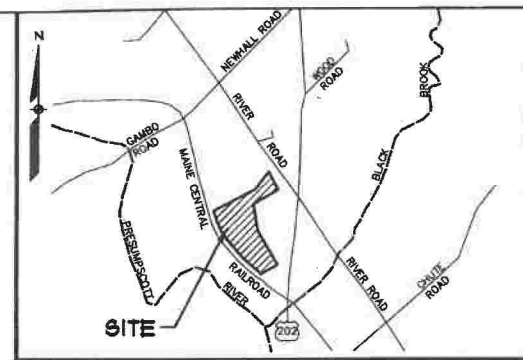
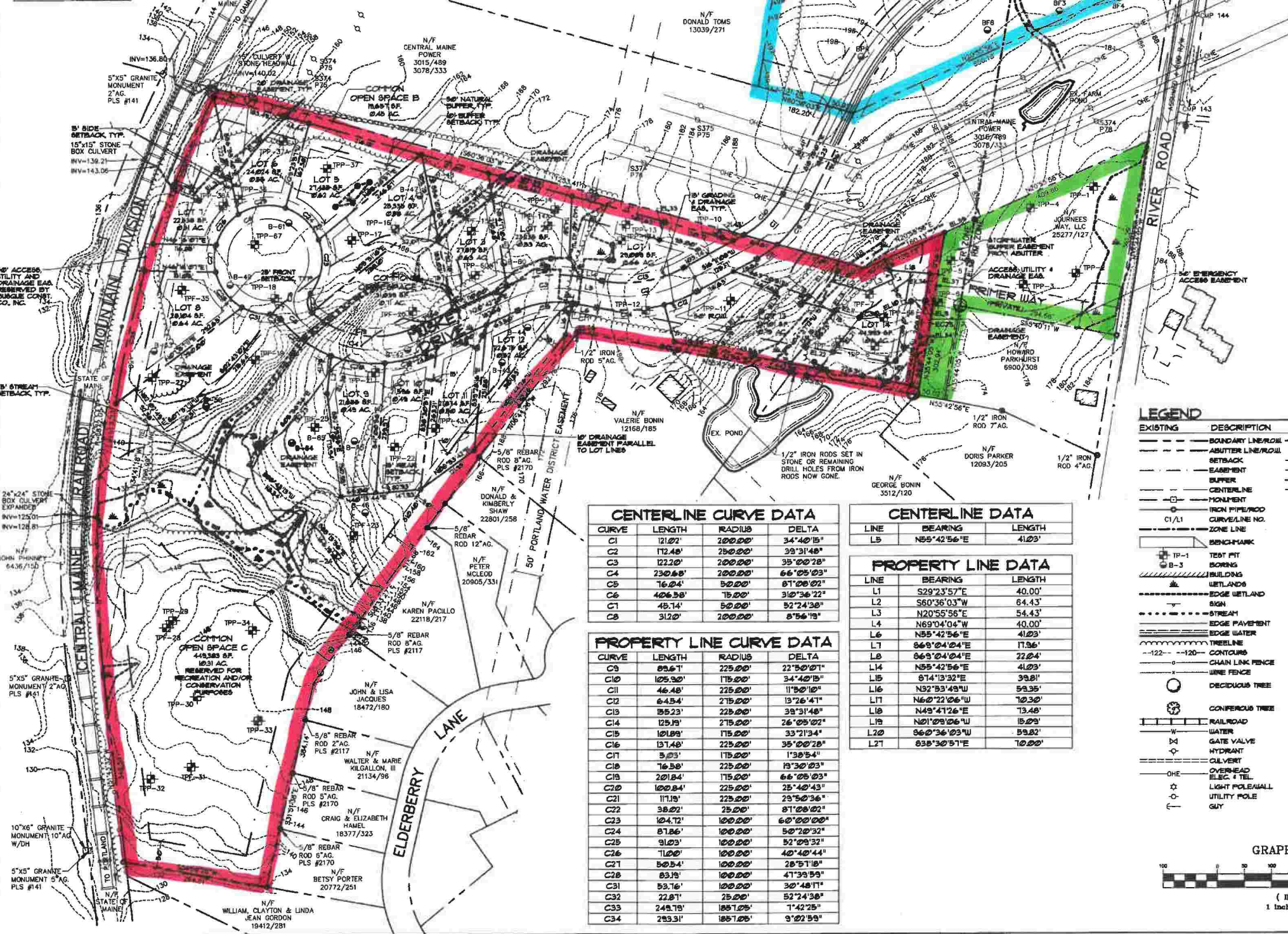
LOT #	TAX MAP #
1	B-1A-1
2	B-1A-2
3	B-1A-3
4	B-1A-4
5	B-1A-5
6	B-1A-6
7	B-1A-7
8	B-1A-8
9	B-1A-9
10	B-1A-10
11	B-1A-11
12	B-1A-12
13	B-1A-13
14	B-1A-14

## EASEMENT LINE DATA

LINE	BEARING	LENGTH
EL9	N49°41'26"E	216.1'
EL10	N20°55'56"E	612.0'
EL11	S60°36'03"W	47.16'
EL12	N20°43'12"W	84.48'
EL13	N20°43'12"W	55.07'
EL21	N20°10'12"W	79.39'
EL22	N56°18'39"E	52.95'
EL23	N20°13'53"W	56.65'
EL24	N16°34'02"E	67.62'
EL25	S20°13'44"E	46.53'
EL26	S11°22'19"W	28.43'
EL28	S20°14'39"W	44.73'
EL29	N19°42'03"W	44.19'
EL30	N22°12'07"W	151.04'
EL31	S20°11'56"W	73.58'
EL32	S26°41'02"W	53.11'
EL33	N29°23'57"E	35.00'
EL34	N54°15'55"E	29.00'
EL35	N22°34'12"W	84.50'
EL36	S20°18'51"W	15.04'
EL37	S55°40'11"W	50.00'
EL38	S35°44'05"E	111.71'
EL39	S20°55'56"W	59.84'

## EASEMENT LINE CURVE DATA

CURVE	LENGTH	RADIUS	DELTA
EC29	25.10'	50.00'	28°51'29"
EC30	34.62'	50.00'	35°40'01"



## GENERAL NOTES:

- THE RECORD OWNER OF THE PARCEL IS BUSQUE CONSTRUCTION CO., INC. BY DEED TO BE RECORDED AT THE CUMBERLAND COUNTY REGISTRY OF DEEDS.
- THE PROPERTY IS SHOWN AS LOT 1A ON THE TOWN OF WINDHAM TAX MAP 5 AND IS LOCATED IN THE FAIRY RESIDENTIAL (FR) ZONE AND THE MEDIUM DENSITY RESIDENTIAL (MD) ZONE.
- SPACE AND BULK CRITERIA:  
FAIRY RESIDENTIAL (FR) ZONE  
NET RESIDENTIAL DENSITY: 10,000 - 30,000 SF.  
MIN. LOT SIZE: 10,000 SF.  
MIN. STREET FRONTAGE: 100 FEET  
MIN. FRONT YARD: 25 FEET  
MIN. SIDE YARD: 5 FEET  
MIN. REAR YARD: 10 FEET  
MIN. ACCESSORY BLDG. SETBACK: 10 FEET  
MAX. BUILDING HEIGHT: 28 FEET  
MAX. ACCESSORY BLDG. HEIGHT: 28 FEET  
MAX. BUILDING COVERAGE: 25%  
TOTAL AREA OF PARCEL: 22.10 AC.
- BOUNDARY AND TOPOGRAPHIC INFORMATION SHOWN HEREON IS BASED UPON A FIELD SURVEY BY SEBAGO TECHNICS, INC. TO THE BEST OF OUR KNOWLEDGE AND BELIEF. DEEDS AND SUPPORTING INFORMATION ACCURATELY REFLECTS THE TRUE CONDITIONS OF THE PROPOSED SUBDIVISION AT THE TIME THE SURVEY WAS PERFORMED.
- LOTS 1 THROUGH 14 WILL BE ACCESSED OFF MARKET DRIVE IN COMMON WITH ALEXANDER ESTATES SUBDIVISION OFF RIVER ROAD AND CROSSING LAND OF CENTRAL MAINE POWER COMPANY. AN EASEMENT IS IN PLACE TO
- A WETLAND DELINEATION WAS PERFORMED ON THIS PROJECT SITE BY GARY ALEXANDER ESTATES SUBDIVISION OFF RIVER ROAD AND CROSSING LAND OF CENTRAL MAINE POWER COMPANY. THIS DELINEATION CONFORMS TO THE STANDARDS AND METHODS OUTLINED IN THE 1987 WETLANDS DELINEATION MANUAL, AUTHORED AND PUBLISHED BY THE U.S. ARMY CORPS OF ENGINEERS. ALL WETLANDS WITHIN THE PROPOSED DEVELOPMENT AREA HAVE BEEN LOCATED BY GROUND SURVEY.
- EACH LOT WITH IN FOLDER HOUSE SUBDIVISION WILL BE SERVICED BY UNDERGROUND SERVICE LINES. WATER SERVICE WILL BE VIA AN 8" AND 4" LINE OFF RIVER ROAD. ELECTRIC, TELEPHONE AND CABLE TV WILL BE UNDERGROUND AND SERVICED THROUGH AN EXTENSION OF THE LINES THROUGH THE ADJACENT ALEXANDER ESTATES SUBDIVISION AND CROSSING LAND OF CENTRAL MAINE POWER COMPANY.
- THE FIFTY FOOT (50') BUFFER SHALL BE MAINTAINED IN A NATURAL VEGETATIVE STATE AND SHALL NOT BE CUT EXCEPT FOR THE CREATION OF PEDESTRIAN ACCESS AND/OR REMOVAL OF DEAD, DISEASED OR STORM DAMAGED TREES. THE BUFFERS SHALL BE SUBJECT TO THE REQUIRED STORMWATER TREATMENT INFRASTRUCTURE WITHIN THE DEVELOPMENT.
- ALL COMMON OPEN SPACE AREAS SHALL BE RESERVED FOR RECREATION AND/OR CONSERVATION PURPOSES.
- THE ENTIRE SUBDIVISION SHALL BE DEVELOPED AND/OR MAINTAINED AS DEPICTED ON THE SUBDIVISION PLANS AND IN ACCORDANCE WITH ALL ACCOMPANYING WRITTEN SUBMITTAL DOCUMENTS AND IN ACCORDANCE WITH ANY CONDITIONS ATTACHED BY THE PLANNING BOARD. APPROVAL BY THE TOWN PLANNER SHALL BE REQUIRED FOR ANY FUTURE ALTERATIONS TO OR DEVIATION FROM THE APPROVED SUBDIVISION PLANS, INCLUDING WITHOUT LIMITATION: TOPOGRAPHY, DRAINAGE, LANDSCAPING, RETENTION OF WOODS OR LAWN AREAS, ACCESS, UTILITIES, SIZE, LOCATION AND SURFACING OF PARKING AREAS, AND LOCATION AND SIZE OF BUILDINGS.
- BUILDINGS WITHIN THE LOTS SHOWN ON THE PLAN SHALL BE CONSTRUCTED WITH PROVISIONS FOR EITHER OF THE FOLLOWING:  
A. A POSITIVE FREE OUTLET FOUNDATION DRAIN, WHEREBY THE FOOTING ELEVATIONS SHOULD BE SET AS ESTABLISHED BY THE BUILDING OR  
B. ANY OTHER FOUNDATION DRAINAGE SYSTEM, SUCH AS A RIMP HOLE, WHEREBY THE BOTTOM OF THE FOOTING ELEVATION SHALL BE SET AT LEAST 12" ABOVE THE LIMITING GROUNDWATER LEVEL AS DETERMINED BY A LICENSED SITE EVALUATOR AND APPROVED BY THE TOWN OF WINDHAM CODE ENFORCEMENT OFFICER.
- FAILURE TO COMPELLE SUBSTANTIAL CONSTRUCTION OF THE SUBDIVISION PLAN WITHIN TWO (2) YEARS OF DATE OF FINAL PLANNING BOARD APPROVAL OF THE PLAN SHALL RENDER THE PLAN NULL AND VOID.
- LOTS 1, 2, 3, 4, 7, AND 8 SHALL BE CONSTRUCTED WITH A ROOF EDGE DRAIN LINE TO PROVIDE ADEQUATE STORMWATER TREATMENT; ROOF EDGE DRAIN LINE SHALL BE MAINTAINED BY CONTRACTOR UNTIL SUCH TIME IT IS TAKEN OVER BY THE HOMEOWNER.
- AREAS IDENTIFIED AS STORMWATER MEADOW BUFFER AND STORMWATER FORESTED BUFFER, LIMITED DISTURBANCE SHALL BE SUBJECT TO DEED RESTRICTIONS.

EXISTING	DESCRIPTION	PROPOSED
---	BOUNDARY LINE/ROW	---
---	SETBACK	---
---	EASEMENT	---
---	BUFFER	---
---	CENTERLINE	---
---	YONEMENT	---
---	IRON PIPE/ROD	---
---	CURVE/LINE NO.	---
---	ZONE LINE	---
---	TEST PIT	---
---	BORINGS	---
---	BUILDINGS	---
---	WETLANDS	---
---	EDGE WETLAND	---
---	SIGN	---
---	STREAM	---
---	EDGE PAVEMENT	---
---	EDGE WATER	---
---	TREELINE	---
---	CONTOURS	---
---	CHAIN LINK FENCE	---
---	WIRE FENCE	---
---	DECIDUOUS TREE	---
---	CONIFEROUS TREE	---
---	RAILROAD	---
---	WATER	---
---	GATE VALVE	---
---	HYDRANT	---
---	CULVERT	---
---	OVERHEAD	---
---	SEC. 1 TEL.	---
---	LIGHT POLE/WALL	---
---	UTILITY POLE	---
---	GUY	---

## GRAPHIC SCALE



## APPROVAL: TOWN OF WINDHAM PLANNING BOARD

12-10-07 DATE  
James G. Sajo, Chairman  
Steve R. Adams  
Karl Williams

STATE OF MAINE  
CUMBERLAND COUNTY SS REGISTRY OF DEEDS  
RECEIVED 12/10/07  
AT 9:37 AM AND RECORDED IN  
PLAN BOOK 203 PAGE 31  
ATTEST: Pamela E. Farley REGISTRAR

Sebago Technics  
Engineering Department You Can Build On  
One Oak Hill Rd.  
Windham, ME 04098-1339  
Tel: (207) 859-0277

FINAL MAJOR SUBDIVISION PLAN  
OF  
POWDER HOUSE SUBDIVISION  
RIVER ROAD  
WINDHAM, ME  
FOR RECORD OWNER:  
BUSQUE CONSTRUCTION CO., INC.  
6 SAGADY POINT ROAD  
WINDHAM, ME 04062

DATE: 07-06-08 SCALE: 1"=100'  
SHEET 2 OF 11



**DRAFT – 9.4.18**

DECLARATION OF CONDOMINIUM  
OF  
RIVER ROAD ESTATES CONDOMINIUM

Windham, Maine

2018

DECLARATION OF CONDOMINIUM  
OF  
RIVER ROAD ESTATES  
WINDHAM, MAINE

THIS DECLARATION OF CONDOMINIUM is made this       day of       2018, by RMILLS, LLC, a Maine limited liability company (the "Declarant") with a place of business at 13 Victoria Lane, Windham, Maine 04062, as the owner in fee simple of the Real Estate (as hereinafter defined).

ARTICLE I  
SUBMISSION

Section 1.1. Property. Declarant, the owner in fee simple of the real estate described in Exhibit A attached hereto and made a part hereof (the "Real Estate") situated in the Town of Windham, County of Cumberland and State of Maine, hereby submits the Real Estate, together with and subject to all easements, rights and appurtenances thereto belonging and the Buildings now or hereafter constructed thereon (collectively, the "Property") to the provisions of Chapter 31 of Title 33 of the Maine Revised Statutes Annotated, as the same may be amended from time to time, known as the Maine Condominium Act (the "Act") and hereby creates with respect to the Property a condominium to be known as "River Road Estates" (the "Condominium"). The Condominium consists of the land described in Exhibit A and those Units listed in Exhibit B, attached hereto and made a part hereof, and depicted on the Plats and Plans (as hereinafter defined). The maximum number of Units the Declarant reserves the right to create is \_\_\_\_\_.

Section 1.2. Address of Condominium. The address of the Condominium is:

River Road Estates  
River Road  
Windham, Maine 04062



## ARTICLE 2 DEFINITIONS

Section 2.1. Terms Defined in the Act. As provided in Section 1603-103 of the Act, capitalized terms not otherwise defined in this Declaration or in the Plats and Plans, shall have the meanings specified or used in Section 1603-103 of the Act.

Section 2.2. Terms Specifically Defined in this Declaration. In addition to the terms defined above, the following terms shall have the following meanings in this Declaration, the Bylaws, and Plats and Plans:

- (b) "Act" means the Maine Condominium Act as defined in Section 1.1 above.
- (c) "Association" means the Unit owners' association of the Condominium, which shall be known as River Road Estates Condominium Owners Association, a non-profit and non-stock corporation organized and existing under Title 13-B of the Maine Revised Statutes Annotated, as amended. It is the association of the Unit owners acting as a group in accordance with the Condominium Documents and the Act.
- (d) "Budget" has the meaning assigned in Section \_\_\_\_.
- (e) "Buildings" (or in the singular, a "Building") means any residential, commercial, service or recreational structure or other improvement.
- (f) "Bylaws" means the document having that name and providing for the governance of the Association, pursuant to Section 1603-106 of the Act, as such document may be amended from time to time.
- (g) "Common Elements" (or in the singular, a "Common Element") means those parts of the Property either described in the Act as being common elements or described in this Declaration or in the Plats and Plans as being common elements.
- (h) "Common Expenses" means expenditures made by or financial liabilities of the Association together with any allocations to reserves.
- (i) "Condominium" means the condominium described in Section 1.1. above.
- (j) "Condominium Documents" means the Declaration, Plats and Plans, Bylaws and Rules and Regulations.
- (k) "Declarant" means RMILLS, LLC, a Maine limited liability company, its successors and assigns.
- (l) "Declarant Control Period" shall have the meaning specified in paragraph (b) of Section 12.2 hereof.

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

(n) "Development Rights" means those rights, if any, which the Declarant has reserved to itself as set forth in Article 15 and elsewhere in this Declaration.

(o) "Eligible Mortgage Holder" means the holder of a recorded first mortgage on a Unit which has delivered written notice to the Association in accordance with Section 1602-119 of the Act.

(p) "Executive Board" means the executive board of the Association.

(q) "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 9.3. hereof.

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

(s) "Limited Common Elements" (or in the singular, a "Limited Common Element") means those parts of the Property either described in the Act as being limited common elements or described herein or in the Plats and Plans as being limited common elements.

(t) "Monthly Assessment" means the Unit owner's share of the anticipated Common Expenses, allocated by Unit, for each month of the Association's fiscal year as reflected in the budget adopted by the Executive Board for such year.

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

(v) "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.

(w) "Plats and Plans" means the plats and plans recorded in the Cumberland County Registry of Deeds in Condominium File \_\_\_, Pages \_\_ through \_\_\_, as the same may be amended from time to time, reduced photocopies of which are attached hereto as Exhibit C.

(x) "Property" means the Property as defined in Section 1.1 above.

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



(z) "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.

(aa) "Special Assessment" means a Unit owner's share of any assessment made by the Executive Board in addition to the Monthly Assessment.

(bb) "Special Declarant Rights" means those rights which the Declarant has reserved to itself as set forth in Article 15 and elsewhere in this Declaration.

(cc) "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 or in any amendment creating such Unit.

Section 2.3. Provisions of the Act. The provisions of the 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 UNIT BOUNDARIES AND MAINTENANCE RESPONSIBILITIES

#### Section 3.1. Unit Boundaries.

(a) The boundary lines of each Unit are as shown on the Plats and Plans and are formed by the following planes:

(1) The Unit-side surface of the walls and partitions of the Building which enclose such Unit and separate it from adjoining Units or Common Elements, the Unit to include the thickness of the finish material such as plaster or drywall;

(2) The Unit-side surface of furring around utility shafts, and other Common Elements within or passing through such Unit, the Unit to include the thickness of the finish material such as plaster or drywall;

(3) The Unit-side surface of the ceiling of the Unit and furring under and around (i) wood members and (ii) utility lines, ducts and cables, the Unit to include the thickness of the finish material such as plaster or drywall;

(4) The Unit-side surface of the undecorated finished floor of the Unit, the Unit to include the thickness of the finish material such as carpet, ceramic or resilient tile or hardwood;

(5) The Unit-side surface of the sash of windows that are set in the exterior walls of such Unit, the exterior surface of the panes of such windows and the Unit-side surface of

window sills, moldings, trim, jambs and mullions for such windows, the Unit to include the thickness of the finish material such as plaster or drywall; and

(6) The exterior surface of doors, and their sills and hardware, and the Unit-side surface of the door frames in which such doors are set, the Unit to include the thickness of the finish material such as plaster or drywall.

(b) Each Unit consists of all portions of the Building in which it is located within the aforesaid boundary lines, except the air space displaced by (i) structural members, fire walls, including gypsum drywall finish, and load bearing partitions within or passing through such Unit which are deemed to be Common Elements and (ii) other Common Elements within such Unit including, without limitation, chutes, flues, ducts, wires, conduits and pipe runs which serve more than one Unit. By way of illustration and not limitation, there is included within a Unit: (1) the air space enclosed by such boundary lines, (2) all non-load bearing partitions which are wholly contained within such boundary lines including, but not limited to, all doors, door frames, hardware, electrical outlets and wiring, telephone outlets and conduits and other equipment and devices in such partitions serving only such Unit, (3) all fixtures located within such boundary lines and serving only such Unit, and their water and waste connections, (4) all items of kitchen equipment located within such boundary lines and serving only such Unit, and such equipment's water, waste and electrical connections, (5) furnaces and HVAC units, heat pumps, exhaust fans and the grilles, registers, ventilation ducts, and related fixtures, and screens and storm windows serving only such Unit, whether or not any of the foregoing is located in any portion of the Common Elements, (6) lighting devices (including by way of illustration and not limitation, lamps and bulbs which are surface mounted on, recessed in or suspended from, ceilings, walls and partitions within or around the perimeter of such Unit) serving only such Unit, whether or not such lighting devices are themselves located entirely within the boundary lines of such Unit, (7) outlets, wires, cables, conduits, circuits and related equipment transmitting electricity for lighting and power or transmitting electrical impulses and signals (including, but not limited to, impulses and signals for telephone, telegraph and television transmission, except to the extent otherwise specifically provided herein) which serve only such Unit and which are located entirely within the boundary lines of such Unit, (8) surface mounted and recessed medicine cabinets including, by way of illustration and not limitation, all associated lighting fixtures and accessories, and (9) refrigerators, ranges, dishwashers and other appliances and the portions of their water, waste, electrical and exhaust connections located within such boundary lines and serving only such Unit.

Section 3.2. Relocation of Unit Boundaries. Relocation of boundaries between Units will be permitted subject to compliance with the provisions therefor in Section 1602-112 of the Act and subject to compliance with any conditions, restrictions or requirements imposed by the Executive Board. The cost for preparation and recordation of any documents required for the relocation of boundaries between Units shall be chargeable to the owner or owners of the Units involved as a Special Assessment.

Section 3.3. Maintenance Responsibilities.



(a) The Association, through the Executive Board, shall be responsible for maintenance, repair and replacement of the Common Elements including, but not limited to the Limited Common Elements, and such maintenance, repair and replacements as may be required for the functioning of or for the bringing of utilities, such as water, gas, electricity and sewer to the Unit shall be furnished by the Association as part of the Common Expenses. If damage is caused to (i) the Common Elements or (ii) to any other part of the Condominium for which maintenance, repairs and replacements shall be required that would otherwise be a Common Expense, by any Unit owner, or guests, tenants, family or invitees of such Unit owner, such Unit owner shall pay for such damage and such maintenance, repairs and replacement as may be determined necessary or advisable by the Association. If such maintenance, repairs and replacement would otherwise be the expense of another Unit owner, then the Unit owner causing or allowing damage to be caused shall pay for such damage. Each Unit owner shall be responsible for the cleanliness of any Limited Common Element allocated to his Unit. [In addition to the maintenance, repair and replacement of the Common Elements, the Association through the Executive Board shall arrange for or provide to each Residential Unit owner trash and garbage removal service on a regular basis with at least one pick-up each week.] The Executive Board, in its discretion, may provide the maintenance and other services described in this Section 3.3(a) either through its own employees or through independent contractors or both. The cost of the provision of such services shall be a Common Expense.

(b) Each Unit owner is responsible for the maintenance, repair and replacement of such Unit owner's Unit, including, without limitation, exterior glass windows and doors included within the Unit. Each Unit owner shall afford to the Association and other Unit owners, and to their agents and employees, access through such owner's Unit reasonably necessary for the maintenance, repair and replacement of the Common Elements.

(c) Electric, water service charges, telephone and cable television service will be separately metered and each Unit owner will be responsible for the cost of such services furnished to such owner's Unit. Utilities that are not separately metered or billed by the respective utility companies and that are used by all of the Units shall be treated as part of the Common Expenses. Electricity for lighting of the Common Elements may be provided by the Association as part of the Common Expenses. The sewer system serving the Condominium will be a Common Element and the maintenance, repair, replacement and servicing (including pumping) will be a Common Expense of the Condominium.

#### ARTICLE 4 DESCRIPTION AND ALLOCATION OF COMMON ELEMENTS AND LIMITED COMMON ELEMENTS

Section 4.1. Description of Common Elements. Common Elements shall include those portions of the Building (i) defined as such pursuant to Section 1601-103(4) and Section 1602-102(1) and (2) of the Act, except as otherwise provided herein, or (ii) as identified and designated as Common Elements in the Plats and Plans, in each case including, by way of description but not limitation, and, if applicable, within the Units' boundaries to the extent that they are constructed:

(a) Land. All lands submitted to the Condominium as described herein, except land subject to the easements set forth in Article 6 of this Declaration.

(b) Improvements. All improved surfaces, drives, curbs, sidewalks and parking spaces, subject to the easements and provisions set forth in Article 6 of this Declaration.

(c) Ornamentals and Utilities. Lawn areas, shrubbery, conduits, utility lines, and waterways, subject to the easements and provisions set forth in Article 6 of this Declaration.

(d) Utilities. Public connections for electricity, light, telephone and water not owned by the public utility or other agencies providing such services.

(e) Lighting. Any exterior lighting or other facilities not attached to a Unit and necessary to the upkeep and safety of the grounds.

(f) After-Constructed Improvements. All other improvements that may be constructed on the premises except those improvements associated with a Unit.

(g) Other Elements. All other elements of the Condominium rationally of common use and necessary to the existence, upkeep and safety thereof and, in general, all other devices or installations existing for common use.

Section 4.2. Description of Limited Common Elements. Limited Common Elements shall include those portions of the Buildings defined as such pursuant to paragraphs (2) and (4) of Section 1602-102 of the Act or as identified and designated as Limited Common Elements on the Plats and Plans, or by Section 4.3. hereof. Those portions of the Limited Common Elements serving only the Unit above, below or adjacent to such Limited Common Element, as the case may be, are Limited Common Elements allocated only to the Unit which they serve. This allocation shall not be changed without the consent of the Unit owners served or benefitted by such Limited Common Elements.

Section 4.3. Specified Limited Common Elements. The following portions of the Building or the Property are hereby designated as Limited Common Elements: shutters, awnings, window boxes, doorsteps, stoops, porches, and optional porch enclosures, if any, that are not part of the Unit, but which are adjacent to and serve only such Unit.

Section 4.4. Locations of Common and Limited Common Elements. The locations of the Common Elements and Limited Common Elements are shown on the Plats and Plans. Pursuant to Section 1602-102(4) of the Act, a shutter, awning, window box, doorstep, stoop, or porch, if any, shown adjacent to a Unit is a Limited Common Element appurtenant to that Unit.

Section 4.5. Reserved Common Elements. The Executive Board shall have the power in its discretion from time to time to grant revocable licenses in designated Common Elements to the Association or to any Unit owners and to establish a reasonable charge to such Unit owners



for the use and maintenance thereof. Such designation by the Executive Board shall not be construed as a sale or disposition of the Common Elements.

Section 4.6. 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, until the expiration of the applicable warranty period. Such rights do not include rights to add or remove real estate not deemed to be fixtures.

Section 4.7. Allocation of Common Elements. Each Unit owner shall acquire, as an appurtenance to each Unit, its Percentage Interest as set forth on Exhibit B attached hereto, as the same may be amended from time to time. The said Percentage Interest shall not be divisible from the Unit to which it appertains and shall be deemed to be conveyed or encumbered with the Unit even though such interest is not expressly mentioned or described in the conveyance or other instrument. Except as otherwise permitted under the Act or this Declaration, the Percentage Interest of each Unit owner shall not be altered without the consent of all of the Unit owners expressed in an amendment to this Declaration duly recorded. Said Percentage Interests shall be used to allocate the division of proceeds, if any, resulting from any casualty, loss, eminent domain proceedings, common surplus, or from any other disposition of the Condominium property.

#### ARTICLE 5 ALLOCATION OF PERCENTAGE INTERESTS IN COMMON EXPENSES AND VOTING RIGHTS

Section 5.1 Percentage Interests. Attached as Exhibit B hereto is a list of all Units by their Identifying Number and the Percentage Interest appurtenant to each Unit, together with an explanation of the formula by which such Percentage Interest is determined.

Section 5.2 Common Expenses. The liability allocated to each Unit for the Common Expenses of the Condominium shall be the same percentage share as the Percentage Interest set forth on Exhibit B and as such shall be determined by the same formula by which the Percentage Interest is determined.

Section 5.3 Allocation of Unit Owner's Voting Rights. Each Unit owner shall be entitled to one (1) vote for each Unit owned by such person.

#### ARTICLE 6 EASEMENTS

Section 6.1 Additional Easements. In addition to the easements provided for by the Act and the rights reserved in Article 15 of this Declaration, the following easements are hereby created:

(a) All Units shall be subject to an easement in favor of the Declarant pursuant to Section 1602-115 of the Act. The Declarant reserves the right to use any Units owned or leased by the Declarant as models, management offices, sales offices for this and other projects or customer service offices. The Declarant reserves the right to relocate the same from time to time within the Property; upon relocation, the furnishings thereof may be removed. The Declarant further reserves the right to maintain on the Units owned or leased by the Declarant and on the Common Elements such advertising signs as may comply with applicable governmental regulations, which may be placed in any location on the Units owned or leased by the Declarant and on the Common Elements and may be relocated or removed, all at the sole discretion of the Declarant. Prior to assignment as Limited Common Elements, the Declarant shall have the right to restrict the use of certain Common Element parking areas for sales purposes and to use such areas for sales purposes. Further, the Declarant shall have the right to erect temporary offices at or on any of the Common Elements for models, sales, management, customer service and similar purposes; if the Declarant ceases to be a Unit owner, the furnishings thereof may be removed by the Declarant. This easement shall continue until the Declarant has conveyed all Units in the Condominium to Unit owners other than the Declarant.

(b) The Units, Common Elements and Limited Common Elements shall be, and hereby are, made subject to easements in favor of the Declarant, other Unit owners, appropriate utility and service companies, cable television companies and governmental agencies or authorities for such utility and service lines and equipment as may be necessary or desirable to serve any portion of the Property. The easements created by this Section 6.1(b) shall include, without limitation, rights of the Declarant, any Unit owner or the providing utility or service company, or governmental agency or authority to install, lay, maintain, repair, relocate and replace gas lines, pipes and conduits, water mains and pipes, sewer and drain lines, drainage ditches and pump stations, telephone wires and equipment, television equipment and facilities (cable or otherwise), electrical wires, conduits, and equipment and ducts and vents over, under, through along and on the Units and Common Elements. Notwithstanding the foregoing provisions of this Section 6.1(b), any such easement through a Unit shall be located either in substantially the same location as such facilities or similar facilities existed at the time of first conveyance of the affected Unit by the Declarant or so as not to materially interfere with the use or occupancy of the Unit by its occupants. With respect to any utility lines or equipment serving only the Condominium and located upon the Common Elements, the Executive Board shall have the right and power to dedicate and convey title to such Common Elements to any private or public utility company. The Executive Board shall also have the right and power to convey to any private or public utility company permits, licenses and easements over the Common Elements for the installation, maintenance, repair and replacement of utility poles, lines, wires and other equipment. In addition, the Executive Board shall have the right to grant permits, licenses and easements over the Common Elements for the building and maintenance of roads and for other purposes necessary for the proper operation of the Condominium.

(c) The Declarant reserves for itself and the Association an easement on, over and under those portions of the Common Elements not located within a Building for the purpose of maintaining and/or correcting drainage of surface water in order to maintain reasonable standards of health, safety and appearance. The easement created by this Section 6.1(c) expressly includes

the right to cut any trees, bushes, or shrubbery, to grade the soil, or to take any other action reasonably determined to be necessary. The Declarant or the Association, as the case may be, shall restore the affected property as closely to its original condition as is practicable.

(d) The Common Elements (other than the Limited Common Elements) shall be, and hereby are made, subject to an easement in favor of the Unit owners and their invitees, employees, tenants and servants, the Association and the agents and employees of the Association for access, egress and ingress over, through and across each portion thereof, pursuant to such requirements and subject to such charges as the Executive Board may from time to time prescribe; provided that nothing contained herein shall create any access easement in favor of Unit owners with respect to such portions of the Common Elements that are not needed in order to gain access to one or more Units and as to which the Executive Board may from time to time determine it to be necessary or desirable to limit or control access by Unit owners or the occupants of Units, or both, including, by way of illustration and not limitation, machinery and equipment rooms, and any management agent's office; provided, however, that every Unit owner shall have an unrestricted right of ingress and egress to his Unit.

(e) The Units, Common Elements and Limited Common Elements are subject to an easement in favor of the Declarant for the purposes of construction, reconstruction, maintenance, repair, renovation, replacement or correction of the Units or Common Elements.

(f) The Common Elements and the Limited Common Elements shall be and hereby are made subject to an easement in favor of the Association and the agents, employees and independent contractors thereof for the purpose of the inspection, upkeep, maintenance, repair and replacement of the Common Elements and the Limited Common Elements.

(g) The Common Elements and the Limited Common Elements shall be and hereby are made subject to the following easements in favor of the Units benefited:

(1) For the installation, repair, maintenance, use, removal and/or replacement of pipes, ducts, heating and air conditioning systems, electrical, sewer and septic, telephone and other communication wiring and cables and all other utility lines and conduits which are part of or exclusively serve a single Unit and which pass across or through a portion of the Common Elements;

(2) For the installation, repair, maintenance, use, removal and/or replacement of overhead lighting fixtures, electrical receptacles and the like which are located in a portion of, the ceiling, wall or floor adjacent to a Unit which is a part of the Common Elements; provided that the installation, repair, maintenance, use, removal or replacement of such fixtures, receptacles and the like does not unreasonably interfere with the common use of any part of the Common Elements or impair or structurally weaken the Building;

(3) For driving and removing nails, screws, bolts and the like into the Unit-side surface of walls, ceilings and floors which are part of the Common Elements; provided that

such action will not unreasonably interfere with the common use of any part of the Common Elements or impair or structurally weaken the Building; and

(4) For the maintenance of the encroachment of any lighting devices, outlets, medicine cabinets, exhaust fans, ventilation ducts, registers, grilles and similar fixtures which serve only one Unit but which encroach into any part of any Common Element or Limited Common Element as shown on the Plat and Plans.

(h) To the extent necessary, each Unit shall have an easement for structural support over every other Unit in the Building in which it is located, the Common Elements and the Limited Common Elements, and each Unit and the Common Elements shall be subject to an easement for structural support in favor of every other Unit in that Building, the Common Elements and the Limited Common Elements.

(i) The Units and the Limited Common Elements are hereby made subject to the following easements:

(1) In favor of the Association and its agents, employees and independent contractors, (i) for inspection of the Units and Limited Common Elements in order to verify the performance by Unit owners of all items of maintenance and repair for which they are responsible, (ii) for inspection, maintenance, repair and replacement of the Common Elements or the Limited Common Elements situated in or accessible from such Units or Limited Common Elements or both, (iii) for correction of emergency conditions in one or more Units or Limited Common Elements, or both, or casualties to the Common Elements, the Limited Common Elements and/or the Units, (iv) for any of the purposes set forth in Section 6.1(j) or Section 6.1(k) hereof, and (v) to do any other work reasonably necessary for the proper maintenance of the Condominium, it being understood and agreed that the Association and its agents, employees and independent contractors shall take reasonable steps to minimize any interference with a Unit owner's use of his Unit resulting from the Association's exercise of any rights it may have pursuant to this Section 6.1(i)(1) and the following Section 6.1(i)(2) or both;

(2) In favor of the Unit owner benefited thereby and the Association and its agents, employees and independent contractors, for the installation, repair, maintenance, use, removal and/or replacement of pipes, ducts, electrical, sewer and septic, telephone, telegraph or other communication systems and all other utility lines and conduits which are part of the Common Elements and which pass across or through a portion of one or more Units.

(j) Whenever in this Declaration and the Plats and Plans a boundary line of a Unit is described as being the Unit-side surface of the undecorated finished floor of the Unit, it is intended thereby, and it is hereby declared, that the owner of such Unit shall have an easement for the purpose of affixing and removing carpeting, parquet flooring and other floor coverings; and otherwise decorating, cleaning and maintaining such surface, all at the cost and expense of the owner of such Unit; it being understood and agreed that the Association acting by its Executive Board on behalf of all Unit owners, shall, at all times while this Declaration is in effect, retain the right and duty to maintain, repair and/or replace such flooring of which said



surfaces are a part, notwithstanding the fact that such maintenance, cleaning, repair or replacement may temporarily adversely affect the Unit owner's aforesaid easement and right to use the said Unit-side surface of such undecorated finished floor.

(k) Wherever in this Declaration and the Plats and Plans a boundary line of a Unit is described as being the Unit-side surface of a designated portion of the Property, it is intended thereby, and it is hereby declared, that the owner of such Unit shall have an easement for the purpose of decorating such surfaces and affixing thereto and removing therefrom paint, wallpaper, other decorative material, pictures, mirrors, wall systems and decorative articles, and (with respect to all such portions of the Property) cleaning and maintaining such surfaces, all at the cost and expense of the owner of such Unit; except in the event of maintenance, repair or replacement occasioned by a loss insured against by the policy or policies of insurance maintained by the Association pursuant to Article 9 hereof. It is understood and agreed that the Association, acting by its Executive Board on behalf of all Unit owners, shall, at all times while this Declaration is in effect, retain the right and duty to maintain, repair and/or replace the portions of the Property of which said surfaces are a part, notwithstanding the fact that such maintenance, cleaning, repair or replacement may temporarily adversely affect the Unit owner's aforesaid easement and right to use the Unit-side surface of such portion of the Property.

(l) If construction, reconstruction, repair, shifting, settlement or other movement of any portion of the Condominium results either in the Common Elements encroaching on any Unit, or in any Unit encroaching on the Common Elements or on any other Unit, a valid easement shall exist during the period of the encroachment for the encroachment and for the maintenance thereof.

(m) Declarant, for itself, its successors and assigns, hereby declares that every Unit owner, including the Declarant as long as it owns a Unit, shall have a perpetual easement in, upon, through and over the Common Elements and Limited Common Elements to construct improvements upon such Unit owner's land area and keep, maintain, use, operate, repair, and replace such improvements. Each Unit owner shall be liable to the Association for any damage to the Common Elements as the result of such Unit owner's exercise of the easement rights described in this clause (m).

(n) All easements, rights and restrictions described and mentioned in this Declaration are easements appurtenant, running with the land and the Property, including by way of illustration but not limitation, the Units and the Common Elements, and (except as expressly may be otherwise provided herein or in the instrument creating the same) shall continue in full force and effect until the termination of this Declaration.

**Section 6.2. Reservation of Easement Rights.** Until the construction, marketing and sale 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 6.3. Certain Other Easements. The Property is subject to, and benefited by, the following easements: [to come].

## ARTICLE 7 RESTRICTIONS ON USE, SALE AND LEASE OF UNITS

Section 7.1. Use. The following restrictions shall apply to the use of the Condominium:

(a) Units (with the exception of any such Units during the time period when they are being used by the Declarant as a sample, model, management or sales office) are restricted to residential use. Such Units may not be used for any other purposes by the Unit owner or any future Unit owner. No present or future owner of any such Unit shall permit his Unit to be used or occupied for any purpose other than as a residence.

(b) No Unit owner may obstruct the Common Elements in any way. No Unit owner may store anything in or on the Common Elements other than in or on any Common Element storage area without the prior written consent of the Executive Board.

(c) No Unit 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 Unit owner may place any garbage, trash or rubbish anywhere in the Property other than in his own Unit and in or on such parts of the Common Elements as may be designated for such purpose by the Executive Board.

(d) 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) Except for a single small non-illuminated name sign or sign indicating the Unit address on the door to a Unit, no owner of any Unit (other than the Declarant in connection with its marketing and sale of the Units) may erect any sign on or in the Unit owner's Unit or any Limited Common Element which is visible from outside such Unit or from the Common Elements, without in each instance having obtained the prior written permission of the Executive Board. This provision is not intended to prevent the Executive Board from maintaining on the Common Elements a register of Unit occupants, or owners, or both.

(f) Domestic animal life (including by way of illustration, and not limitation, dogs, cats, birds and fish may be kept by a Unit owner as household pets in the Unit owner's Unit, provided that such animals: (1) are not kept for any commercial purposes; (2) are kept in strict accordance with any Rules and Regulations relating to household pets from time to time adopted or approved

by the Executive Board; (3) do not, in the judgment of the Executive Board, constitute a nuisance to others; and (4) are kept in compliance with local leash laws and animal health laws.

(g) The Executive Board may from time to time 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 Unit owners by the Association promptly after the adoption of such Rules and Regulations and any amendments thereto.

(h) Without the prior written consent of the Executive Board, the owner of a Unit shall not alter in any way any portion of his Unit which is part of the exterior facade of the Building in which it is located, including by way of example, but not by way of limitation, exterior doors.

#### Section 7.2. Sale and Lease of Units.

(a) A Unit owner, including but not limited to the Declarant, may sell or lease his Unit at any time and from time to time provided that:

(1) All tenancies must be in writing and shall be for a term of not less than thirty (30) days; and

(2) Each tenant and lease shall be subject to and be bound by all of the covenants, restrictions and conditions set forth in the Condominium Documents.

(b) This Section 7.2. shall not be deemed or construed to impair a Mortgagee's right to foreclose, accept a deed in lieu of foreclosure or sell or lease a Unit so acquired by the Mortgagee.

### ARTICLE 8 RIGHTS OF MORTGAGEES, INSURERS AND GUARANTORS

Section 8.1. Subject to Declaration. Whether or not it expressly so states, any mortgage constituting 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 Plats and Plans and any Rules and Regulations.

#### Section 8.2. Rights of Eligible Mortgage Holders.

(a) The Association shall send reasonable prior written notice by prepaid United States mail to Eligible Mortgage Holders of the consideration by the Association of the following proposed actions:

(1) The termination of the Condominium pursuant to Section 1602-118 of the Act;

(2) A change in the allocated interest of a Unit, a change in the boundaries of a Unit or a subdivision of a Unit;

(3) The merger or consolidation of the Condominium with another condominium;

(4) The conveyance or subjection to a security interest of any portion of the Common Elements;

(5) The proposed use of any proceeds of hazard insurance required to be maintained by the Association under Section 1603-113(a) of the Act for purposes other than the repair or restoration of the damaged property;

(6) The adoption of any proposed budget by the Executive Board and of the date of the scheduled Unit owners meeting to consider ratification thereof which notice shall be accompanied by a summary of the proposed Budget; and

(7) Any default in the performance or payment by a Unit owner of any obligations under the Declaration, including, without limitation, default in the payment of Common Expense liabilities.

(b) In the event of any proposed actions described in subsection (a), paragraphs (1), (2), (3), (4), or (5) hereinabove, an Eligible Mortgage Holder 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. In the event of any default described in subsection (a), paragraph (7) of this Section 8.2, the Eligible Mortgage Holder shall have the right, but not the obligation, to cure such default.

(c) An Eligible Mortgage Holder, or its representative, shall have the right to attend Association and Executive Board meetings for the purposes of discussing the matters described in subsection (a), paragraphs (1) through (6) of this Section 8.2.

(d) Records. An Eligible Mortgage Holder may examine the books, records and accounts of the Association at reasonable times. Any Eligible Mortgage Holder may have an audited statement of the Association's fiscal affairs prepared at such Eligible Mortgage Holder's expense.

### Section 8.3. Rights of Mortgage Holders, Insurers or Guarantors.



(a) The Association shall send timely prior written notice of the following matters by prepaid United States mail to holders, insurers and guarantors of a mortgage on any Unit:

(1) Any condemnation or casualty loss that affects either a material portion of the Condominium or the Unit securing the mortgage;

(2) Any sixty (60)-day delinquency in the payment of Monthly Assessments or other charges owed by the owner of any Unit on which it holds the mortgage;

(3) A lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

(4) Any proposed action that requires the consent of fifty-one percent (51%) of the Eligible Mortgage Holders.

(b) To receive such notice, the mortgage holder, insurer or guarantor shall send a written request therefor to the Association, stating its name and address and the Unit identifying number or address of the Unit on which it holds, insures or guarantees the mortgage.

Section 8.4. 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 Unit 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 a Unit owner for the payment of such unpaid assessment or charge that is assessed against the Mortgagee as a result of all Unit owners being reassessed for the aggregate amount of such deficiency.

Section 8.5. Condemnation Rights. No provision of this Declaration shall give a Unit 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 Unit owner of insurance proceeds or condemnation award for loss to or a taking of one or more Units and/or Common Elements.

Section 8.6. 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 9 INSURANCE

Section 9.1. 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 Unit owners and their Mortgagees, if any, in each case complying with the applicable requirements of Section 9.2. hereof. The insurance maintained by the Association shall cover the Property, including but not limited to, all Common Elements and Limited Common Elements, the Units and all improvements, fixtures and appliances contained within the Unit as of the date of settlement on the Unit by the Declarant or the value thereof, and building service equipment and common equipment, fixtures, personal property and supplies owned by the Association, but excluding any improvements or appliances subsequently added by a Unit owner and all other personal property of the Unit owner. 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 the Condominium, including the individual Units, 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. Funds to cover this deductible amount shall be included in the Association's reserve fund. The named insured under the policy shall be "Association of the owners of River Road Estates Condominium, 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 Unit 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 Unit owner and each Mortgagee of a Unit. Such policy shall also contain the standard mortgagee clause in accordance with Section 9.2(f) of this Declaration, naming each Mortgagee of a Unit ' its 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 complying with the requirements of Section 9.2. hereof, insuring the Unit owners, in their capacity as Unit owners and Association members and any managing agent retained by the Association, against any liability to the public or to other Unit owners, their tenants or invitees, relating in any way to the ownership and/or use of the Common Elements, public ways 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 a Unit owner because of the negligent acts of the Association or another Unit owner. Such insurance shall include coverage for death, bodily injury and property damage that results from the operation, maintenance or use of the 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 9.2. hereof.

(c) Such worker's compensation insurance as applicable laws may require.

(d) Insurance to satisfy the indemnification obligation of the Association and all Unit owners set out in Section 10.2. hereof, 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 Property lies within a special flood hazard area, a master or blanket policy of flood insurance covering the Property, including but not limited to, all Common Elements and Limited Common Elements, the Units and all improvements, fixtures and appliances contained within the Unit as of the date of settlement on the Unit or the value thereof, and building service equipment and common equipment, fixtures, personal property and supplies owned by the Association, but excluding any improvements or appliances subsequently added by a Unit owner and all other personal property of the Unit 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 not to exceed the lesser of \$5,000 or one percent (1%) of the policy face amount. Funds to cover this amount shall be included in the Association reserve fund.

(f) Blanket fidelity bonds naming the Association as obligee and covering any person who handles or is responsible for funds held or administered by the Association, regardless of whether such person receives compensation for such services. In the event that the Association employs a professional, experienced managing agent in accordance with Article 13 of this Declaration, such management agent shall maintain a fidelity bond covering itself, naming the Association as an additional obligee and containing the same provisions required by this Article 9 for fidelity bonds maintained by the Association. The fidelity bond maintained by the Association or the management agent, as the case may be, shall cover the maximum funds that will be in the custody of the Association or the management agent, as the case may be, at any time while such bond is in force; provided, however, that such fidelity bond coverage must at least equal the sum of three months' Common Expense Assessments for all Units in the Condominium, plus the Association's reserve fund. Such fidelity bonds may not be canceled nor may coverage thereunder be substantially changed (whether or not requested by the Executive Board) except by the insurer giving at least ten (10) days prior written notice thereof to the Executive Board, the Insurance Trustee, if any, Unit owners, each holder of a first mortgage on a Unit, each servicer of a mortgage held, insured or guaranteed by the Federal National Mortgage Association and covering any Unit, and every other party in interest who shall have requested such notice of the insurer.

Section 9.2. Required Provisions. Insurance obtained by the Association shall be in accordance with the following provisions:

(a) 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 9.1.(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.

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

(c) Each Unit owner may obtain additional insurance at his own expense; 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 Unit owner shall be entitled to exercise his right 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.

(d) Any Unit owner who obtains individual insurance policies covering any portion of the Property other than personal property belonging to such owner shall be required to file a copy of such individual policy or policies with the Association within thirty (30) days after purchase of such insurance.

(e) With respect to the insurance policies described in subsections (a) and (b) of Section 9.1. issued to the Association and covering all or any part of the Property, the Association shall cause such policies to provide that:

(1) Each Unit owner is an insured person under such policies with respect to liability arising out of such Unit owner's 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 Unit owner or members of such Unit owner's household;

(3) No act or omission by any Unit owner, unless acting within the scope of his 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.

(4) If at the time of a loss under such policies 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;

(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 Unit owner;



(6) The insurer shall not be relieved from 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 Unit owner or any other person under either of them;

(7) Such policies may not be canceled nor may coverage thereunder be substantially changed (whether or not requested by the Executive Board) except by the insurer giving at least ten (10) days prior written notice thereof to the Executive Board, the Insurance Trustee, if any, Unit owners, each holder of a first mortgage on a Unit, and every other party in interest who shall have requested such notice of the insurer;

(8) The insurer will recognize any Insurance Trust Agreement entered into by the Association.

(f) With respect to the property insurance policy described in subsection (a) of Section 9.1., such policy shall contain a standard mortgagee clause that shall:

(1) In the case of mortgages held, insured or guaranteed by the Federal National Mortgage Association, name as Mortgagee either that institution or the appropriate servicer of the mortgage, its successors and assigns.

(2) 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;

(3) Provide that such insurance as to the interest of any Mortgagee shall not be invalidated by any act or neglect of the Executive Board or Unit owners or any persons under any of them;

(4) 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, and requirement that the Mortgagee pay any premium thereon, and any contribution clause; and

(5) Provide that without affecting any protection afforded by such mortgagee clause, any proceeds payable under such policy shall be payable in accordance with subsection (a) of Section 9.1.

(g) With respect to the property insurance policy described in subsection (a) of Section 9.1, such policy shall contain the following endorsements:

(1) Agreed Amount and Inflation Guard Endorsement, when it can be obtained.

(2) Construction Code Endorsements, if there is a construction code provision that requires changes to undamaged portions of the Buildings even when only part of the Condominium is destroyed by an insured hazard.

(3) Steam Boiler and Machinery Coverage Endorsement, if applicable, which provides that the insurer's minimum liability per accident at least equals the lesser of Two Million Dollars (\$2,000,000) or the insurable value of the Building or Buildings housing the boiler or machinery.

Section 9.3. 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 trustee with whom the Association may enter into any Insurance Trust Agreement or any successor to such trustee (hereinafter referred to as the "Insurance Trustee"), who shall have the exclusive authority to negotiate losses under any policy providing such property or liability insurance.

Section 9.4. 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 Act and otherwise in accordance with applicable law.

Section 9.5. 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.

## ARTICLE 10 LIMITATION OF LIABILITY

Section 10.1. 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 Unit 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;

(b) Shall not be liable to the Unit owners 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;

(c) Shall have no personal liability in contract to a Unit owner 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;

(d) Shall not be liable to a Unit owner, or such Unit owner's tenants, employees, agents, customers or guests, for loss or damage caused by theft of or damage to personal property left by such Unit owner or his 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;

(e) Shall have no personal liability in tort to a Unit owner 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

(f) 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 10.2. Indemnification. Each member of the Executive Board in his 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 the Executive Board Member in connection with any proceeding in which the Executive Board member may become involved by reason of the Executive Board member being or having been a member and/or officer of the Executive Board, or any settlement of any such proceeding, whether or not the Executive Board member 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 such Executive Board member's duties or any other standard imposed by the 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 still an Executive Board member at the time of settlement) approves such settlement and reimbursement as being in the best interests of the Association. The indemnification by the Unit owners set forth in this Section 10.2. shall be paid by the Association on behalf of the Unit 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 Unit owners or otherwise.

Section 10. 3. Joint and Several Liability of Unit Owners and Lessees. Each Unit owner shall be jointly and severally liable with any tenants of the Unit owned by such Unit owner for all liabilities arising out of the ownership, occupancy, use, misuse or condition of such Unit or any portion of the Common Elements or Limited Common Elements.

Section 10.4. Defense of Claims. Complaints 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 Unit owners and the Eligible Mortgage Holders and such complaints shall be defended by the Association. The Unit owners and the Eligible Mortgage Holders shall have no right to participate other than through the Association in such defense. Complaints of a nature specified in Section 10.3 hereof against one or more but less than all Unit owners shall be defended by such Unit owners who are defendants themselves and such Unit owners shall promptly give written notice of the institution of any such suit to the Association and to the holders of any mortgages encumbering such units.

Section 10.5. Storage; Disclaimer of Bailee Liability. Neither the Executive Board, the Association, any Unit owner nor the Declarant shall be considered a bailee of any personal property stored on the Common Elements (including property located in storage areas on the Common Elements, including the Limited Common Elements), whether or not exclusive possession of the particular area is given to a Unit owner for storage purposes, and shall not 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.

## ARTICLE 11

### UNITS SUBJECT TO CONDOMINIUM DOCUMENTS; EMINENT DOMAIN

Section 11.1. Applicability of Condominium Documents. Each present and future owner, tenant, occupant and Mortgagee of a Unit 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 or Mortgagee of a Unit any obligation which the Act or one or more of the Condominium Documents, or both, make applicable only to Unit owners (including, without limitation, the obligation to pay assessments for Common Expenses). The acceptance of a deed or mortgage to any Unit, or the entering into of a lease or the entering into occupancy of any Unit 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 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 or lease thereof. Failure to comply with the covenants, conditions and restrictions set forth in the Condominium Documents and the deed to such Unit shall be grounds for an action to recover damages or for injunctive relief, or both, maintainable by the Executive Board on behalf of the Association or by an aggrieved Unit owner.

Section 11.2. Eminent Domain. Whenever all or part of the Common Elements shall be taken, injured or destroyed by eminent domain, each Unit owner shall be entitled to notice thereof and to participate in the proceedings incident thereto; provided, however, that the Association shall officially represent the Unit 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 Unit owner's interest therein and any award for such damage shall be payable to the Association for the benefit of the Unit owners and of the Mortgagees of the Units.

ARTICLE 12  
ASSOCIATION; EXECUTIVE BOARD OF THE ASSOCIATION

Section 12.1. The Association. The Association is the governing body for all Unit owners with respect to the administration, maintenance, repair, replacements, cleaning and management of the Common Elements. The membership of the Association shall at all times consist exclusively of all Unit owners. Each Unit owner shall automatically become and be a member of the Association as long as such person is a Unit owner and upon the termination of the interest of a Unit owner in the Condominium, such Unit owner's membership and any interest the common funds of the Association shall thereupon automatically terminate and transfer and inure to the next Unit owner or Unit owners succeeding such unit owner in interest. The Association shall have all of the powers granted pursuant to Section 1603-102 of the Act, including the powers to assign its right to future income.

Section 12.2. Members of the Executive Board.

(a) The initial Executive Board shall consist of three (3) members. The members of the initial Executive Board shall be appointed, removed and replaced from time to time by the Declarant without the necessity of obtaining resignations; the appointees of the Declarant need not be Unit owners. The Declarant appointed members of the Executive Board shall be replaced with Unit owners other than the Declarant in accordance with the provisions of paragraph (b) of this Section 12.2.

(b) The Declarant shall have the right to control the Association until the earlier of (i) sixty (60) days after the conveyance of seventy-five percent (75%) of the Units to Unit owners other than the Declarant or (ii) seven (7) years following conveyance of the first Unit to a Unit owner other than the Declarant (the "Declarant Control Period"). The Declarant Control Period shall in no event terminate prior to the later of (i) the conveyance by the Declarant of seventy-five percent (75%) of the Units, (ii) termination of any right of the Declarant to appoint officers or members of the Executive Board, or (iii) termination of the right of the Declarant to approve or veto any actions of the Association or the Executive Board. Upon the termination of the Declarant Control Period, all members of the Executive Board appointed by the Declarant shall resign and the Unit owners (including the Declarant to the extent of any Units owned by the Declarant at that time) shall elect new members of the Executive Board in accordance with the Bylaws. The Unit owners on this Executive Board shall serve until the first regular election of the Executive Board held at the next annual meeting of the Association held in accordance with the Bylaws; thereafter, members of the Executive Board shall be elected in accordance with the Bylaws. Not later than the earlier of (i) sixty (60) days after the conveyance of seventy-five percent (75%) of the Units to Unit owners other than the Declarant or (ii) seven (7) years following conveyance of the first Unit to a Unit owner other than the Declarant (the "Declarant

Control Period"), all members of the Executive Board appointed by the Declarant shall resign and the Unit owners (including the Declarant to the extent of any Units owned by the Declarant at that time) shall elect new members of the Executive Board in accordance with the Bylaws.

(c) Subject to the terms and provision of the Act, this Declaration or the Bylaws, the Executive Board shall have the power to act on behalf of the Association. If, prior to the termination of the Declarant Control Period, the Declarant voluntarily surrenders the Declarant's right to appoint and remove members of the Executive Board, the Declarant shall have the right during the remainder of the Declarant Control Period to approve or disapprove any acts of the Association or the Executive Board, including, but not limited to, any proposed amendment to this Declaration, the Bylaws or the Rules and Regulations. The Executive Board shall possess all of the duties and powers granted to the Executive Board by the Act.

Section 12.3. Disputes. In the event of any dispute or disagreement between any Unit 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 Unit 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 12.3. All costs of obtaining such judgment shall be borne by the disputants, or in the absence of disputants, by the Association as a Common Expense.

Section 12.4. Abating and Enjoining Violations by Unit 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 Unit owner or any tenant of such Unit 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 in equity, the continuance of any such violation or breach.

### ARTICLE 13 MANAGEMENT

The Association shall have the right to employ a professional, experienced managing agent who shall oversee the daily operation of the Condominium in accordance with the provisions of the Act and the Condominium Documents; provided, however, that no agreement for such professional management of the Condominium may exceed a term of three (3) years but may be renewed upon consent of the Association. Such agreement 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 more than thirty (30) days' written notice. Any agreement for professional management negotiated by the Declarant shall meet the requirements of this Article 13 for such agreements negotiated by the Association and shall not exceed one (1) year, but may be renewed upon consent of the Association.

ARTICLE 14  
ASSESSMENTS; LIABILITY OF UNIT OWNERS

Section 14.1. Power to Assess.

(a) 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 (based on the Budget for such fiscal period), including, but not limited to, such amounts as are necessary for (i) the maintenance, repair and replacement of the Common Elements as set forth in Section 3.3(a) hereof, (ii) uncollectable assessments, (iii) budget deficits, (iv) such other reserves as are hereinafter described, (v) such additional reserves as the Executive Board shall deem necessary or prudent, and (vi) such other expenses as are specifically provided for in the Act, this Declaration or the Bylaws. The Association shall establish an adequate reserve fund for maintenance, repair and replacement of those Common Elements and Limited Common Elements for which the Association is responsible that 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 by the Monthly Assessments. Common Expenses shall be assessed against each Unit in accordance with the allocation set forth in Section 5.2 above and Section 1602-107 of the Act. The Executive Board shall annually adopt a proposed budget (the "Budget"), and, within thirty (30) days of adoption shall provide a summary of the proposed Budget to all Unit owners. The Executive Board shall also schedule a meeting of the Association to consider ratification of the Budget not less than fourteen (14) days nor more than thirty (30) days after such a summary is provided to Unit owners. The Declarant shall pay the Monthly Assessment for Units owned by the Declarant in the same manner as the other Unit owners. Any of the time limits or procedures referred shall be deemed waived unless timely objection not the procedure is made by a member at the meeting of the Association called to consider ratification of the Budget, in which event, the current Monthly Assessment shall continue until the adoption of a new Budget is made at a meeting of the Association called for that purpose no sooner than fifteen (15) days nor later than thirty (30) days after the initial ratification meeting of the Association.

(b) In addition to paragraph (a) of this Section 14.1, the following shall apply:

(1) Any common expense associated with the maintenance, repair or replacement of a Limited Common Element shall be assessed against the Unit or Units to which that Limited Common Element is assigned;

(2) Any Common Expense benefiting fewer than all of the Units shall be assessed exclusively against the Units benefited;

(3) Any payments, fees or charges for the use, rental or operation of any Common Element shall be applied first, to reduce the Common Expense relating to such Common Element and, second, any excess shall be applied to Common Expenses generally;

(4) Assessments to pay a judgment against the Association shall be a lien only against the Units in the Condominium at the time the judgment was entered, in proportion to their Common Expense liability;

(5) If any Common Expense is caused by the misconduct of any Unit owner, the Association may assess that expense exclusively against such Unit owner's Unit;

(6) if Common Expense liabilities are reallocated, Common Expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated Common Expense liabilities; and

(7) Any Common Expense that is to be reimbursed by Unit owners according to use shall be paid as part of the Common Expense installment billed at the same time as the reimbursable expense, and for all purposes except allocation by percentage interest in the Common Elements, all such reimbursable expenses shall be treated as Common Expenses.

Section 14.2. 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 Unit 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 Unit owner. Special Assessments shall be due and payable in the manner and on the date set forth in the notice thereof.

Section 14.3. Payment of Assessments. Until the Association makes an assessment for Common Expenses, the Declarant shall pay all Common Expenses of the Condominium and shall be entitled to receive all profits therefrom. Each Unit owner, including the Declarant to the extent it is the owner of any unsold Units, shall pay all Monthly Assessments and Special Assessments levied by the Association. Multiple owners of a Unit shall each be jointly and severally liable for all unpaid Monthly Assessments and Special Assessments. Liability for such assessments shall be determined in accordance with Section 5.3(a) of the Bylaws. Such assessments shall begin accruing at the time of the creation of the Condominium and they shall be due and payable on a monthly basis as designated by the Executive Board; provided, however, that the first Monthly Assessments shall be due on the first day of the month following the closing of the first sale of a Unit to a purchaser other than the Declarant. Assessments that are unpaid for over fifteen (15) days after the due date shall bear interest at the lesser of eighteen percent (18%) and the highest legal rate from the due date until paid. In the sole discretion of the Executive Board, a late charge may be assessed against the delinquent Unit owner.

Section 14.4. New Assessments. After the initial assessment has been made by the Association, subsequent assessments shall be made by the Association annually on or before the anniversary date of the initial assessment or such other date as the Association may choose, based on a budget adopted by the Association not later than sixty (60) days prior to the assessment. If the Executive Board shall fail to fix new Monthly Assessments for Common Expenses for the subsequent fiscal year before the expiration of any fiscal year, the Unit owners shall continue to

pay the same sums they were paying for such Monthly Assessments during the fiscal year just ended and such sum shall be deemed to be the new Monthly Assessments for the succeeding fiscal year. If the Executive Board shall change the Monthly Assessment at a later date, the difference between the new Monthly Assessment, if greater, and the previous year's Monthly Assessment up to the effective date of the new Monthly Assessment shall be treated as if it were a Special Assessment under Section 14. 2. hereof ; thereafter each Unit owner shall pay the new Monthly Assessment. In the event the new Monthly Assessment is less than the previous year's Monthly Assessment, in the sole discretion of the Executive Board, the excess either shall be refunded to the Unit owners, credited against future Monthly Assessments or retained by the Association for reserves.

Section 14.5. No Exemption by Waiver. No Unit owner may exempt himself 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 such Unit owner's Unit or otherwise.

Section 14.6. Personal Liability of Unit Owners. All sums assessed by the Association as a Monthly Assessment or Special Assessment shall constitute the personal 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 Act. The Association shall have the right to take such actions as are permitted by Section 1603-116 of the Act for failure to pay any assessment or other charges. The delinquent owner shall be obligated to pay (a) all expenses of the Executive Board, including reasonable attorneys' fees, 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 14.7. 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 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; provided, however, that a lien against the Unit so purchased for assessments imposed pursuant to this Declaration or the Act shall not be affected by such sale, conveyance or other transfer.

Section 14.8. Subordination of Certain Charges. Any Monthly Assessments or any fees, charges, late charges, fines and interest that may be levied by the Association pursuant to Section 1603-102 of the Act shall be subordinate to any first mortgage lien recorded before or after such Monthly Assessment, fee, charge, late charge, fine or interest was due.

Section 14.9. Surplus. The Budget of the Association shall set forth the Common Expenses. Any amounts accumulated from Monthly Assessments for Common Expenses in excess of the amount required for actual Common Expenses and reserves for additional Common Expenses, unless otherwise directed by the Executive Board, in its sole discretion, shall be credited to each Unit owner, such credit to be applied to the next Monthly Assessments of

Common Expenses due from said Unit owners under the current fiscal year's budget, and thereafter, until exhausted or retained by the Association for reserves.

ARTICLE 15  
SPECIAL DECLARANT RIGHTS AND DEVELOPMENT RIGHTS

Section 15.1. Special Declarant Rights. In addition to the easement rights reserved in Article 6, the Declarant reserves to itself and for the benefit of its successors and assigns, and subjects the Property to, the right:

- (a) to complete the improvements indicated on the Plat and Plans; as the same may be amended from time to time, including any Additional Units which may be created under Section 15. 2 of this Declaration;
- (b) to exercise any Development Right;
- (c) to maintain sales offices and models in any Units owned or leased by the Declarant and to relocate the same within the Property from time to time;
- (d) to conduct sales activities in such manner as will not unreasonably disturb the rights of other Unit owners;
- (e) to have prospective purchasers and other invitees of the Declarant park in such portions of the Common Elements as are available for parking;
- (f) to place and maintain signs advertising the Condominium and models;
- (g) to use easements through the Common Elements for the purposes of making improvements within the Condominium and of performing such warranty work, construction and repairs as are described in the Condominium Documents, in the public offering statement prepared by the Declarant and relating to the Condominium, and in any contract of sale made with any Unit owner or purchaser;
- (h) to make the Condominium subject to a master association;
- (i) to appoint or remove any officer of the Association or any Executive Board member during the period of Declarant control;
- (j) until the construction, marketing and sale of all Units is completed, 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;
- (k) until the construction, marketing and sale of all Units is completed, to use the Common Elements for ingress and egress, for the repair and construction of Units and Common



Elements, including, but not limited to, the movement and temporary storage of construction materials and equipment, and for the installation of signs and lighting for sales and promotional purposes;

(l) until the construction, marketing and sale of all Units is completed, to complete all improvements shown on the Plats and Plans, to exercise the Development Rights set forth herein, to maintain models and sales offices in any Units owned or leased by the Declarant and to relocate the same within the Property from time to time and to exercise the easements as set forth in Article 6 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 the Declarant Control Period and any and all other Special Declarant Rights as are now allowed or in the future may be allowed by the Act.

The real estate subject to these Development Rights and Special Declarant Rights is the Property.

Section 15.2 Development Rights. The Declarant hereby reserves the right to add the real property described in Exhibit D to the Condominium and to build the additional Units set forth in Exhibit D. Declarant's exercise of its Development Rights shall apply to all of the Property.

Section 15.3 Amendment. This Article 15 shall not be amended without the written consent of the Declarant duly recorded in the Cumberland County Registry of Deeds.

#### ARTICLE 16 ASSIGNABILITY OF DECLARANT'S RIGHTS

The Declarant may assign any or all of its rights or privileges reserved or established by this Declaration or the Act in accordance with the provisions of the Act.

#### ARTICLE 17 AMENDMENT OF DECLARATION

Section 17.1. Amendments. Except as provided herein or in Section 1602-117 of the Act, this Declaration may be amended only by vote or agreement of owners of Units representing a total of at least sixty-seven percent (67%) of the Percentage Interests.

Section 17.2. Rights of Mortgagees. The Declarant reserves to itself the right to amend or restate this Declaration prior to the first recorded conveyance of any Unit by recording said amended or restated Declaration. 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, the Association or certain Unit owners under the Act or this Declaration, are deemed to be 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 Elements or Limited Common Elements, or rights to their use;
- (f) boundaries of any Unit;
- (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;
- (j) leasing of Units;
- (k) imposition of any restrictions on a Unit owner's right to sell or transfer his or her Unit;
- (l) 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 a response to any written proposal for an amendment within thirty (30) days after the proposal is made. Except as related to the Percentage Interests, no amendment to the Condominium Documents shall diminish or impair the rights of the Declarant under the Condominium Documents without the prior written consent of the Declarant. No amendment may modify this Article 17 or the rights of any person

hereunder this Article 17. Except as specifically provided in the Condominium Documents, no provision of the Condominium Documents shall be construed to grant to any Unit owner, or to any other person, any priority over any rights of mortgagees of any Unit owner.

## ARTICLE 18 TERMINATION

The Condominium may be terminated only by agreement of the Unit 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 Act.

## ARTICLE 19 GENERAL PROVISIONS

Section 19.1. Headings. The headings used in this Declaration and any 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 19.2. 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 19.3. Applicable Law. This Declaration shall be governed by and construed according to the laws of the State of Maine.

Section 19.4. Interpretation.

(a) 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 and to permit compliance with the requirements of the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association. In the event of any conflict or discrepancy between this Declaration, the Bylaws and the Plats and Plans, the provisions of this Declaration shall govern.

(b) Any dispute or disagreement between Unit owners with respect to the interpretation or application of the Condominium Documents shall be determined by the Executive Board, which determination shall be final and binding on all parties.

Section 19.5. Effective Date. This Declaration shall become effective when it and the Plats and Plans have been recorded.

Section 19.6. Notices. 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 second business day after the day on which mailed by certified mail, return receipt requested, addressed to the address maintained in the register of current addresses established by the Association.

Section 19.7. Arbitration. 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 related to, this Declaration, the By-Laws, or the deed to any Unit or the breach thereof, 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. This agreement to arbitration 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 claimed, dispute or other matter in question would be barred by the applicable statute of limitations or other principals of law and equity.

Section 19.8. Exhibits. All exhibits attached to this Declaration are hereby made a part of this Declaration.

Section 19.9. Pronouns. Wherever used, the singular number shall include the plural, the plural the singular and the use of any gender shall include all genders.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed by \_\_\_\_\_, [title], thereunto duly authorized, this \_\_\_\_ day of \_\_\_\_\_, 2018.

RMILLS, LLC

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
\_\_\_\_\_, [TITLE]

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

\_\_\_\_\_, ss.

\_\_\_\_\_, 2018

Personally appeared the above-named \_\_\_\_\_, \_\_\_\_\_ of RMILLS, LLC, a Maine limited liability company, 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 RMILLS, LLC.

Before me,

\_\_\_\_\_  
Notary Public/Attorney at Law

My commission expires:

\_\_\_\_\_

**EXHIBIT A**

**[Description of the Real Estate]**

DRAFT



## **EXHIBIT B**

**[Description of Units with Identifying Numbers, Percentage Interest allocation  
and formula for calculating Percentage Interest.]**

DRAFT

**EXHIBIT C**

**[Photocopy of Plats and Plans]**

DRAFT

## **EXHIBIT D**

**[Additional Property That May Be Added to the Condominium and Additional Units [need not be built]]**

DRAFT