

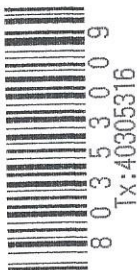
Durbin Law Offices PLLC
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Portsmouth, NH 03802

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Book 6064 Page 540 Page 1 of 70
Register of Deeds, Rockingham County

Carly Ann Tracy

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SURCHARGE

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DECLARATION OF CONDOMINIUM
PEVERLY HILL ESTATES

THIS DECLARATION is made this ___ day of July 2019 by **Merrimack Valley Homes, Inc.** a Massachusetts corporation, having an address of 1794 Bridge Street, Unit 6, Dracut, Massachusetts (hereinafter known as “**Declarant**”) for the purposes of submitting certain real property located at 288 Peverly Hill Road, Portsmouth, Rockingham County, New Hampshire to condominium use and ownership in accordance with the provisions of the New Hampshire Condominium Act, N.H. RSA Chapter 356-B.

WHEREAS, Declarant owns, in fee simple, the real property located at 288 Peverly Hill Road, in the City of Portsmouth, County of Rockingham and State of New Hampshire as described in a deed from Pauline Dowd to Merrimack Valley Homes, Inc. dated December 20, 2017 and recorded at the Rockingham County Registry of Deeds at Book 5881, Page 0981, as more particularly described in **Appendix A** attached hereto, together with the buildings, all improvements heretofore or hereafter constructed thereon, and all easements, rights and appurtenances described in said **Appendix A** all if any (collectively, said real and personal property is hereafter referred to as the “**Peverly Hill Road Property**” or the “**Submitted Property**”); and

WHEREAS, the Declarant intends by this Declaration to create a condominium project on the Submitted Property to consist of a nine (9) residential units (hereinafter the “Condominium Units”) located in two (2) newly constructed buildings, hereinafter described, and certain other improvements and amenities on the Submitted Property, all to be known as the Peverly Hill Estates (sometimes hereinafter referred to as “the Condominium”), with said units hereby submitted as of the date of the recording of this Declaration shall be units 1-5 in Building One, and units 6-9 in Building Two, and the common areas and facilities associated with those units; and

WHEREAS, the condominium shall contain a total of nine (9) separate living Units which shall be constructed in phases. Phase I shall consist of a four (4) unit building identified as Building Two, consisting of Units 6-9 as identified on the Condominium Site Plan, and Phase II shall consist of a five (5) unit building identified as Building One, consisting of Units 1-5 as identified on the Condominium Site Plan. Until Phase I has been completed, the number of units in the condominium shall include only four (4) units in Phase I. Following the completion of Phase I and prior to and after the completion of Phase II, the number of units in the condominium shall be the nine (9) units in Phases I and II; and

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

NOW THEREFORE, Declarant **HEREBY DECLARES** that all of the Submitted Property described in said **Appendix A**, including all of the Condominium Units and other improvements located or to be located on said Submitted Property, and all easements, rights and appurtenances belonging thereto or to which the Submitted Property is subject, are hereby submitted to condominium use and are held and shall be subject to the provisions of Title 31 of the New Hampshire Revised Statutes, Chapter 356-B, herein called the **"Condominium Act"**, and shall be subject to the following restrictions, covenants, easements, conditions, uses, limitations and obligations, all of which are declared and agreed to be in furtherance of a general plan for the improvement of the aforesaid Submitted Property and division of said Submitted Property into Condominium Units, and said restrictions, covenants, easements, conditions, uses, limitations and obligations are intended to enhance and protect the value and desirability of the said Submitted Property as a whole and to mutually benefit each of the Condominium Units located therein.

ARTICLE I **DEFINITIONS**

Certain use of the terms as used in this Declaration are defined and shall have meaning as follows, unless the context clearly indicates a different meaning thereof, which determination shall be left to the reasonable interpretation and discretion of the Board of Directors:

1. **"Act"** means the New Hampshire Condominium Act (Chapter 356-B of the New Hampshire Revised Statutes Annotated) as revised periodically.
2. **"Assessment"** means that portion of the cost of repairing and managing the Submitted Property, which is to be paid by each Unit Owner according to his percentage of undivided interest in the Common Area.
3. **"Association"** or **"Association of Owners"** or **"Peverly Hill Estates Condominium Association"** or **"Unit Owners Association"** means the unincorporated association of the Owners created under and acting in accordance with this Declaration and the Bylaws as the

governing body of the Condominium.

4. **“Board” or “Board of Directors”** means the governing body of the Association elected pursuant to the Bylaws of the Association.

5. **“Building”** means the structures containing the Residential Units located on the property subject to this Condominium.

6. **“Bylaws”** means the instrument annexed hereto as **Appendix C** and hereby made a part hereof which provides for the self-government of the Association.

7. **“Common Area”** means all that portion of the Condominium other than the Units and specifically includes the Limited Common Area.

8. **“Common Expenses”** means all expenditures lawfully made or incurred by or on behalf of the Unit Owners Association, together with all funds lawfully assessed for the creation and/or maintenance of reserves pursuant to the provisions of the Condominium Instruments; and shall include “future common expenses” which term shall mean common expenses for which Assessments are not yet due and payable.

9. **“Condominium”** means the Peverly Hill Estates.

10. **“Condominium Instruments”** is a collective term referring to this Declaration, the By-Laws, the Site Plan, the Condominium Site Plan, and the Floor Plans, recorded pursuant to the provisions of the Act. Any appendix, exhibit, schedule, or certification accompanying a Condominium Instrument and recorded simultaneously therewith shall be deemed an integral part of that Condominium Instrument. Any amendment or certification of any Condominium Instrument shall, from the time of the recordation of such amendment or certification, be deemed an integral part of the affected Condominium Instrument, so long as such amendment or certification was made in accordance with the provisions of the Act.

11. **“Condominium Site Plan”** means the plan entitled “Condominium Site Plan – Peverly Hill Estates, Tax Map 255 Lot 8, 288 Peverly Hill Road, Portsmouth, New Hampshire, Owner of Record: Merrimack Valley Homes, Inc., 1794 Bridge Street, Unit 6, Dracut, MA”, last revised 11/8/19, prepared by Jones & Beach Engineers, Inc. and recorded in the Rockingham County Registry of Deeds as Plan No. D - 41888, consisting of one (1) sheet, depicting the real property the comprises the Condominium, subject to the terms of this Declaration, and which may be amended and/or up- dated from time to time.

12. **“Declaration”** means this instrument and all of its Appendices, to be recorded at the Rockingham County Registry of Deeds, as amended from time to time.

13. **"Floor Plans"** means the plans entitled "Condominium Floor Plans for: Peverly Hill Estates, Tax Map 255/Lot 8, Portsmouth, NH 03801", dated November 12, 2019, prepared by Michael J. Keane Architects, PLLC, consisting of four (4) plan sheets, recorded in the Rockingham County Registry of Deeds at Plan No. D41888.
14. **"Peverly Hill Estates"** means the Submitted Property described in Appendix A attached hereto including land, all buildings and all other improvements and structures now or hereafter thereon or attached thereto, all easements, rights and appurtenances belonging thereto, and all personal property now or hereafter used in connection therewith, which have been or are intended to be submitted to the provisions of the Act by the Declarant pursuant to this Declaration.
15. **"Landscape Plan"** means the Plan entitled, "Landscape Plan", Sheet L-2, prepared as part of the Plan Set entitled "Peverly Hill Road Condominiums Tax Map 255, Lot 8, 288 Peverly Hill Rd., Portsmouth, New Hampshire, prepared by Ironwood, dated September 29, 2017. Said Plan is located in the City of Portsmouth Planning Department files for the Submitted Property.
16. **"Limited Common Area"** means that portion of the Common Area, if any, which is designated herein or on the Floor Plans or Condominium Site Plan as reserved for the use of one or more Units /but less than all Units as referenced herein.
17. **"Occupant"** whenever used herein shall mean a person or persons, other than the Owner, in possession of one or more Units.
18. **"Owner" or "Unit Owner"** means any person or persons or other entity owning a Unit in fee simple absolute, together with an undivided interest in the Common Area.
19. **"Percentage of Interest" or "Percentage of Undivided Interest"** means the percentage of undivided interest of each Unit in the Common Area as set forth in Appendix B hereto.
20. **"Property"** means the land and the buildings and all other improvements heretofore or hereafter constructed thereon and all easements, rights and appurtenances thereto and all articles of personal property intended for common use in connection therewith which have been or are intended to be submitted to the provisions of the Act and which are more particularly described in Appendix A attached hereto.
21. **"Reserved Rights"** means those assets, property, rights and matters which are reserved to the Declarant as described in Article II, Section 11 of this Declaration.
22. **"Rules" or "Rules and Regulations"** means such rules and regulations as the Board of Directors from time to time may adopt relative to the administration, use, occupancy and governance of the Condominium or of any part thereof, as the same may be amended pursuant to the terms hereof and of the Bylaws.

the terms hereof and of the Bylaws.

23. **"Site Plan"** means (i) the plan entitled "Site Plan, Tax Map 255 Lot 8, 288 Peverly Hill Road, Portsmouth, New Hampshire, Owner of Record: Pauline M. Dowd, 135 Ocean Road, Portsmouth, NH Bk 2295, Pg. 0576" dated November 11, 2017, prepared by Jones & Beach Engineers, Inc. and recorded in the Rockingham County Registry of Deeds as Plan No. D-40570, consisting of one (1) sheet, depicting the real property being submitted to the Condominium, subject to the terms of this Declaration, and which may be amended and/or up- dated from time to time.

24. **"Unit"** means a part of the Condominium intended for independent ownership, together with an undivided interest in fee simple in the Common Area, all as more particularly described in Article II, Section 4 of this Declaration.

ARTICLE II

INFORMATION REQUIRED BY SECTION 356-B:16

1. **Name**. The name of the condominium is and shall be Peverly Hill Estates Condominium and the name of the Association shall be Peverly Hill Estates Condominium Association.

2. **Location**. The Condominium is located at 288 Peverly Hill Road, in the City of Portsmouth, County of Rockingham and State of New Hampshire and is comprised of nine (9) residential units in two (2) buildings, all occupying and including the Property.

3. **Description of Submitted Property**. A legal description of the land submitted to the Act is noted and described in **Appendix A** and made a part hereof.

4. **Buildings**. This Condominium consists of a maximum of nine (9) units. The Site Plan approved by the City of Portsmouth Planning Board which depicts the entire development is recorded at the Rockingham County Registry of Deeds as Plan #D-40570. The location and dimensions of these buildings are also shown on the Condominium Site Plan and Floor Plans.

5. **Units**. Each of the Units is hereby declared to be held in fee simple and may be retained, occupied, conveyed, transferred, encumbered, inherited, or devised in the same manner as any other parcel of real property independent of the other individual Units. Annexed hereto and made a part hereof is **Appendix B** is a list of the Units, their respective identifying numbers or Unit designations, and the Undivided Percentage Interests in the Common Area appurtenant to each. **Appendix B** shows the Undivided Percentage Interests in the Common Area during Phase I, as well as the Undivided Percentage Interests during and following the completion of Phase II.

6. **Unit Boundaries and Maintenance Responsibilities**. The Units are bounded as follows:

A. Horizontal Boundaries:

- i. Lower Boundary: The upper plane of the unfinished surface of the concrete floors on the first floor of each unit; and
- ii. Upper Boundary: The interior face of the ceiling joists in the third floor of each unit.

B. Vertical Boundaries:

- i. Exterior Walls: The interior face of the exterior walls when there is no interior wall or the interior face of wall studs (such that the sheetrock or other wall surface is part of the Unit); and
- ii. Interior Walls: In the event a Unit wall abuts another Unit, the exterior side of the sheetrock on the studs common to both Units shall be the boundary between the Units. The sheetrock of each Unit shall be the responsibility of the Unit Owner whose Unit includes the sheetrock. The studs themselves, the insulation, the air spaces between, and any utilities contained therein, whether they serve one or both Units, shall be Common Area.

C. Doors and Windows:

- i. Doors: The unfinished interior surface of exterior doors and frames. The painting/staining of exterior doors and frames is Common Area and is the responsibility of the Association. Doors opening into the Common Areas, shall be Common Area and not part of the Unit. Notwithstanding any- thing herein to the contrary, the Board of Directors controls the size, style and quality of the exterior doors and frames; and
- ii. Windows: The unfinished interior surface of the window frames, frames and sashes. The painting/staining of the exterior surface of the windows, frames and sashes is Common Area and is the responsibility of the Association. Notwithstanding anything herein to the contrary, the Board of Directors controls the size, style and quality of the exterior windows/frames/glass and sashes. The glass is part of the Unit and the responsibility of the Unit Owner.

- D. Garages and Parking Spaces: The garages associated with each individual Unit are a part of the Unit and the responsibility of the Unit Owner. The exterior parking assigned to each Unit abutting each garage shall be Limited Common Area for the Units to which they are assigned as shown on the Condominium Site Plan. Each unit shall have one (1) assigned visitor parking space to be located within the Common Area as shown on the Condominium Site Plan.

- E. Additional Unit Owner Maintenance and Replacement Responsibilities: In addition to the Unit Owner's responsibility for maintaining and replacing that portion of the Unit within the above-described boundaries, the Unit Owner is responsible for the following Unit-related items regardless of the location of these items, unless otherwise stated by this Declaration or the By-Laws:
- i. All finished surfaces inside the Unit, except as otherwise noted above, including, but not limited to, paneling, tiles, wallpaper, paint, finished flooring, cabinets, interior walls, interior partitions and any other improvements that may need to be repaired or replaced;
 - ii. Any and all appliances, plumbing fixtures, electrical systems, heating, air conditioning, cooling, and ventilation systems and all associated wiring and piping servicing only the Unit, see also Article II, Section 12, Paragraph O;
 - iii. All pipes, ducts, flue chutes, conduits, wires and other utility installations servicing the Unit regardless of where located;
 - iv. HVAC Units, air conditioners and generators may be placed on the Common Area in the discretion of the Board of Directors, but are still the responsibility of the Unit Owner, including any pad(s) and accessories to such equipment associated therewith, the placement of which is left to the discretion of the Board of Directors, see also Article II, Section 12, Paragraph O; and
 - v. No wood or pellet stove may be inserted into any fireplace, nor may any wood or pellet stove be connected to any fireplace.
- F. Right of Ingress and Egress: Each Unit Owner has an unrestricted right of ingress and egress to said Unit Owner's Unit. This right is perpetual and shall pass with the Unit as transfers of ownership of the Unit occur.
- G. Relocation of Unit Boundaries and Subdivision of Units. Relocation of boundaries between Units and/or subdivision of Units will be permitted subject to compliance with the provisions thereof in the Condominium Act, the provisions of this Declaration and the Bylaws and the provisions of any applicable governmental law, ordinance or regulation. The requesting Owner(s) shall be responsible for all costs, including any updates to the Condominium Instruments as that term is defined in the Condominium Act and any Rules and Regulations of the Peverly Hill Estates Condominium Association as adopted from time to time, additionally including, but not limited to, any attorney's fees incurred by or on behalf of the Association.

- H. Construction Requirements. Any construction or reconstruction within the boundaries of any Unit shall be subject to the following additional requirements:
- (a) Construction Schedule. The Unit Owner shall submit a construction schedule to the Board of Directors for its review and approval prior to the commencement of said construction, said approval not to be unreasonably withheld or delayed.
7. Common Area. The Common Area includes, but not by way of limitation:
- A. The land and the walks, shrubbery and other plantings, parking areas, drivable ways and other land and interests in land included and described in **Appendix A** hereto, except that which is otherwise herein or on the Condominium Site Plan or Floor Plans designated solely as Limited Common Area; and
- B. The water supply and sewerage disposal, electrical, cable television and telephone systems serving the Buildings, to the extent said systems are located within the Building, and are not owned by the supplier of the utility service (but not including any portion thereof contained within and servicing a single Unit unless such portions are entirely encased within other Common Area within the Unit); see also Article II, Section 12, Paragraph O; and,
- C. Roofs, foundations and supports of the Building (including any interior wall studs necessary to maintain the integrity of the structure of the buildings), the perimeter walls, ceiling and floors bounding each Unit to the unfinished interior surfaces thereof and other walls which are not within a Unit; and
- D. The conservation open space as detailed and described in the Site Plan and Condominium Site Plan and is subject to said rights, rules, restrictions and regulations as are contained in the Grant of Conservation Restrictions and Conservation Open Space Management Plan recorded in the Rockingham County Registry of Deeds at Book 5881, Page 1074.
8. Limited Common Area. The Limited Common Areas of a Unit shall include:
- A. Decks and Patios and Driveways. Each deck, entryway, driveway, patio and any stairs to them are Limited Common Area for the Unit(s) to which these items are attached or serve and which are further identified on the Condominium Site Plan and the Floor Plans. Each Unit Owner shall keep their decks, patios, entryways and stairs neat and clean and uncluttered. Further, each of the Unit Owners shall be responsible for the routine maintenance of their respective decks, patios, entryways and stairs. Routine maintenance shall include snow and ice removal. All determinations hereunder shall be left to the discretion of the Board of Directors. Notwithstanding anything herein to the contrary, although these items

and areas are Limited Common Area, the maintenance responsibility for which is the Unit Owner's, all repairs, renovations and replacements are the responsibility of the Association. If the Board of Directors finds, in its sole judgment, that any such repairs were caused by the neglect or purposeful act of any Unit Owner, the Board of Directors may, in its discretion, assess any such expense to said Unit Owner. Additional Limited Common Area is as defined in RSA 356-B: 12, V, as amended from time to time.

- B. Other Areas. The Owners, and their respective guests or invitees or tenants, may park in the spaces immediately in front of said Unit's garage door provided said outside parking, ingress and egress does not interfere with the parking, ingress or egress of any other Unit or with maintenance or snow removal that may be necessary. Whatever is not designated as Limited Common Area shall simply remain Common Area available for use by all Owners.

9. Additional Descriptions of Common Areas. The Common Area shall consist of all land and improvements of the Condominium not specifically designated as part of a Unit described in Section 4 or Section 5 of this Article II. The Common Area specifically includes the Limited Common Area as designated in Section 6 of this Article II. The Common Area includes, but not by way of limitation, the following:

- A. All life safety and building code compliance equipment, fire panel and sprinkler system, including sprinkler heads, propane storage tanks and generator and including all equipment attendant thereto, regardless of where such equipment may be located;
- B. Any other amenities constructed or to be constructed on the Property and not reserved to a particular Unit hereunder; and
- C. Pipes, ducts, flues, chutes, conduits, plumbing, wires, meters, meter housings and other facilities located within a Unit, which serve parts of the Condominium other than the Unit within which they are located;
- D. All other parts of the Condominium, including personal property acquired by the Association, necessary or convenient to its existence, use, maintenance and safety or normally in common use.
- E. The stairways and hallways, except as otherwise noted herein as Limited Common Area, and the Association's emergency exits;

10. Allocation of Percentage of Undivided Interest in Common Area. Each Unit is accorded an equal, Percentage of Undivided Interest in the Common Area for voting and assessments.

11. Statement of Purposes and Use. The Condominium is intended for residential use, and the following provisions, together with the provisions of the Bylaws and Rules and Regulations, are in furtherance of this purpose.

12. Residential Character. Neither the Common Area nor the Units shall be used in a manner that is inconsistent with the residential character of the Property. No one shall obstruct, commit any waste in, or otherwise cause any damage beyond reasonable wear and tear to the Common Area. Nothing shall be stored on the Common Area without the prior written consent of the Board of Directors. Nothing shall be altered, constructed in or removed from the Common Area or Limited Common Area without the prior written consent of the Board of Directors.

- A. Nuisance and Hazards. No noxious or offensive use shall be made of any part of the Condominium and nothing shall be done therein which is or will become an annoyance or nuisance to another Owner. No use shall be made of any part of the Condominium which will constitute a fire hazard or which will result in the cancellation of insurance on any part of the Condominium or which is in violation of any law, ordinance or governmental regulation applicable thereto. No use shall be made of any part of the Condominium that will increase the rate of insurance on the Common Area, without prior written consent of the Board of Directors.
- B. Limited Use. The use of the Common Area shall be limited to the Owners and to their tenants in residence and to their guests, invitees, and licensees. The use of the Limited Common Area shall be further restricted to the Owner(s) of the Unit(s) to which it is appurtenant, and to the Owner's tenants in residence and to their guests, invitees, and licensees. The use, including responsibilities for maintenance and repair, of the Common Area and Limited Common Area, shall be governed by this Declaration, the Bylaws and the Rules as adopted and amended from time to time by the Board of Directors.
- C. Business Use. Units are to be used solely for residential purposes. Telecommuting, and other such electronic/internet activities that do not affect the quality or value of the Condominium such as professional offices for lawyers, accountants, consultants, and similar professions, may be done in the Unit without further approval, unless otherwise notified by the Board of Directors that the use has become a nuisance, annoyance or does not fit within the residential character of the Condominium, the determination of which is left to the sole discretion of the Board of Directors. Further, no employee or other person other than a rightful occupant of such Unit shall engage therein in any such activities and no such office shall be advertised, held out or used as a place for service to clients, customers or patients.

Further, any language to the contrary notwithstanding, no Owner of any Unit shall

do anything related to any business which will cause the insurance on the Association to rise (without the express, written permission of the Board of Directors, and for which the increased cost shall become an obligation of the Unit Owner who has incurred the increased cost), nor shall the Owner in any way, shape or form alter the physical structure of the Unit or Common Area as a result of any such activity. Under no circumstances shall the Association Property be listed as the address of any business. Additionally, no sign advertising or indicating any home-based occupation shall be permitted anywhere on the Property. Finally, the Board of Directors shall possess the sole discretion to revoke any permission given to any Owner to operate a home-based occupation granted pursuant to this paragraph.

- D. Appearance. An Owner shall not paint, change or alter the appearance of the exterior portion of the Unit or the Building or the Common Area or any portion of the Property without the prior written permission of the Board of Directors.
- E. Encroachments. None of the rights and obligations of the Owners created herein shall be altered in any way by encroachments as a result of construction of any structures or due to settling or shifting of structures. There shall be valid easements for the maintenance of such encroachments so long as they shall exist; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful conduct of said Owner or Owners. If any portion of the Common Area encroaches upon any Unit, or if any Unit now encroaches upon any other Unit or upon any portion of the Common Areas, or if any such encroachment shall occur hereafter as a result of (a) settling of a Unit, or (b) alteration or re- pair to any portion of the Common Area made by or with the consent of the Board of Directors, or (c) as a result of repair or restoration of the Building or any Unit after damage by fire or other casualty, or (d) as a result of condemnation or eminent domain proceedings, a valid easement shall exist for such encroachment and for the maintenance of the same so long as the affected Building or Unit exists.
- F. Occupancy. Except for initial sales by the Declarant, no Unit shall be leased, sold or occupied unless and until the Owner thereof shall have received an occupancy permit for said Unit and said Unit shall only be used as a private residence and in accordance with the Zoning Ordinance and Building Code of the City of Portsmouth. Occupancy of any Unit shall be in accordance with the Rules and Regulations of the Condominium and ordinances of the City of Portsmouth and further subject to the laws of the State of New Hampshire. The Board of Directors may make any occupancy rules that are not in violation of the rules, regulations and ordinances of the City of Portsmouth.
- G. Pipes, Ducts, Cables, Wires, Conduits, Public Utility Lines and Other Common

Area Located Inside of Units; Support. Each Unit Owner shall have an easement in common with the Owners of all other Units to use all pipes, wires, ducts, cables, conduits, public utility lines and other Common Area located in any of the other Units and serving said Owner's Unit. Each Unit shall be subject to an easement in favor of the Owners of all other Units to use the pipes, ducts, cables, wires, conduits, public utility lines and other Common Area serving such other Units and located in such Unit. The Board of Directors shall have a right of access to each Unit to inspect the same, to remove violations therefrom and to maintain, repair or replace the Common Area contained therein or elsewhere in the Condominium. Every portion of a Unit that contributes to the structural support of the Condominium improvements shall be burdened with an easement of structural support for the benefit of all other Units and the Common Area. Any costs associated with the entry into a Unit to repair what is determined to be a Unit Owner's property and/or maintenance responsibility shall be assessed to the Unit, including, but not limited to time, labor, materials and attorney's fees, if any.

- H. Leases. Any Unit may be rented, leased, subleased or otherwise granted to someone other than the Unit Owner(s) and occupied only by the lessee, renter or other occupant, his family, servants and guests. Any such rentals referenced herein may be for no less than six (6) months. Any costs incurred by the Association to enforce this provision, including but not limited to attorneys' fees, shall be assessed to the Unit Owner. All Unit rentals, leases and tenancies shall be subject to the prior submittal to the Board of Directors and, if a process is established by the Board of Directors, approval by the Board of Directors of a complete New Lease Application Package in form and substance as may be set forth in the Bylaws, as amended from time-to-time.
- I. Snow Removal/Grass and Lawn Maintenance. Snow removal will be a common expense, and it will be the responsibility of the Association to remove all snow from the Common Areas as well as any walkways, parking spaces, stairs or driveways shown as Limited Common Area on the Condominium Site Plan, and store it the areas set forth for "Snow Storage" on the Site Plan and Condominium Site Plan. In addition, all grass areas in the Condominium, regardless of whether they are depicted on the Site Plan and Condominium Site Plan as Common Area or Limited Common Area, shall be maintained by the Association and all costs of such maintenance shall be common expense. *See also* Landscape Plan referenced in Article I, Section 15 above.
- J. Trash Removal. Trash removal will be common expense, and it will be the responsibility of the Association to obtain and provide for the trash removal for the Unit Owners and the Association.
- K. Stormwater Management and Maintenance Plan. The Association is responsible

for implementing the Stormwater Management Operation and Maintenance Plan as referenced in note #14 of the Condominium Site Plan, which is further described and reproduced in **Appendix D**.

- L. Owners Subject to Declaration, Bylaws and Rules and Regulations. All present and future Owners, tenants and occupants of Units, and any other person who might use the facilities of the Condominium in any manner, are subject to the provisions of this Declaration, the Bylaws and the Rules to be adopted by the Board of Directors, and decisions and resolutions of the Board of Directors, as lawfully amended from time to time. The use of the Submitted Property and/or acceptance or the entering into occupancy of any Unit shall constitute an agreement that the provisions of this Declaration, the Bylaws and the Rules, as they may be lawfully amended from time to time, are accepted and ratified by such Owner, tenant or occupant and all of such provisions shall be deemed and taken to be enforceable servitudes and 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 of conveyance or lease thereof.

The Declaration and Bylaws, the Rules and Regulations to be adopted by the Board of Directors, and the decisions and resolutions of the Board of Directors, as lawfully amended from time to time, all contain or will contain certain restrictions as to use of the Units or other parts of the Condominium. Each Owner shall comply therewith, and failure to comply with any such provision, decision or resolution shall be grounds for an action to recover sums due, for damages, for injunctive relief, for specific performance or for any other relief to be awarded by a court of law. All such actions in law or at equity by the Association shall be authorized by resolution of the Board of Directors and the prevailing party shall be entitled to recover all reasonable costs and expenses of such actions, including reasonable attorneys' fees, all as more particularly set forth in the Bylaws. Nothing herein, however, shall exempt a Unit Owner from paying all collection costs, including attorney's fees, should the Association prevail in any such collection case.

- M. Condominium Subject to Easements for Ingress and Egress and Use. Subject to the provisions of this Declaration, the Bylaws and the Condominium Act, each Unit Owner shall have an easement in common with the other Unit Owner for ingress and egress through and use and enjoyment of all Common Areas and each Unit shall be subject to an easement for ingress and egress through and use and enjoyment of all Common Areas by persons lawfully using or entitled to the same.
- N. Submitted Property Subject to Covenants, Easements and Restrictions of Record. The submission of the Property is subject to all covenants, conditions, easements and restrictions of record, namely:

- i. The Site Plan. For further reference see definition above.
 - ii. The Condominium Site Plan. For further reference see definition above.
 - iii. Access Easement for Water Services. For further reference see Book 5881, Page 1072, recorded in the Rockingham County Registry of Deeds.
 - iv. 25' Town Access Easement. See Site Plan and Condominium Site Plan.
 - v. City of Portsmouth Development Agreement. For further reference see Book 5881, Page 0984, in the Rockingham County Registry of Deeds.
 - vi. Grant of Conservation Restrictions and Conservation Open Space Management Plan. For further reference see Book 5881, Page 1074, in the Rockingham County Registry of Deeds.
 - vii. Stormwater Management and Maintenance Plan. For further reference see Appendix TBD.
- O. Submitted Property Subject to Covenants, Easements and Restrictions not of Record. The submission of the Property is subject to all covenants, conditions, easements and restrictions not of record, namely:
- i. The Landscape Plan. For further reference see Article I, Section 15. The Landscape Plan shall be held at all times on file by the Declarant, or upon the creation of the Association, then by the Association. The Declarant, the Association, and their agents and representatives, and each Unit Owner shall obey and abide by the Landscape Plan at all times. Each Unit Owner shall receive a copy of the Landscape Plan before, on, or after the purchase of a Unit, or within thirty (30) days of the Landscape Plan being amended and approved by the City of Portsmouth. Each Unit Owner is assumed to have received a copy of the Landscape Plan.
- P. Reservation of Utility and Easements. The Association shall have perpetual easements for the installation, construction, reconstruction, maintenance, repair, operation and inspection of all utility services necessary or desirable in connection with operation of the Condominium, including but not limited to, cable, water, sewage disposal, snow removal, telephone, gas, cable, internet and electrical systems, all for the benefit of the respective Owners of the Condominium, as the case may be, which reservation includes the right to convey such easements directly to suppliers and/or distributors of such utility services. The intent of this Section is to grant the Association the perpetual right to allow utility and other providers to enter onto the Common Area to inspect, maintain and otherwise access the utility services, which permission shall not be unreasonably withheld to utility providers. It is particularly noted that no use shall be permitted which could directly or indirectly degrade the quality of the Property.

The Declarant has entered into a Propane Agreement with Palmer Oil & Gas ("Palmer") for a duration of five (5) years, ending on January 22, 2024. The intent of this Propane Agreement is for Palmer to install underground propane tanks and

related piping, meters and other equipment that shall service the Condominium and each Unit therein. The underground tanks, as well as any piping, regulators, and meters, as may be the case and as may be located on Common Area and/or Limited Common Area, shall be maintained by Palmer with Palmer having unlimited access to said effect, and the Association shall be responsible for any costs and expenses associated therewith. Each Unit Owner shall be individually responsible for any maintenance and associated cost of any and all interior components related to the propane service for each Unit, such as but not necessarily limited to, piping from the meter to the interior of the Unit, plumbing, furnaces, boilers, and hot water heaters, as well as the cost for such anticipated use of the propane. The Declarant shall transfer and assign the Propane Agreement, which includes all of its rights, responsibilities and obligations, to the Association concurrently with the creation of the Association as set for in Article I, Section 2 of the By-Laws. The Declarant, or the Association as the case may be, shall retain a copy of the Propane Agreement at all times and shall supply a copy of the Propane Agreement to each Unit Owner upon the sale of a Unit.

- Q. The Board of Directors is empowered to adopt and amend, from time to time, Rules concerning the use of the Condominium and various parts thereof, which Rules shall be furnished in writing to all Owners and which shall not be violated. The Rules may not conflict with the provisions of the Declaration or Bylaws.

13. Determination of Action Following Casualty Damage. In the event of damage to any portion of the Condominium by fire, or other casualty, the proceeds of the master casualty policy shall, pursuant to the Condominium Act, as amended from time to time, be used to repair, re- place or restore the structure or Common Area damaged, unless the Unit Owners vote to terminate the Condominium pursuant to RSA 356-B; 34 as amended from time to time. The Board of Directors is hereby irrevocably appointed the agent for each Owner of a Unit and for each mortgagee of a Unit and for each owner of any other interest in the Condominium to adjust all claims arising under such policy or otherwise resulting from such damage and to execute and deliver releases upon the payment of claims. The provisions of Article VII of the Bylaws shall determine the extent to which any part of the Condominium shall be reconstructed or repaired, provided that said provisions shall not discriminate against or inequitably affect or impact any Unit Owner.

14. Rights Reserved to the Declarant. Notwithstanding anything to the contrary contained in this Declaration or the Bylaws, the following rights are reserved to the Declarant, its successors, nominees and assigns (the "**Reserved Rights**"):

- A. Access for Sales. The Declarant reserves the right to use any Unit or part thereof owned by Declarant as a model Unit or for sales relating to the Condominium, and to erect signs and other promotional materials to advertise or otherwise market the Unit(s) for sale, until all Units have been conveyed to unrelated third parties.

- B. Easements for Construction. The Declarant shall, until completion of all

Condominium improvements required to be completed by the Declarant under the Site Plan, Condominium Site Plan and Floor Plans, have the right of ingress and egress over, upon and across the Common Area and any Unit containing Common Area and to make such other use thereof as may be reasonably necessary and incident to the construction, maintenance, repair and upkeep of the Condominium, but the Declarant shall not unduly interfere with the Unit Owners and their rights to use the same.

ARTICLE III **AMENDMENTS**

This Declaration of Condominium and Bylaws of the Peverly Hill Estates Condominium Association may be amended only as provided herein and shall be evidenced by an instrument in writing signed, acknowledged and recorded as provided by the Act, and such amendment shall be effective only upon recording in the office of the Registry of Deeds of Rockingham County, State of New Hampshire subject to the following:

1. The Declaration and the Bylaws shall only be amended by agreement of the Unit Owners of Units to which votes totaling at least sixty-seven percent (67%) of the Percentage of Undivided Interest in the Association appertain.
2. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which the proposed amendment is to be considered.
3. No Amendment shall discriminate against any Unit Owner or against any Unit or group of Units unless the Unit Owners affected shall consent. Further, no amendment shall change any Unit or the share of the Common Areas appurtenant to it, or increase an Owner's share in the Common Area, unless all the record Owners of the Units affected shall join in the execution of the Amendment.
4. No change in the Declaration, Bylaws or Rules and Regulations shall affect any Unit's Limited Common Area or relating in any way to the Common Area that abuts a Unit shall be allowed or suffered without the written consent of the affected Unit Owner(s).
5. Notwithstanding anything herein to the contrary, until the Declarant conveys the last Unit to an unrelated third party, the Declaration and By-Laws may not be amended without the approval and consent of the Declarant, and no amendment to the Declaration shall be adopted that could interfere with the construction, sale, lease or other disposition of Unit(s).
6. No amendment shall be contrary to the provisions of the Act.
7. Any amendment of material nature as defined in Section 402.02 of FNMA Lending documents dated January 1, 1983, shall have been approved in writing by fifty-one (51%)

percent of the mortgagee or mortgagees holding first mortgages on Units.

8. No amendment shall be contrary to any provisions of the City of Portsmouth Zoning Ordinance and Building Code or Subdivision Regulations.

ARTICLE IV
FNMA/FHLMC
COMPLIANCE

Notwithstanding anything to the contrary elsewhere in the Condominium Instruments, the following provisions shall govern and be applicable insofar and for so long as the same are required in order to qualify mortgages of Units in the Condominium for sale to the Federal Home Loan Mortgage Corporation (FHLMC) or the Federal National Mortgage Association (FNMA) or the Federal Housing Administration (FHA) under the laws and regulations applicable thereto.

1. Any holder, insurer, or guarantor of a first mortgage on a Unit in the Condominium shall, upon written request, be entitled to written notification from the Association of any of the following (holders of first mortgages who have submitted such written request will be referred to as "Eligible Mortgage Holders"):
 - A. A condemnation or loss which affects a material portion of the Property of such Unit on which such first mortgagee holds a first mortgage lien;
 - B. Any sixty (60) day delinquency in the payment of assessments or charges owned by a mortgagor or such Unit;
 - C. Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;
 - D. Any action for which the consent of Eligible Mortgage Holders is required pursuant to this Declaration.
2. Any first mortgagee of a Unit in the Condominium who obtains title to the Unit pursuant to the remedies provided in the mortgage, or foreclosure of the mortgage, or deed (of assignment) in lieu of foreclosure, shall take the property free of any claims for unpaid assessments or charges against the mortgaged Unit which accrue prior to the acquisition of title of such Unit by the mortgagee.
3. Unless at least fifty-one (51%) percent of the Eligible Mortgage Holders (based upon votes appurtenant to Units subject to such mortgages) have given their prior written approval, the Owners and the Association shall not be entitled to: (i) by act or omission, seek to abandon or terminate the Condominium project; (ii) change the Percentage Interests or obligations of any Unit for purposes of (a) levying assessments or charges or allocating distributions of

hazard insurance proceeds or condemnation awards or (b) determining the pro rata share of ownership of each Unit in the Common Area; (iii) partition or subdivide any Unit; (iv) by act or omission, seek to abandon, partition, subdivide, encumber, sell, or transfer, the Common Area (the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area by the Declarant or the Association shall not be deemed a transfer within the meaning of this clause); (v) use hazard insurance proceeds for losses to the Property (whether to Units or to Common Area) for other than the repair, replacement, or reconstruction of such Property; or (vi) amend, modify, or otherwise change any material rights or obligations under this Declaration or the Bylaws. In the case of termination of the Condominium for any reason other than substantial destruction or condemnation, prior written approval of sixty-seven (67%) percent of Eligible Mortgage Holders shall be required.

4. The Board of Directors of the Association shall assure that its books, records, and financial statements, as well as current copies of the Declaration, Bylaws, and Rules are available for inspection by Unit Owners or holders, insurers, or guarantors of first mortgages on Units during normal business hours or under other reasonable circumstances.
5. An adequate operating fund and a reserve fund for maintenance, repairs, and replacements of any Common Area which must be replaced on a periodic basis shall be established by the Association and shall be funded by regular monthly payments rather than by special assessments.
6. This Declaration and the Bylaws contain provisions concerning various rights, priorities, remedies, and interests of first mortgagees of Units. Such provisions are to be construed as covenants for the protection of such mortgagees on which they may rely in making loans secured by mortgages on the Units. Accordingly, any Owner who gives a first mortgage on his Unit shall notify the Association of the name and address of the first mortgagee of such Unit. All mortgagees with respect to which the Association has received such notice shall be given written notice of any damage or loss where the cost of restoring the Common Area exceeds Ten Thousand (\$10,000.00) Dollars, and the first mortgagee of a Unit shall be given written notice of damage or loss to the Unit covered by its mortgage where the cost of restoration of such damage or loss exceeds One Thousand (\$1,000.00) Dollars, the Association is made aware of such damage or loss, and notice of such mortgage has been supplied to the Association.
7. If FHLMC or FNMA or FHA holds any interest in one or more mortgages of Units:
 - A. The Association shall be required to obtain and maintain, to the extent obtainable, and permitted by applicable law, such insurance other than that which may be required by

Article VI of the Bylaws, in such amounts and containing such terms, as may be required from time to time by FHLMC, FNMA, or FHA, including, but not limited to, dishonest acts on the part of the officers of the Association, employees, or volunteers responsible for handling the Association's funds. All such insurance shall provide that an adjustment of loss shall be made by the Association and if FHLMC, FNMA, or FHA holds any interest in one or more mortgages on Units, all such policies shall be in such amounts and contain such terms as may be required from time to time by whichever of FHLMC, FNMA, or FHA (or all) holds such interests.

- B. Wherever any Unit and/or Common Area is damaged by fire or other hazard, the Association shall give notice to such persons as may be required by FHLMC or FNMA,
- C. Any holder, insurer, or guarantor, or grantor of a first mortgage on any Unit shall be entitled to have the Association provide a copy of the audited financial statement for the immediate preceding fiscal year of the Association. If no such audited statement exists, the requesting party is entitled to have an audited statement prepared at its own expense, or at its option to receive a copy of any unaudited statement. Upon such request, the Association must provide the financial statement to the requesting party within a reasonable time.

ARTICLE V **INSURANCE**

The Board of Directors shall obtain and maintain at all times FULL REPLACEMENT COST, including for building and safety code upgrades, fire, quake, flood and extended coverage insurance of the type and kind and in at least the amounts provided in the Bylaws, and a master liability policy, in an amount not less than Two Million Dollars (\$2,000,000.00), covering the Unit Owners' Association, the managing agent, if any, the Board of Directors, all persons acting or who may come to act as agents or employees of the Condominium, and all Unit Owners or other persons entitled to occupy any Unit or any portion of the Condominium (provided, that, this insurance shall not insure against the individual liability of an Owner or occupant for negligence occurring within said Owner or occupant's own Unit or within the limited common area over which said Owner or occupant has exclusive use), and such other policies as the Board of Directors shall designate, including insurance for such other risks, of a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to other condominium complexes of similar construction, design and use; such insurance shall at all times be sufficient to finance the reconstruction of all improvements to the Common Area, provided that:

1. All policies shall be written with a company licensed to do business in the State of New Hampshire.
2. Premiums upon insurance policies purchased by the Board of Directors shall be paid by

the Board of Directors as a Common Expense and proceeds of such policies shall be payable to the Board of Directors, to be held in accordance with the Bylaws.

3. Exclusive authority to adjust losses under policies hereafter enforced shall be vested in the Board of Directors or its authorized representative.

4. This insurance, however, shall not insure against the individual liability of an Owner for negligence occurring within said Owner's Unit or within the Limited Common Area over which said Owner has exclusive use.

5. Each Owner must obtain insurance for said Owner's benefit and at said Owner's own expense, insuring all personal property presently or hereafter located in said Owner's Unit or Limited Common Area. Each Unit Owner shall obtain fire, quake and extended coverage for their Unit, covering the portions of the Unit not covered by the master policy and any other insurance for liability including any deductible contained in the master insurance policy or personal property as the Unit Owner deems appropriate. No such policy shall be written so as to decrease the coverage under any of the policies obtained by the Board of Directors, and each Owner hereby assigns to the Association the proceeds of any such policy to the extent that any such policy does, in fact, result in a decrease in such coverage. Certificates of proof of all such policies (except policies covering only personal property owned or supplied by individual owners) shall be filed with the Association. Any costs incurred by the Association to enforce this provision, including any attorney's fees incurred by the Association to acquire a copy of the policy, shall be assessed to the Unit Owner.

6. The Board of Directors shall be required to make every effort to secure insurance policies that will provide for the following:

- A. A waiver of subrogation by the insurer as to any claims against the Board of Directors, the Manager, and Owners and their respective servants, agents and guests;
- B. The master policy cannot be canceled, invalidated, or suspended on account of the conduct of any one or more individual Owners;
- C. The master policy cannot be canceled, invalidated, or suspended on account of the conduct of any officer or employee of the Association or Manager without prior demand in writing that the Association or Manager cure the defect; and
- D. That any "no other insurance" clause in the master policy exclude individual Owner's policies from consideration.

ARTICLE VI **ASSOCIATION**

The operation of the Condominium shall be by an unincorporated Association. The Board of Directors shall have all of the powers and duties as set forth in the Condominium Act except as limited by this Declaration and the Bylaws, and all of the powers and duties reasonably necessary to operate the Condominium as set forth in this Declaration and the Bylaws and as they may be amended from time to time.

1. Membership in the Association.

- A. Qualifications. The members of the Association shall consist of all the record Owners of the Units.
- B. Change of Membership and Mortgages. Change of membership in the Association shall be established by recording in the Registry of Deeds for Rockingham County, State of New Hampshire a deed establishing record title to a Unit in the Condominium. The Buyer shall immediately deliver to the Association a copy of the deed showing the Book and Page of same. Should the new Owner fail to do so within thirty (30) days of the date of the filing of said Deed (or within thirty days of the passage of this provision), the Board of Directors may acquire one, and the Unit Owner shall pay all costs, including Registry and attorney's fees, and such fees shall act as a lien against the unit until paid in full. The Board of Directors shall keep such copy on file as evidence of the Grantee's membership in the Association for all purposes, rights, and obligations as set forth in this Declaration and Bylaws. The Unit Owner designated by such instrument shall thereby become a member of the Association. Further, no one shall enter into a reverse mortgage without ensuring that all condominium fees, assessments, fines, interest and other costs, if any shall be, from the time of the signing of the reverse mortgage, paid by the mortgagee directly to the Association. At such time, the membership of the prior Unit Owner shall be thereby terminated. All costs, including Registry and attorney's fees, incurred to enforce this Paragraph, shall be assessed to the Unit and shall act as a lien against the Unit until paid in full.
- C. Voting Rights. A member of the Association shall be entitled to cast one (1) vote for each Unit owned. All votes shall be weighted according to the Unit's Percentage of Undivided Interest in the Common Area. When there is more than one record Owner, any of such persons may attend any meeting of the Association and cast the vote of such Unit, but if more than one (1) such Record Owner shall attend, it shall be necessary for those present to act unanimously in order to cast any vote(s) to which they are entitled.
- D. Restraint Upon Assignment of Shares in the Association. The share of a member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to his Unit.
- E. Proxies. Members may vote at all Association meetings by written proxy as provided by the Act and as properly delivered to the Association.

2. Board of Directors. The affairs of the Association shall be conducted by a Board of Directors the members of which shall be designated in the manner provided in the Bylaws.
3. Indemnification. Every Director and Officer of the Association shall be indemnified by the Association against all expenses and liabilities, including counsel fees, reasonably incurred or imposed upon him in connection with any proceeding to which he may be a party or in which he may become involved, by reason of his being or having been a Director or Officer of the Association, or any settlement thereof, whether or not he is a Director or Officer at such time the expenses are incurred, except in such cases wherein the Director or Officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement, the indemnification herein shall apply only when the Board of Directors approves such settlement and reimbursement as being in the best interest of the Association. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such Director or Officer may be entitled.
4. Limitations upon Liability of the Association. Notwithstanding the duty of the Association to maintain and repair parts of the Condominium, the Association shall not be liable for in- jury or damage, other than the cost of maintenance and repair, caused by any latent condition of the property to be maintained and repaired by the Association.
5. Bylaws. The Bylaws of the Association shall be in the form attached hereto as Appendix C, as amended from time to time.
6. Property in Trust. All funds and title to all properties acquired by the Association and the proceeds thereof shall be held in trust for the membership in accordance with the provisions of this Declaration and the Bylaws.

ARTICLE VII PARTITION

There shall be no judicial partition of the Condominium or any part thereof, nor shall the Declarant or any other person acquiring any interest in the Condominium or any part thereof seek any judicial partition, unless the property has been removed from the provisions of the Condominium Act as provided in the Act; provided, however, that if any Unit shall be owned by two or more co-tenants as tenants in common or as joint tenants, nothing herein contained shall be deemed to prevent a judicial partition as between such co-tenants. Such partition shall not affect any other Unit, nor shall it subdivide any Unit.

ARTICLE VIII INTERPRETATION

1. Interpretation. The provisions of the Declaration shall be liberally construed in accordance with the common law and statutory law of the State of New Hampshire in order to effect its

purpose of creating a uniform plan for the development and operation of a Condominium. Failure to enforce any provision of this Declaration, the Bylaws and/or the Rules shall not constitute a waiver of the right to enforce said provision.

2. Gender. The use of the masculine gender in this Declaration shall be deemed to refer to the feminine gender and vice versa, and the use of the singular shall be deemed to refer to the plural and vice versa, whenever the context so requires.

3. Priority. Further, the order of priority between the Declaration, the Bylaws and the Rules, as each are amended and/or changed from time-to-time, shall be that the Declaration pre- sides over conflicting language in either the Bylaws or the Rules and the Bylaws preside over conflicting language in the Rules.

4. **JURY TRIAL WAIVER. THE DECLARANT AND EACH UNIT OWNER MUTUALLY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS DECLARATION AND ANY MATTER ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS DECLARATION, THE OPERATION, MANAGEMENT OR ADMINISTRATION OF THE CONDOMINIUM OR ANY OTHER MATTER OR ISSUE CONTEMPLATED OR ARISING HEREUNDER, OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY. THIS WAIVER CONSTITUTES A MATERIAL INDUCEMENT FOR DECLARANT TO ESTABLISH THE CONDOMINIUM AND FOR EACH UNIT OWNER TO PURCHASE THEIR RESPECTIVE UNIT.** Any dispute between or among any party subject hereto must be brought and litigated in the state courts situate in Rockingham County, New Hampshire or in the federal courts situate in the State of New Hampshire. In any suit, action or proceeding, the prevailing party shall be entitled to receive its costs, including reasonable attorney's fees, incurred in the matter.

5. Surety. Any Unit Owner or other party (except the Association or Declarant) aggrieved by the terms, conditions, interpretation or application of this Declaration, the Bylaws or Rules, or any other matter arising out of or relating to this Declaration, the operation, management or administration of the Condominium or any other matter or issue contemplated or arising hereunder, shall, prior to filing any suit, action or proceeding involving the Association or any other Unit Owner, post with the Association, in cash, the sum of One Hundred Thousand Dollars (\$100,000.00) as surety for the payment to the Association or such Other Unit Owner of its respective costs and expenses, including reasonable attorney's fees, incurred with respect to the defense or prosecution of such suit, action or proceeding in the event the Association or such Other Unit Owner prevails in such suit, action or proceeding.

ARTICLE IX
SEVERABILITY

The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion hereof shall not affect the validity or enforceability of any other provision hereof.

ARTICLE X
EFFECTIVE DATE

This Declaration shall take effect upon recording at the Rockingham County Registry of Deeds.

[End of page. Signatures appear on following pages.]

IN WITNESS WHERE OF, the undersigned has caused this Declaration to be duly executed as of this 17th day of July 2019.



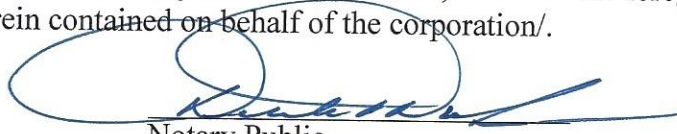
Witness

MERRIMACK VALLEY HOMES,
INC.

By: 
Charles Zoukis, President

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

On this the 17th day of July 2019, before me, the undersigned, personally appeared Charles Zoukis, who acknowledged himself to be President of MERRIMACK VALLEY HOMES, INC., and that he as President, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of the corporation/.



Notary Public

Print Name: Derek R. Durbin

My Commission Expires: 4/22/2020



SCHEDULE OF APPENDICES

Appendix A - Submitted Property - All Real and Personal Property

Appendix B - Percentage of Undivided Interest in Common Area

Appendix C - Bylaws

Appendix D - Stormwater Management and Maintenance Plan

APPENDIX A

SUBMITTED PROPERTY

ALL REAL AND PERSONAL PROPERTY

Legal Description – Overall Property Description

Tax Map 255, Lot 8
288 Peverly Hill Road
Portsmouth, New Hampshire

Beginning at a point at or near the westerly sideline of Peverly Hill Road, so-called, and land described as Lot 1 on the below referenced plan; thence proceeding S 77° 00' W for a distance of 177.20 feet more or less to a point; thence turning and running N 18° 36' 30" W for a distance of 113.15 feet more or less to a point at land now or formerly of New Hope Baptist Church, the last two courses being by and along said lot 1; thence turning and running S 79° 54' 30" W for a distance of 1,594.98 feet more or less to land now or formerly of Peter Zeda Stokel; thence turning and running S 7° 45' 00" E along land of said Stokel for a distance of 404.50 feet to a point at land now or formerly of John Hett; thence turning and running N 83° 06' 15" E for a distance of 474.04 feet to a point; thence turning and running S 87° 41' 45" E for a distance of 159.62 feet more or less to a point; thence turning and running N 83° 59' E for a distance of 145.96 feet more or less to a point; thence turning and running N 9° .03' W for a distance of 100 feet more or less to a point; thence turning and running N 84° 22' 45" E for a distance of 271.57 feet more or less to a point; thence turning and running N 71° 40' 00" E for a distance of 209.02 feet more or less to a point; thence turning and running N 69° 22' 30" E for a distance of 374.71 feet to land of the Grantor and show as Lot 2 on the plan referenced below; the last seven courses being by and along land now or formerly of Frank Hett; thence turning and running N 12° 07' W for a distance of 125.80 feet to a point; thence turning and running N 77° 00' E for a distance of 178.60 feet more or less to a point at or near the westerly sideline of Peverly Hill Road, the last two course being by and along land now or formerly of the Grantor and show as Lot 2 on the below referenced plan; thence turning and running N 9° 3' W along the westerly sideline of Peverly Hill Road so-called to Lot 1 on the plan described below and the point of beginning.

Meaning and intending to describe an area as shown as approximately 14.87 acres on plan entitled "Subdivision of Land for Robert E. Dowd in Portsmouth, N.H." dated May 31, 1978 drawn by Bruce L. Pohopek, Licensed Land Surveyor and recorded in the Rockingham County Registry of Deeds as Plan #D-8312.

APPENDIX B

Percentage of Undivided Interest in Common Area During and After Completion of Phase I

Each Unit is accorded a Percentage of Undivided Interest in the Common Area as follows:

Unit 6 = 25.00%

Unit 7 = 25.00%

Unit 8 = 25.00%

Unit 9 = 25.00%

Percentage of Undivided Interest in Common Area During and After Completion of Phase II

Each Unit is accorded a Percentage of Undivided Interest in the Common Area as follows:

Unit 1 = 11.11%

Unit 2 = 11.11%

Unit 3 = 11.11%

Unit 4 = 11.11%

Unit 5 = 11.11%

Unit 6 = 11.11%

Unit 7 = 11.11%

Unit 8 = 11.11%

Unit 9 = 11.11%

APPENDIX C

BYLAWS

of

PEVERLY HILL ESTATES CONDOMINIUM ASSOCIATION

Portsmouth, New Hampshire

ARTICLE I

GENERAL

1. The Association. Peverly Hill Estates Condominium Association (the “**Association**”) is a condominium association formed for the purpose of maintaining and/or improving the Common Area and other assets of the Association (the “**Property**”), governing its use, and in general administering and enforcing the Declaration, these Bylaws, and the Rules promulgated pursuant thereto.
2. Creation and Formation. The Declarant shall create the Peverly Hill Estates Condominium Association upon sale of the last Unit owned by the Declarant in the Condominium, or at such time as the Declarant deems appropriate, whichever occurs sooner.
3. Members. An owner of record of a Unit (“**Unit Owner**” or “**Owner**”) shall automatically become a member of the Association, and the membership of a Unit Owner shall terminate when said member ceases to be a Unit Owner, with such membership automatically transferred to such member’s successor in interest. All present and future Unit Owners, lessees and occupants of Units, their employees, all associate members and any other person(s) who may use the Common Area in any manner, are subject to these Bylaws, the Declaration, and the Rules and Regulations referred to in the Declaration. As referenced therein, the acceptance of a deed, and/or the conveyance, letting, use or occupancy of a Unit, shall constitute an agreement that the Owner, lessee, guest and/or occupant of any Unit shall abide by these Bylaws, the Declaration, and the Rules and Regulations, as any or all may be amended from time to time.
4. Purpose. The administration of the Condominium shall be governed by these Bylaws which are annexed to the Declaration of Peverly Hill Estates and are made a part hereof, and all present and future holders of any interest in the Condominium shall be members of Peverly Hill Estates Condominium Association which is a “condominium management association” organized and operated to provide for the acquisition, construction, management, maintenance and care of “association property” as those terms are defined in Section 528 of the Internal Revenue Code as such may be amended or replaced from time to time. No part of the net earnings of said Association shall inure (other than by acquiring, constructing or providing management,

maintenance and care of Association property and other than by a rebate of excess assessments) to the benefit of any Unit Owner.

5. Bylaws Applicability. The provisions of these Bylaws are applicable to the Property and the use, occupancy, sale, lease or other transfer thereof. All present and future Owners, present and future tenants, their guests, licensees, servants, agents, employees and any other person(s) or occupant(s) who shall use the facilities of the Property shall be subject to these Bylaws and to the Rules and Regulations of the Condominium. The acceptance of a deed of conveyance or the entering into a lease or the act of occupancy of a Unit or any other portion of the Condominium shall constitute an acknowledgment that such Owner, tenant or occupant has accepted and ratified these Bylaws, the provisions of the Declaration and the Rules and Regulations and will comply with them.

6. Office. The offices of the Condominium and of the Association shall be located at the Condominium or at such other place as may be designated from time to time by the Board of Directors.

ARTICLE II

UNIT OWNERS' ASSOCIATION

1. Composition. All of the Unit Owners, acting as a group in accordance with the Condominium Act, the Declaration and these Bylaws, shall constitute the "Peverly Hill Estates Condominium Association" or the "Unit Owners' Association" or the "Association", which shall have the responsibility of administering the Condominium, establishing the means and methods of collecting the Assessments for Common Expenses, arranging for the management of the Condominium and performing all of the acts that may be required for the Condominium and performing all of the acts that may be required to be performed by the Association by the Condominium Act. Except as to those matters which the Act, the Declaration or these Bylaws specifically require to be performed by the vote of the Unit Owners, the administration of the Condominium shall be performed by the Board of the Directors (as more particularly set forth in Article III herein).

2. Voting. Each Unit shall be entitled to one vote on all Association matters. Except as specifically otherwise noted in the Declaration and Bylaws of Peverly Hill Estates Condominium Association, a majority of votes shall mean a majority of votes or percentage interests, as applicable, that are in attendance in person or by proxy and which are entitled to vote on any given matter. As applied to a person who is not a natural person, such as a Trust or a corporation, the word "person" shall be deemed for the purposes of this section to be the designated representative of any such entity. Since a Unit Owner may be more than one person, if only one of such persons is present at a meeting of the Association, that person shall be entitled to cast the votes pertaining to that Unit. But if more than one of such persons is present, the vote appertaining to that Unit shall be cast only in accordance with the agreement of a majority of them and such consent shall be conclusively presumed if any one of them purports to cast the vote appertaining to that Unit without

protest being made forthwith by any of the others to the person presiding over the meeting. Where multiple owners of a Unit cannot agree to cast their Unit votes unanimously (in the case where there are an even number of unit owners present either in person or by valid proxy) or cannot agree to cast their Unit vote in accordance with the agreement of a majority of them (in the case where there are an odd number of unit owners present either in person or by valid proxy), then no vote shall be cast for that Unit. Unless specifically directed otherwise in these Bylaws or the Declaration, the vote either in person or by proxy of those Units that hold a majority shall be binding upon all Unit Owners. As applied to a person who is not a natural person, the word "**person**" shall be deemed for the purposes of this section to be the designated representative of any unit owned by a corporation, partnership or other entity.

Voting may be conducted by mail, postal or email, without a meeting, including by ballot pursuant to the terms of RSA 356-B: 39-a as amended from time to time.

Any voting conducted at an Association meeting, Annual or Special, may be held open for a period of time of up to sixty (60) days from the date of the meeting, after which time if insufficient votes have been acquired, either in person, in writing or by proxy, the vote shall fail, but may be re-presented at any subsequent Association meeting.

3. Place of Meeting. Meetings of the Association shall be held at the principal office of the Condominium or at such other suitable place in Portsmouth, New Hampshire as may be designated by the Board of Directors and stated in the notice of meeting.

4. Annual Meeting. The Annual Meeting of the Association shall be held on a date to be determined by the Board of Directors, which date, if at all practicable, shall be within sixty (60) days, before or after, the end of Association's fiscal year. At such Annual Meetings the Owners may transact any business as may properly come before them at such meetings.

5. Special Meetings. It shall be the duty of the President to call a special meeting of the Association if so directed by a petition signed and presented to the Secretary by the Owners of at least two (2) Units. The notice of any Special Meeting shall state the time and place of such meeting and the purpose thereof. If such notice is not given within ten (10) days after delivery of a written request to call the meeting, the Owners requesting the meeting may fix the time, date and place of the meeting and give notice to all other Owners. No business shall be transacted at a Special Meeting except as stated in the notice.

6. Notice of Meeting. Notice of Association meetings shall be in accord with the provisions of the Condominium Act, as amended from time to time. The Notice shall state the purpose thereof, as well as the time and place where it is to be held, to each Owner of record, at the address of their respective Units or at such other address as each Owner may have designated by notice in writing to the Secretary.

Notice of the time, place and purpose(s) of any meeting of the members of the Association may be waived in writing by any members of the Association, either before or after the holding of

such meeting, which writing shall be filed with or entered upon the records of the meeting. The attendance of any member of the Association at such meeting without protesting, either prior to or at the commencement of the meeting, the lack of proper notice, shall be a waiver of notice of such meeting.

7. Voting Requirements. An Owner shall be deemed to be in good standing and entitled to vote at any Annual Meeting or at any special meeting of the Association if, and only if, he shall have fully paid all assessments made or levied and due against him and his Condominium Unit by the Association as hereinafter provided, together with all interest, costs, attorneys' fees, penalties and other expenses, if any, properly chargeable to him and against his Condominium Unit at least three (3) days prior to the date fixed for such annual or special meeting. Nothing herein will deny a delinquent owner from otherwise participating in the meeting.

8. Proxies. The votes appertaining to any Unit may be cast pursuant to a proxy or proxies in accordance with the provisions of Section 39 of the Condominium Act, and as amended. Proxies may be used to establish a quorum. No such proxy shall be revocable except by actual notice to the person presiding over the meeting, by the Unit Owner or by any of such persons, that it be revoked. Revocation shall not affect any vote or act previously taken or authorized. The appearance of a Unit Owner at any Association or Special Meeting shall void any proxy previously signed by the Owner. Revocation shall not affect any vote or act previously taken or authorized. Proxies shall not be allowed for Board meetings.

9. Quorum. A quorum shall be established only if at least five of the nine Units appear in person or by proxy at any such Association meeting.

10. Order of Business. The order of business at all meetings of the Association shall be as follows, unless otherwise changed by the Board of Directors: (a) roll call, (b) recitation of proof of notice of meeting, (c) acceptance of minutes of preceding meeting; (d) reports of officers; (e) reports of committees; (f) unfinished business; and (g) new business, any of which may be waived.

11. Conduct of Meeting. The President, or his designee, shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meeting and record in a record book all resolutions adopted at the meeting, as well as a record of all transactions occurring thereat. In the discretion of the Board of Directors, Roberts Rules of Order shall govern the conduct of all or any portion of meetings of the Association when not in conflict with the Declaration, these Bylaws or the Condominium Act. Owners may attend by telephone, video, or other conferencing process so long as the technology at any place where a meeting occurs allows for same and the Board of Directors, in its sole discretion, determines that the cost to make such technology available is appropriate and within the operating budget.

ARTICLE III
BOARD OF DIRECTORS

1. **Powers and Responsibilities.** The affairs and business of the Condominium shall be managed by the Board of Directors which shall have all of the powers and responsibilities necessary for the administration of the affairs of the Condominium, including the health, safety and welfare of the owners and occupants of Peverly Hill Estates Condominium Association, and may do all such acts and things as are not, by the Condominium Act, the Declaration or by these Bylaws, directed to be exercised and done exclusively by the Association toward these ends, including waiving or enforcing any provision of the Declaration, Bylaws and/or Rules and Regulations as amended from time-to-time as it deems appropriate in its sole discretion. The Board of Directors may delegate to one of its members the authority to act on behalf of the Board of Directors on all matters that might arise between meetings of the Board of Directors. In addition to the general duties imposed by these Bylaws, the Board of Directors shall have the power to perform and shall be responsible for the following:

- A. Preparation and adoption of an annual budget, in connection with which there shall be established the assessment of each Owner for the Common Expenses. Further, the Board of Directors shall undertake a Reserve Study conducted by a professional experienced in such matters no less than every ten (10) years, create a budget to institute any recommendations contained therein, and abide by any recommendations contained therein. In keeping with this provision, all maintenance contracts approved pursuant to Article, V, Paragraph 7 herein, shall show an adherence to the Association's long-term capital improvement plan. The Board of Directors may diverge from this requirement for good cause shown, the reasons for which must appear in the minutes of the Board's meetings.
- B. Making assessments against Owners to defray the Common Expenses for the Condominium, establishing the means and methods of collecting such assessments from the Owners, collecting said assessments, depositing the proceeds thereof in a bank depository and using the proceeds to carry out the administration of the Property. Unless otherwise determined by the Board of Directors, the annual assessments against each Owner for his proportionate share of the Common Expenses shall be payable in equal monthly installments, each such installment to be due and payable in advance on the first (1st) day of each month.
- C. Providing for the operation, repair, replacement and maintenance of all of the Common Area, including designating, hiring and dismissing the personnel necessary therefore, and, where appropriate, providing for the compensation of such personnel and for the purchase or use of equipment, supplies and materials to be used by such personnel in the performance of their duties.
- D. Making and amending Rules providing detail concerning the operation, use and enjoyment of the Property for the health, safety and welfare of the Owners and occupants

of Peverly Hill Estates Condominium and enforcing by legal means the provisions of the Declaration, these Bylaws and such Rules, and bringing any proceedings which may be instituted on behalf of the Owners.

E. Obtaining and carrying insurance against casualty and liability, as provided in Article VI of these Bylaws, and paying the premium cost thereof and making, or contracting for the making of, repairs, additions and improvements to, or alterations of, the Property and repairs to, and restoration of, the Property in accordance with the other provisions of these Bylaws, after damage or destruction by fire or other casualty.

F. Opening of bank accounts on behalf of the Association and designating signatories required therefor and keeping books with detailed accounts of the receipts and expenditures affecting the Property and the administration of the Condominium. The said books shall be available for examination by the Owners and their duly authorized agents at reasonable times and places. All books and records shall be kept in accordance with generally accepted accounting practices. All funds shall be invested in federally insured institutions or accounts.

G. Managing, leasing and otherwise dealing with the Common Area or other properties or facilities for which easements or rights are conveyed to the Association.

H. Terminate a Unit Owner's Common Area privileges and services pursuant to the terms of RSA 356-G: 46, IX as amended from time to time.

I. All such other things and acts not inconsistent with the Condominium Act and with the Declaration.

2. Managing Agent. The Board of Directors may employ, or contract with, a professional manager or management firm ("**Manager**") for a fee or compensation established by the Board of Directors, to perform such duties and services as the Board of Directors shall authorize, including, but not limited to, the duties listed in Section 1 of this Article III. The Board of Directors may delegate to the Manager all of the powers granted to the Board of Directors by these Bylaws. The term of any employment contract for a manager may not exceed three (3) years and any such employment contract shall provide, inter alia, that such agreement may be terminated without cause upon no less than thirty (30) days and no more than ninety (90) days written notice and without payment of a termination fee. Rollover management contracts shall be permissible.

3. Number of Directors. The Association shall maintain a Board of Directors consisting of a minimum of three (3) Unit Owner's, which number may be increased or decreased from time to time by a majority vote of the Unit Owner's Association. Members of the Board of Directors shall consist only of Owners or spouses of Owners as designated by the Owner at any time, or where a person that is an Owner is not a natural person, any natural person having authority to execute deeds on behalf of such Person. All actions of the Board of Directors shall require the approval of at least three (3) Directors.

4. Regular Meetings. Regular meetings of the Board of Directors may be held without call or notice at such time and place as shall be determined, from time to time, by agreement of a majority of the Directors. At least four (4) meetings shall be held during each twelve (12) month period after the Annual Meeting of the Association. Unit Owners are welcome to attend Board meetings, but may not participate without the express permission of a majority of Board members who may cede such permission to the presiding officer. Meetings may be held electronically including via the Internet.
5. Special Meetings. Any Board member, on thirty (30) business days' notice to the other Directors, may call special meetings of the Board of Directors. Such notice shall be given personally or by mail, electronic mail, telephone, text or other Internet communication and such notice shall state the time, place and purpose of the meeting.
6. Waiver of Notice. Before or within ten (10) days after any Special Meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board, in person or electronically, shall be a waiver of notice by him of the time and place thereof. If all the Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.
7. Board of Director's Quorum. At all meetings of the Board of Directors, a majority of the Directors need appear for a quorum to be established. Proxies are not valid for Board meetings. Board members may appear by audio and/or video conference.
8. Vacancies. Any vacancies on the Board of Directors shall be filled by any other Owner of the Unit for which there is a vacancy.
9. Removal of Directors. A Director may be removed from the Board of Directors only by resignation, by a majority vote of Unit Owners present in person or by proxy at any meeting of Unit Owner's at which a quorum is present, or by judicial decree, so long as another Owner of record who can then be seated on the Board of Directors. Notwithstanding anything herein to the contrary, until two (2) years after the date upon which the Declaration is filed with the Registry of Deeds, or until six (6) of the Units in the Association are sold, whichever occurs first, the Declarant shall have sole and total right to appoint and remove members of the Board of Directors.
10. Compensation. No Director shall receive any compensation from the Association for acting as such, nor shall any Director accept anything of value from people providing or proposing to provide services or products to the Association. Directors may, however be reimbursed for travel and business expenses.
11. Conduct of Meetings. The President, or his designee, shall preside over all meetings of the Board of Directors and the Secretary shall keep minutes of the meetings of the Board of Directors, recording therein all resolutions adopted by the Board of Directors and all transactions and