



RECORDING 298.00
SURCHARGE 2.00

**DECLARATION
OF
THE CLIFFS AT EVERGREEN CONDOMINIUM**

This Declaration of Condominium for THE CLIFFS AT EVERGREEN CONDOMINIUM (hereinafter referred to as "Declaration") is made this 16 day of February, 2023 by Chinburg Development, LLC, a New Hampshire limited liability company with mailing address of 3 Penstock Way, Newmarket, NH 03857 (hereinafter referred to as "Declarant"), in accordance with the provisions of the aforesaid Declaration and the provisions of the New Hampshire Condominium Act, New Hampshire RSA Chapter 356-B hereby declares:

- 1 Submission of Property.** The Declarant hereby submits to the provisions of the Condominium Act, the land in Auburn, Rockingham County, New Hampshire, (being a portion of the same land conveyed to Declarant by (i) deed from Paola Farina, Trustee of the Paola Farina Revocable Trust of 2019 u/d/t November 2, 2019 dated February 28, 2022 and recorded in Rockingham County Registry of Deeds at Book 6387, Page 0327, and (ii) deed from Auburn School District dated February 28, 2022 and recorded in Rockingham County Registry of Deeds at Book 6387, Page 0324, but excepting therefrom Area "B" conveyed by deed by Grantor to Paola Farina Revocable Trust of 2019 u/d/t November 2, 2019, dated February 28, 2022 and recorded in Rockingham County Registry of Deeds at Book 6387, Page 331 and more particularly described in Section 3.3 below and in Appendix A, together with all easements, rights and appurtenances thereto including but not limited to those described in Appendix A (hereinafter referred to as the "Land") all of which are owned by Declarant in fee simple, and subject to easements, restrictions and covenants of record and easements, restrictions and covenants hereinafter granted by the Declarant.
- 2 Definitions.** As provided in Section 12,I. of the Condominium Act capitalized terms not otherwise defined herein or in the Bylaws shall have the meanings specified in Section 3 of the Condominium Act. The following terms are expressly defined herein.

 - 2.1 "Appendix A"** means the legal description of Submitted Land, with any easement and rights thereon, and any appurtenances thereto, annexed to this Declaration as **Appendix A** as amended from time to time.
 - 2.2 "Appendix B"** means the Bylaws of **THE CLIFFS AT EVERGREEN CONDOMINIUM UNIT OWNERS' ASSOCIATION** attached to this Declaration as Appendix B, as amended from time to time.
 - 2.3 "Appendix C"** means the List of Unit Numbers and Percentage Interest attached to this Declaration as Appendix C as amended from time to time.

- 2.4 **"Assessment"** means that portion of the cost of maintaining, repairing, and managing the Common Area, which is to be paid by the Unit Owner.
- 2.5 **"Total Number of Units"** means seventy-nine (79) residential units is the total number of Units that may become part of the Condominium.
- 2.6 **"Board of Directors" or "Board"** means the board of directors of the Association.
- 2.7 **"Bylaws"** means the bylaws of the Association providing for the self-government of the Condominium attached to this Declaration as Appendix B as amended from time to time.
- 2.8 **"Common Area" or "Common Areas"** means the area or improvements marked as or designated as the clubhouse, clubhouse parking, sidewalks, well fields, community water and septic systems, RV Parking Area, "Undisturbed Open Space", and "Open Space with Utilities and Stormwater Features", roadways, lawns and other areas as shown on the Plan.
- 2.9 **"Common Expenses"** means all expenditures lawfully made or incurred by or on behalf of the Unit Owners' Association, together with all funds assessed for the creation and/or maintenance reserves pursuant to the provisions of the documents creating the Condominium; "future common expenses" means common expenses for which assessments are not due and payable.
- 2.10 **"Condominium"** means THE CLIFFS AT EVERGREEN CONDOMINIUM, the condominium established by this Declaration, including the Land, all improvements thereon, easement rights, and appurtenances belonging thereon, as amended by addition or withdrawal, from time to time.
- 2.11 **"Condominium Act"** means Chapter 356-B of the New Hampshire Revised Statutes Annotated (1984) as amended as of the date of this Declaration and as amended thereafter.
- 2.12 **"Convertible Land"** means a portion of the land which is portion of the common area, which additional units and/or common area, including but not limited to limited common area described in **Appendix A-1** and as shown on the Plans.
- 2.13 **"Declarant"** means Chinburg Development, LLC, a New Hampshire limited liability company, and its successors and assigns as record owner of the Declarant's rights hereunder.
- 2.14 **"Declaration"** means the Condominium Declaration of THE CLIFFS AT EVERGREEN CONDOMINIUM, as amended from time to time.
- 2.15 **"Interior Roads"** means the roads by which the Units are accessed. The roads are Evergreen Drive, Cliffside Drive, Trail's Way, Hemlock Drive, and Cypress Lane. They shall not be accepted as Town roads and shall be maintained, plowed and repaired by the Association.
- 2.16 **"Land"** shall mean the land described in the Submitted land described in Section 3.3, below and in **Appendix A**, together with all easements, rights, and appurtenances, and subject to easements, restrictions and covenants of record and subsequently granted by the Declarant, but exclusive of improvements.
- 2.17 **"Limited Common Area"** means the area around each unit as shown as the "Proposed Limited Common Area Line" on the Legend on Sheet 1 and table on sheets 2-4 on the Plan.

- 2.18 **"Majority of the Owners"** means the Owners of the Units to which more than fifty (50%) percent of the votes in the Association appertain. Any specified percentage of the Owners means the Owners of Units to which the specified percentage of the votes in the Association appertain.
- 2.19 **"Mortgage"** means a real estate mortgage.
- 2.20 **"Mortgagee"** shall mean the holder of a real estate mortgage.
- 2.21 **"Owner" or "Unit Owner"** means any natural person or persons or any entity holding a fee simple title to a Unit. No Mortgagee shall be deemed to be an owner until such Mortgagee has acquired such title pursuant to foreclosure or any procedure in lieu of foreclosure.
- 2.22 **"Open Space w/Utilities for Stormwater Features"** This is the land shown on the Legend on Sheet 1 and table on sheets 2-6 on the Plan.
- 2.23 **"Percentage Interest" or "Undivided Interest"** means the interest of each Unit in the Common Area as set forth in **Appendix C**.
- 2.24 **"Plan(s)"** means the Condominium Site Plan, recorded in the Rockingham County Registry of Deeds as plan D-43274, and entitled: "CONDOMINIUM SITE PLAN FOR CHINBURG DEVELOPMENT, LLC, (TAX MAP 10, LOT 19), HOOKSETT ROAD, AUBURN, NEW HAMPSHIRE" as may be amended from time to time, and floor plans for each Unit.
- 2.25 **"Resolution"** means any resolution adopted by the Board of Directors relative to the use of the Condominium provided they are not in conflict with the Condominium Act, the Declaration, the Bylaws or the Rules or the ordinances, regulations and rules of the Town of Auburn.
- 2.26 **"Restriction"** means any covenant or restriction limiting the ability of the Declarant or Unit owner to use or transfer any portion of the Condominium, including, but not limited to Age Restrictions.
- 2.27 **"Rules"** means those rules and regulations adopted from time to time by the Board of Directors relative to the use of the Condominium provided they are not in conflict with the Condominium Act, the Declaration, or the Bylaws.
- 2.28 **"Site Plan and Floor Plan" or "Plans"** means the plat of the entire Land described in the declaration and all floor plans attached hereto which are or are to be recorded in the Rockingham County Registry of Deeds pursuant to the Declaration and the Condominium Act as amended from time to time.
- 2.29 **"Undisturbed Open Space"** This land is shown as "Undisturbed Open Space" on the Legend on Sheet 1 and table on sheets 2-6 on the Plan.
- 2.30 **"Town"** means the Town of Auburn, Rockingham County, New Hampshire or any of its political subdivisions, commissions, boards or the like as the context may require.
- 2.31 **"Unit"** means a unit as defined by the Condominium Act, used as a residence, which is bounded and described as shown on the Plans and as provided in Section 3.4, et seq. hereof.
- 2.32 **"Unit Owners' Association" or "Association"** means **THE CLIFFS AT**

EVERGREEN CONDOMINIUM UNIT OWNERS' ASSOCIATION, which is comprised of all of the Owners acting as a group in accordance with the Declaration, and/or the Bylaws.

- 2.33 “Yard Area”** means that portion of the Limited Common Area of land lying behind the rear line of the foundation of the house comprising the unit (exclusive of decking or uncovered porch or bulkhead) as of the date its first certificate of occupancy was issued from the Town of Auburn, no wider than the width of the Limited Common Area as shown on the Condominium Site Plan, including any attached garage, and extending rearward to the common land boundary line, or a no-cut line, or a septic setback or wetland setback or open space line of such similar boundary, whether prescribed on a plan, by state or town regulation or by deed restriction or by rule promulgated by the Unit Owner’s Association, beyond which no improvement or household activity may take place thereon.

3 Statutory Requirements. The following information is provided pursuant to the provisions of Section 16,I of the Condominium Act:

- 3.1 Name.** The name of the Condominium is THE CLIFFS AT EVERGREEN CONDOMINIUM.

- 3.2 Location.** The condominium is located off of Dollard Road, Auburn, Rockingham County, New Hampshire.

- 3.3 Description of Submitted Land.** A legal description by metes and bounds of the Land submitted to the condominium along with all easements and rights and appurtenances thereto and easements subject thereto are contained in **Appendix A**; same being a portion of the land and location as described in (i) deed from Paola Farina, Trustee of the Paola Farina Revocable Trust of 2019 u/d/t November 2, 2019 dated February 28, 2022 and recorded in Rockingham County Registry of Deeds at Book 6387, Page 0327, and (ii) deed from Auburn School District dated February 28, 2022 and recorded in Rockingham County Registry of Deeds at Book 6387, Page 0324, but excepting therefrom Area “B” conveyed by deed by Grantor to Paola Farina Revocable Trust of 2019 u/d/t November 2, 2019, dated February 28, 2022 and recorded in Rockingham County Registry of Deeds at Book 6387, Page 331 and recorded on March 2, 2022 and as further shown on the Plan.

3.4 Description of Units.

- 3.5 Number of Units and Phases.** The Condominium may consist of up to a total of seventy-nine (79) residential Units. The Condominium may be built in one or more phases. The first Phase will consist of thirteen (13) Units and subsequent phases may be one or more subsequent Units. As provided in Section 25 of this Declaration, the Declarant has reserved the option of converting the Convertible Land into more Units. The first Phase will consist of thirteen (13) Units, Units 26 through 32 and 74 through 79.

- 3.5.1 Buildings.** All of the buildings will be constructed on the Land. Each building will be comprised of one (1) Unit residential building of a size allowed under zoning. The location, unit numbers, and dimensions of the buildings are as shown on the Plan. These buildings are of wood frame construction with full basements. Each building will have up to two bedrooms, one and one-half to three and one-half baths, and each with a one-car or a two-car attached garage. Some may have a rear deck and some will have a small front porch. Each unit will have vinyl, clapboard style, siding. The basement may have finished living

space, which shall be in addition to the living space on the levels above the basement, provided no bedrooms are added. Further, notwithstanding any other provision of this Declaration, the Bylaws, and the Rules, and provided first that the Declarant or its successor(s) approve the architectural design of any such improvement, which approval shall not be unreasonably withheld, and to the extent allowed by the Town of Auburn Zoning and Land Use Ordinance and approved by the applicable Board or Department, improvements such as decks, gardens, patios, and porches may all be installed within the Unit's Limited Common Yard Area for the exclusive use of the Unit. Approval by a Declarant or its successor(s) shall be established either by a letter from the Declarant or its successor(s) or by any improvement added to it being built and no objection being received by the Unit Owner from then current Declarant within one (1) week after a building permit was pulled from the Town of Auburn.

3.5.2 Unit Boundaries. The boundaries of each Unit shall be all the improvements above and below the land on which the unit is situated which are a part of and contiguous with the building which is the residential Unit, excepting the driveway and utility conduits and piping (underground or aboveground) and including, without limitation, foundation, footing, framing, roofing, siding, windows, doors, electrical, plumbing, pumps, e-pumps, fire suppression systems, heating, walls, floors, ceilings, doors, sinks, appliances, and cabinetry shown on the Site and Floor Plans. It is the intent that the unit shall include the entire structure above the land the unit is constructed upon which the unit owner shall be responsible for the maintenance and replacement. Further, the installation of an improvement in the Unit's Limited Common Yard Area, as allowed under Section 3.4.2, shall not be a conversion of Common Area because such improvement does not alter or expand the boundaries of a Unit. The boundaries of the Units shall not include any patios, decks, yard areas appertain to a Unit, all of which shall be Limited Common Area as shown on the Plan. Any such improvements in the Limited Common Area, shall be the responsibility of the Unit Owner to maintain and replace.

3.5.3 Units

3.5.3.1 The Unit numbers and dimensions of each Unit are shown on the Site Plan and Floor Plans. The location and dimensions of the Units are shown on the Plans. Each Unit shall be built within the area designated by the Unit number of a particular unit on the Site Plan. 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. **Appendix C** contains a list of all Units and their respective identifying numbers or Unit designations, to be updated upon the completion of each phase and an Amendment to the Declaration.

3.5.3.2 Each Unit is served with water from a common well and is also served by a community common area septic system. Each Unit is also served with a separate water line from an on-site well or water source for use for irrigation and outdoor watering and may have a separate meter in addition to the master meter from the well source. Lateral piping and conduits connecting the Units to these systems which run from the roadway to the Unit, shall be deemed part of the Unit whether or not located on the Common Area or Limited Common Area appurtenant to the Unit and shall be maintained and repaired by the Unit Owner.

- 3.5.3.3** Each Unit's fuel will be by buried, propane, metered gas or an alternative fuel source at the Declarant's discretion. Heating system will be either hot air or hot water and each Unit will have its own furnace and central air-conditioning unit/condenser. Ability for cable hook-up is provided. Costs for fuel, cable and electricity shall be borne by the Unit Owner exclusively.
- 3.5.3.4** Each Unit Owner shall be responsible entirely for the maintenance and repair of his Unit.
- 3.5.3.5** The Association shall be responsible for the mowing each Unit's yard, snow-removal of each Unit's driveway and front walkway (except for steps leading to the Unit, which shall be the Unit Owner's responsibility), unless the Board of Directors determine otherwise. Each Unit Owner shall be fully responsible for the removal of any snow that is not removed from his driveway due to cars being parked in said driveway. The Association shall also conduct an annual test of the fire suppression system in each Unit. All costs shall be Common Expenses.
- 3.5.3.6** Each Unit shall be occupied full-time by not more than the number of people allowed to occupy the Unit as set forth in this Declaration or based upon the septic capacity.

3.6 Description of Common Area and Limited Common Area

3.6.1 Common Area consists of the following:

Undisturbed Open Space and Open Space with Utilities as shown on the Plan. Permanent placards marking wetland buffers, shall be installed every 50 feet along the wetland buffer line and the line dividing the Undisturbed Open Space and the Open Space with Utilities and Stormwater Features. The Association shall be responsible for the maintenance of the placards in perpetuity;

The roadways, driveways, parking spaces and areas, sidewalks, lawns, gardens, shrubbery and other plantings, walkways and other Land and interest in the Land;

The Club House and associated parking;

The RV Parking Area is Common Area and shall be leased to Unit Owners at rate and per the terms determined by the Board of Directors of the Association;

The community septic system and leach field serving all of the Units; The community water systems serving all of the Units, including but not limited to, the potable water system distribution pumps and pipes for the Condominium. Initially the community water system shall be owned, operated and maintained by the Declarant. The Declarant hereby reserves the right to convey or sell it to a third party to manage and maintain. Declarant shall only impose reasonable charges for use of the community water system, which provision shall be binding on Declarant's successors and if Declarant desires to convey the community water system, then (a) Declarant shall provide the Association with ninety (90) days advance, written notice during which time Association shall have the opportunity to purchase the system on such terms as Declarant and the Association might mutually agree, with agreement not to be unreasonably withheld; and (b) failing reaching such agreement, the Association shall have a right of first refusal to purchase the water system on the exact same terms as Declarant proposes to convey to a third party (including a complete copy of Declarant's purchase and sale agreement with the prospective third party purchaser) with the Association having ninety (90) days (from the date of Declarant's

written notice to the Association of Declarant's intent to convey to a third party) to give Declarant written notice of Association's intent to exercise such right, with closing to be consummated within sixty (60) days of the Association giving notice to Declarant;

The electrical and telephone systems serving the Condominium to the extent said systems are located within the Land and are not owned by the supplier of the utility service (but not including any portions thereof contained within and servicing a single Unit, which shall be part of the Unit);

The pipes, ducts, flues, chutes, conduits, plumbing wires, meters, meter housing and other facilities, not owned by the supplier of the facility, for the furnishing of utility services or waste removal not located within a Unit and such facilities located within a Unit, which serve parts of the Condominium other than the Unit within which they are located;

The land designated as Convertible Land as shown on the Plan and described in **Exhibit A-1** is subject to Declarant's development rights as described in Section 25 of this Declaration; and

All other parts of the Condominium including personal property acquired by the Association necessary or convenient to its existence, maintenance and safety, or normally in common use and including any other easements set forth in **Appendix A** or later obtained.

3.6.2 Restrictions on Use of Undisturbed Open Space. The area shown as Undisturbed Open Space on the Plan shall be left in its current condition. The existing trails may continue to be used and maintained in a safe condition but there shall be no other improvements to the area shown as Undisturbed Open Space. There shall be no removal of vegetation or other materials, no use of chemical herbicides, no dumping of snow, debris, or refuse, and no improvements including structures, new roadways, or new trails within the Undisturbed Open Space.

3.6.3 Allowed Uses in the Open Space with Utilities and Stormwater Features. The area shown as Open Space with Utilities and Stormwater Features shall be used for the construction, repair, replacement relocation of septic systems, wells, utilities of all types, drainage ponds, all stormwater features, RV parking, trails, active recreation and clubhouse and snow storage.

3.6.4 Limited Common Area consists of the following:

Any Common Area which is designated herein or on the Plans as serving only one Unit; said Common Area serving only one Unit to be Limited Common Area appurtenant to said Unit, including, but not limited to: parking areas, driveways, entranceways and walkways.

Any Limited Common Area not specifically designated with a Unit number on the Plan is Limited Common Area for the exclusive use of the Unit(s) to which it is adjacent or which it serves exclusively. Each Limited Common Area is owned in common by the Owners but is restricted to the use and benefit of the Unit(s), which it serves.

Further, each Unit shall have as Limited Common Area appurtenant to such Unit, an area of the Land shown on the Site Plan as the Yard for that Unit number, limited by the terms of Section 3.4.2, above and the Bylaws. The Unit Owner of a particular Unit may plant and maintain shrubs, trees, and otherwise do landscaping on their own in this area at their own costs and expense, but only as allowed by the Association as promulgated from time

to time by Rules of the Condominium. The Association may cut each Unit's lawn area in the Yard.

Individual generators may be located in the Limited Common Area but not in the front yard with the prior approval of the Association.

Further, any stoop, steps, porches and decks which are Limited Common Area of the Unit shall be kept clear of snow, ice and debris at the sole responsibility and expense of the Unit Owner. The Association shall have no liability arising from the Unit Owner's failures to so keep clear. The Association shall remove the snow from each Unit's driveway, unless the Board of Directors determine otherwise.

- 3.6.5 Use.** The use of the Common Area shall be limited to the owners in residence, to their tenants in residence and to their guests, invitees and licensees. The use of each Limited Common Area shall be further restricted to the Owner of the Unit to which it is appurtenant, to his tenants in residence, and to his (their) guests, invitees and licensees. The use, including responsibilities for maintenance and repair, of the Common Area and the Limited Common Area shall be governed by this Declaration and by the Bylaws, the Rules and the Resolutions. Owners of the Unit shall be responsible, pursuant to this Declaration and pursuant to the Bylaws, Rules and Resolutions, for any damage to the Unit, Common Area or Limited Common Area by their guests, invitees, and licensees.
- 3.6.6 AGE-RESTRICTIONS.** THE USE OF THE ENTIRE CONDOMINIUM SHALL BE SUBJECT TO THE AGE-RESTRICTIONS DESCRIBED IN SECTION 24, BELOW.
- 3.6.7 Subsequent Assignment of Common Area as Limited Common Area.** No Common Area may be subsequently assigned as Limited Common Area.
- 3.6.8 Allocation of Percentage Interests.** An equal undivided interest in the Common Area shall be allocated to each Unit as described in **Appendix C**.
- 3.7 Statement of Purposes and Restrictions of Use.** The Condominium and each of the Units are primarily intended for residential use and the following provisions, together with the provisions of the Bylaws, the Rules and the Resolutions are in furtherance of this purpose. THE USE OF THE ENTIRE CONDOMINIUM SHALL BE SUBJECT TO THE AGE-RESTRICTIONS DESCRIBED IN SECTION 24, BELOW.
- 3.8 Residential Use.** Subject to the rights of Declarant pursuant to Section 25 et seq, each Unit shall be occupied and used only for residential purposes by the owner and his family, or by tenants, guests, invitees or licensees of the owner. This restriction shall not be construed to prohibit owners from leasing their Units so long as the lessees thereof occupy and use the leased premises in accordance with the provisions hereof. This is a 55+ age-restricted condominium providing housing for older persons subject to the provisions of NHRSA 354-A:15 and 42 USC 3607 (b). At any one time, 80% of the Units must be occupied by at least one resident who is age 55 or older per unit. Consequently, THE USE OF THE ENTIRE CONDOMINIUM SHALL BE SUBJECT TO THE AGE-RESTRICTIONS DESCRIBED IN SECTION 24, BELOW.
- 3.9 Easements for Structural Encroachments.** None of the rights and obligations of the Owners created herein or in any deed conveying a Unit from the Original Declarant or Declarant to a purchaser thereof shall be altered in any way by encroachments as a result

of construction, reconstruction, repair, renovations, restoration or replacement of any structure or improvement, or due to settling or shifting of any land, structure or improvement. 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.

3.10 Easements for Pipes, Ducts, Cables, Wires, Conduits, Utility Lines, and Other Common Area Located Inside of Units and 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, utility lines and other Common Area located outside the Units. Each Unit shall be subject to an easement in favor of the owners of all other Units to use the pipes, ducts, cable, wires, conduits, utility lines and other Common Area located outside the Units. 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 portions of the exterior of the Unit so that it is conformity with the level of maintenance and architectural consistency required by the Association.

3.11 Units Subject to Declaration, Bylaws, Rules and Resolutions.

3.11.1 The Declaration, the Bylaws, the Rules and the Resolutions, as adopted and amended from time to time, all contain or will contain certain restrictions as to use of the Units or other parts of the condominium. The Association is empowered to adopt and amend, from time to time, rules and regulations concerning the use of the Condominium, which rules and regulations shall not be violated. Such amendments, however, shall be **SUBJECT TO THE AGE-RESTRICTIONS DESCRIBED IN SECTION 24, BELOW.**

3.11.2 The Declarant, all present or future Unit Owners, tenants and occupants of Units, or any other person who might use the facilities of the Land in any manner are subject to the provisions of the Declaration, the Bylaws, the Rules and the Resolutions. The acceptance or the entering into occupancy of any Unit shall constitute an agreement that the provisions of the Declaration, the Bylaws, the Rules and the Resolutions, 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.

3.11.3 Failure to comply with the Declaration, Bylaws, Rules or Resolutions shall be grounds for an action to recover sums due for damages or for injunctive relief or for any other remedy available at law or in equity, maintainable by the Association, or by its Board of Directors or any President on behalf of the Association or in the proper case, by one or more aggrieved Unit Owners on their own behalf or as a class action. All such actions, in law or at equity (except as appropriate for such action of Unit Owners) shall be authorized by Resolution of the Board of Directors and whosoever maintains such action shall be entitled to recover all reasonable costs and expenses of such actions, including reasonable attorneys' fees.

3.11.4 The Declaration, the Bylaws, the Rules and the Resolutions, as amended from time to time, are also expressly declared to be for the benefit of the Town of Auburn, and any

commission, board and/or agency of the Town of Auburn and may be enforced by an action at law or in equity by the Town of Auburn or an appropriate commission, board, agency or officer of the Town of Auburn. The Town shall have reasonable access to the premises, or any part thereof, for such inspection as may be needed to enforce the Declaration, the Bylaws, the Rules and the Resolutions, as amended from time to time. If the Town maintains such an action and prevails, it shall be entitled to recover all reasonable costs and expenses of such an action, including reasonable attorneys' fees.

3.12 Easements for Ingress and Egress and Use.

3.12.1 Each Unit Owner shall have an easement in common with the owners of all other Units for ingress and egress through, and use and enjoyment of, all Common Area by persons lawfully using or entitled to same. Each Unit and Common Area shall be subject to an easement for ingress and egress through, and use and enjoyment of, all Common Area by persons lawfully using or entitled to same, including without limitation employees and other agents of utility companies in performance of their duties.

3.12.2 The Board of Directors, if any, or if not, the Association, shall have the right to grant access, licenses and easements over the Common Area for the installation, construction, maintenance, repair and replacement of utilities and for other purposes reasonably necessary or useful for the proper maintenance or operation of the Condominium.

3.12.3 The Town of Auburn, its employees, agents or representatives shall have the right to enter onto all Common Area for the purpose of providing emergency services, including, but not limited to, police, fire and ambulance service to the Unit Owners and for the purpose of inspection of the water supply, septic/sewerage and drainage systems and any other utilities servicing the Condominium, together with the inspection of all structures and other improvements on the Land.

3.13 Property Subject to Covenants, Easements and Restrictions of Record. The submission of the property is subject to any covenants, conditions, easements and restrictions of record and shall also be subject to any covenants, conditions, easements and restrictions granted/made by Declarant, its successors and assigns, and recorded in the Rockingham County Registry of Deeds. THE USE OF THE ENTIRE CONDOMINIUM SHALL BE SUBJECT TO THE AGE-RESTRICTIONS DESCRIBED IN SECTION 24, BELOW.

3.14 Restriction of Rental Units. Any Unit may be rented by its owner to a third party, SUBJECT TO THE AGE-RESTRICTIONS DESCRIBED IN SECTION 24, BELOW. In addition, Unit Owners shall be prohibited from renting his/her/their Unit through any short-term rent platform, including, but not limited to, AirBnB, HomeAway or the like. Any rental of a Unit shall be for a minimum of 12 months.

3.15 Lateral and Subjacent Support. N/A.

3.16 Easement to Facilitate Completion of Sales. Declarant shall be deemed to be the Owner of any Units which have been completely constructed but not sold and conveyed. Declarant and its duly authorized agents, representatives (including independent contractors), successors and assigns, may make such reasonable use of the Condominium as may facilitate the completion of construction of both Units and Common Areas, and the sale and conveyance of unsold Units, including, without limiting the generality of the foregoing,

the right to enter all Units and Common Area for construction purposes, and the right to store materials, maintain a sales office, a rental office and/or a model Unit or model Units to show the property and to display signs.

The Declarant is fully obligated to complete any buildings containing Units on any portion of the Land, labeled "NOT YET COMPLETED" on the Site Plan. In addition, the Declarant and its agents, representatives (including independent contractors) and assigns shall have the right to use any and all unsold and unconveyed Unit or Units as sales offices and model Units. Such Units shall be Units within the meaning of this Declaration and the Condominium Act, and not parts of the Common Area. The Declarant shall have the absolute right to convey or lease such Units. Further, the Declarant reserves the right to enter into certain agreements with other Owners who may agree to lease their Units to the Declarant for use by the Declarant as model Units and/or sales offices.

4 Insurance and Determination of Action Following Casualty Damage.

- 4.1 General Insurance Provisions.** At the discretion of the Board and to the extent reasonably available, the Board of Directors shall obtain and maintain a Master Casualty Policy of insurance for casualty and extended coverage for fire and damage to Common Area and Common Area structures and improvements as set forth in this article. If such insurance is not reasonably available, and the Board of Directors determines that any insurance described herein will not be maintained, the Board shall cause notice of that fact to be hand-delivered or emailed or sent postage prepaid by United States mail to all unit owners and eligible mortgagees at their respective last known addresses.
- 4.2 Specific provisions.** To the extent reasonably possible, insurance policies required and obtained under this article shall provide the following:
- 4.2.1** The insurer waives the right to subrogation under the policy against a Unit Owner or member of the household of a Unit Owner;
- 4.2.2** An act or omission by a Unit Owner, unless acting within the scope of the Unit Owner's authority on behalf of the Association, will not void the policy or be a condition to recovery under the policy;
- 4.2.3** If, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy shall provide primary insurance;
- 4.2.4** Loss must be adjusted with the Association;
- 4.2.5** Each Unit Owner shall be an insured person under the policy with respect to liability arising out of the Unit Owner's interest in the Common Area or membership in the Association;
- 4.2.6** The insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days, after notice of the proposed cancellation or non-renewal has been mailed to the following at their last known addresses;
- 4.2.6.1** The Association;
- 4.2.6.2** Each Unit Owner; and
- 4.2.6.3** Each eligible mortgagee, which term shall mean each holder of a Mortgage or security

interest in a Unit or the Common Area to whom a certificate or memorandum of insurance has been issued.

- 4.3 Annual Review.** The Board shall review with the insurer or insurance agent, at least annually, the types and amounts of coverage under any insurance policies obtained pursuant to this article. The Board is further authorized to obtain appraisals periodically for the purposes of establishing full replacement value and actual cash value of any of the properties-insured under this article. The Board shall send written notice of the obtaining of any insurance under this article, or of any subsequent change or termination of that insurance to each Unit Owner and to each eligible Mortgagee.
- 4.4 Insurance Payable to the Board.** Insurance proceeds payable under any policy of casualty insurance insuring Common area and obtained under this Article IV shall be payable to the Board of Directors as insurance trustee to be held in trust for each unit owner and such Unit Owner's Mortgagee.
- 4.5 Deductible.** The maximum deductible for insurance policies obtained under this article shall be Twelve Thousand Dollars (\$12,000.00) or One Percent (1%) of the policy face amount, whichever is less. Of the deductible portion, One Thousand Dollars (\$1,000.00) per unit owner affected shall be paid by each of the unit owners suffering the loss. The difference between the policy deductible and the said \$1,000.00 per unit owner affected shall be paid by the Association as a common expense.
- 4.6 Premiums.** Premiums for insurance obtained under this article shall be a common expense.
- 4.7 Obligation to Repair.** In the event of damage to any portion of the Common Area by fire or other casualty, the proceeds of the Master Casualty Policy shall, pursuant to Section 43, of the Condominium Act, be used to repair, replace or restore the structure or Common Area damaged unless the Unit Owners vote to terminate the Condominium pursuant is to Section 34 of the Condominium Act.
- 4.8 Attorney-in-fact.** The Board of Directors is hereby irrevocably appointed the attorney-in-fact 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 Master Casualty Policy, or otherwise resulting from such damage, and to execute and deliver releases upon the payment of claims. Insurance proceeds shall be payable and paid to the Board of Directors for the benefit of the Association, the Unit Owners, or any Mortgagee as their interests may appear. The procedure for making repairs after such damage is specified in the Bylaws.
- 4.9 Unit Owner's Insurance.**
- 4.9.1** Each Unit Owner, at that Owner's own expense, shall obtain additional casualty and extended coverage for fire and damage to property insurance with Special Broad Form Coverage covering any of the property, whether real or personal, of the Unit Owner that is not covered by the insurance obtained by the Board. Since the Unit incorporates all improvements within the Unit above the ground, such insurance shall cover the full replacement value of the Unit – from the bottom of the foundation to the top of the roof line and from the exterior surface, inward, and everything in between, and the septic tank serving that particular Unit. Each Unit Owner shall also obtain and maintain a liability policy and in no event shall the limits of liability be less than Five Hundred Thousand

Dollars (\$500,000.00) per occurrence and One Million Dollars (\$1,000,000.00) aggregate for bodily injury and property damage. Each Owner shall provide the Association with a certificate of all property insurance obtained by said Owner, except for policies that cover only personal property owned by said Unit Owner.

- 4.9.2** The Board of Directors is hereby authorized to make a special assessment against that Unit Owner for any increased insurance premium for the insurance maintained by the Association due to the improvements made by the Unit Owner. Nonetheless, that Unit Owner shall bear the entire risk of loss for all improvements made to that Unit.
- 4.9.3** No Unit Owner shall be entitled to exercise its right to maintain insurance coverage in such a way as to decrease the amount of insurance that the Board of Directors, on behalf of all of the Unit Owners, may realize under any insurance policy that the Board of Directors may have in force covering the Condominium or, any part thereof at any time. In the event there is any such decrease in the amount of the Association's insurance coverage due to such coverage obtained by an individual Owner, any proceeds from the insurance obtained by that individual owner shall be assigned to the Board as insurance trustee to the extent that any such policy does, in fact, result in a decrease in such Association coverage
- 4.10 Insurance to be Obtained.** The Board of Directors shall obtain and maintain at all times insurance of the types and kinds provided for herein and including insurance for such other risks of a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to other property similar to the condominium in construction, design, and use.
- 4.11 Property Insurance.** Property insurance shall be held with Broad Form Special Coverage insuring any improvement of the Condominium which is not part of a Unit (to wit: any Common area improvement or structure), and insuring the Common Area of the Condominium, and the fixtures, installations, or additions comprising a part or whole of any non-unit building initially installed or replacements thereof, in accordance with the original condominium plans and specifications, or as installed by or at the expense of the Declarant of Association. Such insurance shall be in an amount at least equal to the full replacement value of the real property insured or the actual cash value of any personal property insured hereunder.
- 4.12 Public Liability Insurance.** Public liability insurance in such amounts as the Board may from time to time determine but in no event shall the limits of liability be less than Two Million Dollars (\$2,000,000.00) per occurrence and Five Million Dollars (\$5,000,000.00) aggregate for bodily injury and property damage. Any insurance obtained hereunder shall name as the insured, the Association, any officer or member-of its Board of Directors while acting within the scope of their duties, any employee of the Association while acting within the scope of the employee's duties, any President of the Association, and each Unit Owner, but only with respect to that Unit Owner's liability arising out of the ownership, maintenance, or repair of that portion of the condominium which is not reserved for that owner's exclusive use or occupancy Such policy shall contain cross liability coverage with respect to liability claims of anyone insured thereunder against any other insured.
- 4.13 Fidelity Insurance.** Comprehensive commercial crime coverage or a blanket fidelity bond shall be obtained for anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. The insurance or bond obtained hereunder shall name the Association as insured

or obligee and shall cover the maximum funds that will be in the custody of the Association or any President at any time while the insurance or the bond is in force, and in no event less than the sum of three month's assessments plus reserve funds. The policy or bond shall include a provision that calls for at least thirty (30) days written notice to the association and to each eligible mortgagee before the same can be cancelled or substantially modified for any reason, except that coverage under said insurance or bond may be deemed terminated as to any employee as soon as the insured shall learn of any dishonest or fraudulent act on the part of such employee, provided such termination is without prejudice to the loss of any property then in transit in the custody of such employee.

- 4.14 Workers' Compensation Insurance.** The Board shall, as needed, obtain workers' compensation insurance to meet the requirements of the laws of the State of New Hampshire.
- 4.15 Directors' and Officers' Liability Insurance.** The Board shall, to the extent the same is available, obtain and maintain directors' and officers' liability insurance covering all of the directors and officers of the Association in such limits as the Board may, from time to time, determine.
- 4.16 Other Insurance.** The Association may obtain and maintain other insurance, which the Board considers appropriate to protect the Association or the Unit Owners.
- 4.17 Procedures in the Event of Damage or Destruction.**
- 4.17.1 Duty to Restore.** A portion of the Condominium for which insurance is required to be held by the Association under the Condominium Act, to wit: the Common Area and Limited Common Area, or for which insurance carried by the Association is in effect, whichever is more extensive, that is damaged or destroyed must be repaired or replaced promptly by the Association unless:
- 4.17.1.1** Cost of repair or replacement is the exclusive responsibility of the Unit Owner and Unit Owner so repairs and replaces;
- 4.17.1.2** The Condominium is terminated;
- 4.17.1.3** Repair or replacement would be statute or municipal ordinance governing health or safety; or
- 4.17.1.4** Eighty Percent (80%) of the Unit Owners, including each Owner of a Unit or assigned Limited Common Area that was not built, vote not to rebuild.
- 4.17.2 Cost.** The cost of repair or replacement in excess of insurance proceeds and reserves shall be a common expense except for repairs or replacement of improvements to individual Units, notice of which was not given to the Board of Directors.
- 4.17.3 Plans.** The Condominium must be repaired and restored in accordance with either, the original plans and specifications or other plans and specifications which have been approved by the Board of Directors and a majority of the Unit Owners.
- 4.17.4 Replacement of Less Than Entire Property.** The insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition compatible with the remainder of the Condominium. Except to the extent that other persons will be distributees, (i) the insurance proceeds attributable to a Unit and Limited Common

Area that are not rebuilt must be distributed to the Owner of the Unit and the Owner of the Unit to which the Limited Common Area was allocated, or to lien holders, as their interests may appear, and (ii) the remainder of the proceeds must be distributed to each Unit Owner or lien holder as their interests may appear, in proportion to the Common Area interests of all the Units. If the Unit Owners vote not to rebuild a Unit; the undivided interest in the Common Area appertaining to such Unit shall be reallocated in the same manner as if the Unit had been taken by eminent domain and the Association shall promptly prepare, execute, and record an amendment to this Declaration reflecting the reallocations.

4.17.5 Insurance Proceeds. The trustee, or if there is no trustee then the Board of Directors of the Association acting by the President, shall hold any insurance proceeds in trust for the Association, Unit Owners, and lien holders as their interests may appear. Subject to the provisions of Section 4.17.1 of this Declaration, the proceeds shall be disbursed first for the repair or restoration of the damaged property, and the Association, Unit Owners and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the Condominium is terminated.

4.17.6 Certificates by the Board. The trustee, if any, may rely on the following certifications in writing made by the Board of Directors:

4.17.6.1 Whether or not damaged or destroyed property is to be repaired or restored;

4.17.6.2 The amount or amounts to be paid for repairs or restoration and the names and addresses of the parties to whom such amounts are to be paid.

4.17.7 Certificates of Ownership. If payments are to be made to Unit Owners or Mortgagees, the Board, and the trustee, if, any, shall obtain and may rely upon an attorney's certificate of title based on a search of the records in the Rockingham County Registry of Deeds from the date of recording of the original Declaration stating the names of the Unit Owners and the Mortgagees.

5 No Partition or Revocation. Unless otherwise provided herein, the Common Area shall remain undivided and no Unit Owner or any other Person shall bring any action for partition or division thereof, nor shall the Common Area be abandoned by act or omission, unless the condominium is terminated pursuant to Section 34 of the Condominium Act.

6 Consent of First Mortgagees. Except as provided in the Condominium Act in the cases of condemnation or substantial loss to the Units and/or Common Area, and notwithstanding any other provision of the Declaration, Bylaws, Rules or Resolutions, unless at least 75% of the first mortgagees (based upon one vote for each first mortgage owned) have given their prior written approval, the Owners and the Association shall not be entitled to:

6.1 By act or omission seek to abandon or terminate the condominium regime;

6.2 Except as otherwise provided in the Condominium Act, change the prorated interest or obligations of any Unit (i) for the purpose of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards or (ii) for determining the pro rata share of each Unit in the Common Area;

6.3 Partition or subdivide any Unit;

- 6.4 Amend, modify or otherwise change any rights or obligations under this Declaration or the Bylaws.
- 6.5 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 Condominium, the granting of easements as permitted in the Declaration and Bylaws and the dedication of Common Areas as provided in under Section 25 of the Declaration, shall not be deemed a transfer within the meaning of this clause); or
- 6.6 Use hazard insurance proceeds for losses to the Condominium (whether to Units or to Common area) for other than the repair, replacement or reconstruction of such improvements, except as provided by statute in case of substantial loss to the Units and/or Common Area.
- 7 **Priority of First Mortgages. No provision of the Declaration, the Bylaws, the Rules or the Resolutions** shall be construed to grant to any Unit Owner, or to any other Person, any priority over any rights of first Mortgagees of the Units pursuant to their first Mortgages in the case of the distribution to Unit Owners of insurance proceeds amounts to be paid upon liquidation of the Condominium or condemnation awards for losses to, or a taking of, Units, and/or the Common Area or any portions thereof.
- 8 **Contracts, Leases.**
- 8.1 Notwithstanding any provision in this Declaration, the Bylaws, the Rules or the Regulations to the contrary, neither Declarant nor the Board of Directors may bind the Association, prior to passage of control of the Condominium to the Association, to any contracts or leases (including management contracts) unless the Association is provided a right of termination of any such contract or lease, without cause, exercisable without penalty at any time after transfer of control, upon not more than ninety (90) days' notice to the other party thereto.
- 8.2 All leases or rental agreements for any Unit shall be in writing, shall be specifically subject to the constituent documents and shall be for a period of not less than 12 MONTHS and shall be subject to the Age-Restriction contained in Section 24, below.
- 9 **FHLMC and FNMA Provisions.** Notwithstanding anything to the contrary contained elsewhere in this Declaration, 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 CLIFFS AT EVERGREEN CONDOMINIUM for sale to the Federal Home Loan Mortgage Corporation (FHLMC) and to Federal National Mortgage (FNMA) under laws and regulations applicable thereto, to wit:
- 9.1 A first Mortgagee of a Unit shall, at the request of such Mortgagee, be entitled to written notification of: (i) any default by the Mortgagor of such Unit in the performance of such Mortgagor's obligations under this Declaration, which is not cured within sixty (60) days; (ii) any condemnation or loss which affects a material portion of the Property or such Unit on which such first mortgage holds a first mortgage lien; (iii) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and (iv) any action for which the consent of the first mortgagees is required;

- 9.2 First Mortgagees of Units shall have the right to examine the books and records of the Directors upon sixty (60) days written request.
- 9.3 No provision of any Deed or the Declaration shall be deemed or construed to give a Unit Owner or any other party priority over any rights of first Mortgagees of Units pursuant to their Mortgages in the case of a distribution to Unit Owners of insurance proceeds or condemnation awards for loss to or a taking of Units and/or common elements.
- 9.4 Any agreement for professional management of the Condominium or any other contract providing for Declarant or Association must provide for termination on ninety (90) days written notice, and a maximum contract term of one (1) year.
- 9.5 Any first Mortgagee of a Unit in the Condominium that obtains title to the Unit pursuant to remedies provided in the Mortgage, or foreclosure of the Mortgage, or deed (or assignment) in lieu of foreclosure, shall take the Unit 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.
- 9.6 The Declarant, and its successors and assigns as successor Declarant, shall have the right to amend this Declaration at any time, to unilaterally amend this Declaration (without need of notice to or consent from either the Board of Directors of the Unit Owner's Association, or the Unit Owner's Association or the Unit Owners) in order to make it compliant with FHA, FHLMC and FNMA provisions. If the Declarant no longer owns any Units herein, the Board of Directors of the Unit Owner's Association shall have the right to amend this Declaration at any time in order to make it compliant with FHA, FHLMC and FNMA provisions
- 10 **Notice of Proceedings.** For the purpose of providing notice to certain individuals of proceedings before the Town of Auburn Planning Board, Zoning Board of Adjustment and any other commission board, and/or agency of the Town of Auburn or the like, as the context may require, the providing of notice to the Association, the Board of Directors or the presiding officer of the Association shall be deemed notice to each and every owner and/or resident of the Condominium.
- 11 **Amendment of Declaration and Bylaws.**
- 11.1 Except as otherwise provided in the Condominium Act and as otherwise set forth herein, the following shall apply to the amendment of the condominium documents. The consent of Owners of Units to which at least eighty percent (80%) of the votes in the Association are allocated and the approval of eligible holders of Mortgages (as the term "eligible mortgage holder" is now or may at any time hereafter be defined in the FNMA Conventional Home Mortgage selling Contract Supplement) on Units which have at least seventy-five percent (75%) of the votes of Units subject to eligible holder mortgages, shall be required to terminate the legal status of the Condominium, including termination after substantial destruction or condemnation.
- 11.2 The consent of owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of eligible holders holding Mortgages on Units which have at least fifty-one percent (51%) of the votes of Units subject to eligible holder mortgages, shall be required to add or amend any material provisions of the

condominium documents of the Condominium. Notwithstanding the foregoing, the Association shall not have the authority to amend the provisions set forth in Section 3.5.2 without the consent of the Town and the New Hampshire Fish and Game Non-Game and Endangered Wildlife Program.

- 11.3** No amendment shall affect the easements set forth in the Declaration or easements or provisions reserved to the Declarant. No amendment may alter or terminate any requirements in any Town or State approval issued for the Subdivision. Any waiver by the Declarant or Association on any one occasion or for any individual Lot shall not be deemed to constitute a waiver on any future occasion with respect to any other Lot.

The consent of owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of eligible holders holding Mortgages on Units which have at least fifty-one percent (51%) of the votes of Units subject to eligible holder mortgages, shall be required to add or amend any material provisions of the condominium documents of the Condominium, with the exception of the restrictions on the Undisturbed Open Space as set forth in Section 3.5.2 and the use of the Open Space With Utilities and Stormwater Features set forth in Section 3.5.3, and which amendment affecting these sections will require the additional consent of the Town and/or Declarant. In addition, any change to the Undisturbed Open Space or Open Space with Utilities and Stormwater Features shall require the consent of both the Town and the New Hampshire Fish and Game Non-Game and Endangered and Wildlife Program. No amendment may alter or terminate any requirement or any Town or State approval issued for the project. Any waiver by the Declarant or Association on any one occasion for any individual lot shall not be deemed to constitute a waiver on any future occasion with respect to any other lot.

No easement shall amend any provision which establish, provide for, govern or regulate any of the following:

- (a) Voting;
- (b) Assessments, assessment liens or subordination of such liens;
- (c) Reserves for Maintenance, repair and replacement of the Common Areas (or Units if applicable);
- (d) Insurance or Fidelity Bonds;
- (e) Rights to use Common Areas or Limited Common Area;
- (f) Responsibility for maintenance and repair of the several portions of the Condominium;
- (g) Expansion or contraction of the Condominium or the addition, annexation or withdrawal of property to or from the project;
- (h) Boundaries of any Unit;
- (i) The interests in the Common Areas or Limited Common Areas;
- (j) Leasing of Unit estates;
- (k) Imposition of any right of first refusal or similar restriction on the right of a Unit

Owner to sell, transfer, or otherwise convey his or her Unit;

- (l) Any provisions that are for the express benefit of mortgage holders, eligible mortgage holders or eligible insurers or guarantors of first Mortgages on Units;
- (m) A decision by the Association to establish self-management when professional management had been required by an eligible mortgage holder; and
- (n) Restoration or repair of the project (after a hazard damage or partial condemnation) in a manner other than that specified in the documents.

11.4 Any eligible mortgage holder that does not deliver or post to the Association a negative response within ninety (90) days of a written request by the Association for approval of any addition or amendment pursuant to Sections 7, 9, and 11 of this Declaration shall be deemed to have consented to the addition or change set forth in such a request. An affidavit by an officer of the Association making reference to this Section, when recorded at the Rockingham County Registry of Deeds, shall be conclusive as to the facts therein set forth as to all parties and may be relied upon pursuant to the applicable provisions hereof.

11.5 Furthermore, notwithstanding the foregoing, so long as the Declarant is the Owner of one or more Units, no amendment to this Declaration, Bylaws or Rules may be adopted which could interfere with the construction, display, sale, lease or other disposition of such Unit or Units.

11.6 A modification or amendment of the Declaration or Bylaws shall become effective only when such modification or amendment has been duly evidenced in accordance with the provisions of Section 34,IV of the Condominium Act.

12 Owner's Obligation to Repair and to keep in conformance with maintenance and architectural requirements.

12.1 Owner's Obligation. Each Owner shall, at his own expense, keep his Unit and its alterations, appliances, fixtures, and improvements, windows, and doors, and other items that are not Common Area and are located within the boundaries of his Unit, inclusive of the interior and exterior, and Limited Common Area, including but not limited to, all porches, decks, partitions appurtenant to his Unit and serving only his unit if located within his Unit's Limited Common Area Yard as shown on the Site Plan, in good order, condition, and repair, and in conformance with the architectural requirements of the Association, as promulgated from time to time and which are contained herein.

12.2 Board's Right to Maintain and to Make Repairs. The Association shall have the irrevocable right, to be reasonably exercised by the Board or its agents, to enter any Unit's Limited Common Area to inspect the same, to remove violations therefrom, or to perform any repair, maintenance, or construction for which the Board is responsible and shall have the irrevocable right, to be reasonably exercised by the Board or its agents, or by any two or more Unit Owners acting as a group, to enter any Unit's Limited Common Area for the purpose of making emergency repairs necessary to prevent damage to other parts of the Condominium. Such entry shall be made with as little inconvenience to the Unit Owner as practicable, and any damage caused thereby or expenses in connection therewith shall be repaired or satisfied by the Board out of the Common Expenses unless such emergency repairs are necessitated by the negligence of one or more unit Owners or such repair or

replacement is the responsibility of the Unit Owner hereunder, in which case the Unit Owner or Unit Owners shall bear the expense of such repairs. In the event an Owner fails to make repairs to his Unit after thirty (30) days written notice of the need for the same as given to him by the Board, the Board may enter the unit and make such repairs, the full expense of which shall be borne by said Owner.

12.3 Evidence of Insurance. No Owner shall permit any repair or other work in his Unit by anyone unless such person or entity has furnished written evidence that it has obtained reasonably adequate public liability and workmen's compensation insurance in forms and amounts which are satisfactory to the Board, and unless such repair or other work is performed in compliance with governmental laws, ordinances, rules, and regulations.

13 Structural Changes By Owner. Provided the Unit Owner has obtained approvals and/or permits as required by the Town of Auburn, and provided such changes are done by licensed craftsmen where required and otherwise done in a professional and safe manner, the Unit Owner, without first obtaining written consent from the Board except for architectural conformity (which consent from the Board must first be obtained), has the right to:

- (a) Perform any work done on the exterior of his Unit, including, without limitation, changes to the paint, siding, shingles and façade, or the addition of patios, decks, porches, and steps; or
- (b) Make or permit to be made any structural alteration, interior improvement, or addition in or to his Unit provided such addition dimensions are within the Unit's Yard.

HOWEVER, no Unit Owner, without first obtaining written consent from the Board, may:

- (a) Tamper with any bearing wall or take any action or permit any action to be taken that will impair the structural soundness or integrity or safety of any other structure or improvement in the Common Area of the Condominium;
- (b) Impair any easement or right or personal property, which is a part of Common Area of the Condominium;
- (c) Place any flag or decoration on the exterior of the Unit, unless a United States flag displayed in accordance with the United States flag code and RSA 3-E and reasonable rules regarding size and manner displayed adopted by the Association as permitted under RSA 356-B:47-a; or
- (d) Place any window unit or wall unit air conditioner in/on the Unit.

14 Assessments.

14.1 Each Unit Owner shall pay all Common Expenses assessed against him, all expenses for which he is liable, and all other assessments made against him by the Board in accordance with the terms of the Declaration and By-Laws and all expenses so incurred and sums so assessed but unpaid shall be secured by a lien as provided in RSA 356-B:46, as amended from time to time. No Owner shall convey, mortgage, sell, or lease his Unit unless and until he shall have paid in full to the Board all such expenses theretofore incurred and sums

theretofore assessed by the Board against his Condominium Unit, which are due and unpaid. Any Unit Owner or purchaser of a Unit, having executed a contract for the disposition of said Unit, shall be entitled upon request to a recordable statement, signed by the Treasurer of the Association, setting forth the amount of the unpaid assessments currently levied against that Unit. Such request shall be in writing and shall be directed to the Board of Directors. The statement shall be binding on the Association, the Board of Directors, and every Unit Owner. Payment of a fee equal to the greater of Twenty Dollars (\$20.00), or the amount permitted by the Condominium Act may be required as a prerequisite to the issuance of such a statement. A purchaser of a Unit shall be liable for the payment of any such expenses or assessments against said Unit prior to its acquisition by him which are unpaid as of the time of said acquisition, whether or not such expenses or assessments are then due, except that an institutional Mortgagee or other purchaser at the foreclosure sale of said institutional Mortgage or the grantee in a deed in lieu of such foreclosure shall not be liable for the payment of expenses or assessments unpaid and due as of the time of his acquisition, but shall be liable for unpaid expenses and assessments becoming due thereafter.

- 14.2** The Association shall have the right to charge interest at the lower of Eighteen (18%) per annum, or at the maximum lawful interest rate for unpaid Common Expenses or other expenses or assessments from the due date. In addition, it shall have the right to charge Unit Owners no more than \$25.00 for each duplicate billing charge plus other costs, including reasonable attorney's fees in the event the Association is required to proceed with collection to obtain payment of such expenses. A lien may be exercised for any unpaid Common Expense or other expenses or assessments or costs after thirty (30) days from the due date. The lien for unpaid Common Expenses or other expenses or assessments once perfected, shall have the priority set forth in RSA 356-B:46, I, as amended from time to time. The lien, including interest, costs and reasonable attorney's fees may be foreclosed in the manner provided by the laws of the state of New Hampshire for the foreclosure of power of sale in mortgages, or by suit brought in the name of the Board of Directors acting on behalf of the Association. The suit to recover a money judgment for unpaid assessments shall be maintainable without foreclosing or waiving the lien securing the same, and foreclosure shall be available without bringing suit to recover a money judgment.
- 14.3** The annual assessment may be increased by vote of the Unit Owners, as hereinafter provided, for each next succeeding one (1) year and at the end of each such period of one year for each succeeding period of one (1) year. The Board of Directors may, after consideration of current maintenance costs and future needs of the Association, fix the actual assessment for any year at a lesser amount. Subject to the limitations in this Section, and the periods herein specified, the Association may change the maximum and basis of the assessments fixed herein prospectively for any such period provided that any such change shall have the assent of two thirds (2/3) of the votes of the Unit Owners at a meeting duly called for this purpose, written notice of which meeting shall be sent to all Unit Owners in accordance with RSA 356-B: 37.
- 15 Invalidity.** It is the intention of the Declarant that the provisions of this Declaration are severable so that if any provision, condition, covenant, or restriction hereof shall be invalid or void under any applicable federal, state or local law or ordinance, the remainder shall be unaffected thereby. In the event that any provision, condition, covenant or restriction hereof

is, at the time of recording the Declaration, void, voidable or unenforceable as being contrary to any applicable law or ordinance, the Declarant, its successors and assigns and all persons claiming by, through or under this Declaration, the Association, Unit Owners and Declarant, or their successors and assigns, covenant and agree that any future amendments or supplements to the said laws having the effect of removing said invalidity, voidability, or unenforceability, shall be deemed to apply retrospectively to this Declaration thereby operating to validate the provisions of this instrument which otherwise might be invalid and it is covenanted and agreed that any such amendment and supplements to the said laws shall have the effect herein declared as fully as if they had been in effect at the time of this instrument.

- 16 **Obligation to Complete.** Once a particular Unit is started, the Declarant, and its successors and assigns to the Development Rights of such Unit, has the obligation to complete only that single, particular Unit.
- 17 **Waiver.** No provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same irrespective of the number of violations or breaches which may occur. The failure of the Board to insist, in any instance, upon the strict, performance of any of the terms, covenants, conditions, or restrictions of this Declaration or of the By-Laws or to exercise any right herein or therein contained, or to serve any notice or to institute any action shall not be construed as a waiver or a relinquishment in the future of such term, covenant, condition, restriction, or right, but such term, covenant, condition, restriction, or right shall remain in full force and effect. The receipt by the Board of payment of any assessment from a Unit Owner with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach and no waiver by the Board of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board.
- 18 **Gender and Number.** The use of the masculine gender in this Declaration shall be deemed to refer to the feminine, masculine and neuter gender and the use of the singular shall be deemed to refer to the singular and plural, whenever the context so requires.
- 19 **Limitation of Liability Relating to Unit Owners.** The Unit Owners shall not assume responsibilities or any liability of the Declarant as defined in this Declaration or in New Hampshire RSA 356-B. This limitation includes, though is not limited to, any warranty associated with the construction and sale of Units to consumer purchasers.
- 20 **Liability of the Board.** Members of the Board shall not be liable to the Unit Owners for any mistake of judgment, negligence, or other except for their own individual willfulness, misconduct or bad faith and except as provided for below. The Owners shall indemnify and hold harmless each of the members of the Board against all contractual liability to others arising out of contracts made by the Board in behalf of the Condominium unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or of the Bylaws. It is permissible for the members of the Board, who are Directors or Officers of the Declarant, to contract with the Declarant and affiliated corporations without fear of being charged with self-dealing. It is intended that the members of the Board shall have no personal liability, other than as Unit Owners, with respect to any contract made by them on

behalf of the Condominium, except with respect to any such contract made in bad faith or contrary to the provisions of the Declaration or of the By-Laws. It is also intended that the personal liability of each Unit Owner arising out of any contract made by the Board or out of the aforesaid indemnity in favor of the members of the Board shall be limited to such proportion of the total liability thereunder as his interest in the Common Area bears to the interests of all the Unit Owners in the Common Area (except that the personal liability of Unit Owners who are members of the Board and who contract in bad faith or contrary to the provisions of the Declaration or of the Bylaws shall not be so limited). The provisions of this Article do not apply to and shall not preclude claims for property damage and personal injury by Unit Owners against the Board or any other insured under the liability insurance required by this Declaration and the Bylaws.

- 21 Enforcement.** Each Owner shall comply strictly with the provisions of this Declaration, the Bylaws, the Rules and the Regulations, as the same may be lawfully amended from time to time, and with decisions adopted pursuant to said Declaration, Bylaws, the Rules and the Regulations and failure to comply shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Board on behalf of the Unit Owners, or, in a proper case, by an aggrieved Unit Owner.
- 22 Site Plan Reference.** The site plans for CLIFFS AT EVERGREEN CONDOMINIUM is recorded at the Rockingham County Registry of Deed as Plan No. D-43274 (site plan). Floor plans shall be recorded when Units of the Condominium are declared.
- 23 Bylaws.** The Bylaws shall be as set forth in **Appendix B** attached hereto. The Bylaws may be amended as set forth therein or in the Act at any meeting of the Association provided a copy of the proposed amendment has been included in the written notice of the meeting as provided for in RSA 356-B:37. Any amendment shall be effective upon recording in the Rockingham County Registry of Deeds. Where a conflict exists between the Bylaws and this Declaration, the Declaration shall be controlling.

24 AGE-RESTRICTION COVENANT AND AGREEMENT.

- 24.1** THE CLIFFS AT EVERGREEN Condominium is an age restricted condominium providing “housing for older persons.” In order for this Condominium to qualify as housing for older persons at least 80% of the Condominium Units must be occupied by at least one person 55 years of age or older. The Condominium is established and shall be maintained in compliance with 42 USC §3607(b) et seq. and 25 CFR Part 100, §§100.304, 100.305, 100.306 and 100.307, RSA § 354-A, et seq., Hum 300 et seq., as amended from time to time, and with the provisions of the Auburn Zoning and Land Use Ordinance. However, housing shall not be out of compliance by reason of unoccupied units, provided, that such units are reserved for occupancy by persons who meet the age requirements.
- 24.2 HOUSING FOR OLDER PERSONS COVENANTS.** The Condominium shall, at all times, be in compliance with the current Federal, State and Town law, regulations, and ordinances governing Housing for Older Persons. In order to assure compliance the following covenants (“Covenants”) are hereby adopted and shall bind the Unit Owner’s Association and the Owner of each Unit within the Condominium:
- 24.2.1** The Condominium is intended for occupancy by persons 55 years of age or older, and

further intended that (i) at least 80% of the occupied units are occupied by at least one person who is 55 years of age or older, (ii) the Condominium publishes and adheres to policies and procedures that demonstrate the intent required to comply with the housing for older persons laws, regulations and ordinances, (iii) the Condominium complies with applicable rules for verification of the occupancy requirements which shall provide for verification by reliable surveys and affidavits.

- 24.2.2** “Occupancy” means a Unit is actually occupied or, if a Unit is temporarily vacant, the primary occupant has resided in the Unit during the year and intends to return on a periodic basis.
- 24.2.3** “Occupied by at least one person 55 years of age or older” means that at least one occupant is 55 years of age or older or, if the Unit is temporarily vacant, at least one of the occupants immediately prior to the temporary vacancy was 55 years of age or older.
- 24.2.4** These requirements of this Section 24.2.4, et seq, are satisfied even though there are unoccupied Units, provided that at least 80% of the occupied Units are occupied by at least one person 55 years of age or older.
- 24.2.5** The Association will, at least once every twenty-four (24) months, send out a notice to the Unit Owners a statement describing the Condominium as housing for older persons 55 years of age or older and only if the Condominium has a website, post a statement thereon describing the Condominium as housing for older persons 55 years of age or older.
- 24.2.6** Unit Owners, when advertising their Unit to sell or lease, shall provide a statement in their promotional material describing the Condominium as housing for older persons 55 years of age or older, and prior to entering into any binding contract, provide the prospective purchaser or tenant with a copy of these Covenants.
- 24.2.7** These Covenants shall be included in each Unit Deed and shall run with the land and be for the benefit of and be enforceable by the Association and such government body having jurisdiction over the Condominium.
- 24.2.8** In order for the Condominium to qualify as housing for persons 55 years of age or older, it must be able to produce, in response to a complaint filed, verification of compliance with the requirements of Sections 24.2.1 through and 24.2.4, et seq, above, through reliable surveys and affidavits to determining the occupancy of each Unit, including the identification of whether at least one occupant of each Unit is 55 years of age or older. The Association may rely on follow-up surveys to acquire regular updates of this information after first acquiring the information through affidavits. Such updates must take place at least once every two (2) years. The Association shall be responsible to maintain such age records. A summary of occupancy surveys shall be available for inspection upon reasonable request by any person.
- 24.2.9** To this end, Units shall only be sold to Buyers or rented to Tenants who deliver to the Association a lease, application, purchase and sales agreement or affidavit signed by a member of the household age 18 or older certifying therein that (i) at least one person that is occupying or will be occupying the Unit is 55 years of age or older at the time occupancy commences, (ii) such Buyers or Tenants are not acquiring the Unit for purposes of or with the intent to allow occupancy of such Unit by a household that does not have at least one person 55 years of age or older, and (iii) that so long as such Buyer owns such Unit at least

one occupant shall be age 55 years or older. A copy of the lease, application, purchase and sales agreement or affidavit, with the required age certification, shall be given to the Association for its records. If the occupants of a Unit refuse to comply with the age verification procedures, the Association may, if it has sufficient evidence from (a) government records, (b) prior forms or applications, or (c) a statement from an individual who has personal knowledge of the age of the occupants, consider the Unit to be occupied by at least one person 55 years of age or older.

- 24.2.10** Nothing in these Covenants is intended to restrict the ownership of or transfer of title to any Unit provided the requirements of these Covenants are met and further provided no Owner shall permit occupancy of the Unit in violation of these Covenants. Unit Owners shall be responsible for including the statement that the units within the Condominium are intended for the housing of persons fifty-five (55) years of age or older, as set forth in this Covenant in its entirety, in conspicuous type in any lease or other occupancy agreement or contract of sale relating to such Owner's Unit, which agreements or contracts shall be in writing and signed by the tenant or purchaser, and for clearly disclosing such intent to any prospective tenant, purchaser, or other potential occupant of the Unit. Every lease of a Unit shall provide that failure to comply with the requirements and restrictions of these Covenants shall constitute a default under the lease.
- 24.2.11** In the event of any change in occupancy of any Unit as a result of the transfer of title, a lease or sublease, a birth or death, change in marital status, vacancy, change in location of permanent residence or otherwise, the Owner of the Unit shall immediately notify the Association in writing and provide the Association the names and ages of all current occupants of the Unit and such other information as the Association, through its Board of Directors, may reasonably require to verify the age of each occupant.
- 24.2.12** Each Owner by himself and by his tenants and other Occupants of his Unit shall be responsible for ensuring compliance of his Unit with the requirements and restrictions of these Covenants and the Rules and Regulations of the Association adopted hereunder. EACH OWNER, BY ACCEPTANCE OF A DEED TO A UNIT, AGREES TO INDEMNIFY, DEFEND, AND HOLD THE ASSOCIATION HARMLESS FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, AND CAUSES OF ACTION WHICH MAY ARISE FROM SUCH UNIT OWNER'S FAILURE TO SO COMPLY.
- 24.2.13** The Board of Directors of the Association shall not be authorized to waive these Covenants, nor may these covenants be amended in a way that makes this Condominium non-compliant with applicable federal, state and local law addressing age-restricted housing.
- 24.2.14** The Association shall have the authority to enforce these Covenants in any legal manner available as the Board deems appropriate.
- 24.2.15** The Association will make available to any Unit Owner, upon request, a directory of services and programs ("Service Providers") offered to assist older persons within the greater Auburn area.

25 SPECIFIC DECLARANT RIGHTS.

- 25.1 Control by the Declarant.** Subject to the provisions of RSA 356-B:36, the Declarant shall have the right to appoint the Board of Directors of the Unit Owner's Association and to

exercise the powers and responsibilities assigned by the Condominium Instruments and by RSA 356-B, to the Unit Owner's Association, the officers or the Board of Directors, either directly or through its appointed President. The right of control herein reserved to the Declarant shall continue until the earlier of (i) three (3) years from the date of recording this Declaration, or (ii) when Units to which $\frac{3}{4}$ interest of the undivided interests in the Common Areas appertain have been conveyed, unless such control is sooner relinquished and turned over by the Declarant. The Declarant shall, during this period, have the right to appoint the President and other officers of the Association and exercise all functions of the Board of the Association as provided in RSA 356-B:36. In the event of foreclosure by the Mortgagee holding a blanket mortgage on the Condominium during the period of control by the Declarant, all officers and directors appointed by the Declarant shall immediately resign.

- 25.2 Maintenance and Assessments by the Declarant.** The Declarant shall be responsible for the pro-rata costs (as allocated for Percentage Interest in Appendix C) of maintenance and/or Common Area expenses of each Unit it owns, provided such Unit has a Certificate of Occupancy, but the Declarant shall be responsible only until such time as it no longer owns such Unit in said Phase. Once the Declarant no longer owns any Unit, the maintenance and Common Area charges shall be paid exclusively by the Unit Owners of completed residential Units pursuant to the Percentage Interest allocations in Appendix C. However, the Declarant shall not be charged or obligated to pay any assessment or reserves for Units that do not have a Certificate of Occupancy for any month for which an assessment shall be made. For any Units that have a Certificate of Occupancy, but have not yet sold, the Declarant shall be charged a portion of the monthly assessment equal to that Unit's share of the insurance premium. However, if the Declarant shall allow any Units to be occupied prior to sale, then Declarant shall be charged the regular assessment for that Unit. The Declarant shall not be responsible to pay monthly assessments for unsold Units except as hereinbefore provided but shall be responsible for any deficit or shortfall in the common expense fund that may arise during the period of time when the Declarant shall control the Association. Initially, assessments shall commence on the date of the sale of the first Unit in each phase.
- 25.3 Voting Rights.** The Declarant shall be deemed to be the Unit Owner of any Unit constructed but not yet conveyed.
- 25.4 Use by Declarant.** Notwithstanding any other provision contained in this Declaration, the Declarant expressly reserves for itself, its representatives and assigns, the right to use one or more of the Units and the Common Area, including, but not limited to, the clubhouse and office of the Condominium, for the purpose of maintaining a sales, rental and management facility on the premises, including, without limitation, the showing of property and the displaying of signs; however, all of the foregoing shall not substantially interfere with the comfortable and convenient use of the Units by the respective Unit Owners.
- 25.5 Declarant's Reserved Rights to Construct and Add Units.** This Condominium is intended to be a phased Condominium and 13 Units are created at the time of execution and recordation of this Declaration. Without intending hereby to limit or affect the rights reserved to the Declarant and its successors in title as hereinafter set forth, the Declarant contemplates the expansion of the condominium by the addition of various Units to the

condominium in multiple successive phases, with each such phase being comprised of one or more Units. Therefore, Declarant hereby reserves the right to add additional Units to the Condominium in one or more subsequent phases by converting the Convertible Land into one or more Units and/or Limited Common Area.

The maximum number of Units in the Condominium, if all allowable Units are added, is seventy-nine (79). Notwithstanding anything to the contrary otherwise contained herein or as approved and allowed in the Conditional Approval issued by the Town of Auburn, on or about July 7, 2021, any modification in the allowable number of Units to more than seventy-nine (79) Units requires approval of 100% of the voting power of the Unit Owners. In addition, if any additional Units are proposed to be allowed by the Unit Owners, such expansion shall be subject to any requirements of the Town of Auburn Planning Board relating to any additional septic and water requirements, subject to the approval of the New Hampshire Department of Environmental Protection and subject to relevant provisions of New Hampshire Revised Statutes Annotated.

The Declarant shall be under no obligation to proceed beyond those units contained in this Declaration; nevertheless, should the Declarant choose to proceed to increase the number of units in the Condominium, the following provisions shall define the Declarant's reserved rights and certain obligations to which the Declarant must adhere:

- (a) The Declarant's reserved rights to amend this Declaration to add new Units to the Condominium shall expire five (5) years after the date of the recording of this Declaration, unless extended by an amendment to the Declaration adopted in compliance with RSA 356-B:23 ("Development Period"), provided that said reserved right shall sooner expire upon the first to occur of the following events:
 - (i) The total Units then included in the Condominium by virtue of this Declaration and subsequent amendments hereto have reached the aforesaid maximum number; or
 - (ii) The Declarant shall record with the Registry of Deeds a statement specifically relinquishing its rights to amend this Declaration to add new Units to the Condominium.
- (b) Future buildings, structures, improvements and installations shall be located substantially as shown on the Plan filed and recorded herewith.
- (c) Each expansion phase following the Declaration shall consist of at least one Unit as described in Section 3.4.
- (d) The Declarant reserves the right to change the type of construction, size, layout, architectural design and principal construction materials of future buildings and the Units therein which are to be added to the Condominium as part of future phases; provided, however, that any future buildings and the Units therein shall be consistent with the quality of construction of buildings and Units described in this Declaration and allowed and approved in the Conditional Approval issued by the Town of Auburn, on or about June 21, 2018.
- (e) The Declarant reserves the right to designate certain portions of the Common

Areas and Limited Common Areas for the exclusive use of the Units to be added to the Condominium as part of future phases. As hereinafter described, each amendment to this Declaration adding additional phases shall specify the Limited Common Areas appurtenant to the Units in such phases if such Limited Common Areas are different from those described in Section 3.5.4 hereof.

- (f) The Declarant may add future phases and Units therein to the Condominium by executing and recording with the Registry of Deeds amendments to this Declaration which shall contain the following information:
 - (i) An amended description of any Unit(s) being added to the Condominium.
 - (ii) An amended description of the designations, locations, approximate areas, numbers of rooms, immediately accessible Common Areas and other descriptive specifications of the Units being added to the Condominium.
 - (iii) If the boundaries of the Units being added to the Condominium vary from those described in said Section 3.4, the definition of the Common Areas and Limited Common Areas contained in said Section 3.5 et seq hereof shall be modified, as necessary, with respect to such Units.
 - (iv) An amended Appendix C setting forth the new percentage ownership interests for all Units in the Common Areas of the Condominium based upon the addition of the new Units and in keeping with Section 3.8 hereof for the determination of percentage interests.
 - (v) If the Limited Common Areas designated as appurtenant to the Units being added to the Condominium vary from those described in Section 3.5.4 hereof, a description of such variations so as to identify the new or modified Limited Common Areas and Facilities appurtenant to the new Units.
 - (vi) A revised phasing plan of the Condominium showing the new Units and floor plan(s) for the new Units being added to the Condominium, which floor plan(s) shall comply with the requirements of NH RSA Section 356-B:20.
 - (vii) Upon the recording of any such amendment to this Declaration so as to include such additional phase(s), the Units shall become Units in the Condominium for all purposes, including the right to vote, the obligation to pay assessments and all other rights and obligations as set forth herein for Units in the first phase of the Condominium.
- (g) The Declarant shall not amend this Declaration so as to include any additional phase(s) until the construction of the Units comprising such phase(s) have been completed sufficiently for the certification of plans as provided for in NH RSA

Section 356-B:20.

- (h) It is expressly understood and agreed that no such amendments adding new phases to the Condominium shall require the consent, approval or signature in any manner by any Unit Owner, any person claiming, by, through or under any Unit Owner (including the holder of any mortgage or other encumbrance with respect to any Unit) or any other party whatsoever, and the only consent, approval or signature which shall be required on any such amendment is that of the Declarant. Any such amendment, when executed by the Declarant and recorded with the Registry of Deeds, shall be conclusive evidence of all facts recited therein and of compliance with all prerequisites to the validity of such amendment in favor of all persons who rely thereon without actual knowledge that such facts are not true or that such amendment is not valid.
- (i) Each Unit Owner and any person claiming, by, through or under any Unit Owner (including the holder of any mortgage or other encumbrance with respect to any Unit) understands and agrees that as additional phase(s) containing additional Units are added to the Condominium by amendment to this Declaration pursuant to the Declarant's reserved rights hereunder, the percentage ownership interest of the Unit in the Common Areas and Facilities, together with the Unit's concomitant interest in the liability for sharing in the common expenses of the Condominium, shall be reduced, since the value of the Unit will represent a smaller proportion of the revised aggregate fair value of all Units in the Condominium. In order to compute each Unit's percentage ownership interest after the addition of a new phase, the fair value of the Unit measured as of the date of this Declaration shall be divided by the aggregate fair value of all Units (including the new Units being added to the Condominium), also measured as of the date of this Declaration. These new percentage interests shall then be set forth in the aforesaid amended **Appendix B** which is to accompany each amendment to this Declaration which adds a new phase to the Condominium.
- (j) Every Unit Owner by the acceptance of a deed to the Unit hereby consents for themselves, their heirs, administrators, executors, successors and assigns and all other persons claiming by, through or under them (including the holder of any mortgage or other encumbrance with respect to any Unit) to the Declarant's reserved rights under this Section 25 and expressly agrees to the alteration of their Unit's appurtenant percentage ownership interest in the Common Areas and Facilities of the Condominium when new phase(s) are added to the Condominium by amendment to this Declaration pursuant to this paragraph. Each unit deed shall contain a statement that the condominium is phased and that the percentage interest may change as additional phases are added.
- (k) In the event that, notwithstanding the provisions of this section to the contrary, it shall ever be determined that the signature of any Unit Owner, other than the Declarant, is required on any amendment to this Declaration which adds new phase(s) to the Condominium, then the Declarant shall be empowered, as attorney-in-fact for the owner of each Unit in the Condominium, to execute and

deliver any such amendment by and on behalf of and in the name of each such Unit owner; and for this purpose each Unit Owner, by the acceptance of the Unit deed, whether such deed be from the Declarant as grantor or from any other party, constitutes and appoints the Declarant as their attorney-in-fact. This power of attorney is coupled with an interest, and shall be irrevocable and shall be binding upon each and every present and future Owner of a Unit in the Condominium.

- (l) The Declarant shall have the right and easement to construct, erect and install on the Land in such locations as the Declarant shall, in the exercise of its discretion, determine to be appropriate or desirable:
 - (i) Additional roads, drives, parking spaces and areas, walks and paths;
 - (ii) New or additional Limited Common Areas;
 - (iii) New or additional conduits, pipes, wires, poles and other lines, equipment and installations of every character for the furnishing of utilities, including connection to existing utilities; and
 - (iv) All and any other buildings, structures, improvements and installations as the Declarant shall determine to be appropriate or desirable to the development of the Condominium as a phased condominium.

Declarant shall have all of the rights to use and grant easements as delineated in Section 3 et seq hereof for the purposes of allowing the construction and development of the Condominium.

The Declarant also reserves the right to have appurtenant to the construction of any Phase, an easement over that portion of the premises on which a Unit is located constituting that Phase, and reserves the right to sell, mortgage or otherwise assign or encumber all or part of this easement.

Ownership of each Unit, together with all appurtenances thereto, constructed by or for the Declarant pursuant to the said reserved rights, and easements shall remain vested in the Declarant; and the Declarant shall have the right to sell and convey the said residential units as Units of the Condominium without accounting to any party (other than the Declarant's mortgagees) with respect to the proceeds of such sales.


25.6 Declarant's Reserved Rights to Grant Easements. Notwithstanding any other provision stated herein to the contrary, the Declarant shall have the right, in its sole and absolute discretion, to grant such easements, rights of way over, under, across and relative to the Land for access, construction, development and utility related matters as the Declarant may deem appropriate and necessary with respect to other land owned by the Declarant and/or owners of land abutting and adjacent to the Land. Such action by the Declarant shall not require the approval of any Unit Owner or eligible mortgage holder unless otherwise required by law. This right shall expire when Declarant's Development Rights expire.

- 25.7 Declarant's Reserved Rights of Fee in Roads of Condominium.** Notwithstanding any other provision stated herein to the contrary, the Declarant hereby reserves any and all rights of the fee in the streets and ways of the Condominium as shown on the Plan, including, but not limited to, the right to grant access to pass and repass the same. This right shall expire when Declarant's Development Rights expire.

[SIGNATURE PAGE FOLLOWS]

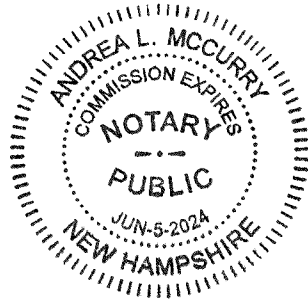
IN WITNESS WHEREOF, the Declarant has caused the Declaration to be executed this 16 day of February, 2023.

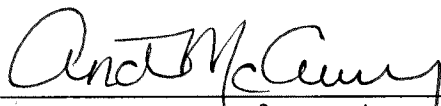
DECLARANT of THE CLIFFS AT EVERGREEN CONDOMINIUM:
CHINBURG DEVELOPMENT, LLC

By: 
Eric J. Chinburg, Manager

STATE OF NEW HAMPSHIRE
ROCKINGHAM, ss.

On this 16 day of February, 2023, before me, the undersigned notary public, personally appeared Eric J. Chinburg in his capacity as Manager of Chinburg Development, LLC.




Notary Public: ANDREA McCURRY
Commission Expires 6-5-2024

APPENDIX A
SUBMITTED LAND (METES AND BOUNDS)

The Submitted Land is shown as "Proposed Tax Map 10, Lot 19" on a plan of land entitled "Boundary Line Adjustment Plan for Harbor Street Limited Partnership between land of Auburn School District (Tax Map 10, Lot 19) and Paola Farina (Tax Map 31, Lot 13), Hooksett Road, Auburn, New Hampshire, drawn by Doucet Survey, LLC, dated March 23, 2021 (revised 2/16/220 and recorded in the Rockingham County Registry of Deeds as Plan No. D-43198, more particularly described as follows:

Beginning at a granite bound set on the southerly side of Hooksett Road in the Town of Auburn, County of Rockingham, State of New Hampshire, said point being the northwest corner of the area herein described;

Thence following along said Hooksett Road the following four courses;

Thence S 88° 38' 50" E, a distance of 34.74' to a rebar set;

Thence S 88° 38' 50" E, a distance of 344.81' to a New Hampshire Highway Bound;

Thence S 82° 11' 00" E, a distance of 264.57' to a New Hampshire Highway Bound;

Thence S 88° 03' 45" E, a distance of 27.59' to a granite bound set in a stone wall at land of Manchester Water Works;

Thence following said stone wall and land of Manchester Water Works the following eleven courses;

S 10° 39' 09" E, a distance of 320.30' to a drill hole set;

Thence S 10° 21' 11" E, a distance of 42.46' to a drill hole set;

Thence S 13° 08' 54" E, a distance of 22.18' to a drill hole set;

Thence S 10° 20' 00" E, a distance of 72.23' to a drill hole set;

Thence S 11° 17' 33" E, a distance of 102.73' to a drill hole set;

Thence S 04° 51' 05" W, a distance of 3.30' to a drill hole set;

Thence S 12° 24' 15" E, a distance of 208.54' to a drill hole set;

Thence S 10° 47' 21" E, a distance of 209.66' to a drill hole set;

Thence S 11° 28' 00" E, a distance of 242.05' to a drill hole set;

Thence S 12° 47' 33" E, a distance of 64.15' to a drill hole set;

Thence S 12° 22' 39" E, a distance of 128.93' to a drill hole set at the end of the stone wall;

Thence N 83° 20' 23" E, a distance of 237.03' to a drill hole set at the beginning of a stonewall;

Thence along said stone wall N 86° 02' 36" E, a distance of 170.47' to a drill hole set;

Thence continuing along said stone wall N 84° 45' 30" E, a distance of 37.10' to a rebar set at the end of the stone wall;

Thence N 83° 11' 06" E, a distance of 249.26' to a granite bound set;

Thence N 83° 18' 35" E, a distance of 11.78' to a granite bound set;

Thence N 79° 24' 10" E, a distance of 12.82' to a rebar set at the beginning of a stone wall;

Thence along said stone wall N 87° 32' 29" E, a distance of 101.58' to a rebar set in the stonewall;

Thence continuing along said stone walls S 89° 33' 21" E, a distance of 21.13' to a rebar set at the end of the stone wall;

Thence N 85° 47' 48" E, a distance of 101.63' to a rebar set at the northerly side of the former railroad bed;

Thence along the former railroad the following twenty three courses;

S 51° 59' 28" W, a distance of 182.45' to a galvanized pipe set;

Thence S 53° 13' 07" W, a distance of 40.69' to a rebar set;

Thence S 51° 15' 51" W, a distance of 151.63' to a granite bound set;

Thence S 56° 44' 10" W, a distance of 33.05' to a rebar set in ledge;

Thence S 62° 03' 44" W, a distance of 71.61' to a rebar set in ledge;

Thence S 67° 42' 48" W, a distance of 26.44' to a rebar set in ledge;

Thence S 66° 00' 29" W, a distance of 23.82' to a rebar set in ledge;

Thence S 68° 24' 46" W, a distance of 39.80' to a granite bound set;

Thence S 76° 57' 56" W, a distance of 62.49' to a rebar set in ledge;

Thence S 81° 53' 09" W, a distance of 121.05' to a granite bound set;

Thence S 85° 40' 16" W, a distance of 10.16' to a granite bound set;

Thence S 89° 34' 31" W, a distance of 67.05' to a granite bound set;

Thence S 66° 20' 35" W, a distance of 40.53' to a granite bound set;

Thence S 76° 28' 58" W, a distance of 240.97' to a granite bound set;

Thence S 73° 28' 15" W, a distance of 55.75' to a galvanized pipe set;

Thence S 67° 12' 17" W, a distance of 276.30' to a granite bound set;

Thence S 73° 16' 18" W, a distance of 222.72' to a granite bound set;

Thence S 82° 03' 03" W, a distance of 215.76' to a rebar set in ledge;

Thence S 77° 43' 00" W, a distance of 77.12' to a granite bound set;

Thence S 80° 05' 17" W, a distance of 173.10' to a granite bound set;

Thence S 72° 47' 02" W, a distance of 42.79' to a granite bound set;

Thence S 69° 40' 16" W, a distance of 284.50' to a granite bound set;

Thence S 65° 52' 15" W, a distance of 90.63' to a granite bound set;

Thence S 64° 41' 23" W, a distance of 133.55' to a granite bound set at land of Megan Grandmason & Kara Carrier;

Thence along land of said Grandmaison and Carrier the following eleven courses

Thence N 15° 33' 10" W, a distance of 72.99' to a 15" oak tree;

Thence N 21° 09' 44" W, a distance of 49.40' to a 15" oak tree;

Thence N 19° 11' 41" W, a distance of 51.21' to a 12" oak tree;

Thence N 15° 31' 27" W, a distance of 58.95' to a stump;

Thence N 13° 11' 15" W, a distance of 68.30' to a 12" oak tree;

Thence N 16° 07' 09" W, a distance of 107.22' to a 8" birch tree;

Thence N 15° 07' 46" W, a distance of 89.32' to a 8" oak tree;

Thence N 12° 34' 00" W, a distance of 40.33' to a 8" oak tree;

Thence N 07° 04' 04" W, a distance of 54.24' to a granite bound set;

Thence N 19° 16' 30" W, a distance of 65.32' to a 20" pine tree;

Thence N 25° 58' 44" W, a distance of 31.21' to a 22" pine tree at land of Michael D. Doefler;

Thence along land of said Doefler the following fourteen courses;

Thence N 88° 39' 26" E, a distance of 122.92' to a rebar set;

Thence N 78° 42' 29" E, a distance of 67.14' to a 10" pine tree;

Thence N 80° 56' 48" E, a distance of 23.36' to a 6" pine tree;

Thence N 84° 00' 48" E, a distance of 45.66' to a 10" maple tree;

Thence N 84° 17' 39" E, a distance of 113.85' to a stump;

Thence N 82° 09' 40" E, a distance of 49.70' to a 7" oak tree;

Thence N 84° 35' 17" E, a distance of 104.16' to a stump;

Thence N 88° 04' 31" E, a distance of 30.98' to a 18" oak tree;

Thence N 81° 56' 27" E, a distance of 33.78' to a barbed wire found;

Thence N 85° 45' 57" E, a distance of 10.29' to a granite bound set;

Thence N 13° 52' 25" E, a distance of 189.00' to a granite bound set;

Thence N 31° 16' 37" E, a distance of 42.51' to a galvanized pipe set;

Thence N 08° 22' 52" W, a distance of 39.52' to a galvanized pipe set;

Thence N 19° 49' 04" W, a distance of 213.71' to a galvanized pipe set;

Thence N 23° 24' 49" W, a distance of 328.32' to a galvanized pipe set at land of the Paola Farine Revocable Trust of 2019;

Thence along land of said Paola Farine Revocable Trust of 2019 the following two courses;

N 72° 11' 48" E, a distance of 83.99' to a granite bound set;

Thence N 01° 58' 08" W, a distance of 521.06' to a granite bound set at the southerly side of Dollard Road;

Thence along said Dollard Road along a curve turning to the left with a chord bearing of N 52° 24' 46" E, a delta of 64° 26' 44", a radius of 325.00' and a length of 365.56' to the granite bound set at the point of beginning.

Said area contains 2,534,059 square feet or 58.17 acres, more or less.

APPENDIX A-1

LEGAL DESCRIPTION OF THE CONVERTIBLE LAND

Convertible Land Parcels 1 through 25, 33 through 73, as delineated on the Condominium Site Plan recorded in Rockingham County Registry of Deeds as Plan #43274.

APPENDIX B

**BYLAWS OF
THE CLIFFS AT EVERGREEN CONDOMINIUM UNIT OWNERS' ASSOCIATION**

THE CLIFFS AT EVERGREEN CONDOMINIUM UNIT OWNERS' ASSOCIATION

BYLAWS

ARTICLE I

PLAN OF UNIT OWNERSHIP

1. **Purpose.** The administration of the Condominium shall be governed by these Bylaws, which are annexed to the Declaration of THE CLIFFS AT EVERGREEN CONDOMINIUM and are made a part thereof. All present and future holders of any interest in the Condominium shall be members of THE CLIFFS AT EVERGREEN CONDOMINIUM UNIT OWNERS' ASSOCIATION and shall hold said interest subject to these Bylaws as well as to the Declaration and the Rules promulgated hereunder. Such Owners' Association 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 of 1954, as amended. No part of the net earnings of the 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 pursuant to Article V, Section 1(c) hereof) to the benefit of any Unit Owner.

2. **Definitions.** Capitalized terms not otherwise defined herein or in the Declaration shall have the meanings specified in Section 3 of the Condominium Act.

3. **Bylaws Applicability.** The provisions of these Bylaws are applicable to the Condominium and the use, occupancy, sale, lease, or other transfer thereof. All present and future Owners, tenants, future tenants, their guests, licensees, servants, agents, employees, and any other Person who shall use the facilities of the Condominium, shall be subject to these Bylaws and to the Rules 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 will comply with them.

4. **Office.** The principal office of CLIFFS AT EVERGREEN CONDOMINIUMS UNIT OWNERS' ASSOCIATION and of the Board of Directors 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. **Unit Owner's Association.** All of the Unit Owners, acting as a group in accordance with the Condominium Act, the Declaration, and these Bylaws, shall constitute THE CLIFFS AT EVERGREEN CONDOMINIUMS UNIT OWNERS' 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 to be performed by the Unit Owners' Association by the Condominium Act. Except as to those matters which the Condominium 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 Directors (as more particularly set forth in Article III herein below).

2. **Voting.**

(a) Each Unit shall be entitled to one vote. 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 vote appertaining 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. As applied to a person which is not a natural person, the word "person" shall be deemed for the purposes of this Section to include, without limitation, any one natural person having authority to execute deeds on behalf of such person which is not a natural person and which is, either alone or in conjunction with another person or persons, a Unit Owner. Except where a greater number is required by the Condominium Act, the Declaration, or these Bylaws, a majority of the vote of those Unit Owners present, in good standing and entitled to vote is required to adopt decisions at any meeting of the Unit Owners Association. If the Declarant owns or holds title to one or more Condominium Units, the Declarant shall have the right at any meeting of the Unit Owners' Association to cast the votes to which such Unit is entitled.

(b) At meetings, Roberts Rules of Order shall be followed in voting and conducting the meeting.

(c) Voting procedure at other than duly authorized meetings will be as follows:

ii A list of the nominees for Directors or the question to be voted on is sent out to each Unit Owner (one vote per unit) in a ballot form.

iii A ten-day response will be allowed.

iiii Only ballots cast will be counted.

ivi The answer to the question that receives the most cast votes will prevail, providing the requisite percentage votes, as described in this Bylaws and the Declaration, are cast.

vi The nominees for Directors which receive the five highest votes will become Directors. The one receiving the highest number of votes shall be Director, as will the one receiving the next highest, etc., until five Directors are elected. However, in all cases, at least one Director shall be elected, even if only one vote is cast and that is for only one nominee.

3. **Place of Meeting.** Meetings of the Unit Owners' Association shall be held at the principal office of the Condominium or at such other suitable place as may be designated by the Board of Directors and stated in the notice of the meeting.

4. **Annual Meeting.** This section is subject to the limitations of Section 25 et seq, of the Declaration, and where a conflict exists, said Section 25 et seq, shall be controlling. The first annual meeting of the Unit Owners' Association shall be held on a date to be determined by the Declarant, which date shall be within one (1) year after the formation of the Association by the recordation of the Declaration. Notice of such meeting shall be given in accordance with the provisions of Section 5 of this Article II. At such meeting, the persons designated by the Declarant shall resign as members of the Board of Directors, and all of the Owners, including the Declarant if the Declarant owns any Unit or Units, shall elect a new Board of Directors. Thereafter, the annual meetings of the Association shall be held on the same date of each succeeding year, or on such other date within a thirty (30) day period prior to such date, as may be designated by the Board of Directors and reflected in the said notice. At such annual meetings, the Board of Directors shall be elected by ballot of the Owners in accordance with the requirements of these Bylaws. The foregoing notwithstanding, until three (3) years from the date of recording this Declaration, unless such control is sooner relinquished and turned over by the Declarant, the Declarant shall be entitled to elect a majority of the members of the Board of Directors. The Association may transact such other 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 Unit Owners' Association if so directed by Resolution of the Board of Directors or upon a petition signed and presented to the Secretary by an Owner. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

6. **Notice of Meeting.** It shall be the duty of the Secretary to mail, by United States mail,

return receipt requested or send via electronic mail, a notice of each annual meeting or special meeting of the Owners, at least twenty-one (21) days in advance of each annual meeting, and at least seven (7) days in advance of each special meeting, stating the purpose thereof as well as the time and place where it is to be held, to each Owner at the address of their respective Units or at such other address or electronic address as each Owner may have designated by notice in writing to the Secretary. The mailing of a notice of meeting in the manner provided in this Section shall be considered service of notice.

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 Unit Owners' 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 Board of Directors as hereinafter provided, together with all interest, costs, attorney's 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.

8. **Proxies.** The vote appertaining to any Unit may be cast pursuant to a proxy or proxies duly executed by or on behalf of the Unit Owner, or, in cases where the Unit Owner is more than one person, by or on behalf of all such persons. 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. Any proxy shall be void if it is not dated, if it purports to be revocable without notice as aforesaid, or if the signature of any of those executing the same has not been duly acknowledged. The proxy of any person shall be void if not signed by a person having authority, at the time of the execution thereof, to execute deeds on behalf of that person. Any proxy shall terminate automatically upon the adjournment of the first meeting held on or after the date of that proxy.

9. **Quorum.** A quorum shall be deemed to be present throughout any meeting of the Unit Owners' Association until adjourned if persons entitled to cast more than fifty-one percent (51%) of the votes are present at the beginning of said meeting, in person or by proxy.

10. **Order of Business.** The order of business at all meetings of the Unit Owners' Association may be as follows: (a) roll call; (b) recitation of proof of notice of meeting; (c) reading of minutes of preceding meeting; (d) reports of officers; (e) reports of Board of Directors; (f) reports of committees; (g) election of Directors, if applicable; (h) unfinished business; and (i) new business, any of which may be waived.

11. **Conduct of Meeting.** The President, or his designee, shall preside over all meetings of the Unit Owners' Association and the Secretary shall keep the minutes of the meeting and record in a record book all resolutions adopted by the meeting as well as a record of all transactions occurring thereat. Roberts Rule of order shall govern the conduct of all meetings of the Unit Owners' Association when not in conflict with the Declaration, these Bylaws, or the Condominium Act.

ARTICLE III

BOARD OF DIRECTORS

1. **Powers and Duties.** The affairs and business of the Condominium shall be managed by a Board of Directors (sometimes hereinafter referred to as the "Board") which shall have all of the powers and duties necessary for the administration of the affairs of the Condominium and may do all such acts and things as are not by the Condominium Act or by these Bylaws directed to be exercised and done by the Unit Owners' Association. The Board of Directors shall have the power from time to time to adopt any Rules deemed necessary for the enjoyment of the Condominium provided that such Rules shall not be in conflict with the Condominium Act, the Declaration, or these Bylaws. The Board of Directors may elect one of its members to serve as Chairman of the Board. 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 which 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, and be responsible for the following:

(a) Preparation of an annual budget, in which there shall be established the assessment of each Owner for the Common Expenses.

(b) Making assessments against Owners to defray the Common Expenses of the Condominium, establishing the means and method of collecting such assessments from the Owners, collecting said assessments, depositing the proceeds thereof in a bank depository that it shall approve, and using the proceeds to carry out the administration of the Condominium. 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 day of each month for said month.

(c) Providing for the operation, care, upkeep, replacement, and maintenance of all of the Common Area and services of the Condominium.

(d) Designating, hiring, controlling and dismissing the personnel necessary for the maintenance, operation, repair, and replacement of the Common Area, and providing services for the Condominium and, where appropriate, providing for the compensation of such personnel and for the purchase or use of equipment, supplies, and material to be used by such personnel in the performance of their duties, which supplies and equipment, if purchased, shall be deemed the common property of the Owners.

(e) Making and amending Rules respecting the use of the Condominium and enforcing by legal means the provisions of the Declaration, these Bylaws, and such Rules, and bringing any proceeding which may be instituted on behalf of the Owners.

(f) Obtaining and carrying insurance against casualties and liabilities, 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 Condominium and repairs to, and restoration of, the Condominium, in accordance with the other provisions of these Bylaws, after damage or destruction by fire or other casualty.

(g) Keeping books with detailed accounts of the receipts and expenditures affecting the Condominium, and the administration of the Condominium. All books and records shall be kept in accordance with generally accepted accounting practices, and the same shall be audited at least once a year by an outside auditor employed by the Board of Directors who shall not be a resident of the Condominium, or an Owner therein. The cost of such audit shall be a Common Expense. The books, records, financial statements and annual audited report of the Condominium as well as copies of the current Declaration, Bylaws and the Rules and Regulations shall be available for examination by prospective purchasers, and the Owners, their duly authorized agents or attorneys, and any holder, insurer or guarantor of a first Mortgage on any Unit(s) during general business hours on working days at the times and in the manner that shall be set and announced by the Board of Directors for the general knowledge of such persons. A copy of the annual audit report shall be supplied to any holder, insurer or guarantor of a first Mortgage on any Unit in the Condominium who requests the same in writing to the Secretary.

(h) To do such other things and acts not inconsistent with the Condominium Act, these Bylaws, and the Declaration.

2. **Managing Agent.** The Board of Directors may employ, or contract with, a professional 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 powers granted to the Board of Directors by these Bylaws; provided that any actions of the Manager with respect to the powers set forth in paragraphs (b) and (f) of Section 1 of this Article III shall require the consent of the Board of Directors. The term of any employment contract for a Manager may not exceed one year (1), and any such employment contract shall provide, inter alia, that such agreement may be terminated for cause upon no more than sixty (60) days written notice. The Declarant may enter into professional management contracts prior to transfer of control of the Unit Owners' Association to the Unit Owners. However, any such contract shall be terminable without cause or penalty upon ninety (90) days' notice.

3. **Number of Directors and Initial Selection of Board and Term of Office.** This section is subject to the limitations of Section 25 et seq, of the Declaration, and where a conflict exists, said Section 25 et seq, shall be controlling. The Declarant shall constitute the sole Director while it still controls the Condominium pursuant to said Section 25 of the Declaration. After the Declarant no longer controls the Association, the Board of Directors shall be composed of no less than five (5) of the record Unit Owners or no less than the minimum number required by the Condominium Act, and no more than seven (7) of the record Unit Owners, elected by the majority vote of all record Unit Owners. the officers of the Association. Declarant shall have the right to control the Board s set forth in Section 25 et seq. Until the election of the Board of Directors takes

place at the first annual meeting of Unit Owners' Association, the Board of Directors shall consist of such persons as shall have been designated by the Declarant. The Declarant may relinquish its rights hereunder at any prior time.

4. **Term of Office.** Subject to the limitations of the Declarant to be a Director as stated in subparagraph 3. above, Directors shall hold office until they resign, are no longer a Unit Owner of record or until they are voted out by majority of the Unit Owners of record and a replacement Director is vote in by a majority of the Unit Owners of record.

5. **Organization Meeting.** The first meeting of the members of the Board of Directors shall be at the same time and place as the first annual meeting of the Unit Owners at such place as shall be fixed by the Directors, and no notice shall be necessary to the Directors in order to legally to constitute such meeting, providing a majority of the whole Board shall be present thereat.

6. **Regular Meetings.** Meetings of the Board of Directors shall be held at least quarterly at such time and place as shall be determined from time to time, by a majority of the Directors, after the annual meeting of the Unit Owners' Association. Notice of regular meetings of the Board of Directors shall be given to each Director and Unit Owner, personally or by mail, telephone, fax or e-mail, at least ten (10) business days prior to the day named for such meeting, except that no notice shall be required for a regular meeting held immediately after, and at the same place as, the annual meeting of the Association. Notice may be waived orally or in writing.

7. **Special Meetings.** Special meetings of the Board of Directors may be called by any one Director on five (5) business days' notice to each Director. Such notice shall be given personally or by mail, telephone, fax or e-mail, and such notice shall state the time, place, and purpose of the meeting.

8. **Waiver of Notice.** Before or within ten (10) days after any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board 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.

9. **Board of Directors' Quorum.** At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. If, at any meeting of the Board of Directors, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

10. **Vacancies.** Vacancies shall be filled by vote of the majority of the record Unit Owners at a special meeting of the Board of Directors held for that purpose promptly after the occurrence of any such vacancy; and each person so elected shall be a Director for the remainder of the term of the Director so replaced; provided, however, that the vacancy of any Director designated by the Declarant pursuant to a right of the Declarant to make such designation shall be filled by the Declarant.

11. **Removal of Directors.** A Director may be removed with or without cause, and his successor elected, at any duly called regular or special meeting of the Unit Owners' Association at which a quorum is present, by an affirmative vote of a majority of the votes represented and voting. Any Director whose removal has been proposed by the Owners shall be given at least ten (10) days' notice of the calling of the meeting and the purpose thereof and an opportunity to be heard at the meeting.

12. **Compensation.** No Director shall receive any compensation for acting as a Director.

13. **Conduct of Meetings.** The President, or, in his absence, a president pro tempore elected by the Board, shall preside over all meetings of the Board of Directors and the Secretary shall keep the minutes of the meetings of the Board of Directors recording therein all resolutions adopted by the Board of Directors and all transactions and proceedings occurring at such meetings, which minutes shall be filed in the Record Book of the condominium.

14. **Report of Board of Directors.** The Board of Directors shall present at each annual meeting, and when called for by vote of the Unit Owners' Association at any special meeting of the Association, a full and clear statement of the business and condition of the Condominium.

15. **Dispensing with Vote.** Any action by the Board of Directors required or permitted to be taken at any meeting may be taken without a meeting if all of the members of the Board of Directors shall individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the Board of Directors.

16. **Liability of the Board of Directors.** Except as provided in the Declaration, the Bylaws or this Section, the Board of Directors acts on behalf of the Association. In the performance of their duties, officers and members of the Board of Directors appointed by the Declarant shall exercise the degree of care and loyalty to the Association required of a trustee. Officers and members of the Board of Directors not appointed by the Declarant shall exercise the degree of care and loyalty to the association required of an officer or director of a corporation organized under RSA 292, and are subject to the conflict of interest rules governing directors and officers under RSA 292. The standards of care and loyalty described in this Section apply regardless of the form in which the Association is organized. The members of the Board of Directors shall not be liable to the Owners

for any mistake of judgment, negligence, or otherwise except for their own individual willful misconduct or bad faith. The Owners shall indemnify and hold harmless each of the Directors from and against all contractual liability to others arising out of contracts made by the Board of Directors on behalf of the Owners unless any such contract shall have been made in bad faith, due to willful misconduct or contrary to the provisions of the Declaration or of these Bylaws. It is intended that the members of the Board of Directors shall have no personal liability (except as Owners) with respect to any contract made by them on behalf of the Owners, unless made in bad faith, due to willful misconduct or contrary to such provisions. It is also intended that the liability of any owner arising out of any contract made by the Board of Directors or out of the aforesaid indemnity in favor of the members of the Board of Directors shall be limited to such proportion of the total liability thereunder as his Undivided interest bears to the Undivided interests of all of the Owners. Every written agreement made by the Board of Directors or by the President on behalf of the Owners shall, if obtainable, provide that the members of the Board of Directors or the President, as the case may be, are acting only as agents for the owners and shall have no personal liability thereunder (except as Owners), and that each owner's liability thereunder shall be limited to such proportion of the total liability thereunder as his undivided interest bears to the undivided interests of all Owners. The Owners shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether or not based in contract, by reason of the fact that he is or was a Director, or officer, against expenses (including reasonable attorneys' fees), judgments, fines, and amounts paid in settlement incurred by him in connection with such action, suit, or proceeding unless he acted in bad faith, was guilty of willful misconduct, or acted contrary to the provisions of the Declaration or these Bylaws.

ARTICLE IV

OFFICERS

1. **Designation.** The principal officers of the Condominium shall be a President, a Secretary, and a Treasurer, all of whom shall be elected by the Board. During Declarant's period of control of the Board, the officers may be one person. The Board may appoint such other officers as in its judgment may be necessary. All officers must be members of the Board of Directors.
2. **Election of officers.** The officers of the Condominium shall be elected annually by the Board at the organization meeting of each new Board and shall hold office at the pleasure of the Board. Any vacancy in an office shall be filled by the Board at a regular meeting or special meeting called for such purpose.
3. **Removal of Officers.** The officers shall hold office until their respective successors are chosen and qualify in their stead. Any officer elected or appointed by the Board of Directors may be removed at any time by the affirmative vote of a majority of the whole Board, and his successor may be elected at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors called for such purpose.

4. **President.** The President shall be the chief executive officer. He, or his designee, shall preside at meetings of the Unit Owners' Association and shall be an ex-officio member of all committees; he shall have general and active management of the business of the Condominium and shall see that all orders and resolutions of the Board are carried into effect.

5. **Secretary.** The Secretary shall attend all meetings of the Board of Directors and all meetings of the Unit Owners' Association, shall record the minutes of all proceedings in the record book of the Condominium, and shall perform like duties for committees when required. He shall keep the record book current and in his custody. He shall give, or cause to be given, notice of all meetings of the Unit Owners' Association, the Board, and committees and shall perform such other duties as may be prescribed by the Board or President. The Secretary shall compile and keep current at the principal office of the Condominium a complete list of the Owners and their last known post office addresses and electronic email addresses. This list shall be open to inspection by all Owners and other persons lawfully entitled to inspect the same, at reasonable hours during regular business days.

6. **Treasurer.** The Treasurer shall have the custody of all funds and securities that are not under the control of the Directors or President, if any, and, with the assistance of the Directors or President, shall keep full and accurate records of receipts and disbursements, shall prepare all required financial data, and shall deposit all money and other valuable effects in such depositories as may be designated by the Board. He shall disburse funds as ordered by the Board, where possible taking proper vouchers for such disbursements, and shall render to the President and Directors, at the regular meetings of the Board or whenever they may require it, an account of all of his transactions as Treasurer and of the financial condition of the Association.

7. **Agreements, Contracts, Checks, etc.** All agreements, contracts, leases, checks, and other instruments of the Association for expenditures or obligations shall be executed by the President and Treasurer of the Association or by such other person or persons as may be designated in writing by the Board of Directors.

8. **Compensation of Officers.** No officer shall receive any compensation for acting as an officer.

ARTICLE V

OPERATION OF THE PROPERTY

1. **Determination of Common Expenses and Assessments Against Owners.**

(a) **Fiscal Year.** The fiscal year of the Condominium shall consist of the twelve- month period commencing on January 1 of each year and terminating on December 31 of the same year, except that the first fiscal year shall begin at the date of organization and terminate on December 31. The fiscal year herein established shall be subject to change by the Board of Directors.

(b) **Preparation and Approval of Budget.** Each year the Board of Directors shall adopt a budget for the Condominium containing an estimate of the total amount which it considers necessary to pay the cost of maintenance, management, operation, repair, and replacement of the Common Area and any parts of the Units as to which it is the responsibility of the Board of Directors to maintain, repair, and replace, and the cost of wages, materials, insurance premiums, services, supplies, and other expenses that may be declared to be Common Expenses by the Condominium Act, the Declaration, these Bylaws, or a resolution of the Unit Owners' Association, and which will be required during the ensuing fiscal year for the administration, operation, maintenance, and repair of the Condominium and the rendering to the Owners of all related services. Such budget shall also include such reasonable reserves as the Board of Directors considers necessary to provide a general operating reserve, and reserves for contingencies and replacements. Not later than thirty (30) days after adoption of the proposed budget, the Board of Directors shall provide all the Unit Owners a summary of the budget, including any reserves, and a statement on the basis on which any reserves are calculated and funded. Simultaneously, the Board of Directors shall set a date not less than ten (10) days or more than sixty (60) days after providing the summary for a meeting of the Unit Owners to consider the budget. Unless at a meeting two-thirds (2/3) of all Unit Owners reject the budget, the budget is ratified, whether or not a quorum is present. If a proposed budget is rejected, the budget last ratified by the Unit Owners continues until the Unit Owners ratify a subsequent budget.

(c) **Assessment and Payment of Common Expenses.** The total amount of the estimated funds required for the operation of the Land set forth in the budget for the fiscal year adopted by the Board of Directors shall be assessed against each owner of a completed Unit in proportion to the number of votes in the Unit Owners' Association appertaining to his Unit, and shall be a lien against each Owner's Condominium Unit in accordance with the Condominium Act. However, the Declarant shall not be charged or obligated to pay any assessment or reserves for Units that are unbuilt for any month for which an assessment shall be made. For any Units that have been completed but not sold, the Declarant shall be charged a portion of the monthly assessment equal to that Unit's share of the insurance premium. If the Declarant shall allow any Units to be occupied prior to sale, then the Declarant shall be charged the regular assessment for that Unit. The Declarant shall not be responsible to pay monthly assessments for unsold Units except as hereinbefore provided but shall be responsible for any deficit or shortfall in the common expense fund that may arise during the period of time when the Declarant shall control the Unit Owners' Association. Initially, assessments shall commence on the date of the sale of the first Unit, in each phase. The basis of the assessment will be the projected budget. Thereafter on or before the first day of each fiscal year, and the first day of each of the succeeding eleven (11) months in such fiscal year, each Owner shall be obligated to pay to the Association - an equally divided percentage of the assessment for such fiscal year made pursuant to the foregoing provisions. Within sixty (60) days after the end of each fiscal year, the Board of Directors shall supply to all Owners an itemized income and expense statement. The amount accumulated in excess of the amount required for actual expense and budgeted reserves shall, in the discretion of the Board of Directors, either be

rebated to the Owners in accordance with each Owner's votes in the Unit Owners' Association by crediting same to the next successive monthly installments due from Owners under the then current fiscal year's budget, until exhausted, or shall be added to reserves. Any net shortage shall, if the Board of Directors deems it advisable, be added according to each owner's votes in the Unit Owners' Association to the installments due in the succeeding six (6) months after the rendering of the accounting.

(d) **Reserves.** The Board of Directors shall, as they may deem necessary, build up and maintain an adequate operating reserve and reserve for replacement of the Common Area, which shall be funded by regular monthly payments as provided for in subsection (c). At the end of each fiscal year, all funds accumulated during such year for reserves for replacement of Common Area shall be placed in a separate bank account, segregated from the general operating funds, and used only for such purposes. If for any reason, including nonpayment of any Owner's assessments, the reserves are inadequate, the Board of Directors may at any time levy a further assessment, which shall be assessed against the Owners according to their respective votes in the Unit Owners' Association and which may be payable in a lump sum, or in installments as the Board of Directors may determine. The Board of Directors shall serve notice of any such further assessment on all Owners by a statement in writing giving the amount and reasons therefor, and such further assessment shall, unless otherwise specified in the notice, become effective with the next monthly payment which is due more than ten (10) days after the delivery or mailing of such notice of further assessment. All Owners shall be obligated to pay the adjusted amount or, if the additional assessment is not payable in installments, the amount of such assessments.

(e) **Initial Assessment.** When the first Board of Directors takes office, it shall determine the budget, as defined in this Section, for the period commencing upon the recording of this Declaration at the Rockingham County Registry of Deeds and ending on the last day of the fiscal year in which their election occurs. Assessments shall be levied against the owners during said period as provided in paragraph (c) of this Section.

(f) **Effect of Failure to Prepare or Adopt Budget.** The failure or delay of the Board of Directors to prepare or adopt the annual budget for any fiscal year shall not constitute a waiver or release in any manner of an Owner's obligation to pay his allocable share of the Common Expenses as herein provided, whenever the same shall be determined, and in the absence of any annual budget or adjusted budget, each Owner shall continue to pay the monthly charge at the then existing monthly rate established for the previous fiscal period until ten (10) days after a statement has been mailed or delivered, showing the monthly payment which is due under the new annual or adjusted budget.

(g) **Capital Reserve.** The Board of Directors, or the Declarant if the Board has not been established, may, but shall not be obligated to, establish a working capital fund equal to two (2) months estimated common charges for each Unit. Any amounts paid into this fund shall not be considered as advance payments of regular assessments. Each Unit's share of the working capital fund shall be collected at the time the initial sale of the Unit is closed and shall be transferred to the Unit Owners' Association for deposit in a segregated fund.

2. **Payment of Common Expenses.** All owners shall be obligated to pay the Common Expenses assessed by the Board of Directors pursuant to the provisions of Section 1 of this Article V. No Owner may exempt himself from liability for his contribution toward Common Expenses by waiver of the use or enjoyment of any of the Common Area or by abandonment of his Unit. No Owner shall be liable for the payment of any part of the Common Expenses assessed against his Unit subsequent to transfer by him of such Condominium Unit. The purchaser of a Unit or other acquiring Owner by virtue of any transfer shall be jointly and severally liable with the transferring Owner for all unpaid assessments against the latter for his proportionate share of the Common Expenses up to the time of the conveyance without prejudice to the acquiring owner's right to recover from the transferring Owner the amounts paid by the acquirer therefor; provided, however, that any such acquiring Owner of transferring owner shall be entitled to a recordable statement from the Chairman of the Board of Directors or the President setting forth the amount of the unpaid assessments against the transferring Owner and such, acquiring Owner shall not be able for, nor shall the Unit conveyed be subject to a lien for, any unpaid assessments in excess of the amount therein set forth. Failure to furnish or make available such a statement within ten (10) days from receipt of such request in writing shall extinguish the lien for unpaid assessments. Payment of a fee of Twenty Dollars (\$20.00) or the maximum allowable under the Condominium Act, whichever is greater, shall be required as a prerequisite for issuance of such a statement. If a Mortgagee of a first Mortgage of record or other purchaser of a Unit obtains title to the Unit as a result of foreclosure of a first Mortgage, or through the enforcement of any other remedies provided for in the Mortgage, or by virtue of a deed in lieu of foreclosure, such Mortgagee or purchaser, his successors and assigns, shall not be liable for the payment of any Common Expenses assessed prior to the acquisition of title to said Unit by said Mortgagee or purchaser pursuant to the aforesaid remedies, and the Unit shall not be subject to a lien for same. The unpaid share of Common Expenses assessed prior to the acquisition of title to such Unit by such Mortgagee or purchaser pursuant to the aforesaid remedies shall be collectible from all owners, including the purchaser or first Mortgagee, in proportion to their respective votes in the Unit Owners' Association

3. **Collection of Assessments.** The Board of Directors shall take prompt action to collect any assessments for Common Expenses due from any Owner which remain unpaid for more than sixty (60) days from the due date for payment thereof.

4. **Maintenance and Repair.**

(a) **By the Board of Directors.** Except as otherwise provided in Section 4 (b) below, the Board of Directors shall be responsible for the maintenance, repair, and replacement (unless necessitated by the negligence, misuse, or neglect of an Owner or of a person gaining access with said owner's actual or implied consent, in which case expense shall be charged to such owner), of all of the Common Area whether located inside or outside of the Units, and whether now existing or hereafter constructed, the cost of which shall be assessed to all Owners as a Common Expense.

(b) **By the Owner.** Each Owner shall be responsible for the maintenance, repair, and replacement, at his own expense, of his entire Unit and of any Limited Common Area located within his Unit's Yard as shown on the Site Plan, except for driveway snow- plowing and repair

and landscaping lawn care, which shall be the responsibility of the Association. Each Owner shall be responsible for performing the normal non-repair maintenance for any other Limited Common Area, if any, which is appurtenant to his Unit, including keeping it in clean, safe and sanitary condition and shall make, at his own expense, all repairs thereto, beyond normal maintenance, caused or necessitated by his negligence, misuse, or neglect, excepting, however, the driveway serving such Unit shall be snow-plowed by the Association and the Unit's front lawn and shrubbery shall be maintained by the Association. Each Owner shall maintain the lawn area adjacent to its unit, and the shrubbery and plants located within his Unit's Yard as the term is defined in the Declaration. Further, each Owner shall be sure no personal property is left outside on the Common Area lawn at those times when the common area lawn is being maintained. Each Owner shall keep the interior of his Unit and its equipment and appurtenances in good order, condition, and shall do all redecorating, painting, and varnishing which may at any time be necessary to maintain the good appearance and condition of his Unit. In addition, each Owner shall be responsible for all damage to any and all other Units or to the Common Area resulting from his failure to make any of the repairs required to be made by him by this Section. Each Owner shall perform this responsibility in such manner as shall not unreasonably disturb or interfere with the other Owners. Each Owner shall promptly report to the Board of Directors, or the President, any defects or need for repairs for which the Board of Directors is responsible.

(c) **Replacement Manner and Repair.** All repairs, and replacements shall be substantially similar to the original construction and installation, and shall be of first class quality. The method of approving payment vouchers for all repairs and the Board of Directors shall determine replacements.

5. **Additions, Alterations, or Improvements by the Board of Directors.** Whenever, in the judgment of the Board of Directors, the Common Area shall require additions, alterations, or improvements costing in excess of Five Thousand Dollars (\$5,000.00) during any period of twelve (12) consecutive months, and the making of such additions, alterations, or improvements shall have been approved by a majority of the votes of the Owners, the Board of Directors shall proceed with such additions, alterations, or improvements and shall assess all Owners for the cost thereof as a Common Expense. Any additions, alterations, or improvements costing Five Thousand Dollars (\$5,000.00) or less during any period of twelve (12) consecutive months may be made by the Board of Directors without approval of the Owners and the cost thereof shall constitute part of the Common Expenses. Notwithstanding the foregoing, if, in the opinion of not less than two-thirds (2/3rds) of the members of the Board of Directors such additions, alterations, or improvements are exclusively or substantially exclusively for the benefit of a limited number of Owner or Owners requesting the same, such requesting Owners shall be assessed therefor in such proportion as they jointly approve or as determined by the Board of Directors.

6. **Additions, Alterations, or Improvements by Owners.** Provided the Unit Owner has obtained approvals and/or permits as required by the Town of Auburn, and provided such changes are done by licenses crafts where required and otherwise done in a professional and safe manner, the Unit Owner, without first obtaining written consent from the Board except for architectural conformity (which consent from the Board must first be obtained), has the right to:

- (a) Perform any work done on the exterior of his Unit, including, without limitation, changes to the paint, siding, shingles and façade, or the addition of patios, decks, porches, steps, shrubbery, trees, plants or outbuildings within its Yard; or
- (b) Make or permit to be made any structural alteration, interior improvement, or addition in or to his Unit.

HOWEVER, no Unit Owner, without first obtaining written consent from the Board, may:

- (a) Tamper with any bearing wall or take any action or permit any action to be taken that will impair the structural soundness or integrity or safety of any other structure or improvement in the Common Area of the Condominium; or
- (b) Impair any easement or right or personal property, which is a part of the Common Area of the Condominium.

The Board of Directors shall be obligated to answer any written request by an Owner for approval of such proposed structural addition, alteration, or improvement or such external change within thirty (30) days after such request, and its failure to do so within the stipulated time shall constitute a consent by the Board of Directors to the proposed addition, alteration, or improvement or change. The provisions of this Section 6 shall not apply to Units owned by the Declarant until such Units have been initially conveyed by the Declarant

ARTICLE VI

GENERAL RESTRICTIONS

1. **General Restrictions on Use of Units.** To assist the Condominium in providing for congenial occupancy and the protection of the value of the Units, it is necessary that the Board of Directors have the right and authority to exercise reasonable controls over the use of the Units. Violation of the following enumerated Prohibitions shall not be permitted, and the Board of Directors is hereby authorized to take all steps necessary to prevent or discontinue any violations thereof, all at the expense of the violator:

- (a) No advertisements, signs, or posters of any kind shall be posted in or on the Units or the Condominium except as authorized in writing by the Board. This restriction shall not apply to advertisements, signs, or posters utilized by the Declarant, or its agents, in selling or leasing the Units.
- (b) No clothing, laundry, rugs or other objects shall be hung, shaken or thrown from any window or exterior portion of a Unit or otherwise left or placed in such a way as to be exposed to public view. All refuse and trash shall be disposed in compliance with the Town ordinances. All

refuse and trash shall be stored in a garage and of sight until day of collection.

(c) No animal, other than common household pets with the consent of the Board, shall be kept or maintained on the Property, nor shall common household pets be kept, bred or maintained for commercial purposes on the Property. Pets shall not be permitted outside of Units unless they are accompanied by an adult person and carried or leashed. The Board of Directors may make further provisions in the Rules for the control and regulation of household pets in the Condominium. The Owner of a Unit where a pet is kept or maintained shall be responsible and may be assessed by the Board of Directors for all damages to the Property resulting from the maintenance of said pet, and any costs incurred by the Association in enforcing the Rules prescribed or to be prescribed by the Board of Directors for the control and regulation of pets in the Condominium and each such Owner shall be deemed to indemnify and hold the Board harmless against such loss or liability resulting from said pet.

(d) No nuisance shall be allowed nor shall any use or practice be allowed which is a source of annoyance or which interferes with the peaceful possession or proper use of the Condominium by others.

(e) No Owner, tenant, or guest shall allow the installation of wiring for electrical or telephone use, or television antennas, which protrudes through the walls or the roof of the building or is otherwise visible to the exterior of the building except as presently installed, or as authorized by the Board.

(f) No Unit or Common Area of the Condominium may be used for any unlawful, immoral, or improper purpose.

(g) Nothing shall be done in any Unit or in, on, or to the Common Area which may impair the structural integrity of the Condominium, or which would structurally change a building or improvements thereon except as provided in the Declaration or these Bylaws. Nothing shall be altered or constructed in or removed from the Common Area, except upon the written consent of the Board of Directors.

(h) No Owner, tenant, or guest shall engage any employee of the Condominium on any private business, nor shall he direct, supervise, or in any manner attempt to assert control over any such employee.

(i) There will be no outside parking of any kind on the Common Area other than in the (i) driveway of a Unit or (ii) RV Parking Area designated on the Condominium Site Plan. There shall be no storage of unregistered or inoperable vehicles allowed in a driveway or in the RV Parking Area or anywhere else on the Condominium Property. All boats, trailers, ATV's, or RVs ("Recreational Vehicles") shall only be parked and located in the RV Parking Area; except Unit Owners may park Recreational Vehicles in a Unit's driveway up to seven (7) days per month. A Unit Owner may apply to the Association to utilize the RV Parking Area for a fee and shall enter into a Parking Agreement with the Association upon such terms as the Association shall reasonably

require, including but not limited to, proof of registration and insurance. The Association shall have the right to limit the months Unit Owners may utilize the RV Parking Area. Notwithstanding the foregoing, Unit Owners may park motor vehicles in a Unit's driveway provided they are insured and operable.

(j) No activity shall be done or maintained in any Unit or in any Common Area which will increase the rate of insurance on any Unit or the Common Area or result in the cancellation of insurance thereon, unless such activity is first approved in writing by the Board of Directors. No waste shall be committed in the Common Area.

2. **Right of Access.** An owner shall grant a right of access to his Unit and any Limited Common Area pertaining thereto to the Board of Directors or the President, or to any other person authorized by the Board for the purpose of making inspections or for the purpose of correcting any condition originating in his Unit and threatening another Unit or Common Area, or for the purpose of performing installation, alterations, or repairs to the mechanical or electrical services or other Common Area in his Unit or elsewhere in the building, provided that requests for entry are made in advance and in writing and that any such entry is at a time reasonably convenient to the Owners. In case of any emergency, such right of entry shall be immediate whether the Owner is present at the time or not, but the Association shall immediately notify the Owner of such entrance promptly after such entry in writing.

3. **Rules.** Rules concerning the operation and use of the Common Area may be promulgated and amended by the Board of Directors, provided that such Rules are not contrary to or inconsistent with the Condominium Act, the Declaration, or these Bylaws. Copies of the Rules and amendments thereto shall be furnished by the Board of Directors to each Owner prior to the time when the same shall become effective. In the use of Units and the Common Area of the Condominium, owners shall obey and abide by all valid laws, ordinances, and zoning and other governmental regulations affecting the same and all applicable Rules adopted by the Board. The Common Area shall be used only for the furnishing of the services and facilities for which they are reasonably suited and which are incident to the use and occupancy of the Units.

ARTICLE VII

AGE RESTRICTION

1. **AGE-RESTRICTION COVENANT AND AGREEMENT.** The Condominium is an age restricted condominium providing "housing for older persons." In order for the Condominium to qualify as housing for older persons, at least 80% of the Units must be occupied by at least one person 55 years of age or older. The Condominium is established and shall be maintained in compliance with 42 USC §3607(b) et seq. and 24 CFR Part 100, §§100.304, 100.305, 100.306 and 100.307, RSA §354-A, et seq., RSA § 356-B, et seq., HUM 300 et seq., as amended from time to time, and with the provisions of the Auburn Zoning and Land Use Ordinance. However, housing shall not be out of compliance by reason of unoccupied Units, provided, that such Units are reserved for occupancy by persons who meet the age requirements.

2. **HOUSING FOR OLDER PERSONS COVENANTS.** The Condominium shall, at all times, be in compliance with the current Federal, State and Town law, regulations, and ordinances governing Housing for Older Persons. In order to assure compliance, the following covenants (“Covenant”) are hereby adopted and shall bind the Unit Owner’s Association and the Owner of each Unit within the Condominium:

(a) The Condominium is intended for occupancy by persons 55 years of age or older, and further intended that (i) at least 80% of the occupied units are occupied by at least one person who is 55 years of age or older, (ii) the Condominium publishes and adheres to policies and procedures that demonstrate the intent required to comply with the housing for older persons laws, regulations and ordinances, (iii) the Condominium complies with applicable rules for verification of the occupancy requirements which shall provide for verification by reliable surveys and affidavits.

(b) “Occupancy” means a unit is actually occupied or, if a Unit is temporarily vacant, the primary occupant has resided in the Unit during the year and intends to return on a periodic basis.

(c) “Occupied by at least one person 55 years of age or older” means that at least one occupant is 55 years of age or older, or, if the Unit is temporarily vacant, at least one of the occupants immediately prior to the temporary vacancy was 55 years of age or older.

(d) These requirements of this Section 2, et seq, are satisfied even though there are unoccupied Units, provided that at least 80% of the occupied Units are occupied by at least one person 55 years of age or older.

(e) The Association will, at least once every twenty-four (24) months, send out a notice to the Unit Owners a statement describing the Condominium as housing for older persons 55 years of age or older, and, only if the Condominium has a website, post a statement thereon describing the Condominium as housing for older persons 55 years of age or older.

(f) Unit Owners, when advertising their Unit to sell or lease, shall provide a statement in their promotional material describing the Condominium as housing for older persons 55 years of age or older, and, prior to entering into any binding contract, provide the prospective purchaser or tenant with a copy of these Covenants.

(g) These Covenants shall be included in each Unit Deed and shall run with the land and be for the benefit of and be enforceable by the Association and such government body having jurisdiction over the Condominium.

(h) In order for the Condominium to qualify as housing for persons 55 years of age or older, it must be able to produce, in response to a complaint filed, verification of compliance with the requirements above, through reliable surveys and affidavits to determining the occupancy of each Unit, including the identification of whether at least one occupant of each Unit is 55 years of age or older. The Association may rely on follow-up surveys to acquire regular updates of this

information after first acquiring the information through affidavits. Such updates must take place at least once every two (2) years. The Association shall be responsible to maintain such age records. A summary of occupancy surveys shall be available for inspection upon reasonable request by any person.

(i) To this end, Units shall only be sold to Buyers or rented to Tenants who deliver to the Association a lease, application, purchase and sales agreement or affidavit signed by a member of the household age 18 or older certifying therein, that (i) at least one person that is occupying or will be occupying the Unit is 55 years of age or older at the time occupancy commences, (ii) such Buyers or Tenants are not acquiring the Unit for purposes of or with the intent to allow occupancy of such Unit by a household that does not have at least one person 55 years of age or older, and (iii) that so long as such Buyer owns such Unit at least one occupant shall be age 55 years or older. A copy of the lease, application, purchase and sales agreement or affidavit, with the required age certification, shall be given to the Association for its records. If the occupants of a Unit refuse to comply with the age verification procedures, the Association may, if it has sufficient evidence from (a) government records, (b) prior forms or applications, or (c) a statement from an individual who has personal knowledge of the age of the occupants, consider the Unit to be occupied by at least one person 55 years of age or older.

(j) Nothing in these Covenants are intended to restrict the ownership of or transfer of title to any Unit provided the requirements of these Covenants are met and further provided no Owner shall permit occupancy of the Unit in violation of these Covenants. Unit Owners shall be responsible for including the statement that the units within the Condominium are intended for the housing of persons fifty-five (55) years of age or older, as set forth in this Covenant in its entirety, in conspicuous type in any lease or other occupancy agreement or contract of sale relating to such Owner's Unit, which agreements or contracts shall be in writing and signed by the tenant or purchaser, , and for clearly disclosing such intent to any prospective tenant, purchaser, or other potential occupant of the Unit. Every lease of a Unit shall provide that failure to comply with the requirements and restrictions of these Covenants shall constitute a default under the lease.

(k) In the event of any change in occupancy of any Unit, as a result of the transfer of title, a lease or sublease, a birth or death, change in marital status, vacancy, change in location of permanent residence or otherwise, the Owner of the Unit shall immediately notify the Association in writing and provide the Association the names and ages of all current occupants of the Unit and such other information as the Association, through its Board of Directors, may reasonably require to verify the age of each occupant.

(l) Each Owner by himself and by his tenants and other Occupants of his Unit shall be responsible for ensuring compliance of his Unit with the requirements and restrictions of these Covenants and the Rules and Regulations of the Association adopted hereunder. EACH OWNER, BY ACCEPTANCE OF A DEED TO A UNIT, AGREES TO INDEMNIFY, DEFEND, AND HOLD THE ASSOCIATION HARMLESS FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, AND CAUSES OF ACTION WHICH MAY ARISE FROM SUCH UNIT OWNER'S FAILURE TO SO COMPLY.

(m) The Board of Directors of the Association shall not be authorized to waive these Covenants, nor may these Covenants be amended in a way that makes this Condominium non-compliant with applicable federal, state and local law addressing age-restricted housing.

(n) The Association shall have the authority to enforce these Covenants in any legal manner available as the Board deems appropriate.

(o) The Association will make available to any Unit Owner, upon request, a directory of services and programs (“Service Providers”) offered to assist older persons within the greater Auburn area.

ARTICLE VIII

INSURANCE

1. **Insurance Required.** The Board of Directors shall obtain (i) a master casualty policy affording fire and extended coverage in an amount equal to the full replacement value of the common area structures within or which are a part of the Condominium Common Area; (ii) a master liability policy covering the Association, the Board, the President, and agents or employees of the foregoing with respect to the Condominium, and all owners and other persons entitled to occupy any portion of the Condominium; and (iii) such other policies as specified herein below, which insurance shall be governed by the following provisions to the extent obtainable or possible:

(a) Fire insurance with standard extended coverage endorsement, vandalism, and malicious mischief endorsements insuring all the common area buildings in the Condominium, including without limitation all such portions of the interior of such buildings as are for insurance purposes normally deemed to constitute part of the building and customarily covered by such insurance, such as heating and air conditioning and other service machinery, interior walls, all finished wall surfaces, ceiling and floor surfaces including any wall-to-wall floor coverings, bathroom and kitchen cabinets and fixtures including appliances which are affixed to the common area buildings, and heating and lighting fixtures, except for improvements made by individual Owners which exceed a total value of One Thousand Dollars (\$1,000) and are not reported to the insurer, such insurance to be in an amount at least equal to the replacement value of the buildings and to be payable to the Board as President for the Owners and their mortgagees as their respective interests may appear.

(b) Public liability insurance in such amounts as the Board may from time to time determine, but in no event shall the limits of liability be less than One Million Dollars (\$1,000,000) for bodily injury and property damage per occurrence, insuring the Association and all individuals referred to in Section 1 (ii) above, against any liability to anyone, and with cross-liability coverage with respect to liability claims of any one insured thereunder against any other insured thereunder. This insurance, however, shall not insure against individual liability for negligence occurring within a Unit or within the Limited Common Area to which a Unit has exclusive use.

- (c) Workmen's compensation insurance as required by law.
- (d) Fidelity Bond Coverage.
- (e) Such other insurance as the Board may determine.

2. General Insurance Provisions.

(a) The Board shall deal with the insurer or insurance agent in connection with the adjusting of all claims covered by insurance policies provided for under Section 1 above and shall review with the insurer or insurance agent, at least annually, the coverage under said policies, said review to include an appraisal of improvements within the Condominium, and shall make any necessary changes in the policy provided for under Section 1 (a) above (prior to the expiration date set forth in any agreed amount endorsement contained in said policy) in order to meet the coverage requirements of such Section.

(b) The Board shall be required to make every effort to see that all policies of physical damage insurance provided for under Section I above: (i) shall contain waivers of subrogation by the insurer as to claims against the Association, its employees and agents, members of the Board, the President, Owners, and members of the family of any Owner who resides with said Owner, except in cases of arson and fraud; (ii) shall contain a waiver of defense of invalidity or prejudice on account of the conduct of any of the Owners over which the Association has no control; (iii) shall contain a waiver of defense of invalidity or prejudice by failure of the insured, or Owners collectively, to comply with any warranty or condition with regard to any portion of the Condominium over which the Insured, or Owners collectively, have no control; (iv) shall provide that such policies may not be canceled or substantially modified without at least thirty (30) days' written notice to all of the insured thereunder and all mortgagees of Units in the Condominium; (v) shall provide that in no event shall the insurance under said policies be brought into contribution with insurance purchased individually by Owners or their mortgagees; (vi) shall exclude policies obtained by individual Owners for consideration under any other insurance clause; and (vii) shall provide that until the expiration of thirty (30) days after the insurer gives notice in writing to the mortgagee of any Unit, the mortgagee's insurance coverage will not be affected or jeopardized by any act or conduct of the Owner of such Unit the other Owners, the Board of Directors, or any of their agents, employees, or household members, nor canceled for non-payment of premiums.

(c) The Board may name as an insured, on behalf of the Owners' Association, the Owners' Associations' authorized representative, including any President with whom such Owners' Association may enter into any Insurance Trust Agreement or any successor to such President, who shall have exclusive authority to negotiate losses under any policy providing property or liability insurance.

(d) Each Unit Owner hereby appoints the Board, or the Owners' Association, or any Insurance President designated by the Board or the Owners' Association, as attorney-in- fact for the purpose of purchasing and maintaining any insurance policy required by the Declaration or to be purchased

pursuant to vote of the Owners' Association, including; the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; the performance of all acts necessary to accomplish such purpose. The Board, Owners' Association, or President must receive, hold or otherwise properly dispose of any proceeds of insurance in trust for Unit owners and their first mortgages as their interest may appear.

3. **Individual Policies.** Each Owner shall and any Mortgagee may obtain at his own expense additional insurance in compliance with the Declaration to insure the said Owner's Unit for fire and hazard and property damage (including a "condominium unit owner's endorsement" for improvements and betterments to a Unit made or acquired at the expense of the Owner). Owner's insurance shall be for no less than full replacement value, inclusive of such limited common area located in that Unit's Yard and for which Unit Owner is responsible of maintenance, repair and replacement. Such insurance should contain the same waiver of subrogation provision as that set forth in Section 2 (b) of this Article VI. It is recommended that each Owner obtain, in addition to the insurance hereinabove provided to be obtained by the Board of Directors, a policy to insure against loss or damage to personal property used or incidental to the occupancy of the Unit, additional living expenses, vandalism or malicious mischief, theft, personal liability, and the like.

(a) Each Owner may obtain additional insurance for his own benefit and at his own expense to insure his/her Unit. No such policy shall be written so as to decrease the coverage under any of the policies obtained by the Board pursuant to Section 1 (a) above, and each Owner hereby assigns to the Board the proceeds of any such policy to the extent that any such policy does in fact result in a decrease in such coverage, said proceeds to be applied pursuant to the terms hereof as if produced by such coverage. Copies of all such policies (except policies covering only personal property, owned or supplied by individual Owners) shall be filed with the Secretary of the Association.

(b) Each Owner should obtain insurance for his own benefit and at his own expense insuring all personal property presently or hereafter located in his Unit or Limited Common Area, any floor coverings, appliances, and other personal property not covered in the master policy, and all improvements to his Unit which exceed a total value of One Thousand Dollars (\$1,000.00) and which are not reported to the Board.

(c) Each owner, prior to commencement of construction of such improvements, shall notify the Board of all improvements to his Unit (except personal property other than fixtures) which exceed a total value of Five Thousand Dollars (\$5,000.00) and upon receipt of such notice, the Board shall notify the insurer under any policy obtained pursuant to Section 1 (a) hereof, of any such improvements.

(d) Each owner should obtain liability insurance with respect to his ownership and/or use of his Unit.

4. **Notice to Unit Owners.** Excepting such policies as are obtained on behalf of the Association prior to the conveyance of the first Unit in the Condominium, when any policy of insurance has been obtained on behalf of the Association, written notice of the obtainment thereof

and of any subsequent changes therein or in such initial policies, or termination thereof shall be promptly furnished to each Unit Owner by the Secretary of the Association. Such notice shall be sent to all Unit Owners of record at the address of their respective Units and to such other addresses as any Unit owner may have designated to the Secretary; or such notice may be hand-delivered by the Secretary or President.

ARTICLE IX

REPAIR AND RECONSTRUCTION AFTER FIRE OR OTHER CASUALTY

1. **When Repair and Reconstruction are Required.** Subject to the provisions of Section 3 (i) of the Declaration, in the event of damage to or destruction of all or part of the building(s) in the Condominium Common Area as a result of fire or other casualty, the Board of Directors shall arrange for and supervise the prompt repair and restoration of the damaged or destroyed portion of the common area buildings. Notwithstanding the foregoing, each owner shall have the obligation to repair its own Unit.

2. **Procedure for Reconstruction and Repair.**

(a) Immediately after a fire or other casualty causing damage to the building, the Board of Directors shall obtain reliable and detailed estimates of the cost of repairing and restoring the damage to a condition as good as that existing before such casualty. Such costs may also include professional fees and premiums for such bonds as the Board of Directors determines to be necessary.

(b) If the proceeds of insurance are not sufficient to defray the said estimated costs of reconstruction and repairs, or upon completion of reconstruction and repair, the funds for the payment of the costs thereof are insufficient, assessment in sufficient amounts to provide payment of such costs shall be made against the Owners in proportion to their respective votes in the Unit Owners' Association.

(c) Any such reconstruction or repair shall be substantially in accordance with the original plans and specifications under which the damaged building was originally constructed to the extent possible.

(d) Encroachments upon or in favor of Units which may be created as a result of such reconstruction or repair shall not constitute a claim or basis for any proceeding or action by the owner upon whose property such encroachment exists, provided that such reconstruction is substantially in accordance with original plans and specifications under which the damaged building was originally constructed. Such encroachments shall be allowed to continue in existence for so long as the building (as reconstructed) shall stand.

3. Disbursements of Construction Funds.

(a) The net proceeds of insurance collected on account of a casualty and the funds collected by the Board of Directors from assessments against Owners on account of such casualty shall constitute a construction fund which shall be disbursed in payment of the cost of reconstruction and repair by the Board of Directors.

(b) The construction fund shall be paid by the Board of Directors in appropriate progress payments, to such contractors, suppliers, and personnel engaged in performing the work or supplying materials or services for the repair and reconstruction of the common area buildings and common area improvements as are designated by the Board of Directors.

(c) It shall be presumed that the first moneys disbursed in payment of the cost of reconstruction and repair shall be from insurance proceeds; and if there is a balance in the construction fund after the payment of all of the cost of the reconstruction and repair for which the fund is established, such balance shall be distributed retained and added to any capital reserve fund.

ARTICLE X

EMINENT DOMAIN

1. In the event that any of the Units or the Common Areas of the Condominium are affected by eminent domain proceedings, the following shall apply:

(a) If a Unit is acquired by eminent domain, or if a part of a unit is acquired by eminent domain leaving the Unit Owner with a remnant which may not practically or lawfully be used for any purpose permitted by the Declaration and Bylaws, the award shall compensate the Unit Owner for his Unit and its undivided interest in the Common Area whether or not any of the Common Area has been acquired. Upon acquisition, unless the decree otherwise provides, that Unit's entire Undivided Interest in the Common Area shall automatically be reallocated to the remaining Units of the Condominium in proportion to the respective Undivided Interest of the remaining Units in the Common Area prior to the taking, and the Directors shall promptly prepare, execute and record an amendment to the Declaration reflecting the reallocations. Any remnant of a Unit remaining after part of a Unit is taken under this subsection shall thereafter be a part of the Common Area.

(b) Except as provided in subsection (a), if part of a Unit is acquired by eminent domain, the award shall compensate the Unit Owner for the reduction in value of the Unit and its Undivided Interest in the Common Area. Upon acquisition, (1) that Unit's Undivided Interest in the Common Area shall be reduced on the basis of the reduction of the fair value of the Unit as at the date of such taking bears to the fair value of the remaining Units in the Condominium is at such date; and (a) the reduction in interest in the Common Area of such Unit shall be divested from the Unit so acquired and shall automatically be reallocated to the remaining Units in proportion to the respective. Undivided Interest of the remaining Units in the Common Area prior to the date of

such taking.

(c) If all or any portion of the Common Area is acquired by eminent domain, the Directors shall be the party in interest to receive any such award and to pursue any additional awards due to such taking. Any such award or any action taken by the Directors pursuant hereto shall be brought or paid to the Directors naming the "Unit Owners' Association as Condemnation Presidents for the benefit of Condominium, of the several Unit Owners and their respective Mortgagees." The Directors shall divide any portion of the award not used for restoration or repair of the remaining Common Area among the Unit Owners in proportion to their respective Undivided Interest before the taking but any portion of the award attributable to the acquisition of a portion of the Common Area which had been exclusively reserved to any Unit pursuant to the terms of the Declaration shall be paid to the Owner of such Unit or his Mortgagee. Each Unit Owner hereby appoints the Directors hereof as his attorney-in-fact for the foregoing purposes.

ARTICLE XI

SALES, LEASES, AND ALIENATION OF UNITS

1. **Compliance with Age Restriction Covenants.** No owner shall sell or lease or rent his unit except in compliance with the age restriction covenants contained in Section 24, et seq. of the Declaration, and as contained in Article VI of the Bylaws.

2. **No Severance of Ownership.** No owner shall execute any deed, lease, mortgage, or instrument conveying or mortgaging the title to his Unit without including therein the undivided interest of such Unit in the Common Area, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, lease, mortgage, or other instrument purporting to affect one or more of such interests, without expressly including all such interests, shall be deemed and taken to include the interest or interests so omitted even though the latter shall not be expressly mentioned or described therein. Except to the extent otherwise expressly provided by the Declaration, these Bylaws or the Condominium Act, the undivided interest in the Common Area allocated to any Unit shall not be altered and any purported transfer, encumbrance, or other disposition of that interest without the Unit to which it appertains shall be void.

The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area by the Condominium, and the granting of easements and dedication of certain Common Area as described in the Declaration or these Bylaws shall not be deemed a transfer within the meaning of this section. All leases or rental agreements for any Unit shall be in writing, shall be specified subject to the constituent documents, and shall be for a period not less than thirty (30) days.

3. **Payment of Assessments.** No Owner shall be permitted to convey, mortgage, sell, lease, give, or devise his Unit unless and until he (or his personal representative) shall have paid in full

to the Board of Directors all unpaid common Expenses heretofore assessed by the Board of Directors with respect to his Unit, except as provided in Section 2 of Article V, and shall have satisfied all unpaid liens with respect to his Unit, except mortgages. The Chairman of the Board of Directors or the Treasurer shall promptly furnish to any owner (or his devisee or personal representative) requesting the same in writing pursuant to this Section, a recordable statement certifying whether or not such Owner is then obligated for any outstanding assessment previously levied against that Owner's Unit and the amount, if any, then outstanding. In the event that the Unit is subject to outstanding expenses previously levied against such Unit, the statement shall certify any waiver of, or failure or refusal to exercise, right of the Unit Owners' Association to prevent the disposition of such Unit, in all cases where the Association allows such disposition. Failure or refusal to furnish such a statement within ten (10) days of receipt of such written request by the Chairman of the Board of Directors or the Treasurer shall make the above-mentioned prohibition inapplicable to any such disposition of the Unit. Any such statement shall be binding on the Association, the Board of Directors, and every Owner. Payment of a fee not exceeding the maximum amount allowable under the condominium Act may be required as a prerequisite to the issuance of such a statement.

ARTICLE XII

AMENDMENT TO BYLAWS

1. **Amendment to Declaration and Bylaws.** Except as provided in the Section 3.4, et seq and Section 25 of the Declaration with regard to expansion of a Unit or Condominium and except as otherwise provided in the Condominium Act, the following shall apply with regard to the amendment of the Condominium Documents. The consent of owners of Units to which at least eighty percent (80%) of the votes in the Unit Owners' Association are allocated and the approval of eligible holders of mortgages (as the term "eligible mortgage holder" is now or may at any time hereafter be defined in the FNMA Conventional Home Mortgage Selling Contract Supplement) on Units which have at least seventy-five percent (75%) of the votes of Units subject to eligible holder mortgages, shall be required to terminate the legal status of the condominium, including termination after substantial destruction or condemnation.

2. **Required Consent.** Except as otherwise provided for in Section 25 et seq of the Declaration, the consent of owners of Units to which at least sixty-seven percent (67%) of the votes in the Unit Owners' Association are allocated and the approval of eligible holders holding mortgages on Units which have at least fifty-one (51%) percent of the votes of Units subject to eligible holder mortgages, shall be required to add or amend any material provisions of the condominium documents of the Condominium, which establish, provide for, govern or regulate any of the following:

(i) Voting;

(ii) Assessments, assessment liens or subordination of such liens;

- (iii) Reserves for maintenance, repair and replacement of the Common Areas (or Units if applicable);
- (iv) Insurance or Fidelity Bonds;
- (v) Rights to use Common Areas or Limited Common Areas;
- (vi) Responsibility for maintenance and repair of the several portions of the Condominium;
- (vii) Expansion or contraction of the Condominium or the addition, annexation or withdrawal of property to or from the project;
- (viii) Boundaries of any Unit;
- (ix) The interests in the Common Areas or Limited Common Areas;
- (x) Leasing of Unit estates;
- (xi) Imposition of any right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer, or otherwise convey his or her Unit;
- (xii) Any provisions which are for the express benefit of mortgage holders, eligible mortgage holders or eligible insurers or guarantors of first Mortgages on Units;
- (xiii) A decision by the Association to establish self-management when professional management had been required by an eligible mortgage holder;
- (xiv) Restoration or repair of the project (after a hazard damage or partial condemnation) in a manner other than that specified he documents;

3. Any eligible mortgage holder that does not deliver or post to the Unit Owners' Association a negative response within thirty (30) days of a written request by the Association for approval of any addition or amendment pursuant to any provision of these Bylaws shall be deemed to have consented to the addition or change set forth in such request. An affidavit by an officer of the Association making reference to this section, when recorded at the Rockingham County Registry of Deeds, shall be conclusive as to the facts therein set forth as to all parties and may be relied upon pursuant to the applicable provisions hereof.

4. Furthermore, notwithstanding the foregoing, so long as the Declarant is the owner of one or more Units, no amendment to the Declaration, Bylaws or Rules may be adopted which could interfere with the construction, display, sale, lease or other disposition of such Unit or Units.

5. A modification or amendment of the Declaration or Bylaws shall become effective only

when it has been duly evidenced in accordance with the provisions of Section 34,IV of the Condominium Act.

ARTICLE XIII

MORTGAGES

1. **Notice to Board.** An Owner who mortgages his Unit shall notify the Board or Secretary of the name and address of his Mortgagee, and shall file a conformed copy of the Mortgage with the Secretary of the Association within two (2) days of the recording of the Mortgage. The Secretary shall maintain suitable records pertaining to such Mortgage. An Owner shall promptly notify the Secretary when such Mortgage has been discharged in the Registry of Deeds.

2. **Notice of Unpaid Assessments for Common Expenses.** The Board or Treasurer, whenever so requested in writing by a Mortgagee of a Unit, shall promptly report any then unpaid assessments for Common Expenses due from, or any other default by, the owner of the mortgaged Unit.

3. **Notice of Default.** The Board shall give written notice to an Owner of any default by the Owner in the performance of any obligations under the Act, Declaration or Bylaws, and, if such default is not cured within thirty (30) days, shall send a copy of such notice to each holder of a Mortgage covering such Unit whose name and address has theretofore been furnished to the Board or Secretary. No suit or other proceeding may be brought to foreclose the lien for any assessment levied pursuant to the Declaration or these Bylaws except after ten (10) days written notice to the holder of the first Mortgage on the Unit which is the subject matter of such suit or proceeding.

4. **Notice of Damage.** The Board of Directors shall notify; (i) the Mortgagee of a Unit whenever damage to the Unit covered by the Mortgage exceeds \$5,000.00 and the Board is made aware of such damage; and (ii) all Mortgagees whenever damage or loss to, or taking of, the Common Area exceeds \$25,000.00.

5. **Examination of Books.** Each Owner and each Mortgagee shall be permitted to examine the books of account of the Condominium at reasonable times, on business days, but, with respect to owners, not more often than once a month.

6. **Additional Notice to Mortgagees.** The Board of Directors shall provide each Mortgagee with timely notice of the following:

(a) Any condemnation or causality loss that affects either a material portion or the Unit securing its Mortgage;

- (b) Any 60-day delinquency in the payment of assessments or charges owed by the owner of any unit on which it holds a Mortgage;
- (c) A lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Owners' Association; and
- (d) Any proposed action that requires the consent of a specified percentage of eligible mortgage holders.

ARTICLE XIV

NOTICE

1. **Manner of Notice.** All notices, demands, bills, statements, or other communications provided for or required under the Declaration or these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by U.S. Mail, return receipt requested, first-class postage prepaid, or by electronically (i) if to an Owner, at the address of his Unit and at such other address as the Owner may have designated by notice in writing to the Secretary or by electronically as the Owner may have designated by notice in writing to the Secretary; (ii) if to the Unit Owners' Association, the Board of Directors or the President at the principal office of the President or at such other address as shall be designated by notice in writing to the owners pursuant to this Section; or (iii) if to a Mortgagee, at the address provided to the Board by the Unit Owner pursuant to Article XIII.
2. **Waiver of Notice.** Whenever any notice is required to be given under the provisions of the statutes, the Declaration or of these Bylaws, a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether signed before or after the time stated therein, shall be deemed equivalent thereto, unless such waiver is ineffective under the provisions of the Condominium Act.

ARTICLE XV

COMPLIANCE AND DEFAULT

1. **Relief.** Each Owner shall be governed by, and shall comply with, all of the terms of the Declaration, these Bylaws, and the Rules and any amendments of the same. A default by an Owner shall entitle the Unit Owners' Association acting through the Board of Directors or the President or, if appropriate, any aggrieved owner to the following relief:
 - (a) **Legal Proceedings.** Failure to comply with any of the terms of the Declaration, these Bylaws, and the Rules shall be grounds for relief which may include, without limiting the same, an action to recover any sums due for money damages, injunctive relief, foreclosure of the lien for

payment of all assessments, any other relief provided for in these Bylaws, or any combination thereof, and any other relief afforded by a court of competent jurisdiction, all of which relief may be sought by the Unit Owners' Association, the Board of Directors, the President, or, if appropriate, by any aggrieved owner.

(b) Additional Liability. Each Owner shall be liable for the expenses of all maintenance, repair, or replacement rendered necessary by his acts, neglect, or carelessness or the act, neglect, or carelessness of any member of his family or his tenants, guests, employees, agents, or invitees, but only to the extent that such expense is not covered by the proceeds of insurance carried by the Board of Directors. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy, or abandonment of any Unit or its appurtenances. Nothing contained herein, however, shall be construed as modifying any waiver by an insurance company of its rights of subrogation.

(c) Costs and Attorneys' Fees. In any proceeding arising out of any alleged default by an Owner, the prevailing party shall be entitled to recover the costs of the proceeding, and such reasonable attorneys' fees as may be determined by the court.

(d) No Waiver of Rights. The failure of the Unit Owners' Association, the Board of Directors or of an Owner to enforce any right, provision, covenant, or condition which may be granted by the Declaration, these Bylaws or the Rules shall not constitute a waiver of the right of the Association, the Board of Directors, or any other to enforce such right, provision, covenant, or condition in the future. All rights, remedies, and privileges granted to the Association, the Board of Directors, or any Owner pursuant to any term, provision, covenant, or condition of the Declaration or the Rules shall be deemed to be cumulative and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such privilege as may be granted to such party by the Declaration, these Bylaws, or the Rules, or at law or in equity.

(e) Interest. In the event of a default by an owner against him which continues for a period in excess of thirty (30) days, such Owner shall be obligated to pay interest on the amounts due at the lower of the highest rate permitted by law, or at eighteen percent (18%), per annum from the due date thereof. In addition, the Board of Directors shall have the authority to impose a late payment charge on such defaulting owners in an amount not to exceed Twenty-Five Dollars (\$25.00) per month, or ten cents (\$.10) per dollar on any amount so overdue, or the amounts permitted by the Condominium Statute, whichever is greater.

(f) Abatement and Enjoinment of Violations by Owners. The violation of any Rule adopted by the Board of Directors or the breach of any Bylaw contained herein or the breach of any provision of the Declaration shall give the Board of Directors or the President the right, in addition to any other rights set forth in these Bylaws: (i) to enter the Unit in which, or as to which, such violation or breach exists and summarily to abate and remove, at the expense of the defaulting Owner, any structure, thing, or condition that may exist therein contrary to the intent and meaning of provisions hereof, and the Board of Directors or President shall not thereby be deemed guilty in any manner of trespass; (ii) to enjoin, abate, or remedy by appropriate legal proceedings, either at

law or in equity, the continuance of any such breach; or (iii) to suspend or limit the right of the Owner committing the violation to use any part of the Common Area during the continuance of such violation.

2. **Non-Compliance by Association.** Failure by the Association to comply with any of the terms of the Declaration, these Bylaws, and the Rules shall be grounds for relief which may include, without limiting the same an action to recover sums due for money damages, injunctive relief, any other relief provided for in these Bylaws, or a combination thereof, and any other relief afforded by a court of competent jurisdiction, all of which relief may be sought by the Board of Directors or any aggrieved Unit Owner.

3. **Lien for Assessments.**

(a) The total annual assessment of each owner for the Common Expenses or any special assessment levied pursuant to these Bylaws, is hereby declared to be a lien levied against the Unit of each Owner as provided in (including without limitation the priority provisions set forth in Section 46 thereof) the Condominium Act, which lien shall be effective when perfected in accordance with said Act.

(b) In any case where an assessment against an owner as payable in installments, upon a default by such owner in the payment of any single installment, which continues for ten (10) days after written notice of such default has been sent to the Owner, the maturity of the remaining total of the unpaid installments of such assessments may be accelerated, at the option of the Board of Directors, and the then balance owing may be declared due and payable in full by the service of notice to such effect upon the defaulting owner by the Board of Directors or President. The Association, in order to perfect such lien, shall file before the expiration of six (6) months from the time that the delinquent assessment (or installment, where such assessment is payable in installments) became due and payable a memorandum in the Rockingham County Registry of Deeds in the form and manner prescribed in the said Act.

(c) The lien assessments shall include interest, costs, and attorneys' fees as provided in Section 1 of this Article X11 and may be foreclosed in the manner provided by the laws of the State of New Hampshire for the foreclosure of power of sale mortgages or by suit brought in the name of the Board of Directors, acting on behalf of the Unit Owners' Association. During the pendency of such proceedings or suit, the Owner shall be required to pay a reasonable rental for the Unit for any period prior to sale pursuant to any judgment or order of any court having jurisdiction over such sale.

(d) Suit to recover a money judgment for unpaid assessment shall be maintainable without foreclosing or waiving the lien securing the same, and foreclosure shall be available without bringing suit to recover a money judgment.

ARTICLE XVI

RESALE BY PURCHASER

1. In the event of any resale of a condominium unit or any interest therein by any person other than the declarant, the prospective unit owner shall have the right to obtain from the Association, prior to the contract date of the disposition, the following:

(a) Appropriate statements pursuant to RSA 356-B:46, VIII and, if applicable, RSA 356-B:47 relative to unpaid assessments currently levied against the Unit;

(b) A statement of any capital expenditures and major maintenance expenditures anticipated by the Association within the current or succeeding two (2) fiscal years;

(c) A statement of the status and amount of any reserve for the major maintenance or replacement fund and any portion of such fund earmarked for any specified project by the board of directors;

(d) A copy of the income statement and balance sheet of the Association for the last fiscal year for which such statement is available;

(e) A statement of the status of any pending suits or judgments in which the Association is a party defendant;

(f) A statement setting forth what insurance coverage is provided for all unit owners by the Association and what additional insurance coverage would normally be secured by each individual unit owner; and

(g) A statement that any improvements or alterations made to the unit, or the Limited Common Areas assigned thereto, by the prior Unit Owner are not known to be in violation of the condominium instruments.

(h) A copy of the Declaration, Bylaws, and the Rules of the Association.

(i) A statement of the amount of monthly and annual fees, and any special assessments made within the last three (3) years.

(j) A copy of these Covenants and any rule or regulation promulgated by the Association regarding its Housing for Older Persons Covenants.

2. The principal officer of the Association, or such other officer or officers as the condominium instruments may specify, shall furnish the statements prescribed by paragraph 1. upon the written request of any prospective unit owner within 10 days of the receipt of such

request.

3. In the event of any resale of a Unit by any person other than the Declarant, the new Unit Owner shall notify the Secretary of his name and address and shall file a conformed copy of the deed with the Secretary within two (2) days of the recording of the deed.

ARTICLE XVII

COMPLIANCE, CONFLICT, AND MISCELLANEOUS PROVISIONS

1. **Compliance.** These Bylaws are set forth in compliance with the requirements of the Condominium Act (herein sometimes referred to as the "Act").

2. **Severability.** These Bylaws are set forth to comply with the requirements of the State of New Hampshire. In case any of the Bylaws are in conflict with the provisions of the Act, the provisions of the Act will apply. If any provisions of these Bylaws, or any section, sentence, clause, phrase, or word, or the application thereof in any circumstance is held invalid, the validity of the remainder of these Bylaws shall not be affected thereby and to this end the provisions hereof are declared to be severable.

3. **Waiver.** No restriction, condition, obligation, or provision of these Bylaws shall be deemed to have been abrogated or waived by any reason of any failure or failures to enforce the same.

4. **Captions.** The captions contained in these Bylaws are for convenience only and are not part of these Bylaws and are not intended in any way to limit or enlarge the terms and provisions of these Bylaws.

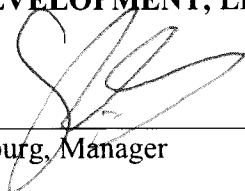
5. **Gender, etc.** Whenever in these Bylaws the context so requires, the singular number shall include the plural and the converse; and the use of any gender shall be deemed to include all genders.

6. **Conflict.** Whenever a conflict exists between terms in the Bylaws and the Declaration, the terms of the Declaration shall be controlling.

[Signature follows on the next page.]

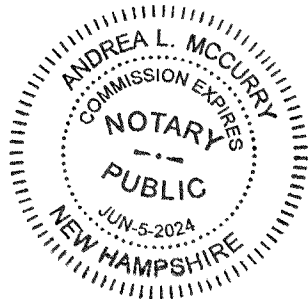
IN WITNESS WHEREOF, Declarant has caused these Bylaws to be executed this 16 day of February, 2023.

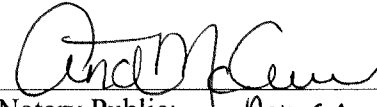
DECLARANT OF THE CLIFFS AT EVERGREEN CONDOMINIUM:
CHINBURG DEVELOPMENT, LLC

By: 
Eric J. Chinburg, Manager

STATE OF NEW HAMPSHIRE
ROCKINGHAM COUNTY

On this 16 day of February, 2023, before me, the undersigned notary public, personally appeared Eric J. Chinburg in his capacity as Manager of Chinburg Development, LLC.




Notary Public: Andrea L. McCurry
My Commission Expires 6-5-2024

APPENDIX C

LIST OF UNIT ADDRESSES AND PERCENTAGE INTEREST

<u>Unit</u>	<u>Percentage Interest</u>
26	1/13
27	1/13
28	1/13
29	1/13
30	1/13
31	1/13
32	1/13
74	1/13
75	1/13
76	1/13
77	1/13
78	1/13
79	1/13



RECORDING 26.00
SURCHARGE 2.00

**FIRST AMENDMENT TO DECLARATION
OF
THE CLIFFS AT EVERGREEN CONDOMINIUM
Auburn, Rockingham County, New Hampshire**

This First Amendment to Declaration of The Cliffs at Evergreen Condominium (hereinafter referred to as the "Amendment") is made this 22 day of March, 2023 by Chinburg Development, LLC, a New Hampshire limited liability company with mailing address of 3 Penstock Way, Newmarket, NH 03857 (hereinafter referred to as "Declarant") to the Cliffs At Evergreen Condominium Declaration dated February 16, 2023 and recorded with the Rockingham County Registry of Deeds in Book 6468, Page 776 (the "Declaration"). All capitalized terms used in this Amendment and not otherwise defined shall have the same meaning as defined in the Declaration.

WHEREAS, Declarant owns one hundred percent of the declared Units and Convertible Land in the Condominium.

WHEREAS, pursuant to NH RSA 356-B:34,II and paragraph 11 of the Declaration, the Declarant has the authority to amend the Declaration in its sole and absolute discretion.

WHEREAS, Declarant wishes to amend the Units declared under the Declaration and replace declared Units 31 and 32 with undeclared Units 72 and 73.

NOW THEREFORE, the Declarant hereby declares and amends the Declaration as follows:

1. Paragraph 3.5 is deleted in its entirety and replaced with the following:

3.5 Number of Units and Phases. The Condominium may consist of up to a total of seventy-nine (79) residential Units. The Condominium may be built in one or more phases. The first Phase will consist of thirteen (13) Units and subsequent phases may be one or more subsequent Units. As provided in Section 25 of this Declaration, the Declarant has reserved the option of converting the Convertible Land into more Units. The first Phase will consist of thirteen (13) Units, Units 26 through 30 and 72 through 79.

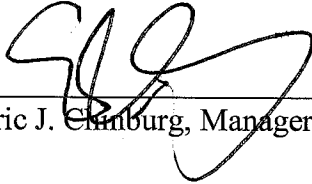
2. **Exhibit A-1** entitled "Legal Description of the Convertible Land" is deleted in its entirety and replaced with a new **Exhibit A-1** attached.
3. **Exhibit C** entitled "List of Unit Addresses and Percentage Interest" is deleted in its entirety and replaced with a new **Exhibit C** attached.

4. Except as modified by this Amendment, all of the terms and provisions of the Declaration and incorporated Bylaws, shall remain in full force and effect. Any inconsistencies between the Declaration and this Amendment shall be controlled by this Amendment.

[The signature page follows on the next page.]

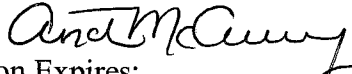
Executed the date first written above.

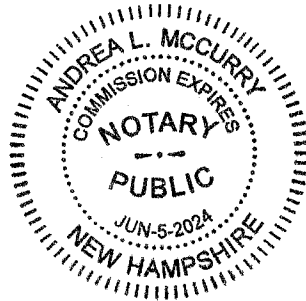
**DECLARANT of THE CLIFFS AT
EVERGREEN CONDOMINIUM:
CHINBURG DEVELOPMENT, LLC**

By: 
Name: Eric J. Chinburg, Manager

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

On this 22 day of March, 2023, before me, personally appeared Eric J. Chinburg in his capacity as Manager of Chinburg Development, LLC, who proved to me through satisfactory evidence of identification to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily, for its stated purpose, and that he has the authority to act in that capacity.

Notary Public: 
My Commission Expires: 6-5-2024



APPENDIX A-1

LEGAL DESCRIPTION OF THE CONVERTIBLE LAND

Convertible Land Parcels 1 through 25 and 31 through 71 as delineated on the Condominium Site Plan recorded in Rockingham County Registry of Deeds as Plan #D-43274.

APPENDIX C

LIST OF UNIT ADDRESSES AND PERCENTAGE INTEREST

<u>Unit</u>	<u>Percentage Interest</u>
26	1/13
27	1/13
28	1/13
29	1/13
30	1/13
72	1/13
73	1/13
74	1/13
75	1/13
76	1/13
77	1/13
78	1/13
79	1/13



RECORDING 18.00
SURCHARGE 2.00

**SECOND AMENDMENT TO DECLARATION
OF
THE CLIFFS AT EVERGREEN CONDOMINIUM
Auburn, Rockingham County, New Hampshire**

This Second Amendment to Declaration of The Cliffs at Evergreen Condominium (hereinafter referred to as the "Amendment") is made this 20 day of June, 2023 by Chinburg Development, LLC, a New Hampshire limited liability company with mailing address of 3 Penstock Way, Newmarket, NH 03857 (hereinafter referred to as "Declarant") to the Cliffs At Evergreen Condominium Declaration dated February 16, 2023 and recorded with the Rockingham County Registry of Deeds in Book 6468, Page 776, as amended by a First Amendment dated March 22, 2003 and recorded at Book 6473, Page 728 (hereinafter together referred to as the "Declaration"). All capitalized terms used in this Amendment and not otherwise defined shall have the same meaning as defined in the Declaration.

WHEREAS, Declarant owns one hundred percent of the declared Units and Convertible Land in the Condominium.

WHEREAS, pursuant to NH RSA 356-B:34,II and paragraph 11 of the Declaration, the Declarant has the authority to amend the Declaration in its sole and absolute discretion.

WHEREAS, Declarant wishes to amend the Declaration to clarify certain restrictions.

NOW THEREFORE, the Declarant hereby declares and amends the Declaration as follows:

1. The second sentence in paragraph 3.5.1 is deleted in its entirety and replaced with the following:

Each building will be comprised of one (1) Unit of a size not to exceed 2,000 square feet of living space.

2. Paragraph 3.5.3.6 is deleted in its entirety and replaced with the following sentence:

"Each Unit shall be occupied full-time by not more than two (2) people and shall be subject to the Age-Restrictions set forth in the Declaration."

3. Paragraph 13 is amended by adding the following subsection in the second list of items in this paragraph as follows:

(e) Increase the size of Unit to not more than the maximum permitted of 2,000 square feet of living space.

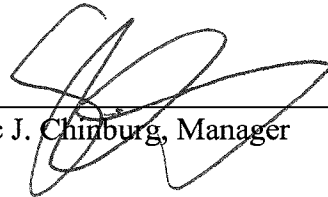
4. Except as modified by this Amendment, all of the terms and provisions of the Declaration and incorporated Bylaws, shall remain in full force and effect. Any inconsistencies between the Declaration and this Amendment shall be controlled by this Amendment.

[The signature page follows on the next page.]

Executed the date first written above.

**DECLARANT of THE CLIFFS AT
EVERGREEN CONDOMINIUM:
CHINBURG DEVELOPMENT, LLC**

By: _____
Name: Eric J. Chinburg, Manager



STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

On this 20 day of June, 2023, before me, personally appeared Eric J. Chinburg in his capacity as Manager of Chinburg Development, LLC, who proved to me through satisfactory evidence of identification to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily, for its stated purpose, and that he has the authority to act in that capacity.

Notary Public: _____
My Commission Expires:

6-5-2024

