



Summerfield
of AMHERST • NEW HAMPSHIRE

PUBLIC OFFERING STATEMENT
(revised 11/18/08)

Summerfield of Amherst, A Condominium

THIS CONDOMINIUM IS REGISTERED WITH THE CONSUMER PROTECTION AND ANTITRUST BUREAU OF THE DEPARTMENT OF JUSTICE OF THE STATE OF NEW HAMPSHIRE PURSUANT TO THE PROVISIONS OF THE NEW HAMPSHIRE CONDOMINIUM ACT, RSA 356-B. THE ACT REQUIRES THAT A PUBLIC OFFERING STATEMENT BE FURNISHED TO A PURCHASER PRIOR TO OR AT THE TIME HE ENTERS INTO A PURCHASE AGREEMENT. THE PURPOSE OF THE STATEMENT IS TO DISCLOSE MATERIAL FACTS PERTAINING TO THIS CONDOMINIUM. IT IS RECOMMENDED THAT THE PURCHASER READ THIS STATEMENT CAREFULLY, PHYSICALLY INSPECT THE PROPERTY, REVIEW ALL SALES AND OTHER DOCUMENTS IN DETAIL AND CONSULT AN ATTORNEY FOR ADVICE. NOTHING CONTAINED HEREIN SHOULD BE CONSTRUED AS SUGGESTING THAT THE CONSUMER PROTECTION AND ANTITRUST BUREAU OR ANY OTHER PUBLIC AGENCY RECOMMENDS THE CONDOMINIUM OR HAS DETERMINED THAT THE DISPOSITION OF ANY CONDOMINIUM UNIT OR INTEREST THEREIN IS LEGALLY SUFFICIENT TO PROTECT THE RIGHTS OF PURCHASERS.

RECEIPT OF THIS STATEMENT MUST BE ACKNOWLEDGED IN WRITING BY THE PURCHASER ON HIS PURCHASE AGREEMENT.

ANY COMPLAINT ALLEGING UNFAIR OR DECEPTIVE SALES PRACTICES OR A VIOLATION OF THE CONDOMINIUM ACT MAY BE DIRECTED TO THE CONSUMER PROTECTION AND ANTITRUST BUREAU, 33 CAPITOL STREET, CONCORD, NEW HAMPSHIRE 03301.

IMPORTANT

Notice of Purchaser's Cancellation Rights

New Hampshire law provides that you have an express and unqualified right to cancel your Purchase and Sale Agreement within five (5) calendar days from the date the agreement was entered into or the delivery to you of the Public Offering Statement, whichever is later. If you elect to cancel, you may do so by written notice thereof hand-delivered or deposited in the United States mail, return receipt requested, within the five-day period, to the Declarant of the Condominium or to any agent of the Declarant; provided, however, that if you elect to mail the notice of cancellation, you must also provide the Declarant with telephonic notice of cancellation within the five-day period. Such cancellation shall be without penalty and any deposit made by you must be refunded in its entirety no later than ten (10) calendar days from the Declarant's receipt of your written notice of cancellation.

NAME OF CONDOMINIUM: Summerfield of Amherst, A Condominium
(the "Condominium")

**EFFECTIVE DATE OF
REGISTRATION:** April 20, 2007

**DATE OF MOST RECENT
APPROVAL OF PUBLIC
OFFERING STATEMENT:** April 20, 2007

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1. The Declarant.

The Declarant is Etchstone Properties, Inc., a corporation organized under the laws of the State of New Hampshire. Its business address is:

179 Amherst Street
Nashua, New Hampshire 03064
(603) 889-5208

The corporation was established in 1984. Kevin Slattery is its president, sole director and sole shareholder. The corporation has been in the home building and construction business since its inception. Kevin Slattery is a real estate broker licensed in New Hampshire.

2. The Condominium Concept.

A condominium is a statutorily established form of real estate ownership. It permits the delineation of real estate, including land and buildings, into component parts known as units, common area and limited common area.

In Summerfield of Amherst, A Condominium (the "Condominium"), each Unit will consist of a single family dwelling (in its entirety), including any porches and decks.

Certain utility system components (outside of the dwelling), such as septic tanks, which serve only that dwelling will be part of the Limited Common Area appurtenant to that Unit. Limited Common Area will also include the steps, driveway, walkway and patio (if any) servicing the particular Unit. A Unit Owner has exclusive use of Limited Common Area, except for such Limited Common Area (such as the driveway or walkway) which serves more than one particular Unit, in which case such Limited Common Area shall be appurtenant to the Units so served. Note that the leach fields at the Condominium are Common Area and not Limited Common Area. See Sections 2.2 through 2.5 of the Declaration for more detail regarding the definitions and descriptions of Unit and Limited Common Area.

The Common Area of the Condominium consists of all aspects of the Condominium exclusive of the Units. The Common Area includes the Limited Common Area.

A purchaser of a Unit will own the Unit outright (in fee simple absolute) and will own, appurtenant to the Unit, an undivided percentage interest in the Common Area (including the Limited Common Area). The undivided percentage interest shall be equal to that of all other Unit Owners. The undivided percentage interest will be re-allocated among Unit Owners as Units are constructed and added to the Condominium.

A Unit Owner will be wholly responsible for all costs to repair, maintain and replace all aspects of his Unit and its Limited Common Area. Cost and expenses to maintain Common Area (except, generally, Limited Common Area) and the Condominium generally shall be known as Common Expenses and borne by all Units Owners equally. All Unit Owners (through the Association) may also maintain certain aspects of the septic systems even if these elements are Limited Common Area (e.g. septic tanks). For example, the Association may charge as a Common Expense (as part of its budget), to be shared by all Unit Owners, the cost to maintain and pump septic tanks, even though they are Limited Common Area. In addition, the Association may plow, shovel and/or sand the driveways and/or walkways servicing the Units, notwithstanding the fact that they are Limited Common Area. **Unit Owners may be required to purchase individual policies of casualty and liability insurance, akin to that of homeowner's insurance for single family dwellings.** The Summerfield of Amherst Condominium Association (the "Association") shall purchase various insurances as a Common Expense. See Section 14 below. The Association may, but has no obligation to, determine from time to time, whether to procure a master policy of insurance in place of such individual Unit Owner policies.

3. Creation of the Condominium.

Summerfield of Amherst, A Condominium, was established on April 18, 2005, by submitting the land contained in the Condominium (consisting of approximately 58.25 acres) (the "Submitted Land") to a so-called Declaration of Condominium for Summerfield of Amherst, A Condominium, by Etchstone Properties, Inc., dated April 18, 2005, and recorded with the Hillsborough County Registry of Deeds at Book 7461, Page 1035, as amended by the First Amendment to Declaration of Condominium dated August 2, 2005 and recorded with said Registry of Deeds at Book 7520, Page 434, the Second Amendment to Declaration of Condominium for Summerfield of Amherst, A Condominium dated December 15, 2005 and recorded with said Registry of Deeds at Book 7601, Page 1062, the Third Amendment to Declaration of Condominium for Summerfield of Amherst, A Condominium dated March 1, 2006 and recorded with said Registry of Deeds at Book 7638, Page 480, the Fourth Amendment to Declaration of Condominium for Summerfield of Amherst, A Condominium dated July 20, 2006 and recorded with said Registry of Deeds at Book 7710, Page 1957, the Fifth Amendment to Declaration of Condominium for Summerfield of Amherst, A Condominium dated November 29, 2006, and recorded with said Registry of Deeds at Book 7774, Page 2609, the Sixth Amendment to Declaration of Condominium for Summerfield of Amherst, A Condominium dated May 17, 2007, and recorded with said Registry of Deeds at Book 7849, Page 605, the Seventh Amendment to Declaration of Condominium for Summerfield of Amherst, A Condominium dated October 19, 2007, and recorded with said Registry of Deeds at Book 7912, Page 559, the Eighth Amendment to Declaration of Condominium for Summerfield of Amherst, A Condominium dated May 1, 2008, and recorded with said Registry of Deeds at Book 7977, Page 775, the Amendments to the Declaration and Bylaws of Summerfield of Amherst, A Condominium dated May 5, 2008, and recorded with said Registry of Deeds at Book 7979, Page 47, and as further amended (the "Declaration"). In addition to the Declaration, Bylaws and Rules and Regulations were also executed by the Declarant, and are recorded with the Hillsborough County Registry of Deeds with the Declaration of Condominium.

Copies of the Declaration, Bylaws and Rules and Regulations are appended to this Public Offering Statement as exhibits.

4. Description of the Condominium.

The initial phase (Phase I) of the Condominium consists of twenty-one (21) Units. The second phase (Phase II) consists of twenty-six (26) Units. The third phase (Phase III) consists of eighteen (18) Units. The fourth phase (Phase IV) consists of twelve (12) Units. Upon the Submitted Land, a total of seventy-seven (77) Units may be established.

No time-sharing interests will be sold in the Condominium; however, Units may be owned by multiple owners.

The Declarant has also reserved additional rights concerning the development of the Condominium, including the right to build and install the necessary road and utility systems to service Units, the right to undertake all aspects of sale and leasing activities at the Condominium and the right to grant easements for the same. See Articles 9, 14 and 17 of the Declaration for more detail.

5. Individual Units.

As noted, the Condominium may consist of up to seventy-seven (77) Units. As noted in Section 2 above, Units will be in the style of single family dwellings. The Units range in size from approximately 1,600 square feet of living space to 2,700 square feet of living space, inclusive of finished basements (if applicable), but exclusive of decks and porches. Units may be of different designs.

6. Common Area Facilities and Amenities.

The Common Area of the Condominium consists of all elements of the Condominium except for the Units, and includes the Submitted Land. The Common Area also includes the private roadways known as Summerfield Way, Appleton Way, Elmwood Way, Crystal Lane, Westgate Way, Beacon Lane and Berkley Lane. The initial phase (Phase I) also includes a community building which is complete and which is part of the Common Area. Each Unit will have its own septic tank (as Limited Common Area appurtenant to that Unit). Units are serviced by various leach fields, each leach field servicing at least two (2) units, all of which leach fields are Common Area and not Limited Common Area. Maintenance of the Common Area, including plowing and maintaining the roads, is a Common Expense borne by the Association and paid for by assessments levied against all Unit Owners. The Units are serviced by Pennichuck Water Works, Inc.

7. Easements and Restrictions; Governmental Approvals.

All state and local approvals necessary for the development of the Condominium (upon the Submitted Land), except for individual building, septic and utility permits for Units, have been obtained. No additional off-site easements for the development of the Condominium are necessary.

THE CONDOMINIUM RECEIVED SITE PLAN APPROVAL FOR SEVENTY-SEVEN (77) UNITS FROM THE PLANNING BOARD OF THE TOWN OF AMHERST AS A SO-CALLED ELDERLY HOUSING (HOUSING FOR OLDER PERSONS) COMMUNITY.

UNDER FEDERAL AND STATE LAWS AND REGULATIONS, AT LEAST EIGHTY PERCENT (80%) OF THE UNITS IN THE CONDOMINIUM SHALL BE OCCUPIED BY AT LEAST ONE PERSON FIFTY-FIVE (55) YEARS OF AGE OR OLDER. UNLESS EXPRESSLY DESIGNATED BY THE DECLARANT, EACH UNIT SOLD BY THE DECLARANT SHALL BE OCCUPIED BY AT LEAST ONE PERSON FIFTY-FIVE (55) YEARS OF AGE OR OLDER, WHICH REQUIREMENT SHALL REMAIN WITH THAT UNIT. THIS REQUIREMENT SHALL APPLY TO ALL SALES BY THE DECLARANT AND ALL REALES BY ANY SUBSEQUENT OWNERS, UNLESS EXPRESSLY EXEMPTED FROM SUCH REQUIREMENT BY THE DECLARANT ON THE FIRST SALE OF SUCH UNIT.

THESE AGE AND RESIDENCY PROVISIONS ARE ENFORCEABLE BY THE DECLARANT, THE ASSOCIATION AND EACH AND EVERY UNIT OWNER. THE DECLARANT, THE ASSOCIATION AND EACH AND EVERY UNIT OWNER SHALL HAVE THE AUTHORITY TO SEEK JUDICIAL ENFORCEMENT OF THESE PROVISIONS, INCLUDING OBTAINING A LEGAL ORDER AND AN INJUNCTION EVICTING OR DISPOSSESSING PEOPLE FROM A UNIT AND PROHIBITING OCCUPANCY IN VIOLATION OF THESE REQUIREMENTS.

UNLESS EXEMPTED FROM THIS REQUIREMENT BY THE DECLARANT, AT EACH CLOSING OF A UNIT, EACH PURCHASER SHALL BE REQUIRED TO EXECUTE AND DELIVER TO THE ASSOCIATION AN AFFIDAVIT CONFIRMING THAT (i) HE WILL COMPLY WITH SUCH AGE REQUIREMENTS, (ii) HE IS ACQUIRING THE UNIT NOT WITH THE INTENT TO RESELL OR LEASE TO SOMEONE NOT MEETING THE AGE REQUIREMENTS AND (iii) WHO WILL ENSURE THAT DURING HIS PERIOD OF OWNERSHIP AT LEAST ONE (1) PERSON RESIDING IN THE UNIT SHALL BE AGE FIFTY-FIVE (55) OR OLDER.

See Article 15 of the Declaration for more detail regarding these requirements. See also Article XIV of the Bylaws.

In addition, each Unit shall be occupied and used only for private, residential purposes by a Unit Owner, except for such limited professional use as the Board of Directors of the Association may authorize in its discretion. Any such limited professional use shall not be incompatible with the residential character of the Condominium. See Section 2.7 of the Declaration for more detail.

8. Encumbrances.

(a) Non-financial Encumbrances:

1. Easements, notes and other matters shown on Plan No. 20667, Plan No. 25083, Plan No. 33090, Plans Numbered 33931, 33932, 33948, 34002, 34003, 34113, 34337, 34413, 34574, 34575, 34744, 34888, 34972, 35050, 35143, 35270, 35395, 35460, 35606, 35735, 35769, 35809, 35889, 36128, 36181 and subsequently recorded plans.
2. Right-of-way of Alex D. McKay to Dana L. Fuller dated September 23, 1944 and recorded at Book 1070, Page 80, if applicable and in effect. This right-of-way, if applicable and in effect, pertains only to Map 2, Lot 2 before the addition of Parcels B and C.
3. Right-of-way reserved "to those possessing their rights if any to pass and repass to land on the east" [of Map 2, Lot 2 before the addition of Parcels B and C] as referenced in deeds recorded with said Registry of Deeds at Book 1298, Page 79, Book 5621, Page 1419 and Book 5803, Page 1851, among others, if applicable and still in effect.
4. Easement from Samuel A. Tamposi and Gerald Q. Nash, d/b/a Bon Terrain, to Southern New Hampshire Water Co. dated March 14, 1991 and recorded at Book 5244, Page 1811, and as shown on Plan No. 25083. This easement is applicable only to Parcels B and C, if at all.
5. Public Water Supply Well Protective Radius Area Easement by TANA Properties Limited Partnership et al dated April 12, 2004 and recorded at Book 7233, Page 1610.
6. Easement Deed of TANA Properties Limited Partnership to Pennichuck Water Works, Inc. dated April 12, 2004 and recorded at Book 7233, Page 1615.
7. Easement Agreement by and between TANA Properties Limited Partnership and EnergyNorth Natural Gas, Inc. dated April 12, 2004 and recorded at Book 7233, Page 1618.
8. Easement Deed of Etchstone Properties, Inc. to Public Service Company of New Hampshire dated August 5, 2004 and recorded at Book 7301, Page 1446.
9. Easement from Etchstone Properties, Inc. to Verizon New England, Inc. dated October 22, 2004 and recorded at Book 7353, Page 1506.
10. Customer's Acknowledgements and Agreements regarding High Pressure Water Service by Etchstone Properties, Inc. in favor of Pennichuck Water Works, Inc., recorded at Book 7385, Page 1642 and Book 7735, Page 1490, and as otherwise recorded or to be recorded, if applicable.
11. Riparian rights and rights to public and others in and to Peacock Brook.

12. Declaration of Condominium for Summerfield of Amherst, A Condominium by Etchstone Properties, Inc. dated April 18, 2005, together with the Bylaws and Rules and Regulations, recorded at Book 7461, Page 1035, as amended by the First Amendment to Declaration of Condominium dated August 2, 2005 and recorded at Book 7520, Page 434, the Second Amendment to Declaration of Condominium for Summerfield of Amherst, A Condominium dated December 15, 2005 and recorded at Book 7601, Page 1062, the Third Amendment of Declaration of Condominium for Summerfield of Amherst, A Condominium dated March 1, 2006 and recorded at Book 7638, Page 480, the Fourth Amendment to Declaration of Condominium for Summerfield of Amherst, A Condominium dated July 20, 2006 and recorded at Book 7710, Page 1957, the Fifth Amendment to Declaration of Condominium for Summerfield of Amherst, A Condominium dated November 29, 2006, and recorded at Book 7774, Page 2609, the Sixth Amendment to Declaration of Condominium for Summerfield of Amherst, A Condominium dated May 17, 2007, recorded at Book 7849, Page 605, the Seventh Amendment to Declaration of Condominium for Summerfield of Amherst, A Condominium dated October 19, 2007, and recorded at Book 7912, Page 559, the Eighth Amendment to Declaration of Condominium for Summerfield of Amherst, A Condominium dated May 1, 2008, and recorded at Book 7977, Page 775, the Amendments to the Declaration and Bylaws of Summerfield of Amherst, A Condominium dated May 5, 2008, and recorded at Book 7979, Page 47, and as further amended.
 13. Condition of approval by the Amherst Zoning Board of Adjustment (at its meeting of November 19, 2002) that the bedrooms in the Unit are to remain as designated (in the Unit).
- (b) Financial Encumbrances: The Submitted Land (and thus all Units which are being offered for sale) are subject to the mortgage in favor of Banknorth, N.A. (Bank of New Hampshire), as follows:
1. Second Mortgage Deed and Security Agreement by and between Etchstone Properties, Inc. and Banknorth, N.A. dated May 13, 2004 in the face amount of \$500,000.00 and recorded at Book 7233, Page 1648.
 2. Collateral Assignment of Leases and Rents from Etchstone Properties, Inc. to Banknorth, N.A. dated May 13, 2004 and recorded at Book 7233, Page 1667.

All recording references are to the Hillsborough County Registry of Deeds.

The Declarant has made arrangements with TD Bank, N.A. (formerly known as Banknorth, N.A.) to obtain a partial release from the aforementioned mortgages for each Unit sold. If a partial release from each Mortgage is not obtained when a person purchases a Unit, then his or her ownership of the Unit will be subject to such mortgage or mortgages, which, if

not subsequently paid in full or discharged, could permit TD Bank, N.A. to conduct foreclosure proceedings which would divest the purchaser of his title to the Unit.

It is important to make certain that when acquiring a Unit, appropriate arrangements for the issuance of such a partial release are in place. It is urged that the purchaser retain his or her own attorney to undertake these assurances.

9. Management; Projected Budget.

Day-to-day management of the Condominium will be undertaken by a Board of Directors of the Association, consisting of at least five (5) members, elected annually by the Unit Owners. The Unit Owners will constitute the membership of the Association.

The Association is a New Hampshire voluntary corporation known as Summerfield of Amherst Condominium Association.

Notwithstanding the foregoing, the Declarant shall have the right to appoint and remove all members of the Board of Directors of the Association and control the Association until the earlier of the following:

- (a) the expiration of three (3) years from the filing of the Declaration in the Hillsborough County Registry of Deeds; or
- (b) the date upon which Units to which three-fourths (3/4) of the undivided interests in the Common Area appertain have been conveyed (including any Units which may be located on the Convertible Land); or
- (c) the date the Declarant expressly waives or relinquishes such right.

The Declarant no longer has the right to appoint and remove members of the Board of Directors and no longer controls the Association.

The Association, through the Board of Directors, may retain a management company to act as its Manager. See Section 8.2 of the Declaration of Condominium for more detail. See also Article 8 of the Declaration and the Bylaws generally (including Article III) relative to the general powers and duties of the Board of Directors and Manager.

As noted in Sections 2 and 6 above, the operating expenses of the Condominium, the costs to maintain, repair and replace Common Area and related expenses are known as Common Expenses and shall be borne equally by all members of the Association. Annually, the Board of Directors shall propose and the Association shall adopt a Budget upon which assessments against Unit Owners are to be based, to cover the Common Expenses. The Budget will include reserve requirements for capital costs and expenses. So long as the Declarant has the right to appoint and remove all members of the Board of Directors, the Board of Directors shall adopt the Budget.

Appended hereto as **Exhibit D** is the first such proposed Budget. This has been proposed by the Declarant in good faith as its best estimate of the present, anticipated annual costs to operate the Condominium.

10. Warranties.

New Hampshire law provides for a limited statutory warranty of structural aspects of the Unit to be provided by the Declarant under RSA 356-B:41, II. RSA 356-B:41, II, provides that Etchstone Properties, Inc. (the Declarant of Summerfield of Amherst, A Condominium) shall warrant or guarantee, against structure defects, each of the units in Summerfield of Amherst, A Condominium, for one (1) year from the date such unit is conveyed, and all of the common areas for one (1) year. This one (1) year period begins as to each of the common areas whenever they have been completed or if later, (a) as to any common area within any additional land or portion thereof, at the time the first unit therein is conveyed, (b) as to any common area within any convertible land or portion thereof, at the time the first unit therein is conveyed, and (c) as to any common area within any other portion of the condominium at the time the first unit therein is conveyed. Structural defects shall be those defects and components constituting any unit or common area which reduces the stability or safety of the structure below accepted standards or restrict the normal intended use of all or part of the structure and which require repair, renovation, restoration, or replacement. RSA 356-B:41, II does not impose upon Etchstone Properties, Inc. any responsibility for any items of maintenance relating to the units or common area.

In addition, the Declarant will provide each initial purchaser of a Unit a limited warranty. The limited warranty is set forth in the instrument entitled General Conditions and Warranty which will be appended as **Exhibit F** to each Purchase and Sale Agreement. In addition, Unit purchasers are entitled to fully inspect a Unit prior to completion or have their inspecting engineer or architect undertake the same. Except for the aforementioned one year statutory warranty and the provisions of the limited warranty (set forth in the General Conditions and Warranty instrument appended as **Exhibit F** to the Purchase and Sale Agreement), the Declarant makes no other warranties, express or implied, relative to any purchaser of a Unit, including, without limitation, no warranty of merchantability, habitability or fitness for a particular purpose. See Section 10 of the Purchase and Sale Agreement for more detail.

11. Unit Owners Association.

The Declarant has created Summerfield of Amherst Condominium Association, as a New Hampshire voluntary (non-profit) corporation. This is the entity which will be the so-called association of unit owners as contemplated by the Condominium Act. All Owners of Units at the Condominium will be members of the Association by virtue of their unit ownership. Each Unit will be attributed one membership interest and one vote in the Association. Multiple Owners of one Unit will constitute but one member. Multiple Owners of one Unit may not split their vote in Association matters.

As mentioned in Section 9 above, the Association members will elect its Board of Directors; provided, that the Declarant has reserved to itself the right to appoint the members of

the Board of Directors and exercise all powers and functions of the Board of Directors (thus control the Association) until the earlier of certain events to occur as more particularly set forth in Section 9 above.

The Association shall be governed by and shall operate in accordance with the provisions of New Hampshire law (RSA 356-B), the Declaration and the Bylaws. In addition, the Association shall have the right to enforce the provisions of the Rules and Regulations, which are appended hereto as **Exhibit C**.

The Board of Directors of the Association may amend from time to time, the Rules and Regulations. See Article III, Section 1 of the Declaration for more detail.

12. Restrictions on Transfers.

There are no rights of first refusal in favor of the Declarant, the Association or any other person or entity.

There are restrictions on transfer in light of the Elderly Housing Covenants more particularly set forth in Article 15 of the Declaration as addressed in Section 7 above. YOU SHOULD READ ARTICLE 15 OF THE DECLARATION AND RE-READ SECTION 7 ABOVE FOR THE DETAILS OF SUCH COVENANTS AND RESTRICTIONS. THESE COVENANTS AND RESTRICTIONS APPLY TO THE SALE, TRANSFER, CONVEYANCE OR LEASE OF ANY UNIT.

13. Financial Matters.

The purchaser will be required to pay the condominium fees and assessments established and imposed by the Association from time to time. For 2007, pursuant to the proposed Budget of the Association, these fees are estimated to be \$188.00 per month. If a Unit Owner fails to pay when due his or her fees and assessments, then the Association may place a lien on his Unit and exercise any rights available to it under that lien and/or sue the Unit Owner to collect the unpaid fees and assessments.

Each purchaser will be required to pay for all utility services to his Unit, including water, electric, heat, air conditioning, cable telecommunications and telephone. In addition, each Unit Owner shall be required to pay for all repairs, maintenance and replacements to his Unit and Limited Common Area; provided, that the Association may arrange to shovel, plow and/or sand the driveways and walkways (Limited Common Area) and maintain certain elements of the septic systems (including pumping the septic tanks (Limited Common Area)) and charge the same as Common Expenses.

At each closing of the initial sale of a Unit from the Declarant to the first purchaser, the first purchaser shall pay to the Association the equivalent of one (1) month's assessment for placement into the Capital Reserve Fund of the Association and the equivalent of two (2) months' assessments for placement into the Working Capital Fund of the Association.

The Association may procure and maintain casualty, liability and other insurances as a

Common Expense; provided, that each Unit Owner may be required to purchase casualty and liability insurance for his Unit akin to that of a standard homeowner's insurance policy. See Section 14 below for more detail. See also Article 6 of the Declaration for more detail.

14. Insurance.

The Association shall procure and maintain, as a Common Expense, certain casualty, liability and other insurances for the Condominium. See Article 6 of the Declaration for more detail. **Notwithstanding the foregoing, unless otherwise determined by the Board of Directors of the Association, each Unit Owner shall purchase and maintain separate, individual policies of insurance for his Unit, to cover fire, vandalism and other casualty (within the terms of extended coverage or "all risk" insurance) and liability insurance. The costs and premiums of such individual policies of insurance (akin to that of homeowner's insurance for single family dwellings) (relative to each particular Unit) shall be borne individually by Unit Owners and not as a Common Expense.** The Association may, but has no obligation to, determine from time to time, whether to procure a master policy of insurance in place of such individual Unit Owners policies. The Association may still maintain insurances, in addition to those maintained by the Unit Owners.

15. Litigation.

There are no legal proceedings pending against Etchstone Properties, Inc.

16. Escrow of Deposits.

All deposits made under any Purchase and Sale Agreement for a Unit shall be held in escrow by Gail Phillips Real Estate, LLC, with offices at 160 Daniel Webster Highway, Unit 303, Nashua, New Hampshire 03060, (603) 888-3098.

17. Taxes.

Each Unit Owner is responsible for paying the real estate taxes assessable against his Unit imposed by the Town of Amherst, County of Hillsborough and/or State of New Hampshire.

18. Financing Available to Purchaser.

Financing the purchase of a Unit shall be the sole obligation and responsibility of the purchaser. There is no assurance from Etchstone Properties, Inc., that it can obtain financing for the purchaser.

PURCHASER RECEIPT

We are required to deliver to you a copy of this Public Offering Statement before we may sell you a Unit or any interest in the Condominium. By signing this receipt, you acknowledge that you have received a copy of our Public Offering Statement.

Dated: _____, 200__

[Purchaser]

Dated: _____, 200__

[Purchaser]

REVISED NOVEMBER 28, 2018

LIST OF EXHIBITS

<u>Document</u>	<u>Exhibit Letter</u>
Declaration of Condominium	A (page 1)
Bylaws	B (page 44)
Rules and Regulations	C (page 67)
First Amendment to Declaration of Condominium	A-1
Second Amendment to Declaration of Condominium	A-2
Third Amendment to Declaration of Condominium	A-3
Fourth Amendment to Declaration of Condominium	A-4
Fifth Amendment to Declaration of Condominium	A-5
Sixth Amendment to Declaration of Condominium	A-6
Seventh Amendment to Declaration of Condominium	A-7
Eighth Amendment to Declaration of Condominium	A-8
Amendments to Declaration of Condominium and Bylaws	A-9
Articles of Agreement (Summerfield of Amherst Condominium Association)	A-10
Articles of Agreement (Summerfield of Amherst Condominium Association)	A-11
Fifth Amendment to Declaration of Condominium and Bylaws	A-12
Ninth Amendment to Declaration of Condominium	A-13

Return: #599
J. Bradford Westgate, Esq.
Winer and Bennett, LLP

EXHIBIT A

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2
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DECLARATION OF CONDOMINIUM

For

SUMMERFIELD OF AMHERST, A CONDOMINIUM

Declarant: Etchstone Properties, Inc.
179 Amherst Street
Nashua, New Hampshire 03064

Location: Hollis Road (Route 122)
Amherst, Hillsborough County, New Hampshire

Date: April 18, 2005

BK7461PG1035

DECLARATION OF CONDOMINIUM
FOR
SUMMERFIELD OF AMHERST, A CONDOMINIUM

This DECLARATION is made this 18th day of April, 2005, by Etchstone Properties, Inc., a New Hampshire corporation, with a principal place of business at 179 Amherst Street, Nashua, Hillsborough County, New Hampshire 03064 (the "Declarant"), for the purposes of submitting certain property to the condominium form of ownership in accordance with the provisions of the New Hampshire Condominium Act, New Hampshire RSA Chapter 356-B (the "Act"); and for the purposes of establishing certain provisions regarding the use and ownership thereof, and other terms and conditions related thereto.

WITNESSETH:

WHEREAS, the Declarant owns a certain tract of land, with the improvements heretofore or hereafter constructed thereon, located on Hollis Road (Route 122), Amherst, Hillsborough County, New Hampshire, on which it proposes to construct certain residential dwellings, a community center (with amenities) and other improvements which will compromise a condominium community known as Summerfield Condominium (hereinafter "Summerfield" or the "Condominium"); and

WHEREAS, the Condominium may consist of a maximum of seventy-seven (77) units; and

WHEREAS, the Declarant intends to sell and convey units in the Condominium, subject to certain restrictions, covenants, conditions, easements and other provisions to establish a general plan of development for the Condominium.

NOW, THEREFORE, the Declarant hereby submits the property described in **Exhibit A**, and all easements and other rights appurtenant thereto, to be governed by and regulated in accordance with the Act, and to be improved, developed, encumbered, conveyed and otherwise transferred in accordance with the Act and the terms and conditions hereof.

ARTICLE 1

DEFINITIONS

Certain of the terms as used in this Declaration and in the Bylaws which are annexed hereto as **Exhibit B** and are made a part hereof, are defined and shall have the following meanings, unless the context clearly indicates a different meaning therefor:

- 1.1 "Act" – The New Hampshire Condominium Act (NH RSA Ch. 356-B, amended from time to time).

- 1.2 “Amendment” – Any amendment to this Declaration, duly executed and recorded from time to time.
- 1.3 “Assessment” – The obligation levied against each Owner relative to the cost of repairing, replacing, maintaining, managing or otherwise implementing the purposes of this Declaration or the Act.
- 1.4 “Association” – The New Hampshire voluntary corporation known as Summerfield Condominium Association, which constitutes the association of Owners at the Condominium.
- 1.5 “Board” or “Board of Directors” – The executive and administrative entity designated in this Declaration, or Bylaws of the Association as the governing body of the Association.
- 1.6 “Bylaws” – The instrument attached hereto as **Exhibit B** and made a part hereof, which instrument provides for the self-government of the Condominium by the Association.
- 1.7 “Common Area” – All that portion of the Condominium, other than the Units, and is more particularly described in Section 2.4 hereof. The Common Area includes the Limited Common Area.
- 1.8 “Common Expenses” – All expenditures lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation and/or maintenance of reserves pursuant to the provisions of the Condominium Instruments. Future Common Expenses means Common Expenses for which Assessments are not yet due and payable.
- 1.9 “Community Center” – the common use building, related exterior improvements and other amenities, to be constructed on the Submitted Land as depicted on the Site Plan.
- 1.10 “Condominium” or “Summerfield” – The Submitted Land and any interests thereon described in **Exhibit A** hereof (and as may be added thereto), together with all buildings and other improvements and structures presently existing or hereafter created thereon, and all personal property now or hereafter existing or put or installed thereon in use connection with such real estate.
- 1.11 “Condominium Instruments” – This Declaration and the Bylaws, as either or both may be amended from time to time.
- 1.12 “Convertible Land” – That portion of the Common Area upon which, subject to the provisions of the Act and the provisions hereof, future Units or other buildings may be constructed; it is more particularly described in **Exhibit A-1** attached hereto.

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- 1.13 “Declarant” – Etchstone Properties, Inc., a New Hampshire corporation, with a principal place of business at 179 Amherst Street, Nashua, New Hampshire 03064.
- 1.14 “Declaration” – This instrument.
- 1.15 “Institutional Lender(s)” – One or more commercial or savings banks, savings and loan associations, trust companies, credit unions, industrial loan associations, insurance companies, pension funds, or business trusts, including any other lender regularly engaged in financing the purchase, construction, or improvement of real estate, or any assignee of loans made by such a lender, or any combination of any of the foregoing entities.
- 1.16 “IPM” – The Fertilization and Integrated Pest Management Outline Summerfield Development Amherst, N.H. prepared by Thomas J. Morin, submitted on June 4, 2003 and which was approved by the Amherst Planning Board.
- 1.17 “Limited Common Area” – A portion of the Common Area reserved for the exclusive use of those entitled to the use of one or more, but less than all, of the Units.
- 1.18 “Manager” – The person designated by the Board, if any, to manage the affairs of the Condominium, and to perform various other duties as may be assigned to such person by the Board in accordance with the provisions of this Declaration and the Bylaws.
- 1.19 “Owner(s)” – One or more persons who own(s) a Unit.
- 1.20 “Rules and Regulations” – Such regulations as the Board, from time to time, may adopt relative to the use of the Condominium, or any part thereof, including these set forth in **Exhibit C** hereto.
- 1.21 “Site Plan” – The plan entitled “Site Plan Tax Map Lot 2-2 Summerfield Condominium Amherst, New Hampshire” by Meridian Land Services, Inc., dated January 6, 2003, as revised through July 3, 2003, which plan was approved by the Amherst Planning Board on June 18, 2003. Extracted and representative pages of the Site Plan are recorded with the Hillsborough County Registry of Deeds as Plan No. 33090.
- 1.22 “Submitted Land” – The land in the Condominium, which land is described in **Exhibit A**.
- 1.23 “Supplemental Declaration” – Any declaration of covenants and restrictions which by its terms expressly made supplemental to this Declaration.

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- 1.24 “Undivided Percentage Interest” – The undivided percentage interest in and to the Common Area attributed to each Unit and as set forth in **Exhibit F** appended hereto, as amended from time to time, pursuant to this Declaration and the Act.
- 1.25 “Unit” – A portion or portions of the Condominium designated and intended for individual ownership and use, as more particularly described in Section 2.3 hereof.
- 1.26 “FNMA” and “FHLMC” – Respectively, the Federal National Mortgage Associates and the Federal Home Loan Mortgage Corporation, and their respective successors.

ARTICLE 2

SUBMITTED LAND, UNITS, COMMON AREA AND LIMITED COMMON AREA AND PURPOSES

- 2.1 Description of Land Submitted to the Act. The Declarant hereby submits to the Act certain land, defined herein as the Submitted Land, more particularly described in **Exhibit A** attached hereto and made a part hereof. A legal description of the Convertible Land (within the Submitted Land) is contained in **Exhibit A-1** attached hereto and made a part hereof.
- 2.2 Description of Buildings.
- (a) Upon the Submitted Land, the Condominium will include up to seventy-seven (77) residential dwellings, each of which shall constitute a Unit, as more particularly described in Section 2.3 below. Initially, the Condominium will include twenty-one (21) Units in its first phase(s). Pursuant to Article 10 of this Declaration, the Declarant has reserved the right and option to convert certain specified portions of the Submitted Land (namely the Convertible Land) into building sites for up to fifty-six (56) Units, making up the aforementioned total of seventy-seven (77) Units.
- (b) The buildings housing the Units will be of wood frame construction upon poured concrete foundations, slabs or crawl space foundations. The designs of the buildings may vary. The buildings shall be of a single family design.
- 2.3 Description of Units. The Unit number and the dimensions of each Unit are shown on the site plans and floor plans recorded from time to time. The Unit number for each Unit and its style or design, if applicable, are set forth in **Exhibit D** attached hereto, as the same may be amended and supplemented from time to time. The horizontal and vertical boundaries of each Unit are as follows:

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(1) Horizontal Boundaries:

The horizontal boundaries of each Unit shall be:

- (a) Lower Boundary – The finished, lower exterior surface of the concrete slab or basement;
- (b) Upper Boundary – The finished, exterior surface of the roof of the building.

(2) Vertical Boundaries:

The vertical boundaries of each Unit shall be the finished surfaces of the exterior walls (including foundation walls) and the finished, exterior surfaces of the doors and windows.

Each Unit includes all improvements within said boundaries and the space which is enclosed thereby, excepting only such Common Area as may be located therein. All doors and windows serving the Unit are part of the Unit. All roofing materials, shingles, exterior siding, paint and other materials constituting part of the finished, exterior surfaces of a Unit are part of the Unit. Each Unit also includes all porches and decks, if any. It is the intention and effect of these provisions that the entire building (single family dwelling) constitutes the Unit.

The pipes, plumbing, water supply system and components, ducts, flues, chutes, conduits, wires, and other utility installations, including heating and air conditioning systems, situated in a Unit, which serve that Unit alone, are part of the Unit. If any such pipes, plumbing, water supply system and components, ducts, flues, chutes, conduits, wires, and other utility installations, including heating and air conditioning systems, lie outside of the aforementioned designated boundaries of a Unit, any portions thereof serving only that Unit shall be deemed Limited Common Area appurtenant to that Unit, while any portions thereof serving more than one Unit shall be deemed part of the Limited Common Area appurtenant to the Units so served.

2.4

Description of the Common Area. The Common Area includes, but not by way of limitation:

- (a) The land on which the buildings containing the Units are located and the roadways, sidewalks, walks, shrubbery, and other plantings, parking areas, driveways, trails and other land and interests in land included in the description of the Submitted Land;
- (b) All components of the septic system (which are not located in a Unit), including the pipes, septic tanks and leach fields (which are not Limited Common Area), the electrical and telephone systems and their components.

and other utility systems and components servicing the Condominium, which are not located in a Unit;

- (c) The Community Center;
- (d) Easements and other interests in real estate appurtenant to the Submitted Land;
- (e) Any other amenities (if any) which are constructed as recreation amenities;
- (f) Street lights, community signs, road signs, fire hydrants (if owned) and appurtenant equipment;
- (g) All other parts of the Condominium, including Limited Common Area, and personal property acquired by the Association, necessary or convenient to its existence, maintenance, and safety, or otherwise in common use.

2.5 Description of Limited Common Area.

- (a) There is appurtenant to each of the Units, certain Limited Common Area, some of which is more particularly shown on the site plans of the Condominium, and/or on the floor plans for the Units, recorded herewith or to be recorded from time to time. In particular, such Limited Common Area includes steps, patios, retaining walls, walkways and driveways servicing a particular Unit. Any components of walkways and/or driveways serving more than one (1) Unit shall be Limited Common Area appurtenant to those particular Units so served. Limited Common Area shall also include the items (if any) referenced as Limited Common Area in Section 2.3 above.
- (b) All components of the septic system situated between the Unit and the septic tank (and including the septic tank) are Limited Common Area appurtenant to that particular Unit. All components of the septic system situated between the septic tank and the leach field(s) (including the leach field(s)) are Common Area but not Limited Common Area.

2.6 Unit Percentage Interest in Common Area and Facilities. An equal undivided interest in the Common Area is allocated to each Unit in accordance with **Exhibit D**, as amended from time to time. There shall appertain to each Unit in the Condominium, for voting purposes in connection with meetings of the Association, one vote per Unit.

2.7 Statement of Purposes of Condominium Use.

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- (a) The Condominium is primarily intended for residential use by persons fifty-five (55) years of age or older, in accordance with and subject to the terms and conditions of this Declaration, including, without limitation, the Elderly Housing Covenants set forth in Article 15 below, and the requirements of applicable governmental approvals.
- (b) Each Unit shall be occupied and used only for private, residential purposes by the Owner and his or her family, or by lessees or guests of the Owner, except for such limited professional use as the Board, upon written application from an Owner, may authorize in its discretion. Such limited professional use shall not be incompatible with the residential character of the Condominium. These provisions regarding use shall not prohibit an owner from leasing or renting his Unit; provided, that such lease or rental shall be by written agreement and in accordance with the terms and provisions hereof. No such limited professional use shall include members of the public entering the Unit in connection therewith.
- (c) The Common Area shall not be used in a manner which is inconsistent with the residential character of the Condominium. No one shall obstruct, commit any waste in, or otherwise cause any damage beyond reasonable wear and tear to the Common Area, and anyone causing such damage shall pay the expense incurred by the Association in repairing or replacing the same.
- (d) No unregistered vehicles may be stored or parked at the Common Area or in a Unit. No Unit Owner shall cause or suffer to be stored or parked at the Common Area any commercial vehicle. Only automobiles and other vehicles customary and usual for so-called pleasure driving shall be parked at the Common Area. Notwithstanding the foregoing, (i) commercial vehicles which come to make deliveries to or service a Unit or the Common Area, or the temporary guests of Unit Owners, may park vehicles at the Common Area and (ii) commercial vehicles and recreational may be parked in the garage portion of a Unit.
- (e) No boats, trailers, recreational vehicles or other, similar items of personal property, except (i) parked or stored in the garage portion of a Unit or (ii) as expressly permitted by the Board, shall be parked on or stored at the Common Area.
- (f) No noxious or offensive use shall be made of any part of the Condominium, and nothing shall be done therein which is or will become an annoyance or nuisance to other Owners. No use shall be made of any part of the Condominium which shall constitute a fire hazard or which will result in the cancellation of insurance on any part of the Condominium, or which is in violation of any law, ordinance, or governmental regulation applicable thereto. No use shall be made of any part of the Condominium

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which will increase the rate of insurance on the Common Area without the express, prior written consent of the Board.

- (g) No signs (except as expressly permitted in this Declaration), clothes lines, television antennas, refuse, or loose clothing or similar material or equipment shall be hung, posted or otherwise so placed as to be within the public view or within the view of other Owners without the express, prior written consent of the Board. Notwithstanding the foregoing, so-called satellite dishes not greater than 18 inches in diameter may be placed in or outside of a Unit; provided, that the Owner shall take reasonable steps to shield the same from public view, so long as such shielding does not materially and adversely affect the utility of such satellite dish.
- (h) The Board of Directors may establish, from time to time, rules and regulations permitting or prohibiting pets to be kept at the Units. No un domesticated animals may be kept anywhere in or within the Condominium.

2.8 Declarant as Owner.

- (a) The Declarant shall be deemed to be the Owner of any Units not conveyed by the Declarant. The Declarant and its representatives and assigns may make such use of such unsold Units and of the Common Area as may facilitate such sale, including, without limiting the generality of the foregoing, the maintenance of a sales office, the showing of the Units and the Condominium generally.
- (b) The Declarant shall have no obligation to pay Assessments as the Owner of a Unit until such Unit is substantially complete.

2.9 Bedrooms and Conversion of Living Space. No Unit shall contain more than two (2) bedrooms. Upon the construction of a Unit, no unheated living space shall be converted to heated space; provided, that unfinished basements may be converted into finished living space. Upon the completion of a Unit, no additions or changes to the footprints of a Unit shall occur and no decks or porches which were unheated living space shall be converted into heated living space.

2.10 Compliance with Local Ordinances and Approvals. Without limitation to the provisions of Section 2.9 above, the Condominium shall be constructed and maintained in compliance with the ordinances of the Town of Amherst (including the Zoning Ordinance and the subdivision and site plan regulations) and the approvals granted for the Condominium by the Amherst Zoning Board of Adjustment and Amherst Planning Board on November 19, 2002 and June 18, 2003, respectively.

ARTICLE 3

EXTENT OF OWNERSHIP AND POSSESSION BY OWNER

- 3.1 Subject to the provisions of this Declaration, each Owner shall be entitled to the exclusive ownership and possession of his Unit.
- 3.2 Each Owner shall own an undivided interest in the Common Area as set forth in **Exhibit D**. Each Owner's undivided interest is arrived at by dividing each Unit by the total number of Units then in the Condominium. In the event that additional Units are constructed on the Convertible Land, then by operation of law, each Owner's undivided interest in the Common Area shall decrease to a percentage equal one Unit divided by the total number of all Units then in the Condominium after creation of each additional Units. No such interest shall be altered in a manner which is contrary to the provisions of the Act, as amended from time to time, and no such interest shall be separated from the Unit to which it appertains, it being deemed to be conveyed or encumbered with the Unit even though it is not expressly mentioned or described in the instrument of conveyance or encumbrance. Subject to the provisions of this Declaration, each Owner may use the Common Area, excepting Limited Common Area, in accordance with the purposes for which it is intended, so long as he or she does not hinder or encroach upon the lawful rights of the other Owners or otherwise violate the provisions hereof or of any Regulations adopted pursuant to said provisions.
- 3.3 Subject to the provisions of this Declaration, each Owner shall be entitled to the exclusive use of the Limited Common Area appurtenant to his or her Unit. Certain Limited Common Area may consist of components of common walkways and/or common driveways servicing two (2) or more Units. The Owners of such Units shall each be entitled to use of that Limited Common Area and shall be equally responsible for the maintenance, repair and replacement of the same. No obstructions or parked vehicles shall be placed in any such common driveway which would prohibit the common use of the other Owner whose Unit is serviced thereby. The exclusive use of the Limited Common Area shall not be altered without the consent of all the Owners expressed in an Amendment to the Declaration duly recorded and, without such unanimous consent, shall not be separated from the Unit to which it is appurtenant, it being deemed to be conveyed or encumbered with the Unit even though it is not expressly mentioned or described in the instrument of conveyance or encumbrance.

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ARTICLE 4

MAINTENANCE AND REPAIRS

4.1 Owners' Obligation to Repair and Maintain.

- (a) Each Owner shall, at his own expense, keep his Unit (including its utility systems, equipment, appurtenances) and other improvements in good order, condition and repair; provided, that the Association (by and through the Board of Directors) may plow, sand and maintain the walkways and driveways and maintain certain elements of the septic tanks, and may establish reserves therefor, all as provided in Article V, Section 4 of the Bylaws. In addition to keeping the Unit in good repair, each Owner shall be responsible for the maintenance, repair and replacement, of the roofs, windows, doors, exterior walls, siding, decks, porches, foundation and other exterior elements and improvements of the Unit.
- (b) Each Owner shall also, at his or her own expense, keep the Limited Common Area appurtenant to his or her Unit in a neat and orderly condition, and shall make all repairs and replacements thereto. With respect to Limited Common Area appurtenant to two (2) or more Units, the Owners of such Units shall at their own expense (jointly and severally) keep such Limited Common Area in a neat and orderly condition, and shall make all repairs and replacements thereto. In the event an Owner or Owners fail(s) to maintain, replace or repair the exterior of his or their Units or the Limited Common Area appurtenant thereto, after thirty (30) days written notice of the need for the same is given to him or them by the Board, the Board may enter and undertake such maintenance, replacements or repairs, the expense of which shall be borne by the Owner(s) of said Unit(s). No Owner shall permit any repair or other work upon his Unit or the Limited Common Area appurtenant thereto, by any one unless such person or entity has furnished written evidence that it has obtained reasonably adequate public liability and workers' compensation insurance in forms and amounts which are satisfactorily to the Board, and unless such repair or other work is performed in compliance with applicable governmental laws, ordinances, rules and regulations.

4.2 Prohibition against Structural Changes by Owner. No Owner shall, without first satisfying the requirements regarding repair or other work contemplated in Section 4.1 above, and in addition, obtaining written consent of the Board:

- (i) Make or permit to be made any structural alteration, improvement or addition in or to his Unit or in or to any part of the Condominium;
- (ii) Undertake any action which would impair the structural integrity, soundness, or safety of his Unit or other structure in the Condominium;

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- (iii) Impair any easement or personal property which is a part of the Condominium; or
- (iv) Paint or decorate the exterior of his Unit in violation of the provisions of this Declaration.

Notwithstanding the foregoing, no such work shall violate the restrictions of Sections 2.9 or 2.10 above.

- 4.3 Entry for Repairs, etc. The Association shall have the irrevocable right, to be reasonably exercised by the Board or its agent, to enter any Unit or Limited Common Area to inspect the same, to remove violations therefrom and to perform any repair, maintenance or replacement work for which the Board is responsible or relative to which the Board may undertake, and shall have the irrevocable right, to be reasonably exercised by the Board or its agents, in an emergency situation, to enter any Unit or Limited Common Area for the purpose of making emergency repairs necessary to prevent damage to other parts of the Condominium.

ARTICLE 5

ALTERATIONS

- 5.1 Alterations Within Units. Subject to the notification requirements of Section 4.1(b) above and the restrictions of Sections 2.9 and 2.10 above, an Owner may make alterations, additions, and improvements within his Unit which do not violate this Article, including moving, removing, altering, or adding to interior non-load bearing walls and partitions, provided that no such alteration, addition, or improvement may affect the structural elements or integrity of any structure without the prior written consent by the Board.

ARTICLE 6

INSURANCE AND VOTING IN THE EVENT OF DAMAGE OR DESTRUCTION

- 6.1 Purchase of Insurance.
- (a) The Association shall obtain and maintain in force insurances covering the Condominium and all insurable improvements therein, of the types and the amounts hereinafter set forth, for the benefit of the Association, all Owners, and their respective Institutional Lenders, as their interests may appear. The premiums for such coverage and other expenses in connection with such insurance shall be assessed against Owners as part of the Common Expenses.

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- (b) Notwithstanding the provisions of subparagraph (a) above, if independent policies of insurance for fire, with extended coverage and other risks, are reasonably commercially available to be purchased by the Owners for their respective Units, then the Board may require that the Owners obtain individual policies of insurance for each Unit, in a form analogous to single family homeowner's insurance coverage, the amount of such coverage to be at least the replacement cost of the Unit.
- (c) The Board may make appropriate arrangements with such insurers for determination as to whom loss payable shall be made with respect to any such policies, including loss being made payable to the Association.

6.2

Coverage.

Subject to and in accordance with the provisions of Section 6.1 above, the Association, by and through the Board, shall obtain and maintain, the extent obtainable on a commercially reasonable basis, the following insurance:

- (a) Casualty. Casualty insurance for the Units and all buildings, improvements, and structures which are included in the Condominium, including buildings, improvements, and structures in the Common Area and the Limited Common Area, and all personal property in the Common Area, and all fixtures, machinery, equipment, and supplies maintained for the service of the Condominium, and all fixtures, improvements, alterations, and equipment within any individual Units, in an amount equal to the full replacement cost thereof (unless one hundred percent (100%) of the insurable value is less), all as determined annually by the Board of Directors. Such coverage shall afford protection against:
 - (i) Loss or damage by fire and other hazards normally covered by a standard extended coverage endorsement; and
 - (ii) All such other risks and perils as from time to time the Board determines and which is customarily covered with respect to use as the buildings included in the Condominium, including but not limited to, vandalism and malicious mischief and risks covered by "all risk" coverage.
- (b) Public Liability. Public liability insurance in such amounts as the Board may, from time to time determine, insuring such persons or entities as the Board determines, which may include the Association, the Board and each of its members, and the Manager. Such insurance shall provide coverage:
 - (i) Of not less than Five Hundred Thousand Dollars (\$500,000.00) for injury to or death of one person; not less than One Million Dollars

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(\$1,000,000.00) for injury to or death of more than one person in the same occurrence; and not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) for damage to property; or

- (ii) A single limit policy in the amount of One Million Dollars (\$1,000,000.00); or
- (iii) Such greater coverage as may, from time to time, be required in order to qualify for FHLMC and FNMA underwriting.

Such insurance shall provide cross liability coverage with respect to liability claims of any one insured thereunder against any other insured thereunder, or against all other insureds thereunder as a group, but shall not insure against the individual liability of an Owner for negligence occurring within his or her Unit or his or her Limited Common Area.

- (c) Workers' Compensation. Workers' compensation insurance, as and if required by law.
- (d) Other Insurance. The Association, by and through the Board, may also procure and maintain:
 - (i) Insurance upon owned and non-owned motor vehicles;
 - (ii) Insurance as may required by New Hampshire RSA 356-B;
 - (iii) Flood insurance;
 - (iv) Fidelity bond coverage;
 - (v) Employer liability insurance; and
 - (vi) Such other insurance as the Board of Directors shall determine from time to time to be desirable.

6.3

General Insurance Provisions.

- (a) The Board shall deal with the insurer or insurance agent in connection with the adjusting of all claims under insurance policies provided for under this Article (except for individual policies covering a Unit of which the Owner and his mortgagee are the sole insureds) and shall review with the insurer or insurance agent, at least annually, the coverage under said policies, said review may include an appraisal of the improvements within the Condominium, and shall make any necessary changes in the policy(ies) provided for hereunder (prior to the expiration date set forth in

any agreed amount endorsement contained in said policy) in order to meet the coverage requirements of this Article.

- (b) The Board shall use its best efforts within the constraints of commercial reasonableness, to see that all policies of physical damage insurance provided for under this Article:
 - (i) shall contain waivers of subrogation by the insurer as to claims against the Association, its employees and agents, members of the Board, the Manager, Owners and members of the family of any Owner who reside with said Owner, except in cases of arson and fraud;
 - (ii) shall contain a waiver of defense of invalidity or prejudice on account of the conduct of any of the Owners over which the Association has "no control";
 - (iii) shall provide that such policies may not be canceled or substantially modified without at least ten (10) days written notice to all of the insureds thereunder and all mortgagees of Units in the Condominium;
 - (iv) 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; and
 - (v) shall exclude policies obtained by individual Owners for consideration under any "no other insurance" clause.

6.4 Individual Policies. Any Owner and any mortgagee may obtain at his or her own expense additional insurance (including a "unit-owner's endorsement" for improvements and betterment to a Unit made or acquired at the expense of the Owner). Such insurance should contain the same waiver of subrogation provision as that set forth in Section 6.4(b).

- (a) Each Owner may obtain additional insurance for his or her own benefit and at his or her own expense. No such policy shall be written so as to decrease the coverage under any of the policies obtained by the Board hereunder, 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 Association.

- (b) Each Owner should obtain insurance for his or her own benefit and at his or her own expense insuring all personal property presently or hereafter located in his or her Unit or Limited Common Area;
- (c) Each Owner (except the Declarant), prior to commencement of construction of improvements to Unit, shall notify the Board (and obtain the permission of the Board, as otherwise required in this Declaration) of all improvements to the Unit (except personal property other than fixtures) which exceed a total value of Five Thousand Dollars (\$5,000.00);
- (d) Each Owner shall obtain liability insurance with respect to his or her ownership and/or use of his or her Unit.

6.5

Action Following Casualty Damage.

- (a) In the event of damage to any portion of the Condominium by fire or other casualty, if a master casualty policy of insurance is in place, the proceeds therefrom shall, pursuant to the Act, be used to repair, replace, restore the Unit(s), structure(s) or the Common Area damaged, unless the Owners, to the extent permitted by the Act and this Declaration, vote not to repair, replace or restore the same, or vote to terminate the Condominium pursuant to the Act.
- (b) In the event individual policies of insurance have been procured by the Owners with respect to their Units, then in the event of damage to any such Unit(s) by fire or other casualty, the proceeds of such policies shall be used to repair, replace and restore the Unit(s) and related improvements.
- (c) The Board of Directors is hereby irrevocably appointed the agent and attorney-in-fact for each Owner, for each mortgagee of a Unit, and for each Owner of any other interest in the Condominium to adjust all claims resulting from such damage and to deliver releases upon the payment of claims.
- (d) Notwithstanding any other provisions of this Declaration or the Bylaws, in the event of casualty to a particular Unit or Units, if the insurance proceeds available for the repair or reconstruction thereof are insufficient, then the Board of Directors may elect not to repair or reconstruct such Unit or Units (and demolish and remove the same) unless the affected Owner(s) provide the Association upon the Board of Directors' demand sufficient funds necessary to undertake and complete such repairs and reconstruction.

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ARTICLE 7

ASSESSMENTS

- 7.1 Power to Fix and Determine. The Association, through the Board of Directors, shall have the power to fix and determine from time to time the sum or sums necessary and adequate to provide for the Common Expenses of the Condominium and such other fees and charges as are specifically provided for in the Declaration and the Exhibits attached hereto and the Bylaws. The procedure for the determination of all such Assessments shall be as set forth in this Declaration and Bylaws and the other Exhibits attached hereto.
- 7.2 Owner's Obligation to Pay Assessments. Each Owner shall pay all Common Expenses assessed against him and all other Assessments and charges made against him by the Board of Directors pursuant to the Declaration or Bylaws. Any Owner having executed a contract for the disposition of his Unit, shall be entitled, upon written request to the President, Treasurer or Secretary of the Association, or the Manager, and payment of a fee which shall be fixed by the Board of Directors but which shall not exceed Ten Dollars (\$10.00) or the largest amount allowed by the Act, whichever is greater, to a recordable statement setting forth the amount of unpaid Assessments currently outstanding against that Unit. Such statement setting forth the amount of unpaid Assessments shall be binding upon the Association, the Board of Directors and every Owner. A purchaser of a Unit shall be liable for the payment of any such expenses or Assessments against the Unit prior to its acquisition by him which are unpaid as of the time of such acquisition, whether or not such expenses or Assessments are then due, except that a Institutional Lender which holds a first mortgage of the Unit, which purchases the Unit at a foreclosure sale of such mortgage, or such other purchaser at any foreclosure sale of such first mortgage, or sale in lieu of foreclosure, shall not be liable for the payment of expenses or Assessment unpaid and due as of the time of such foreclosure sale or conveyance by deed in lieu of foreclosure, but shall be liable for all unpaid expenses and assessments which become due on and after the date of such foreclosure sale or conveyance, whichever is earlier.
- 7.3 Unpaid Assessments. Assessments for Common Expenses, maintenance fees and other fees and charges that are unpaid for over ten (10) days after due date shall bear interest at the rate of eighteen percent (18%) per annum (or such other rate as the Board of Directors may determine) provided said interest rate does not violate any then applicable usury statute or regulations (in which case said interest rate shall automatically be reduced to the then highest permitted rate) from due date until paid, and in addition and at the sole discretion of the Board of Directors, a late charge to be determined by the Directors of the Association but which shall not exceed any limits imposed by the Act and which shall initially be twenty-five Dollars (\$25.00) shall be due and payable. Regular Assessments shall be due and payable monthly on the first day of each calendar month, or such other period as the Board establishes. A purchaser of a Unit other than a purchaser at a

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foreclosure sale or a purchaser at a sale in lieu of foreclosure, shall be liable for the payment of any Assessments against such Unit which are unpaid at the time of such purchase.

7.4

Lien for Unpaid Assessments.

- (a) The Association shall have a lien upon each Unit for unpaid Assessments, together with interest thereon, against the Owner thereof. Expenses incurred by the Association, including reasonable attorney's fees, incident to the collection of such Assessments or the enforcement of such lien, together with all sums advanced and paid by the Association for taxes and payments on account of superior mortgages, liens or encumbrances which may be required to be advanced by the Association, in order to preserve and protect its lien, shall be payable by the Owner and secured by such lien. The Board of Directors may take such action as it deems necessary to collect Assessments by personal action or by enforcing and foreclosing said lien, and may settle and compromise the same if deemed in the best interests of the Association. Said lien shall be effective as and in the manner provided for by the Act, and shall have the priorities established by the Act. The Association shall be entitled to bid at any sale held pursuant to foreclosure of a lien for unpaid Assessments, and to apply as cash credit against its bid, all sums due, as provided herein, and covered by the lien being enforced. In connection with any such foreclosure, the Owner shall be required to pay a reasonable rental for the Unit for the period of time said Unit is occupied by the Owner or anyone by, through or under said Owner, while such foreclosure proceeding is pending;
- (b) In the event an Institutional Lender, or other purchaser of a Unit, obtains title to such Unit as a result of foreclosure by the Institutional Lender, or if an Institutional lender accepts a deed to such Unit in lieu of foreclosure, the person or entity so acquiring title shall not be liable for any Assessments by the Association pertaining to such Unit, or chargeable to the former Owner which became due prior to acquisition of title as a result of the foreclosure. Such unpaid Assessments shall be deemed to be Common Expenses collectible from all of the Owners including the person or entity acquiring title;
- (c) No person who acquires an interest in a Unit, except through foreclosures by an Institutional Lender, or the acceptance by an Institutional Lender of a deed in lieu of foreclosure (including, without limitation, persons acquiring title by operation of law, including purchasers at judicial sales), as contemplated in Section 7.2 above, shall be entitled to occupancy of the Unit or enjoyment of the Common Area until such time as all unpaid Assessments due and owing by the former Owner have been paid. The Association shall have the right to assign its claim for the recovery of any

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unpaid Assessments to the Declarant, or to any Owner or group of Owners or to any third party; and

- (d) All such liens shall be subordinate to any first mortgage of a Unit held by an Institutional Lender.

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

ARTICLE 8

ADMINISTRATION, MANAGEMENT AND MAINTENANCE OF COMMON AREA

8.1 Administration. The administration of the Condominium shall be governed by the Association, by and through the Board, except for those matters which are exclusively within the province of the Members of the Association, as established in this Declaration or by Bylaws, as either or both may be amended from time to time. The membership of the Association shall consist of all the Owners, with such membership interest being as established in the Articles of Agreement of the Association. Without limitation to the foregoing, the Association, by and through the Board, may undertake all aspects of the management and administration of the Condominium, including the management and maintenance of Common Area, undertaking capital improvements, the enforcement of the Elderly Housing Covenants set forth in Article 15 hereof, and all other powers and duties granted an association of condominium unit owners under New Hampshire law.

8.2 Management Contract. The Board of Directors, acting on behalf of the Association, may enter into a management agreement with any firm, person or corporation, or may join with other condominium associations and entities in a joint management agreement, for the management of the Condominium and its maintenance and repair, and may delegate to the Manager all the powers and duties of the Association, except such as are specifically required by the Declaration, or by the Bylaws, or as may otherwise be required by the Act, to have the approval of or be solely exercised by the Board of Directors or the membership of the Association. The Manager may be authorized to recommend to the Board a budget and make and collect on behalf of the Association Assessments for Common Expenses as provided by the Declaration, Bylaws and appendices to the Declaration.

8.3 Rules and Regulations. The Board is empowered to adopt and amend, from time to time, Rules and Regulations concerning the use of the Condominium and various parts thereof. Without limitation to the foregoing, the Board may amend,

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from time to time, the Rules and Regulations adopted simultaneously with the execution of this Declaration.

- 8.4 Consent and Withdrawal. Any consent(s) granted by the Board may be withdrawn by the Board, from time to time, whenever it deems such withdrawal to be in the best interests of the Condominium.
- 8.5 Waiver. The failure of the Board to insist, in any instance, upon the strict performance of any of the terms, covenants, conditions, or restrictions of this Declaration or of the Bylaws or to exercise any right herein or therein contained, or to serve any notice or to institute any action shall not be construed as a waiver or a relinquishment in the future of such term, covenant, condition, restriction, or right shall remain in full force and effect. The receipt by the Board of payment of any Assessment from an 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.
- 8.6 Persons to Receive Service of Process. In addition to any method of service of process set forth in Section 68 of the Act, Kevin Slattery, with a business address of 179 Amherst Street, Nashua, New Hampshire 03064, shall be a person to receive process in connection with any matter involving the Declarant. With respect to matters involving the Association, the Manager, if any, and any member of the Board whose residence is at the Condominium, shall be a person to receive service of process in accordance with the Act with respect to matters involving the Association.
- 8.7 Liability of the Board. The members of the Board shall not be liable to the Owners for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct, or bad faith and except as provided for below. The Owners shall indemnify and hold harmless each of the members of the Board against all contractual liability to others arising out of contracts made by the Board on behalf of the Condominium unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or of the Bylaws. It is permissible for the members of the Board, who are directors or officers of the Declarant, to contract with the Declarant and affiliated corporations without being charged with self-dealing during the period in which the Declarant is in control of the Board. It is intended that the members of the Board shall have no personal liability, other than as Owners, with respect to any contract made by them on behalf of the Association, except with respect to any such contract made in bad faith or contrary to the provisions of the Declaration or of the Bylaws. It is also intended that the personal liability of each Owner arising out of any contract made by the Board or out of the aforesaid indemnity in favor of the members of the Board shall be limited to such proportion of the total liability thereunder as his or her interest in the Common Area bears to the interests of all the Owners in the Common Area (except that the personal liability of Owner who are members of

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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 Owners against the Board or any other insured under the liability insurance contemplated by this Declaration.

8.8 Renewal of Management or Other Agreement. If entered into during the period of control by the Declarant, no management agreement, or any other contract or lease executed by or on behalf of the Association, its Board of Directors or the Owners as a group shall be binding after such period of control unless then renewed or ratified with the consent of Owners of Units to which a majority of the votes in the Association appertain.

8.9 Maintenance of Common Area. As authorized under New Hampshire law, and as more further detailed in the By-laws (including Article V, Section 4) and throughout this Declaration, the Association shall maintain, replace and repair all elements of the Common Area (except for those components of Limited Common Area to be maintained by the particular Owner(s) of a particular Unit), including, without limitation, the roadways, fire hydrants, Community Center, irrigation system, grounds (including lawns, shrubbery and other vegetation) and septic tanks, pipes and leach fields. Without limitation to the foregoing, the costs and fees, including rental fees for hydrants, shall be borne by the Association as a Common Expense.

ARTICLE 9

EASEMENTS

9.1 Easement to Construct. The Declarant hereby reserves a transferable easement over, through, under and on the Common Area of the Condominium for the purpose of constructing the additional Units and structures on any portions of the Convertible Land, together with any other improvements, including roadways, walkways, utility systems and appurtenances and other improvements of any kind or nature relating to or desirable for the development of the Condominium.

9.2 Utility Easements. The Declarant also expressly reserves the right to grant utility easements (if necessary) within the Common Area of the Condominium for the purpose of connecting the structures to underground and above-ground utilities for the benefit of any or all of the respective Owners of the Condominium. All such easements do hereby take precedence over the Owners' rights and title in and to the Units and the Common Area. Upon the expiration of last of the Declarant's rights to convert and expand under this Declaration, this reservation shall automatically pass and evolve to the Association to be exercised by its Board of Directors.

- 9.3 Easements for Support and Encroachments. The Declarant hereby establishes easements appurtenant to each Unit for structural support in connection with those elements of a particular Unit which require the other Unit for their support. The Declarant also recognizes and establishes easements for encroachments appurtenant to each Unit in accordance with the terms of RSA 356-B:22.
- 9.4 Easement to Facilitate Completion and Sales. Without limitation to any other easements reserved by the Declarant hereunder, the Declarant further expressly reserves the right to make reasonable use of the Condominium as may facilitate the completion of construction of Units and Common Area (including all improvements relating thereto) and such sale and conveyance, including without limitation, the right to enter all Units and Common Area for construction purposes and the right to store materials upon the Common Area, the right to maintain a sales office and rental office, and the showing of property and the displaying of signs.
- 9.5 Common Area Easements. The Association shall have the power and right to grant reasonable, non-exclusive permits, licenses, and easements over the Common Area for utilities, roads and other purposes necessary for the proper operation of the Condominium.
- 9.6 Particular Utility Easements. The Declarant hereby establishes and grants for the benefit of each Unit, an easement in favor of each Unit over, upon and under any Limited Common Area and in each other Unit to use, install, maintain, replace and repair utility system components servicing the benefited Unit.

ARTICLE 10

CONVERSION OF CONVERTIBLE LAND

- 10.1 Option to Convert. The Declarant for itself and its successors in interest and assigns hereby expressly reserves the right, at its sole option, for a period of five (5) years from the date of recording of this Declaration to create additional Units and Limited Common Area on all or any part of the Convertible Land and to construct certain permitted amenities such as community center, nature trails, and similar amenities, which right shall be exercised by Amendment to this Declaration and the Bylaws (if necessary) executed by the Declarant alone in the manner provided by this Declaration and the Act. The consent of Owners and mortgagees of Units shall not be required in connection with the exercise of the option. The Declarant may at any time during such five (5) year period, upon compliance with the Act, amend this provision to extend such time for conversion.
- 10.2 Right to Mortgage. The Declarant reserves the right to mortgage or cause a deed of trust to be placed on all or any portion of its interest in the Convertible Land for the purpose of financing construction thereon or other lawful purpose, and

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until discharge, any such mortgage or deed of trust shall have priority over the interest of Owners and any such portion of the Convertible Land which may be added to the Condominium.

- 10.3 Legal Description. A legal description by metes and bounds of the Convertible Land is appended hereto as **Exhibit A-1**. Portions of the Convertible Land may be converted at different times, in any order.
- 10.4 Other Improvements. Improvements consisting of Units, walkways, roads, parking areas, trails, landscaping, utility services and like improvements are contemplated for that portion of the Convertible Land converted.
- 10.5 Maximum Number of Units. A maximum of fifty-six (56) Units may be created on the Convertible Land.
- 10.6 Restrictions on Use. The additional Units therein shall be restricted exclusively to the use(s) set forth in Section 2.7 above and subject to the provisions of Article 15 hereof.
- 10.7 Construction of Compatible Quality Structures. It is hereby assured that the structures erected on the Convertible Land will be generally compatible with the structures on the other portions of the Submitted Land in terms of quality of construction.
- 10.8 Other Improvements on Convertible Land. In addition to the Units which may be constructed on the Convertible Land, roadway(s), driveway(s), walkway(s), other elements of Limited Common Area, the Community Center and related improvements may be constructed on or upon the Convertible Land.
- 10.9 Construction of Additional Units. The Units which may be created on any portion of the Convertible Land will be substantially identical to the Units on other portions of the Submitted Land, recognizing that the Units to be created on the Submitted Land may be of differing types or styles, or the mirror images or variations thereof.
- 10.10 Right to Create Limited Common Area. The Declarant reserves the right, exercisable in its sole discretion, to create Limited Common Area within portions of the Convertible Land and/or to designate the Common Area therein which may be subsequently assigned as Limited Common Area, but there is no assurance with respect to the types, sizes, and maximum number of such areas within each such portion of the Convertible Land converted, or that it will be similar to the Limited Common Area appurtenant to Units on other portions of the Submitted Land.
- 10.11 No Limitations on Option. There are no limitations on the option to convert, except as expressly provided in this Article or in the Act. No consent of any

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Owner or mortgagee of a Unit shall be required in connection with the exercise of such option.

10.12 Re-allocation of Interest in the Common Area. Upon the creation of additional Units on the Convertible Land the interests of all Owners in the Common Area shall be re-allocated in accordance with Section 3.2 above and in accordance with the Act. The Declarant shall record site plan(s) depicting the Units and Limited Common Area, together with Amendment(s) to the Declaration, from time to time, re-allocating undivided interests in the Common Area.

10.13 Planning Board Approval. Any exercise by the Declarant of the right to create additional Units and Limited Common Area on the Convertible Land is expressly subject to all necessary municipal approvals that must be obtained from the Town of Amherst Planning Board for site plan and/or subdivision approval or modification of approvals.

ARTICLE 11

EXPANSION OF THE CONDOMINIUM

11.1 Right to Expand. The Declarant hereby expressly declines any reservation of the right to expand the Condominium.

ARTICLE 12

OPTION TO CONTRACT

12.1 Option to Contract. The Declarant hereby expressly declines any reservation of the rights to withdraw any part of the "Submitted Land" from this Declaration or the Condominium and has, therefore, not created any withdrawable land within the Condominium.

ARTICLE 13

TERMINATION OF CONDOMINIUM

13.1 Termination Prior to Conveyance of a Unit. Prior to the conveyance of a Unit to an Owner other than the Declarant, the Condominium may be terminated at any time by an instrument in writing signed by the Declarant.

13.2 Termination After Conveyance of a Unit.

- (a) Required Vote. Subsequent to the conveyance of a Unit to an owner other than the Declarant, the Condominium may be terminated only by an instrument in writing approved and agreed to by Owners of Units to which four-fifths (4/5) of the voting power in the Association appertain.

(b) Effect of Termination. If the Association votes to terminate the Condominium at any time or for any reason, then upon the recording of an instrument terminating the Condominium all of the property constituting the same shall be owned by the Owners as tenants-in-common in proportion to their respective undivided interests in the Common Area immediately prior to such recordation. As long as such tenancy-in-common lasts, each Owner and their respective heirs, successors, and assigns shall have an exclusive right of occupancy of that portion of the Condominium property which formerly constituted his Unit.

13.3 Recording Required. No termination of the Condominium shall become effective until an instrument reciting the fact of such termination shall be recorded at the Hillsborough County Registry of Deeds. After the conveyance of a Unit to an Owner other than the Declarant, such instrument shall either:

(a) be signed by Owners holding the requisite voting power for its adoption; or

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

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

13.5 Planning Board Approval. Any exercise of the right to terminate the Condominium pursuant to this Article 13 is expressly subject to all necessary municipal approvals that must be obtained from the Town of Amherst Planning Board for site plan and/or subdivision approval or modification of approvals.

ARTICLE 14

AMENDMENT OF CONDOMINIUM INSTRUMENTS

14.1 Amendment Prior to Conveyance of a Unit. Prior to the conveyance of any Unit to an Owner other than the Declarant, the Condominium Instruments may be

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amended at any time and from time to time by an instrument in writing signed and recorded by the Declarant.

14.2

Amendment After Conveyance of a Unit. Subsequent to the conveyance of a Unit to an Owner other than the Declarant, and except as provided in Articles 10 and 17 hereof and Section 14.5 below, the Condominium Instruments may be amended only by an instrument in writing approved and agreed to by Owners of Units to which two-thirds (2/3) of the voting power in the Association appertain, provided that:

- (a) No instrument of amendment which alters the dimensions of any Unit shall be of any force or effect unless the same has been signed by the Owner(s) and any Institutional Lender of record of the Unit so altered;
- (b) Except as contemplated by Section 3.2 above, no instrument of amendment which alters the percentage of undivided interest in the Common Area, the liability for Common Expenses, the rights to Common Profits, or the voting rights in the Association appurtenant to any Unit shall be of any force or effect unless the same is permitted or required by the Condominium Instruments, is consistent with the applicable provisions of the Act and, except as contemplated in Section 3.2 above, has been approved and agreed to by all the Owners and any Institutional Lenders of record of the Units affected thereby;
- (c) No instrument of amendment which purports to affect (i) the Declarant's reserved rights of control set forth in Article 17 hereof or (ii) the Declarant's reserved rights and easements set forth in this Declaration shall be of any force and effect unless it is assented to in writing by the Declarant, and this assent is recorded in such Amendment at the Hillsborough County Registry of Deeds;
- (d) No instrument of amendment which would adversely affect the Declarant's right and ability to develop and/or market the Condominium shall be of any force or effect unless it is assented to in writing by the Declarant, and this assent is recorded with such amendment at the Hillsborough County Registry of Deeds; and
- (e) The Declarant shall not be required to obtain the consent of any Owner, or any mortgagee of a Unit to any instrument or amendment of the Declaration, or any other of the Condominium Instruments for the Declarant to create Units on the Convertible Land.

14.3

Mortgagee Consent. Subsequent to the conveyance of a Unit to an Owner other than the Declarant, the prior written approval of the first mortgagees of Units to which sixty-seven percent (67%) of the voting power in the Association

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appertains shall be required in order to adopt any amendment to any or all of the Condominium Instruments which amendment would have the effect of altering:

- (a) The voting rights of the Owners in the Association, except as permitted or contemplated in Section 3.2 thereof;
- (b) The manner of assessing Common Expenses, assessment liens or subordination of assessment liens;
- (c) The requirement of the Association reserves for replacement, maintenance, and repair of the Common Area;
- (d) The terms of the Condominium Instruments relating to responsibility for maintenance and repair of the Units, the Common Area or the Limited Common Area;
- (e) The terms of the Condominium Instruments relating to the conversion of the Units in the Common Area;
- (f) The terms of the Condominium Instruments relating to the creation of additional Units on the Convertible Land; provided, that the Declarant shall not be required to obtain the consent of any Owner or any mortgagee of a Unit to any instrument of amendment of the Declaration, or any other of the Condominium Instruments, which is necessary in order for the Declarant to create Units on the Convertible Land in order for the Declarant to exercise its rights to do the same under this Declaration;
- (g) The terms of the Condominium Instruments relating to the insurance or fidelity bonds to be provided by the Association;
- (h) The terms of the Condominium Instruments stating which Units and under what conditions Units may be leased;
- (i) The terms of the Condominium Instruments relating to or adding restrictions to an Owner's right to sell or transfer his or her Unit;
- (j) Any terms of the Condominium Instruments that expressly benefit mortgage holders, insurers or guarantors;
- (k) The terms of the Condominium Instruments provided for the restoration or repair of property after a hazard, damage or partial condemnation; or
- (l) Any term of the Condominium Instruments relating to terminating the Condominium's legal status after substantial destruction or condemnation occurs.

- 14.4 Recording Required. No amendment to the Condominium Instruments shall become effective until an instrument setting it forth in full shall be recorded at the Hillsborough County Registry of Deeds. After the conveyance of a Unit to an Owner other than the Declarant, such instrument shall either:
- (a) be signed by Owners holding the requisite voting power for its adoption; or
 - (b) be signed by the President and Treasurer of the Association, in which case it shall be accompanied by a certification of vote by the Secretary of the Association which shall recite that the consent and approval of the Owners required for its adoption has been obtained. Such instrument, as so executed and recorded, shall be conclusive evidence of the existence of all facts recited therein and of compliance with all prerequisites to the validity of such amendment in favor of all persons who rely thereon without actual knowledge that such facts are not true or such amendment is not valid.
- 14.5 Corrective Amendments. The Declarant reserves the right to itself and its successors in interest to amend the Condominium Instruments at any time, without the consent of any Owners or mortgagees of Units, but only to:
- (a) correct typographical errors; or
 - (b) to bring the Condominium Instruments in compliance with New Hampshire RSA 356-B; or
 - (c) to conform the Condominium Instruments to the FNMA and/or FHLMC underwriting requirements.
- 14.6 Planning Board Approval. Notwithstanding the foregoing, and notwithstanding the provisions of Article 17, no amendment to Sections 2.9, 3.2, 10.12, 13.5 or Article 15, and to this Section 14.6, shall be permitted without the written approval (or written waiver of approval) by the Town of Amherst Planning Board or its designated agent.
- 14.7 No Amendments to be Inconsistent with Regulations and Approvals. Notwithstanding any other provisions of this Declaration (including the By-Laws), no amendment to the Declaration or the By-laws may be made by the Declarant or the Association which is inconsistent with the land use ordinances of the Town of Amherst (including the Zoning Ordinance and the subdivision and site plan regulations) nor inconsistent with the approvals for the Condominium issued by the Amherst Zoning Board of Adjustment and the Amherst Planning Board on November 19, 2002 and June 18, 2003, respectively, nor shall any such amendments be inconsistent with the requirements for so-called housing for older persons under applicable federal and state law or the requirements for so-called

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elderly housing under the applicable provisions of the Amherst Zoning Ordinance.

ARTICLE 15

ELDERLY HOUSING COVENANTS

In order to assure compliance with the Amherst Zoning Ordinance and the site plan approval issued by the Amherst Planning Board for the Condominium for elderly housing, the following covenants are hereby adopted by the Declarant, and shall bind the Declarant and each and every Owner of the Unit:

- 15.1 The Condominium obtained site plan approval from the Amherst Planning Board on June 18, 2003 in accordance with the so-called elderly housing provisions of the Amherst Zoning Ordinance.
- 15.2 The Condominium is being established and shall be maintained in compliance with 42 USC § 3601, et seq and RSA 354-A:15, III and related regulations, all as amended (55 or older housing).
- 15.3 In accordance with the requirements referenced in Section 15.2 above, during the period it kept the right to designate the members of the Board of Directors of the Association (pursuant to Article III, Section 3 of the By-laws), the Declarant shall cause the Condominium to be in compliance with the requirements of Section 15.2 above. In connection therewith, the Declarant shall establish significant facilities and services as such may be required under regulations duly adopted by the New Hampshire Human Rights Commission pursuant to RSA Ch. 354-A from time to time, and shall construct the Community Center which may be used in conjunction with the provision of certain of such significant facilities and services.
- 15.4 After the Declarant relinquishes its right to designate the members of the Board of Directors of the Association, the Association shall cause the Condominium to remain in compliance with the requirements referenced in Section 15.2 above.
- 15.5 Units shall be occupied in accordance with the requirements of federal and state law, and related regulations, governing so-called 55 or older housing, specifically the laws and regulations referenced in Section 15.2 above. Recognizing that under current law up to twenty percent (20%) of Units need not have at least one occupant age 55 or older, so long as the Declarant owns a Unit or has the right to construct a Unit, the Declarant may designate such Unit(s) which need not have at least one occupant age 55 or older. Unless so designated by the Declarant at the closing of the sale of such Unit, each such Unit shall be occupied by at least one person age 55 or older and meet the age 55 and older occupancy requirements under the laws and regulations referenced in Section 15.2 above. This requirements of occupancy by at least one person age 55 or older under current

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law shall apply to all subsequent Owners, unless first exempted by the Declarant at the closing of the sale by the Declarant.

- 15.6 With respect to any conveyance or transfer of a Unit, including any conveyance or transfer by the Declarant, the prospective transferee(s) of the Unit shall execute and deliver to the Declarant and the Association affidavits confirming that (i) such transferee(s) will comply with the aforementioned age requirements set forth in this Article, (ii) is/are acquiring the Unit not with the intent to resale or transfer to someone who will not honor the age requirements and (iii) will ensure that during his or her period of ownership of the Unit, occupancy of the Unit will be in accordance with federal and state law governing so-called 55 or older housing.
- 15.7 From time to time as required by state and/or federal laws and regulations, but at least no less frequently than every two (2) years, the Association shall verify the ages of those individuals who occupy Units. Such verifications shall be in accordance with means required by state and/or federal laws and regulations, which may include surveys or other data gathering mechanisms. Owners and all occupants of Units shall cooperate with the Association with respect to such age verification efforts, including providing to the Association, from time to time, reliable information confirming their ages, which may include driver's licenses, birth certificates, passports, immigration cards, military identification, affidavits or other verifiable and reliable age verification information.
- 15.8 The Covenants and Restrictions set forth in this Article shall run to the benefit of the Declarant, the Association and each and every Owner, any of whom may enforce the same by proceedings at law or in equity, which proceedings may seek the remedies of specific performance and mandatory injunction. The full text of these provisions shall be included in each and every deed of a Unit.

ARTICLE 16

OPEN SPACE AND EMERGENCY ACCESS ROAD

- 16.1 Open Space. The Declarant on behalf of itself and its successors in interest and the Association covenant that open space or conservation areas shall forever be and remain subject to such reasonable rules and regulations as may from time to time be promulgated by the Board for its use.
- 16.2 100 Foot Buffer. The one hundred foot (100') buffer along Peacock Brook shall be maintained in its natural state, except for those improvements and modifications contemplated by the Site Plan.
- 16.3 Emergency Access Road. The Association shall maintain the emergency access road (a portion of Westgate Way) such that it is open for travel during all seasons.

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ARTICLE 17

DECLARANT'S RESERVED RIGHTS OF CONTROL
AND TO FILE SPECIAL AMENDMENTS

- 17.1 Rights Reserved. The Declarant reserves the right to appoint and remove some or all of the Officers of the Association, or its Board of Directors, or both, and may exercise the powers and responsibilities otherwise assigned by the Condominium Instruments to the Association, its Officers, or the Board of Directors; but only until the earlier of:
- (a) the expiration of three (3) years from the filing of the Declaration in the Hillsborough County Registry of Deeds; or
 - (b) the date upon which Units (including Units which may be created upon the Convertible Land) to which three-fourths (3/4) of the undivided interests in the Common Area appertain have been conveyed (including any Units which may be located on the Convertible Land); or
 - (c) the date the Declarant expressly waives or relinquishes such right.
- 17.2 Special Amendments. The Declarant reserves the right and power to create and record special amendment(s) ("Special Amendment(s)") to the Condominium Instruments at any time and from time to time which amends the Condominium Instruments:
- (a) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veterans Administration or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities. Such reserved right and power to create and record Special Amendments also includes the right to delete certain provisions of Section 14.3 and Article 20 hereof to the extent the same contain provisions which are not necessary to comply with the requirements of either FNMA or FHLMC;
 - (b) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Unit ownerships;
 - (c) to bring the Condominium Instruments into compliance with New Hampshire RSA 356-B;
 - (d) to correct clerical or typographical errors in any Amendment thereto. In furtherance of the foregoing, a power coupled with an interest is hereby

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reserved and granted to the Declarant to vote in favor of, make or consent to a Special Amendment on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation or other instrument affecting a Unit and the acceptance thereof, shall be deemed to be a grant and acknowledgement of, and a consent to the reservation of the power to the Declarant to vote in favor of, make, execute and record Special Amendments. The right of the Declarant to act pursuant to rights served or granted under this Section shall be automatically assigned by the Declarant to the Board of Directors of the Condominium at such time as the Declarant no longer holds or controls title to any Unit (or the right to establish a Unit upon the Convertible Land).

ARTICLE 18

PERSONAL PROPERTY

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

ARTICLE 19

CONSENT OF FIRST CONSTRUCTION MORTGAGEE

- 19.1 Consent. Notwithstanding any other provision of this Declaration, the Bylaws, or Regulations, so long as a mortgagee is the holder of a construction mortgage lien conveyed to it by the Declarant covering one or more of the Units, or other interest in the Condominium, and unless all construction mortgagees shall have given their approval, the Association and Board of Directors shall not be entitled to:
- (a) by act or omission, seek to abandon or terminate the Condominium;
 - (b) partition or subdivide any Unit;
 - (c) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area;
 - (d) use hazard insurance proceeds for losses to the property (whether to Units or to the Common Area) for other than the repair, replacement or

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reconstruction of such losses, except as provided by law in case of substantial loss to the Units and/or the Common Area.

- 19.2 No Limitation. This Article shall not apply to or in any way be construed as a limitation upon the right of the Declarant to create additional Units on the Convertible Land with the resulting change in the undivided percentage of interest allocated to existing Units pursuant to the provisions of the Act and of this Declaration.

ARTICLE 20

UNIT MORTGAGEE AND FNMA/FHLMC REQUIREMENTS

- 20.1 Prior Approval. Notwithstanding any other provision of this Declaration, the Bylaws, or Rules and Regulations, it shall require the prior written approval of two-thirds (2/3) of the mortgagees (based on one vote per first mortgagee) holding mortgages recorded in the Hillsborough County Registry of Deeds, constituting first liens on Units within the Condominium, and the Owners of such number of Units to which two-thirds (2/3) of the voting power in the Association appertains, in order for the Association or its Board of Directors to be entitled to:
- (a) by act or omission, seek to abandon or terminate the Condominium (and subject to the requirements of New Hampshire RSA 356-B:34 I and Section 13.2 hereof);
 - (b) partition or subdivide any Unit;
 - (c) by act or omission, seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Area;
 - (d) use hazard insurance proceeds for losses to the property (whether to Units or to the Common Area) for other than the repair, replacement or reconstruction of such losses, except as provided by law in case of substantial loss to the Units and/or the Common Area;
 - (e) change the percentage interest or obligations of any Unit in order to levy Assessments or charges, allocate distribution of hazard insurance proceeds or condemnation awards or re-determine the percentage of ownership of each Unit in the Common Area (except pursuant to New Hampshire RSA 356-B:23 and Section 3.2 of this Declaration). As used in this Section only, the word Owner shall not include the Declarant.
- 20.2 No Insurance Priority. No provision of this Declaration, the Bylaws, or the Regulations shall be construed to grant to any Owner, or to any other party, any priority over any rights of first mortgagees of the Units pursuant to their first

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mortgage in the case of the distribution to Owners of insurance proceeds or condemnation awards for losses to, or a taking of, Units and/or the Common Area or any portions thereof.

20.3 Notice. The Association shall notify, in writing, all holders, insurers, or guarantors of first mortgages in a Unit in the event:

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

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

20.4 Audited Financial Statements. Any mortgage holder may have an audited statement prepared of the Association's accounts at the mortgage holder's expense.

20.5 FNMA/FHLMC Compliance. 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 the Condominium for sale to the Federal Home Loan Mortgage Corporation (FHLMC) and to Federal National Mortgage Association (FNMA) under laws and regulations applicable thereto, to wit:

- (a) A first mortgage of a Unit shall, at the request of such mortgagee, be entitled to written notification from the Directors of any default by the mortgagor of such Unit in the performance of such mortgagor's obligations under his deed to his Unit and/or these Articles which is not cured within sixty (60) days;
- (b) Any first mortgagee of a Unit who obtains title to the Unit pursuant to the remedies provided in the mortgage, or foreclosure of the mortgage, or deed (or assignment) in lieu of foreclosure, shall not be liable for, and take the property free of any claims for, unpaid Assessments or charges against the mortgaged Unit which accrue prior to the acquisition of title to the Unit by the mortgagee;

- (c) Unless first mortgagees (based upon one vote for each first mortgage owned), and the Unit Owners (other than the Declarant) of Units have given their prior written approval, the Unit Owners and the Declarant shall not be entitled to:
- (i) by act or omission, seek to abandon or terminate the Condominium;
 - (ii) change the percentage interest or obligations of any Unit for (a) purposes of levying assessments or changes or allocating distributions of hazard insurance proceeds or condemnation awards, or (b) determining the percentage of ownership or any Unit in the Common Areas and facilities ("common element");
 - (iii) partition or subdivide any Unit;
 - (iv) by act or omission, seek to abandon, subdivide, encumber, sell, or transfer, the common elements. The granting of easements for public utilities or for other public purposes consistent with intended use of the common elements shall not be deemed a transfer within the meaning of this clause;
 - (v) use hazard insurance proceeds for losses to any property (whether to Units or to common elements) for other than the repair, replacement or reconstruction of such improvements, except as provided by law in case of substantial loss to the Units and/or common elements;
- (d) An Institutional Lender which holds a first mortgage of a Unit shall have the right to examine the books and records of the Directors and the Association;
- (e) Common expense assessments shall include an adequate reserve fund for maintenance, repairs and replacement of those common elements that must be replaced on a periodic basis, and shall be payable in regular installments rather than by special assessments;
- (f) No provision of any deed of a Unit or this Declaration shall be deemed or construed to give an 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 Owners of insurance proceeds or condemnation awards for losses to or a taking of Units and/or common elements;
- (g) Any agreement for professional management of the Condominium or any other contract providing for services by the Declarant must provide for

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termination on ninety (90) days' written notice, and a maximum contract term of two (2) years;

- (h) A written notice of each meeting of the Owners stating the place, date and hour and the purposes of the meeting shall be given at least ten (10) days before the meeting to the holder of such mortgage by mailing it, postage prepaid, to such mortgagee at its last or usual known address;
- (i) If FHLMC or FNMA holds any interest in one or more mortgages on Units, the Directors shall obtain such insurance as may be required from time to time by whichever of FHLMC or FNMA (or both) holds such interests, including without limitation, fidelity coverage against dishonest acts on the part of the Directors, managers, employees or volunteers responsible for handling the Association's funds. All such insurance shall provide that an adjustment of loss shall be made by the Directors and if FHLMC or FNMA holds any interest in one or more mortgages on Units, all such policies shall be in such amounts and contain such terms as may be required from time to time by whichever of FHLMC or FNMA (or both) holds such interests.

The Association must have blanket fidelity bonds 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 Association bonds should name the Association as the obligee and the premiums should be paid as a Common Expense by the Association.

A management agent that handles funds for the Association should be covered by its own fidelity bond, which must provide the same coverage required of the Association. The Association should be named as an additional obligee in the management agent's bond. The fidelity bond should cover the maximum funds that will be in the custody of the Association or its management agent at any time while the bond is in force. In addition, the fidelity bond coverage must at least equal the sum of three (3) months' assessments on all units in the Project.

The bonds must include a provision that calls for ten (10) days' written notice to the Association or insurance trustee before the bond can be cancelled or substantially modified for any reason. This same notice must also be given to each servicer that services a FNMA/FHLMC owned mortgage in the project.

- (j) If FHLMC or FNMA holds any interest in one or more mortgages on Units, then whenever any Unit or the common elements are damaged by fire or other casualty, the Directors shall give notice of such damage to such persons as may be required by whichever of FHLMC or FNMA (or both) hold such interests.

- (k) If FHLMC or FNMA holds any interest in one or more mortgages on Units, public liability insurance policies obtained by the Directors shall be in such amounts and contain such terms as may be required from time to time by whichever of FHLMC or FNMA (or both) hold such interests.
- (l) If FHLMC or FNMA holds any interest in one or more mortgages on Units, upon request of either FHLMC or FNMA, an annual financial statement of the Association, prepared and audited at the expense of FHLMC or FNMA, shall be rendered by it to all Unit Owners and to such mortgagees requesting the same within ninety (90) days after the end of each fiscal year. Such annual financial statement shall be audited and contain the certification of a public accountant if required by whichever of FHLMC or FNMA (or both) hold such interests.
- (m) After the expiration of the Declarant's period of control, so long as FNMA holds any interest in one or more mortgages on Units, any decision by the Directors or Unit Owners to terminate professional management of the Association shall, if FNMA so requires, require approval of the holders of fifty-one percent (51%) of all first mortgages of record on Unit.
- (n) All leases or rental agreements for unit estates shall be in writing and specifically subject to the requirements of the Declaration and Bylaws.
- (o) Whenever the term "first mortgagee(s)" is used in the Declaration, and in its Exhibits, it shall mean eligible mortgage holders, insurers, and guarantors, as those terms are used by FNMA and FHLMC.

ARTICLE 21

ENFORCEMENT

- 21.1 Each Owner shall comply strictly with the provisions of the Declaration, the Bylaws, and the Rules and Regulations, as the same may be lawfully amended from time to time and with decisions adopted pursuant to said Declaration, Bylaws, and Rules and Regulations and failure to comply shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Board on behalf of the Owners, or in a proper case, by an aggrieved Owner.
- 21.2 In the event of any dispute between Owners, such dispute shall be first submitted to arbitration or mediation, within an expeditious and reasonable time, prior to final adjudication by a court of competent jurisdiction. Such mediation or arbitration may include such proceedings available through a court of competent jurisdiction. Any determinations made pursuant to such arbitration proceeding may be enforced by appropriate action or suit at law or equity.

- 21.3 The provisions of Section 21.2 shall not apply to the collection of unpaid assessments or enforcement of liens against any Unit.

ARTICLE 22

STATUTORY WARRANTY AGAINST STRUCTURAL DEFECTS

- 22.1 The Declarant hereby acknowledges the one (1) year statutory warranty established under Section 41, II of the Act.
- 22.2 Except as set forth in Section 22.1 above, or in any other written warranty by the Declarant to Owner, the Declarant hereby disclaims any warranty of habitability, merchantability or fitness for a particular purpose; and there are no warranties in favor of any Owner or the Association which extend beyond the express warranty set forth in Section 22.1 above.
- 22.3 The Declarant expressly disclaims responsibility for incidental, consequential, or special damages, and the same are expressly excluded from the warranties referred to herein. The Declarant reserves the right to substitute for any materials, equipment, and appliances to be used in the Units and buildings described herein and to change the size, number, and location of buildings, Units, and other improvements. The Declarant is not responsible for variations in dimensions from one Unit to another of similar design.

ARTICLE 23

AQUIFER/PUBLIC WATER SUPPLY/ENVIRONMENTAL SENSITIVITY

- 23.1 The Condominium is located above an underground aquifer which provides drinking water for the public water supply, including that which services the Condominium. The Condominium is also located adjacent to Peacock Brook (lying immediately to the north and east of the Submitted Land). Lying immediately to the north of Peacock Brook (and less than two hundred feet (200') from the northerly line of the Submitted Land) lies a public water supply well currently owned and operated by Pennichuck Water Works, Inc., which supplies source water to its public water supply system. A portion of the Submitted Land is subject to a well protection easement (generating a protection zone with a four hundred foot (400') radius around the location of such well) which is shown on the Site Plans and other plans of the Condominium.
- 23.2 In light of its location, as a condition of approval of the Site Plan, the Amherst Planning Board required the submission of a fertilization and integrated pest management plan as part of an approved landscaping protocol, and further required that all Owners abide by such plan. The Planning Board approval also required that the Association develop and maintain educational literature and an educational program for Owners and generally educate Owners regarding the

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Condominium's environmental characteristics. In connection with such conditions of Planning Board approval, the Declarant submitted to the Planning Board on June 4, 2003, the "Fertilization and Integrated Pest Management Outline Summerfield Development Amherst, N.H." prepared by Thomas J. Morin (the "IPM") which was approved by the Amherst Planning Board.

- 23.3 The Association and all Owners shall abide by the IPM.
- 23.4 The Association's fertilization and pest management plans shall be in accordance with the IPM.
- 23.5 The Association, by and through the Board of Directors, shall develop and maintain educational literature and an educational program for all Owners which addresses proper use of fertilizers, limitations on pesticides, notes the Condominium's leach field discharge into ground water, lists items which should not be dumped down drains and generally educates Owners regarding the Condominium's environmental characteristics.
- 23.6 Only low phosphates detergents are to be used in wash water by Owners at the Units or otherwise in the Condominium.
- 23.7 The Association, by and through the Board of Directors, shall develop and maintain a program for semi-annual collection and disposal of household hazardous waste.
- 23.8 The Association shall permit the New Hampshire Department of Fish and Games to maintain water temperature monitoring devices at locations on Peacock Brook, as determined by the New Hampshire Department of Fish and Games.
- 23.9 The Association shall establish and maintain the monitoring wells called for by the Planning Board approval of the Site Plan, in accordance with the particular requirements of the Amherst Planning and Zoning Department.
- 23.10 The irrigation system for the Common Area shall be maintained and controlled by the Association, by and through the Board of Directors. Centralized control, with appropriate timing devices, which shall be integral components of the irrigation system.
- 23.11 At least annually, the Association, by and through the Board of Directors, shall distribute literature to all Owners concerning the environmental characteristics and sensitivity of the Submitted Land.

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ARTICLE 24

TAXATION OF COMMON AREA

- 24.1 The Town of Amherst assesses the value of the Common Area and will distribute the assessment proportionately among the Owners in relation to their respective interests in the Common Area.

ARTICLE 25

INTERPRETATION

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

ARTICLE 26

NOTICES

- 26.1 All notices hereunder and under the Bylaws and the Act, to the Association and the Board, shall be sent by United States certified mail or national overnight courier to the Board, c/o Etchstone Properties, Inc., 179 Amherst Street, Nashua, New Hampshire, 03064, or as the Board may designate, from time to time. All such notices to Owners shall be sent to the address of the Owners at their respective Units and to such other addresses as any of them may have designated in writing to the Board. All notices shall be deemed to have been given when mailed, except notices of change of address which shall be deemed to have been given when received, and except as otherwise provided herein.

ARTICLE 27

SEVERABILITY

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

ARTICLE 28

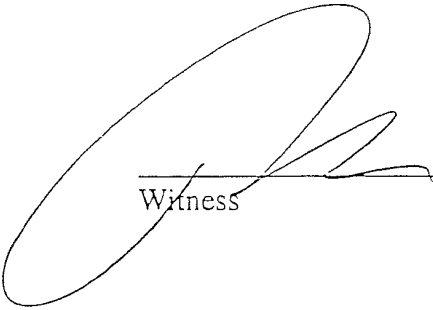
GENDER

- 28.1 The use of the masculine gender herein shall be deemed to include the feminine gender (or neuter) and the use of the singular shall be deemed to include the plural, whenever the context so requires.

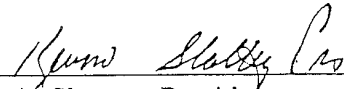
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IN WITNESS WHEREOF, Etchstone Properties, Inc. has caused this Declaration to be executed on the day and year first above written.

Etchstone Properties, Inc.



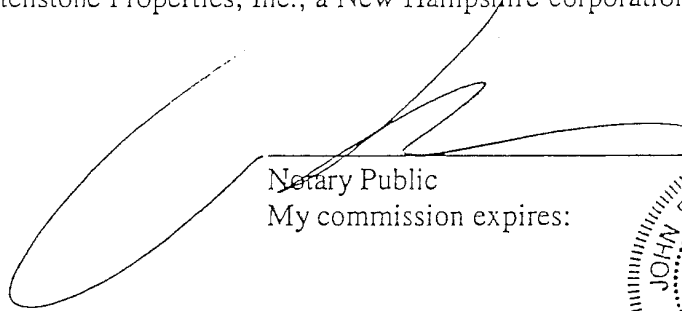
Witness

By: 

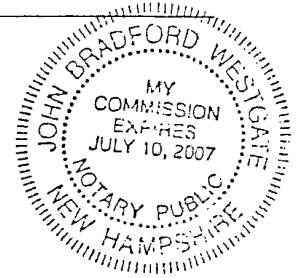
Kevin Slattery, President

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this 18th day of April, 2005, by Kevin Slattery, President of Etchstone Properties, Inc., a New Hampshire corporation, on behalf of the corporation.



Notary Public
My commission expires:



BK 1461P610/5

EXHIBIT A

SUBMITTED LAND

A certain tract of land situated on the easterly side of Hollis Road (N.H. Route 122) in Amherst, Hillsborough County, New Hampshire, being shown as Lot 2-2 (inclusive of Parcel B and Parcel C but exclusive of Parcel A) on a plan entitled "Lot Line Adjustment Plan Tax Map Lots 2-2 & 2-26 Prepared for Rais-Crest, LLC and TANA Properties Limited Partnership Amherst, New Hampshire" by Meridian Land Services, Inc. dated January 6, 2003 and recorded with the Hillsborough County Registry of Deeds as Plan No. 33068 (six sheets), reference to which may be made for a more particular description.

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EXHIBIT A-1

CONVERTIBLE LAND

A certain tract of land situated on the easterly side of Hollis Road (N.H. Route 122) in Amherst, Hillsborough County, New Hampshire, being shown as Phase 2 ("Convertible Land") on a plan entitled "Condominium Site and Phasing Plan Tax Map Lot 2-2 Summerfield of Amherst, A Condominium prepared for Etchstone Properties, Inc., Amherst, New Hampshire" by Meridian Land Services, Inc. dated February 15, 2005, and recorded with the Hillsborough County Registry of Deeds as Plan No 33931, containing 34.58 acres, more or less, reference to which may be made for a more particular description.

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