

**DECLARATION**

**OF**

**THE REGENCY WOODS CONDOMINIUM**

Regency Woods Development, LLC, Declarant

May 2021

Prepared by  
Clark & Howell, LLC  
16A Woodbridge Road  
P. O. Box 545  
York, Maine 03909

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## DECLARATION OF CONDOMINIUM

### **THE REGENCY WOODS CONDOMINIUM**

THIS DECLARATION OF THE REGENCY WOODS CONDOMINIUM ("Declaration") is executed this \_\_\_\_ day of \_\_\_\_\_, 2021 by **Regency Woods Development, LLC**, a Massachusetts Limited Liability Company with a place of business at Kittery, Maine and a mailing address of 352 Middlesex Road, Tyngsboro, Massachusetts 01886 ("Declarant"), pursuant to the Maine Condominium Act, chapter 31 of Title 33 of the Maine Revised Statutes, as amended ("Condominium Act").

#### **ARTICLE 1. SUBMISSION.**

##### **Section 1.1. Declaration of Property; Short Description.**

The Declarant as the owner in fee simple of the land located at 459 U S Route 1, Kittery, County of York and State of Maine described in **Exhibit A**, the buildings and improvements located thereon and subject to and together with all easements, rights, privileges and appurtenances thereto (collectively the "Property"), HEREBY SUBMITS the Property to the Condominium Act in accordance with this Declaration, and establishes a condominium as defined in Section 1601-103(7) of the Condominium Act known as The Regency Woods Condominium ("Condominium").

The name of the Unit Owners' Association is The Regency Woods Condominium Owners Association, a Maine nonprofit corporation (the "Association").

The Condominium consists of approximately \_\_\_\_ acres of land containing 8 buildings. The maximum number of condominium Units will be 32. Initially, **the Declarant will build and declare 4 Units**; the Declarant is reserving the right to create 28 additional condominium Units.

Of the 32 Units to be declared, 16 units shall be set aside for exclusively for "elderly housing" as defined by the Town of Kittery **Zoning Ordinances**.

##### **Section 1.2. Applicability.**

This Declaration shall govern the Property. All present and future owners, occupants and tenants, their guests, licensees, invitees, employees, agents, and any other person entering on the Property shall be subject to this Declaration, the Bylaws of the Association and

to such Rules and Regulations of the Association, all of which shall be deemed to be covenants running with the land and shall bind any person having at any time any interest in or entering upon the Property.

### **Section 1.3. Plats and Plans.**

The location and dimensions of the Property, the location and dimensions of the buildings and units included in the Condominium are depicted on the Condominium Plats and Plans entitled "THE REGENCY WOODS CONDOMINIUM, Site & Floor Plans for property at 450 u s Route 1, Kittery, Maine" dated May \_\_\_, 2021, recorded in the York County Registry of Deeds in Condominium Files simultaneously with this recording (the "Plats and Plans").

### **Section 1.4. Interpretation.**

In the event of any conflict or discrepancy between this Declaration, the Bylaws, the Rules and Regulations, and the Plat and Plans, the provisions of this Declaration shall govern.

### **Section 1.5. Governmental Requirements and Restrictions.**

The provisions of this Declaration shall be in compliance with the Town of Kittery Zoning Ordinances as well as approvals by the Town of Kittery Planning Board. Any proposed change in use of the Units is prohibited without the specific approval of the Town of Kittery Planning Board.

## **ARTICLE 2 - DEFINITIONS**

### **Section 2.1. Meaning of Terms.**

Terms contained in The Declaration, Bylaws and Plats and Plans shall be interpreted according to the definitions found in the following section. Other terms not defined in the following section shall have the meanings given to them by the Maine Condominium Act. Some terms are defined elsewhere in this Declaration if they are used only in a particular section. If the terms found in this Declaration are not defined in the Declaration or in the Maine Condominium Act, they shall have their ordinary meanings.

Defined terms are capitalized when used in this Declaration.

### **Section 2.2. Definitions.**

The terms defined in this section have meanings which apply to the Declaration, the Bylaws, and the Plats and Plans:

"Allocated Interests" means the undivided ownership interest of Unit owners in the Common Elements, the Common Expense Liability and votes in the Association allocated to each Unit. The Allocated Interests are set out in **Exhibit B** to this Declaration.

"Association" means the Unit Owner's Association of the Condominium, known as "THE REGENCY WOODS CONDOMINIUM OWNERS ASSOCIATION."

"Bylaws" means the bylaws of THE REGENCY WOODS CONDOMINIUM OWNERS ASSOCIATION, an association, which is a non-profit corporation registered to do business in Maine, as they may be amended from time to time.

"Common Elements" (or in the singular, a "Common Element") means all portions of the Condominium other than the Units.

"Common Expenses" include, but are not limited to, such costs and expenses established by the Condominium Act, by this Declaration, by the Bylaws, or by the Executive Board in connection with the administration, operation, maintenance and repair of the Condominium and the Property and the rendering to Unit Owners of all related services.

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

"Declarant" means the Declarant described in Section 1.1 above.

"Declarant Control Period" means the period which extends from the date of the recording of this Declaration until the earlier of (a) seven (7) years following the conveyance of the first Unit to a Purchaser or (b) sixty (60) days after the sale of 75% of the total number of units, other than a conveyance to a successor Declarant. The Declarant shall have the right during the Declarant Control Period to appoint, remove and replace from time to time any and all members of the Executive Board, and officers of the Association, without the necessity of obtaining resignations. The directors appointed by the Declarant need not be Unit Owners.

"Declaration" means this document, as it may be amended from time to time.

"Development Rights" means the rights to add real estate to the Condominium,

create additional Units, subdivide Units, convert Units to Common Elements, and to withdraw land from the Condominium, reserved to a Declarant.

"Eligible Mortgage Holder" means the holder of a Recorded first mortgage on a Unit which has registered with the condominium association its name, address and appropriate contact information.

"Executive Board" means the Executive Board of the Condominium Association. The terms "Board" and "Directors" also refer to the Executive Board.

"Insurance Trust Agreement" means any agreement between the Association and the Insurance Trustee providing for the management and disbursement of insurance proceeds.

"Insurance Trustee" means the entity responsible for the management and disbursement of insurance proceeds according to any Insurance Trust Agreement.

"Limited Common Elements" means those parts of the Common Elements for which the exclusive use is reserved for only one Unit, which is either described in the Act, this Declaration or the Plats and Plans as being Limited Common Elements.

"Limited Common Expenses" mean the Common Expenses associated with the maintenance, repair or replacement of a Limited Common Element, which shall be assessed against the Units to which the appurtenant Limited Common Element is assigned in proportion to the relative Common Expense Liabilities of such Units, as the Executive Board may periodically establish and determine.

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

"Periodic Assessment" means the Unit owner's share of the anticipated Common Expenses, assigned by Unit, for each period of the Association's fiscal year as reflected in the budget adopted by the Executive Board for such year.

"Property" means the property described in Section 1.1. above.

"Plats and Plans" means the Plats and Plans for the Condominium, reduced copies of which are attached to the Declaration as **Exhibit C**.

"Record", "Recorded" or "Recording" refers to filing as a permanent record in the York County Registry of Deeds at Alfred, Maine.



"Rules and Regulations" means the rules and regulations which may be adopted by the Declarant or the Executive Board.

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

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

"Unit" means a physical portion of the Condominium designated for separate ownership or occupancy, the boundaries of which are described in Article 3. They remain personal property owned by their respective Unit owners.

### **Section 2.3. Provisions of the Act.**

The provisions of the Maine Condominium Act (hereinafter referred to as "the Act") shall apply to the Condominium, except to the extent that contrary provisions, not prohibited by the Act, are contained in one or more of the Condominium Documents.

## **ARTICLE 3. UNITS, COMMON ELEMENTS, LIMITED COMMON ELEMENTS.**

Units are separately owned areas of the Property. The Common Elements are owned in common by all Unit owners. The Limited Common Elements are a part of the Common Elements that are reserved for the exclusive use of the owners of Units to which the Limited Common Elements are attached.

### **Section 3.1. Description of the Units.**

The boundary lines for each Unit are as shown on the Plats and Plans.

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

(1) As to Outside walls and partitions. The Unit-side (inside) surface of the walls and partitions of the Building which separates such Unit from adjoining Units or Common Elements, the Unit to include the thickness of the finish material such as plaster or drywall, or paneling;

(2) As to area near utility lines and the like, which pass through the Unit. The Unit-side surface of the furring around utility shafts, and other Common Elements within or passing through such Unit, the Unit to include the thickness of the finish material such as plaster or drywall, or paneling; otherwise, the Unit-side surface of ceilings and flooring under and around (I) wood members and (ii) utility lines, ducts and cables, the Unit to include the thickness of finish material such as plaster or drywall, or paneling;

(3) As to the ceiling. The planes formed by the Unit-side (lower) surface of the ceiling (or the roof rafters where roof rafters form all or a portion of the ceiling), the Unit to include the thickness of finish material such as plaster or drywall, or paneling, but excluding any beams which extend below the horizontal plane of the upper boundary of the Unit.

(4) As to the Floor. The Unit-side (upper) surface of the structural wood floor, the Unit to include the thickness of the finish material such as carpet, ceramic or resilient tile or hardwood.

(5) As to the windows and surrounding area. The Unit-side (inner) surface of the sash of windows and skylights which are set in the exterior walls or ceilings of such Unit, the exterior surface of the panes of such windows and the Unit-side surface of window sills, moldings, trim, jambs and mullions for such windows, the Unit to include the thickness of the finish material; and

(6) As to doors and surrounding area. The exterior surface of doors, and their sills and hardware, and the Unit-side (inner) surface of the door frames in which such doors are set, the Unit to include the thickness of the finish material.

(b) Things within the above boundaries which are not part of the Unit. Each Unit consists of all portions of the Building within the aforesaid boundary lines, except the air space displaced by (I) structural members, load bearing partitions within or passing through such Unit which are deemed to be Common Elements: (ii) other Common Elements within such Unit including, without limitation, chutes, flues, ducts, wires, conduits and pipe-runs which serve more than one Unit and (iii) beams, if any, which extend below the horizontal plane of the upper boundary of the Unit.

By way of illustration, there is included within a Unit:

(1) the air space enclosed by such boundary lines;

(2) all non-load bearing partitions which are wholly contained within such boundary lines, including but not limited to, all doors, hardware, electrical outlets

and wiring, telephone outlets and conduits and other equipment and devices in such partitions serving only such Unit,

(3) all fixtures located within such boundary line and serving only such Unit, and their water and waste connections,

(4) all items of equipment located within such boundary lines and serving only such Unit, and such equipment's water, waste, and electrical connections,

(5) heat pumps, exhaust fans, and the grills, registers, ventilation ducts, and related fixtures, and screens and storm windows, which serve only such Unit, whether or not any of the foregoing is located in any portion of the Common Elements,

(6) lighting devices (including by way of illustration and not limitation, lamps and bulbs which are surface mounted on, recessed in, or suspended from, ceilings, walls and partitions, within or around the perimeter of such Unit) serving only such Unit, whether or not such lighting devices are themselves located entirely within the boundary lines of such Unit,

(7) telephone, cablevision, and electrical outlets, wires, cables, conduits, circuits and related equipment which serve only such Unit and which are located entirely within the boundary lines of such Unit,

(8) surface mounted and recessed medicine cabinets including, by way of illustration and not limitation, all associated lighting fixtures and accessories, and

(9) any appliances and the portions of their water, waste, electrical and exhaust connections located within such boundary lines and serving only such Unit.

(c) Each Unit's identifying number is shown on the Plats and Plans.

### **Section 3.2. Subdivision of Units.**

No Unit owner shall have the right to further subdivide his Unit, either physically or into time shares.

### **Section 3.3. Identifying Letter**

Each Unit's identifying Letter is shown on the Plats and Plans, reduced copies of which are

attached hereto as **Exhibit C**.

**Section 3.4. Common Elements.**

Common Elements consists of all parts of the Property which are not designated as either Units or Limited Common Element.

**Section 3.5 The Limited Common Elements.**

Limited Common Elements are designated portions of the Common Elements which are reserved for the exclusive use of a particular Unit or Units, to the exclusion of other Units. Each Unit's Limited Common Elements are more properly described and designated on the Plats and Plans.

**ARTICLE 4. MAINTENANCE, REPAIR, REPLACEMENT, ALTERATIONS AND ADDITIONS.**

**Section 4.1. Alterations to Unit by Unit Owner.**

Subject to this Declaration, the Bylaws and the Rules and Regulations of the Association as amended from time to time, a Unit Owner may make nonstructural interior improvements and alterations to the Unit. Any and all structural improvements and alterations shall only be performed in accordance with this Declaration, the By-Laws, the Rules and Regulations, the approval of the Town of Kittery and in accordance with all local, state, and federal regulations. Excepting routine maintenance, no exterior structural changes may be undertaken.

**Section 4.2. Maintenance of Unit/Repair Responsibility Units.**

Each Unit Owner shall keep and maintain her or his Unit and its equipment, appliances and appurtenances in good order, condition and repair, and in a clean and sanitary condition, whether such maintenance and repair shall be structural or non-structural. Each Unit Owner shall do all redecorating, cleaning, painting, and varnishing which at any time may be necessary to maintain the good appearance and condition of such Unit. No Unit Owner shall deposit any trash, dirt, debris or other substance from the Unit onto the Limited Common Elements, except in designated trash disposal areas.

Should any Unit become unsightly, dangerous or result in an increase in insurance premiums, the Association may, at the absolute discretion of the Executive Board, remedy such dangerous condition or undertake necessary maintenance to the offending Unit at a cost solely to said Unit owner.

Each Unit Owner shall be responsible for all maintenance to and damage to any and all utility lines running from their Unit to either the public system or to a place where it connects to the Common Element. The Unit Owner's responsibility shall cease and it shall become the Association's responsibility and a common expense once said utility lines connects to/with a line from another Unit or Common Element.

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

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

#### **Section 4.4. Maintenance of Limited Common Elements.**

The Unit owners shall maintain, repair and replace the Limited Common Elements associated with their Units, at their expense, unless they become unsightly, dangerous or result in an increase in insurance premiums for the entire condominium. In such case, the Association shall do such maintenance, repair and replacement, but the Unit owners to whom the Limited Common Element is associated with shall still be solely responsible to pay the cost of same.

#### **Section 4.5. Common Elements to Remain Undivided.**

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

#### **Section 4.6. Maintenance of Common Elements other than Limited Common Elements.**

Generally, the Association shall be responsible for the maintenance, repair, and replacement of the Common Elements (except the Limited Common Elements), including, but

not limited to, snowplowing, lawn maintenance and landscaping, all as determined by the Executive Board. If such repair or replacement of the Common Elements shall be necessitated by the negligence, neglect or misconduct of fewer than all of the Unit Owners, then such cost shall be assessed to the Unit Owners responsible as a Service Charge.

By way of example, without limitation, however, the Association shall be responsible for:

- (a) maintenance and repairs of the Building containing the Units;
- (b) maintenance and repairs of the grounds and landscaping;
- (c) maintenance and repairs of the parking areas;]
- (d) maintenance and repairs of all utilities and utility lines to the point where they enter the Units, at which point these utilities become the responsibility of the Unit owners as Limited Common Element;
- (e) operation of, maintenance and repairs of the drainage system in compliance with the terms of approval from the Town of Kittery Planning Board; and
- (f) maintenance and repairs of the walking paths and recreational areas.

#### **Section 4.7. Alteration of Common Elements.**

No Unit Owner shall alter any of the Common Elements, e.g., create patios, plant trees or establish gardens, or otherwise change the appearance of the Common Elements (including the Limited Common Elements).

#### **Section 4.8. Exceptions to Maintenance Rule for the Common Elements.**

If the Association shall allow Unit owners to place improvements on or within the Common Elements (including the Limited Common Elements), then the cost of permitting, insurance, maintenance, repair, replacement, improvement and alteration of such improvements shall be at the expense of the Unit owner for whose benefit the improvement was allowed. In all cases, such improvements may be made only under such conditions as allowed by the Executive Board. The Association shall have the power to maintain such improvements in a clean and attractive condition if the Unit owner does not do so and charge the Unit owner for the cost of same, with said charges having the same status as a common expense assessment, and enforceable as such.

### **ARTICLE 5 - THE ALLOCATED INTERESTS & EXPENSES**

#### **Section 5.1. Allocated Interests Defined.**

The term "Allocated Interests" means the Common Element Interest, the Common Expense Liability and the voting rights in the Association allocated to each Unit pursuant to this Declaration. The term "Common Element Interest" means the percentage of undivided

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

### **Section 5.2. The Percentage Interest (Each Unit's Undivided Ownership Interest in Common Elements).**

**Exhibit B** of this Declaration contains a list of all Units by their Identifying Number and their Percentage Interest. The Percentage Interest of each Unit is determined on the basis of a fraction, the numerator being 1 and the denominator being the total number of declared Units, as set forth in **Exhibit B** of this Declaration.

### **Section 5.3. Common Element/Common Expense.**

The Association shall be responsible for and Units shall collectively and equally pay for the following:

- (a) Insurance on the Common Areas;
- (b) Lawn and landscape maintenance;
- (c) Driveway and parking lot maintenance, including snow plowing;
- (d) Maintenance of the Buildings housing the Units (interior and exterior), as well as all equipment and utilities contained therein;
- (e) Operation of, maintenance and repair of the drainage system;

#### **Section 5.3-A. Insurance Expense.**

Whether or not the Association obtains insurance in its own name, and notwithstanding whether such insurance policies are blanket policies, or whether such policies are liability policies or property and casualty policies, the cost of coverage for the policies shall be determined by the Executive Board in consultation with the insurer providing coverage or other experts, and the cost attributable to said policies shall be assessed against each Unit as a Common Expense.

#### **Section 5.3-B. Utility Services Expense.**

The cost of utility services, including water, electricity, cable and telephone shall be

billed directly to individual Unit owners. (All units are separately metered.)

**Section 5.3-C. Limited Common Expense.**

The expense of maintenance, repair and replacement of Limited Common Expenses shall be assessed against the Units to which the Limited Common Element is associated.

**Section 5.3-D. Liens.**

Each Unit is subject to a lien in favor of the Association for the unpaid Common Expenses, Limited Common Expenses, Service Charges and penalties, fines, interest and costs of collection including reasonable attorneys' fees, all as provided in the Condominium Act, the Declaration and the Bylaws.

**Section 5.4. Each Unit's Voting Rights.**

Each Unit shall have one vote, as set forth in **Exhibit B** of this Declaration.

**Section 5.5. Service Charges.**

The Association shall have the express power to separately assess a Unit and the owner thereof as a "Service Charge" for services rendered to that Unit. Such Service Charge assessments shall constitute a lien on the Unit with the same status as a lien for Common Expense liability assessments under the Condominium Act, this Declaration and Bylaws, which lien for service charges may be foreclosed in like manner as a mortgage on real estate. The recordation of this Declaration constitutes record notice of the lien. Service Charges shall include without limitation:

- (a) If a Unit Owner, members of his family, guests or tenants requests the Association or its agent to perform repair and maintenance work on his Unit, or damages the Common Elements or safety systems or fails to perform maintenance and repair work required, e.g. failure to maintain the structure of the Unit, the expense thereof as determined by the Executive Board or its designee may be assessed as a Service Charge.
- (b) Fees, if any, which may be established by the Executive Board for the use and maintenance of water, sewer and/or other utility services and equipment not billed directly to the Unit by the supplier.
- (c) Activities of a Unit Owner, members of his family, guests or tenants which results in an increase in an insurance premium for the condominium, the amount of increase shall be assessed as a Service Charge against that Unit.



For budgeting and working capital purposes, the Executive Board may charge Unit Owners monthly in advance for such expenses based on its reasonable estimate thereof, subject, however, to such periodic reconciliation as the Board in its discretion may deem appropriate based on the measuring system adopted by the Board. At the election of the Executive Board, the expense of capital improvements, major repairs or renovations to the water and sewer supply systems may be assessed either as a Common Expense or as a Service Charge. The expense of water and sewer services for the Common Elements may be assessed as a Common Expense or as a Service Charge at the election of the Executive Board.

## **ARTICLE 6 - EASEMENTS AND ACCESS**

### **Section 6.1. Declarant's Easement and Access Rights and Obligations.**

Until all Units have been sold and the Declarant' obligations under Purchase and Sale Agreements for all Units have been satisfied, the Declarant reserve the right:

- (a) To modify, alter, repair, or improve portions of the Common Elements, including without limitation, any equipment, fixtures and appurtenances, and further reserves an easement over the Common Elements in order to discharge its obligations, whether arising hereunder or under the Act.
- (b) To place signs and lighting on the Property during marketing of Units.
- (c) To connect with and make use of utility lines, wires, pipes and conduits located on the Property for construction purposes, provided that the Declarant shall be responsible for the cost of service so used.
- (d) To grant and reserve easements and rights-of-way (even though not depicted on the Plats and Plans) through, under, over, and across the Units, Common Elements and Limited Common Elements for the installation, maintenance, repair, replacement and inspection of water, sewer, gas, electricity, telephone, cable TV and other utilities servicing the Property, as well as for drainage, including provisions for the installation of lines, wires, pipes, conduits and facilities servicing the Property. No such easement shall be effective until recorded. No such easements may be granted through Units that have been sold by Declarant to consumers. The Common Elements shall be promptly restored upon installation and repair of any such facilities.

The Declarant' rights under this section may not be amended by the Unit owners and shall continue until Declarant have conveyed all Units to Unit purchasers.

### **Section 6.2. Unit Owners Access and Easement.**

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

Subject to the terms of this Declaration, the Bylaws and the Rules and Regulations, each Unit Owner shall have an easement in common with all other Unit Owners to use the Common Elements as a means of access to and from his Unit.

### **Section 6.3. Association and Executive Board Access and Easement Rights.**

The Association and its officers and directors and such persons as may be authorized by the Executive Board shall have the right of access to the Units for the inspection, maintenance, repair or replacement of the Common Elements and Limited Common Elements located in the Unit or accessible from the Unit or for making any addition or improvements thereto; or to make repairs to any Unit, the Common Elements or the Limited Common Elements if such repairs are reasonably necessary for public safety or to prevent damage to any other Unit, the Common Elements or the Limited Common Elements; or to abate any violation of law, orders, Rules and Regulations of the Association or of any governmental authorities having jurisdiction thereof.

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

The Association is authorized and empowered to grant such easements, rights-of-way, leases, and licenses for sewer lines, water lines, electrical cables, telephone cables, television cables, storm drains, underground conduits, fire alarms, and such other purposes related to the provision of public services, and utilities to the Condominium as may be considered desirable, necessary or appropriate by the Executive Board for the orderly

maintenance, improvement and preservation and enjoyment of the Common Elements or for the preservation of the health, safety, convenience and welfare of the owners of the individual Units upon at least thirty (30) days' notice to the members unless a special meeting of the members is called within such period and the members vote to reject such grant. No such rights may be created through any Unit without the written consent of the owners thereof and that no such easement shall materially impair the use and enjoyment of the Condominium.

#### **Section 6.4. Water, Sewer and Utility Line Easements.**

Each Unit shall be subject to an easement for all water, sewer and utility lines which are located within any Unit or its Limited Common Area. This easement shall be for the maintenance, repair, and to ensure the proper operation of said water and/or sewer lines.

### **ARTICLE 7 - RESTRICTIONS ON USE AND OCCUPANCY OF UNITS AND COMMON ELEMENTS.**

#### **Section 7.1. General Use Restrictions.**

Each Unit shall be occupied and used subject to the following restrictions:

(a) Use. No Unit shall be used or occupied for any purpose other than for the existing use as allowed under the Kittery Zoning Ordinance.

(b) Age Restriction. Units \_\_\_\_\_ (16 total units, unit numbers TBD) may be owned and occupied only by persons who are 55 years of age or older or by a family whose head or spouse is at least 55 years of age or older. Notwithstanding any provision of this Declaration, any question regarding a person's qualification for ownership and/or occupancy shall be determined by application of the Town of Kittery's Zoning Ordinance.

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

(c) Nuisance/Hazard. No Unit shall be used so as to create a nuisance or an unreasonable interference with the peaceful possession or proper use of any other Unit or the Common Elements. No owner or occupant of any Unit shall carry on, or

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

(d) Trash. Trash, garbage and other waste shall be kept only in sanitary containers and shall be disposed of in such manner as may be prescribed from time to time in accordance with Rules and Regulations established by the Executive Board.

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

(f) Antennas. No Unit owner shall erect or maintain an outside television or radio antenna or dish in the Limited Common Element or Common Elements.

(g) Pets and Animals. Except for household pets permitted below, the maintenance, keeping, boarding and/or raising of animals, including without limitation laboratory animals, livestock, poultry or reptiles of any kind, regardless of number, is prohibited within any Unit or upon the Common Elements.

A Unit Owner may keep within such Unit up to 2 domestic animals that are properly licensed in the Town of Kittery (other ordinary household pets such as fish, birds, hamsters) subject to the Rules and Regulations as established from time to time by the Executive Board. Any dogs kept in the unit must weigh 30 lbs or less. In any event all pets shall be restrained so as not to become noisome, bothersome or offensive to other persons, as determined by the Executive Board. No dogs, cats or other pets shall be permitted outside of a Unit except on a leash and attended by a responsible person. Pet owners shall promptly clean up the droppings left by their pets.

All pets on the Property must abide by all the pet rules in this Declaration, the Bylaws, and Rules and Regulations.

The Executive Board shall have the power to further regulate the keeping of pets and animals under the Bylaws or Rules and Regulations of the Association as promulgated or amended from time to time. Upon notice and opportunity to be heard, the Board may expel any offending pets from the Property.

## **Section 7.2. Use of Common Elements.**

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

(a) Motor Vehicles and Parking. Only passenger vehicles may be kept on the Property, and such vehicles must be in operable condition and fully licensed for operation on public highways. No motorized vehicles shall be used on the Property, except within the parking areas and on the drivable area as shown on the Plats and Plans. Owners will be asked to remove vehicles creating excessive noise, as determined by the Executive Board. Should owners refuse to remove said vehicle, then the Board shall have the authority remove said vehicle from the property.

No inoperable vehicles, or any boat, recreational vehicles, snowmobiles, all-terrain vehicles or other vehicles or recreational equipment, trailers, or similar items may NOT be kept or parked on the Property for a period of more than 48 hours. No snowmobiles, all-terrain vehicles or similar items may be operated on the Property. Motor vehicles shall be parked only in designated areas.

The Executive Board may adopt such Rules and Regulations as it deems necessary or appropriate to further regulate parking.

(b) Exterior Alterations. Except with the written consent of the Executive Board or as otherwise expressly provided in this Declaration, no person shall (i) construct or maintain any antennas, dishes, wires, lines, cables, fences, decks, steps, signs, canopies, clotheslines or other structures, nor (ii) plant, trim, cut, or remove vegetation, trees or shrubs, nor (iii) materially alter the grading or landscaping, nor (iv) do any other thing which affects the appearance from the exterior of the Common Elements or Limited Common Elements. The Executive Board may, in its absolute discretion, designate areas of the Common Element and Limited Common Element in which Unit Owners may place clotheslines, plant flowers and annuals based on plans specifically approved by the Board and subject to the obligation of the Unit Owner to maintain such items in good condition and repair, failing which they may be removed by the Association at the Unit Owner's expense.

(c) Signs. No signs of any character, except as listed below, shall be erected, posted or displayed from any Unit, Common Element or Limited

Common Element without the prior written approval of the Executive Board, except for such signs as may be posted by the Declarant for the promotional or marketing purposes as permitted herein or as permitted by the Condominium Documents. The Executive Board shall have sole authority to erect the exterior sign or signs authorized by the Town of Kittery. The Executive Board may also erect or authorize directional and identifying sign(s) listing the name and location of each occupant of the Units. Unit owners may place 1 (one) for sale sign on the Common Area near the entrance to the Property and 1 (one) for sale sign within the Boundary of the Unit.

(d) Obstruction/ Storage. No Unit Owner shall obstruct any of the Common Elements nor shall any Unit Owner place or store personal property on any of the Common Elements except those areas designated for parking by the Condominium Documents or as permitted by the Executive Board. This section does not apply to the Limited Common Elements of a Unit. The storage of personal property on the Limited Common Element shall be set forth by the Rules and Regulations adopted by the Executive Board.

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

### **Section 7.3. Municipal Requirements.**

All Unit owners shall comply with applicable requirements of Kittery ordinances. Violation of any provisions of the Kittery Zoning Ordinance or other health or safety ordinances of the Town of Kittery shall be a violation of this Declaration and shall subject the violator to fines and other remedies allowed by this Declaration and the Maine Condominium Act.

### **Section 7.4 Rentals.**

Any rental of a Unit shall be by written lease Agreement with a minimum rental term of 12 months and shall include specific language obligating the tenant to comply with the terms of the Declaration and any Rules and Regulations approved by Executive Board.

In the event a Unit owner rents and there is a violation by the renter of the terms and conditions of the condominium documents or the lease, then the Board shall have the right, but not the duty, to institute and prosecute such election as attorney-in-

fact for the Owners and at the Owner's sole cost and expense, including all legal fees incurred. Said costs and expenses shall be due and payable upon demand by the Association and shall be deemed to constitute a lien on the particular Unit involved, and collection thereof may be enforced by the Executive Board in the same manner as the Board is entitled to enforce collection of Service Charges and common charge assessments.

### **Section 7.5 Rules and Regulations.**

The Executive Board shall have the power from time to time to adopt, amend and enforce Rules and Regulations relative to the operation, use and occupancy of the Units and the Common Elements, consistent with the provisions of this Declaration, Bylaws and the Condominium Act including, but not limited to, the appointment of such committees and the enactment and enforcement of such enforcement procedures and penalties for violations as the Executive Board shall deem appropriate. Any such Rules and Regulations shall be adopted or amended, by means of appropriate resolutions duly approved by the Executive Board. Notice of such Rules and Regulations and any amendment thereto shall be sent to each Owner or occupant of a Unit promptly after the adoption thereof, and shall bind all Owners, their heirs and assigns, any all tenants, invitees, guests and other persons entering upon the Property. Any rules adopted by the Board may be repealed or amended by a unanimous vote of all Unit Owners at a meeting specially called for that purpose.

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

### **Section 8.1. Right to Mortgage.**

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

### **Section 8.2. Identification of Mortgagee.**

A Unit Owner who mortgages his Unit shall notify the Executive Board in writing of the name and address of his Mortgagee(s).

### **Section 8.3. Mortgage Foreclosure and Dispositions.**

Any holder of a first mortgage covering a Unit which obtains title to the Unit pursuant to a foreclosure or other exercise of the remedies provided in the Mortgage or through deed in lieu of foreclosure after written notice of default which deed identifies the

circumstances classifying it as such a deed shall take title to the Unit with its appurtenant Allocated Interests, free of any claims for unpaid assessments for Common Expenses, Service Charges, late fees, interest and costs levied against such Unit which accrued prior to the acquisition of title to such Unit by the Mortgagee, other than the proportionate share of the Common Expenses which become due and payable from and after the date on which the Mortgagee shall acquire title to the Unit through a completed foreclosure or deed in lieu of foreclosure.

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

#### **Section 8.4. Eligible Mortgage Holder; Rights to Receive Notice.**

Eligible Mortgage Holders (meaning the holder of a Recorded first mortgage on a Unit which has delivered written notice to the Association by prepaid United States mail, return receipt requested, or by delivery in hand securing a receipt therefore, which notice states the Mortgagee's name and address, the Unit owner's name and address, and the identifying number of the Unit, and states that the mortgage is a Recorded first mortgage) shall have all rights specified in the Condominium Act. Furthermore after the filing of the request by an Eligible Mortgage Holder, the Board shall cause notice to be sent to the Eligible Mortgage Holders (and any insurers or guarantors of such mortgages identified in the request) of any one or more of the following events affecting the mortgaged Unit(s), if so requested.

- a) Default in the payment of Common Charges, Assessments, Service Charges, or other amounts due the Association which continues for Sixty (60) days or as required by the Condominium Act;
- b) Default or violation of the Condominium Documents, or any proceedings by the Association relating thereto;
- c) The expiration, cancellation or material modification of insurance required to be maintained under the Declaration or Bylaws of the Association;
- d) A material amendment to the Declaration requiring the consent of Eligible Mortgage Holders;
- e) Termination of the Condominium pursuant to Section 1602-118 of the Condominium Act;



- f) Change in the Allocated Interests of a Unit, voting rights, a change in Unit boundaries or the subdivision of a Unit;
- g) The merger or consolidation of the Condominium with another condominium;
- h) The conveyance or subjection to a security interest of any portion of the Common Elements;
- i) The lapse, cancellation or material modification of any insurance policy maintained by the Association or any use of any hazard insurance proceeds other than for repair or restoration of the Property; and
- j) Such other events specified in the Condominium Act.

If in said request to the Association forwarded by an Eligible Mortgage Holder the mortgage is identified as being subject to the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Veterans' Administration, the Federal Housing Administration or other recognized institutional mortgage programs, then the Association shall maintain such hazard and other insurance policies and coverage required under said mortgage programs and identified in said notice from the institutional mortgage holder, to the extent such insurance is available to the Association.

#### **Section 8.5. Eligible Mortgage Holder; Approval Rights.**

For a material amendment to the Declaration or any of the actions specified below but subject in any event to the provisions of the Condominium Act, approval must be obtained from Eligible Mortgage Holders representing in the aggregate at least Fifty-One percent (51%) of the votes of Units subject to mortgages held by Eligible Mortgage Holders. An amendment affecting any of the following is considered material:

- a) Voting rights in the Association;
- b) Change in percentage liability for common expenses, assessment liens for common expenses, priority of assessment liens, or the subordination of assessment liens, or increases in the assessments of more than 25% over the prior year;

- c) Reduction in reserves for maintenance, repair and replacement of Common Elements;
- d) Responsibility for maintenance and repairs;
- e) Reallocation of pro rata interests in the Common Elements, the Limited Common Element or rights to their use;
- f) Alteration of the definitions of the boundaries of any Unit, including the partition or subdivision of a Unit;
- g) Convertibility of Units into Common Elements or vice versa;
- h) Expansion or contraction of the Condominium, or the addition, annexation or withdrawal of property to or from the Condominium;
- i) Hazard insurance or fidelity bond requirements;
- j) Imposition of any restrictions on the leasing of Units;
- k) Imposition of any restrictions on a Unit Owner's right to sell or transfer his or her Unit;
- l) A decision by the Association to establish self-management after more than 50 Units have been created when professional management had been required previously by an Eligible Mortgage Holder or by the Condominium Declaration or the Bylaws;
- m) Restoration or repair of the Property (after damage or destruction, or partial taking by eminent domain or condemnation) in a manner other than that specified in the Declaration;

- n) Any action to terminate the Condominium after substantial damage destruction or condemnation occurs;
- o) Any provisions of this Article and any other provision of this Declaration expressly benefits mortgage holders, insurers or guarantors; or
- p) Any provisions of this Section 8.5.

When Unit Owners are considering termination of the Condominium for reasons other than substantial damage, destruction or taking by eminent domain of the Condominium, the Eligible Mortgage Holders representing at least eighty percent (80%) of the votes of Units subject to mortgages held by Eligible Holders must agree.

Approval shall be presumed when an Eligible Mortgage Holder is sent a written request for approval of a proposed amendment by registered or certified mail, return receipt requested, and then fails to submit a response within 30 calendar days after the notice is received.

#### **Section 8.6. Mortgagee Priority.**

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

#### **Section 8.7. Records.**

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

## **ARTICLE 9 - LIMITATION OF LIABILITY**

### **Section 9.1. Exculpation.**

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

### **Section 9.2. Indemnification.**

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

### **Section 9.3. Claims.**

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

## **ARTICLE 10 - UNITS SUBJECT TO CONDOMINIUM DOCUMENTS; EMINENT DOMAIN**

### **Section 10.1. Acquisition of Unit(s).**

If a Unit is acquired by eminent domain, to the extent the award is paid to the Association or is controlled by this Declaration or the Association, the award shall be applied to compensate the Unit Owner and his mortgagee(s), if any, for the Unit and its percentage interest in the Common Elements, whether or not any Common Elements are acquired. Upon acquisition of the Unit, its Allocated Interests shall be automatically reallocated to the remaining Units in proportion to their respective Allocated Interests before the taking, and the Association shall promptly prepare, execute, and record an instrument reflecting the reallocations.

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

### **Section 10.2. Acquisition of Common Elements.**

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

### **Section 10.3. Rights of the Association and Mortgage Holders.**

In the event of a proposed acquisition by eminent domain, the Association shall

have the right but not the obligation to act and to intervene on behalf of Unit Owners. Nothing contained in this Declaration, the Bylaws or any Rules and Regulations adopted by the Board or Association, however, shall entitle any Unit Owner or other person to priority over a first mortgagee of a Unit pursuant to its mortgage instrument in the right to receive eminent domain awards for the taking of Units and/or Common Elements.

## **ARTICLE 11 - DEVELOPMENT RIGHTS, SPECIAL DECLARANT RIGHTS AND DECLARANT CONTROL PERIOD**

### **Section 11.1 Development Rights.**

The Declarant reserves to itself, and for the benefit of itself and its successors and assigns, the Development Rights to create additional units, common elements or limited common elements within the Condominium, to convert units into common elements, to convert common elements into units, to add real estate to the Condominium and to modify, extend or relocate roads, paths, utility lines and common driveways in the Condominium (provided that no such modification or relocation shall be undertaken in such a manner so as to permanently deprive any unit of access or utilities). The real estate subject to the Development Rights is shown and delineated on the Plats and Plans attached hereto. The Declarant further reserves an easement across the Property for access by workers and equipment, and for re-grading the surface of the earth, for the construction of improvements; provided, however, that Declarant shall reasonably restore those portion of the Property disturbed by such construction activities. If units are added to the Condominium, or converted from common elements, by the Declarant in the exercise of its Development Rights as reserved in the Declaration, the votes in the Association shall be reallocated among all of the units such that each unit shall have one (1) vote, and the percent of interest in common elements shall be allocated equally and prorata among all of the units created and then existing. Development Rights and Special Declarant Rights must be exercised within fifteen (15) years from the date of recordation of this Declaration provided that the period of Declarant control of the Association as permitted by Section 1603-103(d) of the Maine Condominium Act, and as reserved in section 11.2 below, shall terminate in accordance with the provisions thereof. For purposes of this Article concerning Development Rights and Special Declarant Rights, such rights shall be deemed to be exercised at such time as this Declaration is amended to reflect the creation of additional units or such other Development Right or Special Declarant Right, if the exercise of such right requires an amendment to this Declaration, regardless of the time that such unit is constructed or such other work contemplated by the Development Right or Special Declarant Right is completed.

### **Section 11.2 Special Declarant Rights.**

The Declarant reserves, in favor of itself and any successor Declarant, for a period of

fifteen (15) years following the recording of this Declaration in the York County Registry of Deeds, the following rights with respect to the Property (the “Special Declarant Rights”) until the construction, marketing and sale of all units that Declarant is allowed to create pursuant this Declaration and the common elements related thereto are completed:

- a. To locate and relocate in the common elements and limited common elements, even though not depicted on the Plat, and grant and reserve easements and rights-of-way for the installation, maintenance, repair, replacement and inspection of utility lines, wires, pipes, conduits and facilities servicing the Condominium including but not limited to water, electric, telephone, cable television and sewer and transformers, meters and other equipment related thereto, provided that no such easement shall be effective until of record, that no such easements may be granted through units sold by Declarant to third parties without such unit owner’s consent and that the common elements promptly shall be reasonably restored upon disturbance
- b. To connect with and make use of utility lines, wires, pipes, conduits and facilities located on the Property for construction and sales purposes, provided that the Declarant shall be responsible for the cost of services so used;
- c. To use the common elements and limited common elements for ingress and egress, for the alteration, repair and construction of units, common elements and limited common elements (including without limitation the movement and temporary storage of construction materials and equipment), pedestrian and vehicular ingress and egress, vehicular parking, the cutting and removal of trees and vegetation, the excavation, grading and alteration of the surface of the earth, the creation of ponds, drainage ditches and swales and the installation of signs and lighting for sales and promotional purposes;
- d. To use the common elements and limited common elements for the ingress and egress of itself, its employees, agents, contractors and subcontractors and for prospective purchasers of units; to use any units owned or leased by the Declarant as models, management offices, sales offices for its project or customer service offices and to relocate the same from time to time within the Property (upon relocation, the furnishings thereof may be removed); to maintain on the Property such advertising signs as may comply with applicable governmental regulations, which may be placed in any location on the Property and may be relocated or removed, all at the sole discretion of the Declarant; to erect temporary offices on the common elements for models, sales, management, customer service and similar purposes, which may be relocated or removed, all at the sole discretion of Declarant;
- e. To appoint and remove members of the Executive Board of the Association (the “Board”) and officers of the Association until sixty (60) days after the sale of seventy-five percent (75%) of the units that Declarant is allowed to create pursuant to this Declaration but in any event:
  1. Within seven (7) years of the first conveyance of any unit, or
  2. Until voluntarily waived in whole or part by Declarant by written notice duly recorded, whichever occurs first (together, the “Declarant Control Period”).

- f. Those Special Declarant Rights established under the Condominium Act.

## **ARTICLE 12- ASSIGNABILITY OF DECLARANT'S RIGHTS.**

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

## **ARTICLE 13 - AMENDMENT OF DECLARATION**

### **Section 13.1. General.**

Certain amendments to this Declaration may be made unilaterally by the Declarant in accordance with this Declaration and the Condominium Act. In addition, certain amendments may be unilaterally executed and recorded by the Association as described in Condominium Act Sections 1601-107, Eminent Domain, 1602-108(c), Allocation of Limited Common Elements, 1602-112(a), Relocation of Boundaries Between Adjoining Units, 1602-113, Subdivision of Units and 1602-117(a), Amendment of Declaration, and certain amendments to this Declaration may be made by certain Units in Sections 1602-108(b), Reallocation of Limited Common Elements, 1602-112(a), Relocation of Boundaries Between Adjoining Units, 1602-113(b), Subdivision of Units, or 1602-118(b) of the Condominium Act.

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

- (a) Before Any Conveyance. Prior to the conveyance of any Unit by the Declarant to a third party purchaser (other than as security for an obligation), the Declarant shall have the right to unilaterally amend and re-amend this Declaration in any manner that the Declarant may deem appropriate.
- (b) After First Conveyance. After the first conveyance of Unit by a Declarant to a third party purchaser, the terms of the following procedures shall apply to an amendment of



this Declaration:

- (i) Development and Special Declarant Rights. Notwithstanding any other provision of this Declaration, the Declarant acting unilaterally may record amendments to this Declaration which result from the exercise of Development and Special Declarant Rights pursuant to this Declaration and/or the Act.
- (ii) Proposal and Notice. An amendment to the Declaration may be proposed by either the Executive Board or by Unit Owners holding at least twenty (20) percent of the votes in the Association. Notice of the subject matter of a proposed amendment, including the proposed text thereof, shall be included in the notice of any meeting in which a proposed amendment is to be considered, and such notice shall be given to all Unit Owners and all Eligible Mortgage Holders.

Approval:

(a) The amendment shall be adopted if it receives the affirmative vote or written consent of Sixty-Six percent (66%) or more of the total percentage in interest of all votes in the Association in all cases and such Eligible Mortgage Holders as may be required herein in Article 8. Unit Owners and mortgagees may express their approval in writing or by proxy. Provided however that no amendment may change the uses to which a Unit may be put without the unanimous consent of the owners of Units affected. Except as specifically provided to the contrary in this Declaration or the Act, no amendment may alter the boundaries of a Unit or the Allocated Interests allocated to a Unit without the unanimous consent of all affected owners.

(b) By Written Agreement. In the alternative, an amendment may be made by an agreement signed by the record Owners of Units to which are allocated one hundred percent (100%) of the Units in the manner required for the execution of a deed and acknowledged by at least one of them, together with any required approval by Eligible Mortgage Holders, and such amendment shall be effective when certified and recorded as provided below.

### **Section 13.2. Proviso; Consent of Declarant.**

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

### **Section 13.3. Notice, Execution and Recording.**

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

### **Section 13.4. Notice and Challenge.**

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

### **Section 13.5. Corrective Amendments.**

If the Declarant or Association determines that a typographical error, misnomer, inadvertent omission, or any other error has been made in this Declaration and Bylaws or any amendment hereto, the Declarant or Association shall have the right, and hereby reserves the right, to correct any such error by an instrument executed by the Declarant making reference to this Article, and upon such instrument being Recorded with the Registry of Deeds, such error shall be deemed to have been corrected as fully and with the same force and effect as if such error were not ever made. No such amendment, however, shall adversely affect any substantive rights or interests of any Unit Owner in his or her Unit or the common areas and facilities in any material way, without such Unit Owner's written consent.

## **ARTICLE 14 – TERMINATION, CONDEMNATION, DESTRUCTION AND LIQUIDATION.**

### **Section 14.1 Termination.**

In accordance with Condominium Act, the Condominium may be terminated in whole or part with the agreement of the Owners of Units to which one-hundred (100) percent of the Votes in the Association are allocated, and that percentage of Eligible Mortgage Holders required herein and the Condominium Act. Termination shall not bar the subsequent resubmission of the Property to the Condominium Act.

### **Section 14.2. Effect of Termination.**

Upon removal of the Property from the Condominium Act, the Unit Owners

shall hold the Property and any proceeds thereof as tenants in common in accordance with the Condominium Act and subject to the Condominium Act with any mortgages or liens affecting a Unit to attach in order of priority against the resulting interest.

## **ARTICLE 15 - GENERAL PROVISIONS**

### **Section 15.1. Enforcement.**

The failure to comply with the terms of this Declaration, the Bylaws and the Rules and Regulations adopted pursuant thereto shall entitle the Association to (a) take court action, including without limitation suit for injunctive relief, and/or (b) take such further action as permitted under the Bylaws, and/or (c) enter the Unit or Common Elements in which such violation or breach exists and summarily to abate and cure the violation at the expense of the defaulting Unit Owner, and the Executive Board shall not be deemed guilty in any manner of trespass when enforcing these terms. The exercise of any one remedy shall not preclude the exercise of other remedies provided by law, the Condominium Act, this Declaration or in the Bylaws. In any such enforcement action or proceeding, the Association shall be entitled to recover the costs of the proceeding, including reasonable attorney's fees and costs, with interest.

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

### **Section 15.2. Units Not Yet Separately Assessed.**

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

### **Section 15.3. Conflict.**

If any provision of this Declaration, the Bylaws or the Rules and Regulations conflicts with any applicable laws, including, but not limited to, the Condominium Act, then the laws shall be deemed controlling; but the validity of the remainder of this Declaration, the Bylaws and Rules and Regulations, and the application of any such provision, section, clause, phrase, or word in other circumstances shall not be affected thereby.

#### **Section 15.4. Severability.**

The invalidity of any provision of this Declaration shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this Declaration, and in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

#### **Section 15.5. Waiver.**

No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same irrespective of the number of violations or breaches which may occur.

#### **Section 15.6. Captions.**

The headings in this Declaration are for purposes of reference only, and shall not limit or otherwise affect the meaning hereof, except that section text for which the section headings reciting types of Units shall apply only to the types of Units referred to in the section heading . The table of contents is attached to this Declaration for purposes of reference and convenience only, and shall neither limit nor otherwise affect the meaning of this Declaration. References in this Declaration to Articles, and Schedules without references to the document in which they are contained are references to this Declaration. Schedules are attached to and incorporated by reference into this Declaration.

#### **Section 15.7. Gender, Number, Etc.**

The use of the singular number in this Declaration shall be deemed to include the plural, the plural the singular, and the use of any one gender shall be deemed applicable to all genders.

#### **Section 15.8. Power to Interpret.**

Any dispute or disagreement with any person other than the Declarant with respect to interpretation or application of this Declaration or the Bylaws or the Rules and Regulations shall be determined by the Executive Board, which determination shall be final and binding on all parties.

#### **Section 15.9. Disputes with Declarant and Arbitration.**

In any dispute between one or more Unit Owners and the Declarant regarding the Common Elements, the Executive Board shall act for the Unit Owners, and any agreement with respect thereto by the Executive Board shall be conclusive and binding

upon the Unit Owners.

All claims, disputes and other matters in question between the Declarant, on the one hand, and the Association or any Unit Owner(s), on the other hand, arising out of or relating to a Unit, the Common Elements, the Limited Common Elements, this Declaration, the Bylaws, the Rules and Regulations, or the deed to any Unit or the breach thereof, or the course of dealing between any Unit Owner, the Association and the Declarant, except for claims which have been waived by the acceptance of a deed, shall be decided by arbitration in accordance with the Rules of the American Arbitration Association then obtaining unless the parties mutually agree otherwise in writing. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance applicable law in any court having jurisdiction thereof.

#### **Section 15.10. Notices.**

(a) To Unit Owners. All notices, demands, bills and statements, or other communications affecting the Condominium shall be given to Unit Owners by the Association in writing and shall be delivered in hand, delivered to the Unit, or sent by United States mail, postage prepaid. If such notification is of a default or lien, then it shall be sent by registered or certified United States mail, return receipt requested, postage prepaid, addressed to the Unit Owner at the address which the Unit Owner shall designate in writing and file with the Secretary of the Association, or if no such address is so designated, the address of the Unit of such Unit Owner who is the record owner thereof. At the request of a Unit owner, the Unit owner may receive the above mentioned notices, demands, bills and statements, or other communications affecting the Condominium via electronic mail.

(b) Notice to the Association. All notices, demands, statements or other communications affecting the condominium given by the Unit Owners to the Association shall be in writing, and shall be deemed to be delivered personally, securing a written receipt therefore, or sent by United States mail, postage prepaid, return receipt requested, addressed to the Association at the principal office of the managing agent, if any, and to the secretary of the Association at the Secretary's address.

(c) Notice to Eligible Mortgage Holder. All notices, demands, statements or other communications affecting the Condominium given by the Association to any Eligible Mortgage Holder shall be in writing and shall be delivered personally, securing a written receipt, or sent by United States mail, postage prepaid, addressed to the Eligible Mortgage Holder at the address identified pursuant to the notice given to the Association when it became an Eligible Mortgage Holder.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be duly executed as of the day and year first above written.

**Regency Woods Development, LLC**

\_\_\_\_\_  
**Witness**

By: \_\_\_\_\_  
DENNIS PAGE, Member/Manager  
**Declarant**

STATE OF MAINE  
YORK, ss.

On this \_\_\_\_ day of \_\_\_\_\_. 2021, personally appeared the above-named, **DENNIS PAGE**, Member and Manager of Regency Woods Development, LLC, Declarant and acknowledged the foregoing instrument to be his free act and deed in said capacity and the free act and deed of the Company.

\_\_\_\_\_  
Notary Public

## WARRANTY DEED

*Know All By These Present* that, MIDDLESEX LAND HOLDINGS, LLC, a Massachusetts limited liability company with a place of business at Kittery, Maine and a mailing address of 1 Bridgeview Circle, Tyngsboro, Massachusetts 01886, with **WARRANTY COVENANTS**, a certain condominium unit situated in the Town of Kittery County of York and State of Maine and being further identified as UNIT \_\_\_\_ (hereinafter referred to as the "Unit") of **THE REGENCY WOODS CONDOMINIUM** (hereinafter referred to as the "Condominium") situated at U S Route 1, Kittery, Maine, as more particularly described in the Declaration of condominium for **THE REGENCY WOODS CONDOMINIUM**, dated May \_\_\_\_, 2021 and recorded in the York County Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_ and (hereinafter referred to as the "Declaration"), and in the Plats and Plans incorporated into the Declaration and recorded in the York County Registry of Deeds in Condominium File No. \_\_\_\_, by virtue of the execution and recording of which Declaration the Grantor, as Declarant, created the Condominium pursuant to the Maine Condominium Act, Title 33 of the Maine Revised Statutes of 1964, as amended, Chapter 31, Sections 1601-101 et. seq., as amended (hereinafter referred to as the "Act"). Reference is hereby made to the Declaration, the Plats and Plans, all as amended and Act which are incorporated herein by reference thereto for a more particular specification, definition, location and description of the real property hereby conveyed;

Units 1 – 16 are conveyed **SUBJECT TO** the restriction that they may only be owned and occupied by persons 55 years of age or older who would qualify for “Elderly Housing” as defined by the Town of Kittery Zoning Ordinances Chapter 16.2.

TOGETHER WITH an undivided interest in the Common Elements of the Condominium, the liability for Common Expenses of the Condominium, and Votes in the Association of Unit Owners of the Condominium allocated to the Unit pursuant to the Declaration;

TOGETHER WITH the rights to use the Limited Common Elements allocated to the Unit as described, specified, and allocated pursuant to the Declaration;

TOGETHER WITH an easement in common with the Owners of other units to use the Common Elements of the Condominium for purposes of ingress and egress in accordance with the Declaration and the exclusive right and easement for the use, occupancy and enjoyment of the Unit;

TOGETHER WITH an easement in common with all other Unit Owners to use all pipes, wires, ducts, cable, conduits, public utility lines and other Common Elements serving the Unit and located in any of the other units;

TOGETHER WITH all other rights, easements, rights-of-way, interests, Allocated Interest, privileges and appurtenances as more particularly described or referred to in the Declaration;

SUBJECT TO the matters affecting title described in the Declaration and the Plats and Plans and the terms, conditions, covenants, agreements, easements and provisions of the Declaration as the same may be amended from time to time, which terms, conditions, covenants, agreements, easements and provisions, together with any amendments thereto, shall constitute covenants running with the land and shall bind the Grantee and any person having at any time any interest or estate in the Unit, as though such provisions were recited and stipulated at length herein;

SUBJECT ALSO to an easement in common with the Owners of other Units to use all pipes, wire, ducts, cables, conduits, public utility lines and other Common Elements serving the other Units and located in the Unit and to an easement for structural and lateral support in favor of every other Unit.

Meaning and intending to convey and hereby conveying the same premises conveyed to the Grantor by deed of DSS Land Holdings, LLC dated April 18, 2019 and recorded in the York County Registry of Deeds at Book 17937, Page 323.

**IN WITNESS WHEREOF, MIDDLESEX LAND HOLDINGS, LLC**, acting through its Manager, Dennis Page, has caused this Declaration to be executed in its name as of the date and year first above written.

**SIGNED, SEALED and DELIVERED  
IN PRESENCE OF**

**MIDDLESEX LAND HOLDINGS, LLC**

\_\_\_\_\_

By: \_\_\_\_\_  
**Dennis Page, Manager  
DECLARANT**



**STATE OF MAINE  
COUNTY OF YORK**

May \_\_\_\_, 2021

Personally appeared the above-named, Dennis Page, Manager of **MIDDLESEX LAND HOLDINGS, LLC** and acknowledged the foregoing Declaration to be his free act and deed and the free act and deed of said company.

Before me,

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