

## CONDOMINIUM DECLARATION

FOR

### CHARTER TOWN HOMES, A CONDOMINIUM

DECLARATION made this \_\_\_\_\_ day of \_\_\_\_\_, 1991 by Exeter Wellington Development Corp., a New Hampshire corporation with a principal place of business at 799 Mammoth Road, Manchester, Hillsborough County, New Hampshire 03104, which being the Owner of legal title to lands described herein and the improvements thereon, hereby declares its intent to submit the land and buildings herein described, and located on Charter Street in Exeter, Rockingham County, New Hampshire, to the Condominium form of ownership and use, in the manner provided by New Hampshire Revised Statutes Annotated, Chapter 356-B, Unit Ownership of Real Property, herein called "The Condominium Act". The Owner shall henceforth be called "Declarant" for the purpose of this Declaration, and said term shall apply to the Owner, its successors, and assigns, except for purchasers of individual Units for their residential use.

#### I. DEFINITIONS

Certain of the terms as used in this Declaration and in the By-Laws, which are annexed hereto as Appendix C and are made a part hereof, are defined and shall have meaning as follows, unless the context clearly indicates a different meaning thereof:

1. "Declaration" means this instrument and all of its Exhibits, except where the context indicates otherwise.
2. "Declarant" means Exeter Wellington Development Corp.
3. "Act" means the New Hampshire Condominium Act (Chapter 356-B of the New Hampshire Revised Statutes Annotated).
4. "Charter Town Homes, A Condominium" (hereinafter referred to as "the Condominium") means the premises described in Appendix A<sup>1</sup> attached hereto including land, all buildings and other improvements and structures now or hereafter thereon, all easements, rights and appurtenances belonging thereto, and all personal property now or hereafter used in connection therewith, which have been or are intended to be submitted to the provisions of the Act.

5. "Unit" means a part of the Condominium intended for independent ownership, all as more particularly described in Section II.4 hereof.
6. "Common Area" means all that portion of the Condominium other than the Units.
7. "Limited Common Areas" means that portion of the Common Area which is designated herein as reserved for the use of the Owner or Owners of a certain Unit or Units to the exclusion of the owners of other Units.
8. "By-Laws" means the instrument annexed hereto as Appendix C and hereby made a part thereof.
9. "Owner" means any person or persons or other entity owning a Unit in a fee simple absolute together with an undivided interest in fee simple in the Common Area.
10. "Association" or "Association of Owners" or "Charter Town Homes Condominium Owners Association" means the unincorporated association of the Owners acting as a group in accordance with the Act, the Declaration and the By-Laws.
11. "Board" or "Board of Directors" means the governing body of the Association elected pursuant to the By-Laws of the Association.
12. "Condominium Rules" means such rules and regulations as the Board from time to time may adopt relative to the use of the Condominium or of any part thereof, as the same may be amended pursuant to the terms hereof and of the By-Laws.
13. "Common Expenses" means all expenses incurred by the Association for the purposes of administration, maintenance, repair and replacement of Common Area and for any other lawful purposes.
14. "Eligible Mortgage Holders" means those holders of a first mortgage on a Unit who have requested the association to notify them of any proposed action that requires the consent of a specified percentage of mortgage holders.

## II. INFORMATION REQUIRED BY RSA 356-B:16 I.

1. Name. The name of the condominium is "Charter Town Homes, A Condominium".

2. Location. The Condominium is located at Charter Street, Exeter, Rockingham County, New Hampshire.

3. Legal Description by Metes and Bounds. A legal description of the land submitted to the Act is set forth in Appendix A<sup>1</sup> to this Declaration and hereby made a part hereof.

4. Description of Units. The following provisions describe the boundaries of Units and each Unit includes all of the building which lies within these boundaries (except for Common Area within the Unit designated as such):

A. Horizontal Boundaries:

(i) Lower Boundary: The lower boundary is the upper boundary surface of the concrete foundation slab in the basement to the extent such falls within the vertical boundaries of a Unit.

(ii) Upper Boundary: The upper boundary is the plane or planes of the lower surface of the sheetrock forming the Unit's upper-most ceiling.

B. Vertical Boundaries: The vertical boundaries of each Unit shall be the interior plane of the sheetrock or other unfinished surfaces, except in the case of windows and doors the Unit's vertical boundaries shall be their exterior surfaces. In the basement area, the Unit boundaries extend to the plane of the interior unfinished foundation walls.

C. Right of Ingress and Egress: Each Unit Owner has an unrestricted right of ingress and egress to his or her Unit. This right is perpetual and shall pass with the Unit as transfers of ownership of the Unit occur.

D. General: The following items, if they are a feature of any Unit, shall be a part of that Unit fully owned by the Unit Owner or Owners: any zero-clearance fireplace; any insulated metal chimney and/or enclosure, even if such chimney or enclosure, or both, shall protrude through the upper horizontal boundaries; any vent pipes through the roof or the walls, even if such pipes shall protrude through this vertical or horizontal boundaries of the Unit.

5. Description of Limited Common Area: In the event there is a deck, balcony, patio or other similar structure adjacent or attached to a Unit which services only that Unit or which services only certain

Units to the exclusion of others, such patio, balcony, deck or other structure shall be Limited Common Area.

6. Description of Common Areas which may be subsequently assigned as Limited Common Areas: Declarant reserves the right to convert portions of the Common Areas as Limited Common Areas which shall be appurtenant to individual units to be constructed out of such Common Areas.
7. Allocation to each Unit of Undivided Interest in Common Area: The allocation to each Unit of Undivided Interest in the Common Areas is set forth in Appendix B hereby made a part hereof.
8. Statement of Purposes and Use: The Condominium is primarily intended for residential use and the following provisions, together with the provisions of the Condominium Rules, are in furtherance of this purpose:
  - A. An Owner shall not occupy or use his Unit or permit the same, or any part thereof, to be used or occupied for any purpose other than as a private residence for the Owner and the Owner's family or the Owner's lessee or guests, except that Declarant may use one or more Units as a Condominium Sales Office and/or Model Unit and/or as an office for Declarant's business; provided, however, that Declarant's sale of all Units, including any Unit used as an office by it, shall extinguish this exception. No Unit shall be occupied by more than four (4) unrelated persons.
  - B. 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. Nothing shall be stored in the Common Area without the prior written consent of the Board. Nothing shall be altered, constructed in or removed from the Common Area without the prior written consent of the Board.
  - C. 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 the other Owners. No use shall be made of any part of the Condominium which will constitute a fire hazard or which will result in the cancellation of insurance on any part of the Condominium or which is in violation of any law, ordinance or governmental

regulation applicable thereto. No use shall be made of any part of the Condominium which will increase the rate of insurance on the Common Area, without prior written consent of the Board.

D. No signs (except as provided in subparagraph (F) hereof), clotheslines, television antennas, refuse, or loose clothing or similar material or equipment shall be hung, posted or otherwise placed so as to be within public view or within the view of other Owners, without the prior written consent of the Board. No Owner, other than Declarant, may display "For Sale" or "For Lease" signs.

E. No animals, livestock or poultry, and no dogs shall be kept anywhere within the Condominium except cats or other household pets may be kept in Units, with the prior written consent of the Board, which consent may be withdrawn whenever any such household pet becomes a nuisance to the other Owners, and which consent shall be subject to the Condominium Rules.

F. Declarant shall be deemed to be the Owner of any Units which have been completely constructed but not sold, and may make such use of such unsold Units as may facilitate the completion of construction and such sale, including without limiting the generality of the foregoing, the right to enter all Units upon reasonable notice to the Owners thereof and the Common Area for construction purposes, the right to store materials, the maintenance of a sales office and a rental office in any of such unsold Units, the showing of property and the displaying of signs.

G. An Owner shall not paint or otherwise decorate or change the appearance of any portion of any of the buildings, other than interior portions of the Unit, without the written permission of the Board of Directors.

H. The Board of Directors is empowered to adopt and amend, from time to time, Condominium Rules concerning use of the Condominium and various parts thereof, which Rules shall be furnished in writing to all Owners and which shall not be violated.

I. The consents of the Board referred to in this Paragraph (8), except as specified in subparagraph (E), may be withdrawn by the Board whenever it deems such withdrawal to be in the best interest of the Condominium.

between and location of, Units so long as the Units so changed or altered have not been conveyed by the Declarant. Any such change or altering which results in a discrepancy between the Condominium as described herein and in the floor plans filed at the appropriate Registry of Deeds, and the Condominium as built, may be reflected by an amendment of this Declaration alone, notwithstanding the procedures for amendment described in Section IV hereof.

9. Reconstruction or Repair after Casualty and Voting Requirements in the Event of Damage or Destruction, as Required by RSA 356-B:16(i).

A. Determination to Reconstruct or Repair. If any part of the Condominium shall be damaged by casualty, whether or not it shall be reconstructed or repaired shall be determined in the following manner:

(1) Common Areas. If the damaged improvement is a Common Area, other than a building or a portion of a building, the damaged property shall be reconstructed or repaired.

(2) Building.

(a) Partial Destruction. If the damaged improvement is a building, and if any Unit in the building is found by the Board of Directors of the Association to be tenantable, the damaged property shall be reconstructed or repaired, with construction to begin within sixty (60) days of the casualty or upon receipt of insurance proceeds, whichever ever is later.

(b) Total Destruction. If the damaged improvement is a building and if none of the Units in the building is found by said Board of Directors to be tenantable, the damaged property will be reconstructed or repaired unless, within sixty (60) days after the casualty, at least ninety (90%) percent of all the Unit Owners and at least sixty-seven (67%) percent of the eligible mortgage holders vote, at a meeting duly called, not to reconstruct the destroyed building and to terminate the Condominium in accordance with New Hampshire RSA 356-B:34. In the event of any such termination of the Condominium, the insurance proceeds shall be held as a fund for the benefit of the Owners of Units which are not reconstructed and their mortgagees, as their interests shall appear. Such fund shall be paid to the affected Unit Owners, and/or to their mortgagees, pro-rata based upon the proportion of the percentage of the undivided interest held by each affected

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(3) Certificate. The mortgagee may rely upon a certificate of the Association made by its President and Secretary to determine whether or not the damaged property is to be reconstructed or repaired.

B. Plans and Specifications. Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original building in regard to exterior appearance, size, dimensions and all portions of Common Areas, or otherwise in accordance with plans and specifications approved by the Board of Directors of the Association, and by the Owners of all damaged Units therein, which approvals shall not be unreasonably withheld.

C. Responsibility. If the damage is only to those parts of one Unit for which the responsibility of maintenance and repair is that of the Unit Owner, then the Unit Owner shall be responsible for and pay the cost of such reconstruction and repair after casualty. In all other instances, the responsibility and cost of such reconstruction and repair after casualty shall be that of the Association.

D. Estimate of Costs. Immediately after determination to rebuild or repair damaged property for which the Association has the responsibility of reconstruction and repair, the Association shall obtain reliable and detailed estimates of the cost to rebuild or repair.

E. Assessments. If the proceeds of insurance are not sufficient to defray the estimated cost of reconstruction and repair, or upon completion of construction and repair, the funds for the payment of the cost thereof are insufficient, assessments shall be made against the Owners in sufficient amount to provide funds for the payment of such cost. Such assessments against Unit Owners for damage to Units shall be to the Unit Owners in the percentages as provided in Appendix B.

F. Construction Funds. The funds for payment of costs of reconstruction and repair after casualty, which shall consist of proceeds of insurance held by the Association and funds collected by the Association from assessments against Unit Owners shall be disbursed in payment of such costs in the following manner:

1. The insurance proceeds and the total assessments made by the Association in order to provide funds for payment of costs of reconstruction and repair, which is the responsibility of the Association, shall be paid to, held and disbursed by the Treasurer of the Association.



2. The proceeds of insurance collected on account of casualty and the sums collected from Unit Owners as assessments on account of casualty shall constitute a construction fund from which the Association shall disburse in payment for costs of reconstruction or repair in the following manner:

(a) If the amount of the estimated costs of reconstruction and repair, for portions which are the responsibility of the Association, is less than Fifteen Thousand (\$15,000.00) Dollars, then the construction funds shall be disbursed in payment of such costs upon the order of the Treasurer of the Association; provided, however, that upon request by a mortgagee, which is the beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such funds shall be disbursed in the manner hereinafter provided for the reconstruction and repair of damage equal to or greater than Fifteen Thousand (\$15,000.00) Dollars.

(b) If the amount of the estimated cost of reconstruction and repair, which is the responsibility of the Association, is equal to or greater than Fifteen Thousand (\$15,000.00) Dollars, then the construction fund shall be disbursed by the Treasurer of the Association, after approval by the Board of Directors of the Association, but only after review by an architect qualified to practice in the State of New Hampshire and employed by the Association to supervise the work and upon approval of any mortgagee requesting notice of such payments.

(c) Surplus. It shall be presumed that the first monies distributed in payment of the costs of reconstruction and repair shall be from the insurance proceeds. If there is a balance in the construction fund after payment of all costs of reconstruction and repair for which the fund was established, such balance shall be distributed to the Unit Owners and the mortgagees, as their respective interests may appear.

10. Declarant's Reserved Right to Mortgage. Declarant herein reserves the unqualified right to mortgage all or part of the submitted land described on Appendix A<sup>1</sup> for the purpose of financing the construction of Units thereon and may do so without further consent or approval of the Unit Owners or the

Association, whose interest is subordinate to this reservation of rights. This right does not extend to the mortgaging of any Unit and associated ownership interest in a percentage of the Common Area which has been transferred to an Owner by the Declarant.

11. Declarant's Reserved Right to Grant Utility Easements. Declarant herein reserves the unqualified right to grant utility easements with respect to all or a part of the submitted land described in Appendix A<sup>1</sup> for the purpose of permitting the construction, maintenance and repair of utilities including, but not limited to public or private sewer and water lines, public or private drainage easements, telephone, electric, cable television and other utilities, and the Declarant may do so without further consent or approval of any Unit Owner or Unit Owners or of the Association, whose interests are subordinate to this reservation of rights.

12. Specific Performance. Both the Owners Association and any aggrieved Unit Owner shall have the right, as against other Unit Owners who fail to comply with the provisions of the condominium documents, to specifically enforce the terms of the condominium documents. Similarly, each Unit Owner shall have the right to bring an action for specific performance against the Owners Association, in the event the Owners Association shall fail to comply with the provisions of the condominium documents.

13. Leases. The Owner or Owners of any Unit shall have the right to lease that Unit. However, no lease a Unit Owner shall enter into shall be for a term of less than thirty (30) days' duration.

### III. INFORMATION REQUIRED BY RSA 356-B:16.II.

1. The Condominium contains convertible land as defined in 356-B:3(X), a legal description of same being set forth in Appendix A<sup>2</sup>, made a part hereof.

2. The maximum number of Units which may be created within the Convertible Land is ten (10) Units.

3. The use of such Convertible Land will be restricted to the uses set forth hereinabove in Section II.8.

4. The buildings proposed to be erected on said Convertible Land will be of similar architectural style and design to that to be constructed on the Submitted Land, and shall be of equal quality and of the same or similar materials.

5. Declarant reserves the right to develop all or part of the Convertible Land. If the Declarant elects to develop only a

part of the Convertible Land, the undeveloped portion of such Convertible Land shall remain Convertible Land available for future development. Other improvements that may be made on such Convertible Land are roadways, sidewalks, lawns, gardens, shrubbery and other plantings, outside parking areas and such other site improvements as the Declarant expects and intends to make in connection with the Submitted Lands. The Declarant further reserves to itself, its employees, agents, subcontractors, independent contractors, assigns, and others, an easement over the submitted land for the purpose of doing all things reasonably necessary for the development of additional Units upon the Convertible Land.

6. The Units to be created on such Convertible Land will be substantially identical to the Units on other portions of the Submitted Land.

7. The Declarant hereby reserves the right to create Limited Common Areas within any Convertible Land, and/or to designate Common Areas therein which may subsequently be assigned as Limited Common Areas. The foregoing reserved right includes, but not by way of limitation, the right to construct decks, balconies or patios which would be attached to and be the Limited Common Area of specific Units.

8. Condominium Assessments, for every Unit constructed in the convertible area, will begin to accrue at the time each such Unit is declared. Payment of the first monthly assessment will become due at the next regularly scheduled payment date, normally occurring within thirty (30) days after a Unit is declared. Each Unit's undivided interest in the Common Area shall be equal to that of every other Unit's interest therein.

#### IV. AMENDMENTS.

This Declaration of Condominium and By-Laws of the Owners Association, except as otherwise provided herein or in RSA 356-B:34, may be amended by a vote in accordance with paragraph II of the By-Laws and by an instrument in writing signed, acknowledged and recorded as provided by New Hampshire RSA 356-B:34, and such amendment shall be effective upon recording in the office of the Registry of Deeds of Hillsborough County, State of New Hampshire, subject to the following:

1. Amendments of a material nature must be agreed to by Unit Owners representing at least 67% of the total allocated votes in the Owners Association. In addition, approval must be obtained from eligible mortgage holders representing at least 67% of the votes of the Unit estates that are subject to mortgages held by eligible holders. A change to any of the following would be considered material:

- A. voting rights;
- B. assessments, assessment liens or subordination of assessment liens;
- C. reserves for maintenance, repair and replacement of common areas;
- D. responsibility for maintenance and repairs;
- E. reallocation of interests in the general or limited common area, or rights to their use;
- F. boundaries of any Unit;
- G. insurance or fidelity bonds;
- H. leasing of Units;
- I. imposition of any restrictions on a Unit Owner's right to sell or transfer his or her Unit;
- J. a decision by the Owners Association to establish self management when professional management had been required previously by an eligible mortgage holder;
- K. restoration of the condominium (after a hazard damage or partial condemnation) in a manner other than that specified in the documents; or
- L. any provisions that expressly benefit mortgage holders, insurers, or guarantors.

2. When Unit Owners are considering termination of the legal status of the Condominium, the eligible mortgage holders representing at least 80% of the votes of the mortgaged Units must agree.

3. Notice. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which the proposed amendment is to be considered.

4. The Declarant reserves the right to unilaterally amend this Declaration for the purpose of reallocating each Unit's interest in the Common Area at such time as additional Units are constructed upon the convertible land and thereby adding to the Condominium. The Declarant shall execute and record at the Hillsborough County Registry of Deeds an amendment of this Declaration as required by Section 18.II. of the Act.

#### V. INSURANCE.

The Board of Directors shall obtain and maintain at all times FULL REPLACEMENT COST fire and extended coverage insurance of the type and kind and in at least the amounts provided in the By-Laws and including insurance for such other risks, of a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to other condominium complexes of similar construction, design and use; such insurance shall at all times be sufficient to finance the reconstruction of each Unit AS SOLD and (provided notice is

first given to the Board of Directors pursuant to subparagraph 7 below) as improved by Unit Owners where the value of such improvement is in excess of One Thousand (\$1,000.00) Dollars; provided that:

1. All policies shall be written with a company licensed to do business in the State of New Hampshire.
2. Premiums upon insurance policies purchased by the Board of Directors of the Association shall be paid by the Association as a Common Expense and proceeds of such policies shall be payable to the Board of Directors of the Association, to be held in accordance with Section II (9) herein as a common fund.
3. Exclusive authority to adjust losses under policies hereafter enforced shall be vested in the Board of Directors or its authorized representative.
4. In no event shall the insurance coverage obtained and maintained by the Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners for their mortgages.
5. Each Owner may obtain additional insurance, at his own expense, from the company issuing the Master Policy; provided, however, that no Owner shall be entitled to exercise his right to maintain insurance coverages in such a way as to decrease the amount which the Board of Directors, on behalf of all of the Owners, may realize under any insurance policy which the Board of Directors may have in force on the Common Areas at any particular time.
6. Each Unit Owner may maintain his own insurance policy on his own Unit and on his personal property contained therein.

NOTICE: UNIT OWNERS ARE URGED TO ASCERTAIN THAT THEIR INDIVIDUAL INSURANCE COVERAGE INCLUDES PROVISION FOR ALL ADDITIONS AND ALTERATIONS AND PHYSICAL ASPECTS OF THE UNIT NOT SPECIFICALLY COVERED BY THE MASTER POLICY AND TO SEE THAT ALL SUCH UNIT OWNER POLICIES CONTAIN A "LOSS ASSESSMENT" ENDORSEMENT.

7. Each Unit Owner shall be required to notify the Board of Directors of all improvements made by the Owner to his Unit, the value of which is in excess of One Thousand (\$1,000.00) Dollars.

8. Any Owner who obtains individual insurance policies covering any portion of the property, other than personal property belonging to such Owner, shall be required to file a copy of such individual policy or policies with the Board of Directors within thirty (30) days of such insurance.

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

A. A waiver of subrogation by the insurer as to any claims against the Board of Directors, the Manager, and Owners and their respective servants, agents, and guests;

B. The master policy cannot be canceled, invalidated, or suspended on account of the conduct of any one or more individual Owners;

C. The master policy cannot be cancelled, invalidated, or suspended on account of the conduct of any officer or employee of the Board of Directors or Manager without prior demand in writing that the Board of Directors or Manager cure the defect;

D. That any "no other insurance" clause in the master policy exclude individual Owner's policies from consideration.

10. The annual insurance review which the Board of Directors is required to conduct as provided in Paragraph I(d)(3) of the By-Laws shall include an appraisal of the improvements in the Condominium by a representative of the insurance carrier writing the Master Policy.

11. The Master Policy shall cover all parts of the Building, including fixtures, and including those parts of the Units which are customarily insured as parts of a building (i.e., walls, ceilings, floor coverings and light fixtures) under fire and multi-peril policies issued in this State.

#### VI. MAINTENANCE, ALTERATION, IMPROVEMENT AND MANAGEMENT.

Responsibility for the maintenance of the Condominium parcel, and restrictions upon the alterations and improvements thereof shall be as follows:

1. By the Association. The Directors shall maintain, repair and replace:

A. All portions of the Common Area not included within the Units as defined in Section II.4 All such repairs shall be at the Association's expense except as hereinafter set forth.

B. All portions of the Limited Common Area, if any. Costs expended for such maintenance shall be assessed by the Association against the Unit Owner or Unit Owners entitled to the exclusive use of such Limited Common Area.

C. All siding, roof shingles and all plumbing, wiring and other facilities for the furnishing of utility services, if any, which may be maintained by the Association, and all such facilities contained within a Unit which service a part or parts of the building in addition to the Unit within which it is contained, if any.

D. All incidental damage caused to a Unit by such work shall be promptly repaired at the expense of the Association.

2. By the Unit Owner. The responsibility of the Unit Owner shall be as follows:

A. To maintain, repair and replace at his expense all portions of his Unit except the portions to be maintained, repaired and replaced by the association and to pay the cost of maintaining and repairing all Limited Common Areas in conjunction with the other users, if any.

B. Not to paint or otherwise decorate or change the appearance of any portion of the exterior of the building.

C. To promptly report to the Association any defect or need for repairs, the responsibility for remedying of which is that of the Association.

3. Unit Alteration and Improvement. Except as otherwise reserved to the Declarant, neither a Unit Owner nor the Association shall make any alterations in the portions of a building which are to be maintained by the Association, nor remove any portion thereof, nor make any additions thereto, nor do anything which may jeopardize the safety or the soundness of a building without the written approval of the Board of Directors of the Association. A copy of plans for all such work, prepared by an architect licensed to practice in this State, shall be filed with the Association prior to the start of the work.

4. Common Areas: Alteration and Improvement. After completion of the improvements included within the Common Areas which are contemplated by this Declaration or performed by Declarant, there shall be no alteration nor further improvement of the Common Areas except as follows: (a) any alteration or improvement of the Common Areas bearing the approval in writing of fifty (50%) percent or more but less than seventy-five (75%) percent of the Unit Owners, which does not interfere with the rights of any non-approving Owners, may be done if the Owners who do not approve are relieved from the cost thereof. Such costs shall be assessed to the consenting Unit Owners in the proportion which their shares in the Common Areas bear to each other; and (b) seventy-five (75%) percent or more of the Unit Owners may agree to make improvements in the Common Areas and assess the cost thereof to all Unit Owners as a Common Expense.

5. Specifically reserved to the Declarant or the Board of Directors of the Association, as the case may be, is the authority to enter into a management and maintenance contract with a qualified management or maintenance service organization providing for the maintenance and repair services contemplated by this paragraph for the Declaration and further providing for the general management of the Condominium and the enforcement of its rules and regulations. However, in the event the Declarant shall enter into a management and maintenance contract, said contract shall not be binding upon the Association after control of the Association has been transferred from Declarant to the Unit Owners, unless then renewed or ratified by a majority of the Unit Owners.

6. There is hereby specifically reserved to the Owners Association the right to enter upon any Unit, Limited Common Area (if any) or Common Area for the purpose of making emergency repairs, or to perform other work reasonably necessary for the proper maintenance of the Condominium. In addition, the Association shall have the right to grant permits, licenses, and easements over the Common Areas for utilities, roads and other purposes necessary for the proper operation of the Condominium.

## VII. ASSESSMENTS

The making and collection of assessments against the Unit Owners for Common Expenses shall be done pursuant to the By-Laws and subject to the following provisions.

1. Share of Common Expense. Each Unit Owner shall be liable jointly and severally for a proportionate share of



the Common Expenses and shall share in the common surplus, such shares being the same as the undivided share in the Common Area which is appurtenant to the Unit owned by him, as set forth in Section II.7. Provided, however, that if a Unit is declared to be untenable by the Board of Directors of the Association on account of casualty covered by the Association insurance policy and it remains untenable for a period exceeding sixty (60) days, the Common Expense attributable to such Unit may be abated by the Board of Directors in its sole discretion, until such Unit is determined to be tenantable by the Board of Directors. During such period of abatement, if any, the Common Expenses attributable to such Unit shall be prorated and borne among the remaining tenantable Units in accordance with their proportionate share of the Common Expense.

2. Interest; Application of Payments. Assessment paid on or before ten (10) days after the date when due shall not bear interest, but all sums not paid on or before ten (10) days after the date when due, shall bear interest at the rate of three (3%) percent per month from the date when due until paid. All payments upon account shall be first applied to interest and then to the assessment.

3. Lien for Assessment. The lien for unpaid assessments, as provided in RSA 356-B:46, shall also secure accrued interest, reasonable attorneys' fees and costs incurred by the Association incident to the collection of such assessment in the enforcement of such lien. Said lien may, at the sole discretion of the Board of Directors of the Association, be enforced in the same manner as a Power of Sale Foreclosure pursuant to New Hampshire Revised Statutes Annotated Chapter 479. The lien for assessments provided for herein shall be subordinate to any first mortgage lien of record held by an Eligible Mortgage Holder.

4. Rental Pending Judicial Sale. After any execution upon such lien for assessment issues and notice of judicial sale has been given the Unit Owner, the Owner of the Unit subject to the lien shall be required to pay a reasonable rental for the Unit and the Association shall be entitled to the appointment of a receiver to collect the same, in the event such Unit Owner continues to occupy such Unit after notice of judicial sale is issued.

5. Mortgagees. Any mortgagee bank or other financial institution, which acquired its title as a result of foreclosure or conveyance in lieu of foreclosure on a Unit, shall not be liable for the payment of any assessment unless it is using or leasing the Unit, or until the expiration of a six month period from the date such

institution takes fee simple title, whichever is sooner. In no case will any such mortgagee be liable for the payment of assessments arising in time prior to such time said mortgagee acquired its title.

6. Working Capital Fund. To insure that the Owners Association will have funds sufficient to meet unforeseen expenditures or to purchase additional equipment or services, there shall be created a Working Capital Fund equal to two months estimated common assessment charges for each Unit. Any amounts paid into this fund shall not be considered as advance payments of regular monthly assessments. Each Unit's share of the Working Capital Fund shall be collected at the time the title to the Unit is transferred, with such funds being transferred to the Owners Association and separately segregated and escrowed. Within Sixty (60) days after title to the first Unit has been transferred, the Declarant shall pay each unsold Unit's share of the Working Capital Fund to the Owners Association. The Declarant, its successor or assigns, shall then reimburse itself for this payment from funds collected at the time of transfer of title for the remaining Units.

7. Times for First Assessment. Each Unit Owner, including the Declarant as the owner of declared but unsold Units, shall be liable for the payment of monthly assessments for the common charges as of the date construction of a Unit is substantially complete. Payment of the monthly assessment shall begin at the next regularly scheduled payment date, normally occurring within thirty (30) days after a Unit is declared.

#### VIII. ASSOCIATION.

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

1. Membership in the Association.

A. Qualifications. The members of the Association shall consist of all the record Owners of the Units.

B. Change of Membership. Change of membership in the Association shall be established by recording in the Registry of Deeds for Hillsborough County, State of New Hampshire, a deed establishing record title to a Unit in the Condominium. The Buyer shall deliver to

the Board of Directors of the Association a photostatic copy of the deed showing the Volume, Page (and/or Document Number) and time of the recording of the Deed in the Hillsborough County Registry of Deeds. The Board of Directors shall keep such photostatic copy on file as evidence of the Grantee's membership in the Association for all purposes, rights, and obligations as set forth in this Declaration and By-Laws. The Unit Owner designated by such instrument shall thereby become a member of the Association. At such time the membership of the prior Unit Owner shall be thereby terminated.

C. Voting Rights. A member of the Association shall be entitled to cast a vote for each Unit owned in the percentages attributed to each Unit in Section II.7. When there is more than one record Owner, any of such persons may attend any meeting of the Association and cast the vote of such Unit, but if more than one (1) such Record Owner shall attend, it shall be necessary for those present to act unanimously in order to cast votes to which they are entitled. The Declarant shall be entitled to vote with respect to any Unit owned by the Declarant.

D. Restraint upon Assignment of Shares in the Association. The share of a member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to his Unit.

E. Members may vote at all meetings by written proxy delivered to the Board of Directors.

2. Board of Directors. The affairs of the Association shall be conducted by a Board of five (5) Directors who shall be designated in the manner provided in the By-Laws.

3. Indemnification. Every Director and every officer of the Association shall be indemnified by the Association against all expenses and liabilities, including counsel fees, reasonably incurred or imposed upon him in connection with any proceeding to which he may be a party or in which he may become involved, by reason of his being or having been a Director or officer of the Association, or any settlement thereof, whether or not he is a Director or officer at such time the expenses are incurred, except in such cases wherein the Director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement, the indemnification herein shall apply only when the Board of Directors approves such settlement and

reimbursement as being in the best interest of the Association. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such director or officer may be entitled.

4. Limitations upon Liability of the Association. Notwithstanding the duty of the Association to maintain and repair parts of the Condominium, the Association shall not be liable for 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.

5. By-Laws. The By-Laws of the Association shall be in the form attached hereto as Appendix C.

6. Property in Trust. All funds and title to all properties acquired by the Association and the proceeds thereof shall be held in trust for the membership in accordance with the provisions of this Declaration of Condominium and the By-Laws.

#### IX. PARTITION.

There shall be no judicial partition of the Condominium or any part thereof, nor shall the Declarant or any other person acquiring any interest in the Condominium or any part thereof seek any judicial partition, until the happening of the conditions set forth in Section II.9 of this Declaration in the case of damage or destruction or unless the property has been removed from the provisions of The Condominium Act as provided in RSA 356-B:34; provided, however, that if any Unit shall be owned by two or more co-tenants as tenants in common or as joint tenants, noting herein contained shall be deemed to prevent a judicial partition as between such co-tenants. Such partition shall not affect any other Unit, nor shall it subdivide any Unit.

#### X. INTERPRETATION.

The provisions of the Declaration shall be liberally construed in accordance with the common law and statutory law of the State of New Hampshire in order to effect its purpose of creating a uniform plan for the development and operation of a Condominium. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof.

#### XI. SEVERABILITY.

The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or

unenforceability of any one provision or portion hereof shall not affect the validity or enforceability of any other provision hereof.

XII. EFFECTIVE DATE.

This Declaration shall take effect upon recording.

XIII. RIGHTS OF FIRST MORTGAGEE.

1. The Holder, insurer or guarantor of the mortgage on any Unit in the Condominium is entitled, upon written request, to timely written notice of:

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

(b) Any sixty (60) day delinquency in the payment of assessments or other charges owed by the Owner of any Unit on which it holds the mortgage;

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

(d) Any proposed action that requires the consent of a specified percentage of eligible mortgage holders.

2. Any holder, insurer or guarantor of a first mortgage has the right to inspect the Condominium's legal documents during reasonable business hours. In the event the Condominium shall contain fifty (50) or more Units, Owners' Association shall provide an audited statement for the preceding fiscal year to the holder, insurer or guarantor of any first mortgage secured by a Unit in the Condominium, if such holder, insurer or guarantor shall first have submitted a written request for same. In the event the project shall contain fewer than fifty (50) Units (and if there is no audited statement available) any mortgage holder shall be permitted to have an audited statement prepared at its own expense.

3. Notwithstanding any other provision of this Declaration or its By-Laws, the Association shall, upon the request of any institutional first mortgagee of a Unit, or their assigns, render the following written warranties which shall be binding upon the Association:

A. That as far as is known to the Association, the Condominium has been created and is existing in full compliance with applicable laws of the State of New Hampshire and the City of Manchester.

B. That any such mortgagee or its assigns may take title to a Condominium Unit pursuant to the power of sale contained in its mortgage, or accept a deed or assignment of title in lieu of foreclosure, or sell or lease a Unit so acquired by said mortgagee.

C. That any said mortgagee acquiring or succeeding to title in any said Unit shall not be liable for unpaid assessments or fees accruing prior to said mortgagee's taking or succeeding to a Unit Owner's title.

D. That except as provided by RSA 356:B, in the case of condemnation or substantial loss of the Units and/or Common Areas, unless at least 4/5 of the first mortgagees or Owners of Units shall have given their prior written approval, the Association shall not by act or omission seek to abandon or terminate the Condominium; nor change the proration of interest or obligations of any Unit for the purpose of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards or determining the pro rata share of ownership of each Unit in the Common Area; nor partition or subdivide, encumber, sell or transfer the Common Area except for easements for public utilities and public services consistent with the intended use of the Common Area; nor use hazard insurance proceeds for losses to the Condominium for other than repair, replacement or reconstruction of the Condominium.

E. That all taxes, assessments and charges which are due and payable have been paid and are assessed on individual Units and not on the Common Areas separate from Units.

F. That no provision of the Condominium instruments gives a Unit Owner or other party priority over a first mortgagee in case of a distribution of insurance proceeds or condemnation awards with regard to any Unit or the Common Area.

G. That all improvements to the Condominium are included within the Common Area and/or the Units, and the first mortgagee of any Unit has an equivalent undivided interest in such Common Area to the Unit so mortgaged and that all improvements have been installed, completed and in operation, if such be true.

H. That, if such be true, 70% or some other percentage of the Units constructed at any time have been sold to bona fide purchasers or are under binding contract to subsequent purchasers.

I. That, if such be true, 80%, or some other percentage of the Units are owned by individuals for use as primary year-round residences.

That Condominium assessments include adequate reserves for repair of Common Areas and are payable monthly.

K. That, if such be true, any management contract or other agreement with the Declarant has a term not exceeding three (3) years and may be terminated by either party without cause or penalty upon ninety (90) days written notice to the other party.

L. That, if such be true, no default of the Unit Owner's obligations to the Association exists with regard to a Unit, or has arisen within the sixty (60) day period prior to the request for such information, which remains uncured as of the date of certification of such fact by the Association; or, if any such default exists, the nature and status thereof.

The Declarant is empowered to render this certificate on behalf of the Association until such time as the Association assumes the management of the Condominium pursuant to Article I, Section (F) of the By-Laws; and the Association, during such time, irrevocably appoints said Declarant as its true and lawful attorney in fact for the purpose of execution and delivery of such certificate.

IN WITNESS WHEREOF, the undersigned has placed his hand and seal on the day and year first above written.

Exeter Wellington Development  
Corp.

\_\_\_\_\_  
Witness

BY: \_\_\_\_\_  
Ronald Kelly, President

STATE OF NEW HAMPSHIRE  
COUNTY OF HILLSBOROUGH

DATED: \_\_\_\_\_

Then personally appeared the above-named Ronald Kelly, President of Exeter Wellington Development Corp. and made oath that the within instrument was executed as his free act and deed. Before me.

\_\_\_\_\_  
Notary Public/  
Justice of the Peace



APPENDIX A<sup>1</sup>

SUBMITTED LAND

Beginning at a point on the southeasterly side of Charter Street in Exeter, Rockingham County, New Hampshire, said point being the northerly-most point of the within-described lot; thence

S 52° 44' 00" a distance of 363.87 feet along the southeasterly side of Charter Street to a point; thence

S 37° 16' 00" E a distance of 200.00 feet to a point; thence

N 52° 44' 00" E a distance of 363.87 feet to a point; thence

N 37° 16' 00" W a distance of 200.00 feet to the point of beginning.

Containing 72,774 square feet or 1.67 acres, more or less.

APPENDIX A<sup>2</sup>

CONVERTIBLE LAND

Beginning at a starting point located N 22° 07' 11" E a distance of 45.16 feet from the southerly-most point of the Submitted Land (appearing as Appendix A<sup>1</sup> to the Declaration), said starting point being the southerly-most point of the Convertible Land described hereinbelow; thence

N 37° 16' 00" W a distance of 126.00 feet to a point; thence

N 19° 02' 36" E a distance of 64.90 feet to a point; thence

N 52° 44' 00" E a distance of 86.00 feet to a point; thence

S 37° 16' 00" E a distance of 42.00 feet to a point; thence

S 52° 44' 00" W a distance of 84.00 feet to a point; thence

S 37° 16' 00" E a distance of 120.00 feet to a point; thence

S 52° 44' 00" W a distance of 56.00 feet to the starting point referenced above.

Containing 11,628 square feet, more or less.

APPENDIX B

<u>UNIT #</u>	<u>Common Area Percentage</u>
11	10%
12	10%
13	10%
14	10%
15	10%
16	10%
17	10%
18	10%
19	10%
20	<u>10%</u>
TOTAL	100%