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Book 2814 Page 1569

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**DECLARATION  
OF  
MOUNT SAINT MARY'S CONDOMINIUM**

**NOW COMES THE DECLARANT, 1663 HOOKSETT ROAD, LLC**, a New Hampshire limited liability company ("Declarant"), with a business address of 670 N. Commercial Street, Manchester, New Hampshire 03101, and as owner of the land and improvements of that parcel of land described in **Appendix A**, attached hereto, does hereby submit this land and all improvements thereon to a condominium formed herein pursuant to New Hampshire Revised Statutes Annotated, R.S.A. 356-B (the **Condominium Act** or **Act**), and is to be known as the Mount Saint Mary's Condominium, located at 1663-1704 Hooksett Road, in Hooksett, Merrimack County, New Hampshire (hereinafter referred to as the **Condominium**), by the recording of this Declaration of Mount Saint Mary's Condominium (Declaration) in the Merrimack County Registry of Deeds, which Declaration includes the Bylaws of the condominium unit owners' association (**Bylaws**) included in **Appendix C**. This Declaration and the attached Bylaws, and the condominium formed therein, are hereby effective and in full force upon the recording of this Declaration (including all Appendices) in the Merrimack County Registry of Deeds.

**INTRODUCTION**

A. Name and Description of the Condominium. Mount Saint Mary's Condominium (hereinafter **Condominium**) is a condominium complex formed under New Hampshire's statutory Condominium Act (Revised Statutes Annotated Chapter 356-B - **The Condominium Act**) comprised of a total of Seventy-Three (73) residential condominium units (**Residential Units**) as described on the floor plans (**Floor Plans**), recorded as Plan # \_\_\_\_\_, Sheets \_\_\_\_\_ through \_\_\_\_\_ at the Merrimack County Registry of Deeds. The Condominium is located on approximately 14.25+/- acres at 1663-1704 Hooksett Road, Hooksett, Merrimack County, New Hampshire, and as more particularly described by the Condominium's Existing Site Plan (**Site Plan**), recorded as Plan # 17526 at the Merrimack County Registry of Deeds. There are Seventy-One (71) units in the building shown on the Site Plan as Existing 4 Story Brick Building, and Two (2) Units in the building shown as Existing 2 Story Building w/2 Units "Whittemore House". The Condominium is governed by a Unit Owners' Association (**Association**) pursuant to this Declaration and the Association's Bylaws, with the current Bylaws attached hereto as

Appendix C. The Association is responsible for managing the Condominium, assessing the Owners for the common expenses, and for other such matters as described herein. **Common Expenses** or **Common Area Expenses** means all expenditures lawfully made or incurred on behalf of the Association as authorized in this Declaration and Bylaws, together with all funds lawfully assessed for the creation and/or maintenance of reserves as required herein. The property comprising the Condominium is either deemed to be part of the **Common Area** or the **Unit**. Included as part of the Common Area, are the **Limited Common Areas** that restrict the use of small portions of the Common Area to an individual Unit. Typically these Limited Common Areas are not part of the interior space and are located within the Common Area. If not otherwise described in this Declaration and the attached Bylaws, all references generally to the Common Area include the Limited Common Areas as well, since the Limited Common Areas are part of the Common Area.

B. Legal Description of Submitted Land and Units. The legal description of the land and all improvements thereon submitted to the Condominium is described in **Appendix A** of this Declaration. The legal description of the Submitted Land is described in **Appendix A** of this Declaration, and the Units' percentages of the undivided interest in the Common Area is described in **Appendix B** of this Declaration. The location and description of the Units, the Common Area, and the Limited Common Areas are more fully described in all plans of record, and such plans are incorporated herein by reference.

B.1 Parking Spaces. The Condominium contains a total of 174 parking spaces, including 9 handicap parking spaces as shown on the Site Plan recorded herewith. All parking spaces are deemed to be Common Area, and each Unit Owner shall have the right to use or occupy one parking space. The remaining parking spaces shall be available on a first come, first serve basis, except that no Unit Owner shall be permitted to use or occupy more than two (2) parking spaces at any time.

B.2 Laundry Rooms. The Condominium contains a total of 4 laundry rooms. The Declarant is the assignee of a certain 20 year lease held by its predecessor in title for the access, use, maintenance and operation (including the right to lease and/or operate the pay-per-use laundry equipment) of those portions of the Common Area of the building shown as Laundry Unit on the Floor Plans (the "Lease"). The Lease grants the Lessee the right to access the utilities and any common areas to install, operate, maintain, repair, and replace utilities, and any laundry equipment and/or related ancillary equipment, including but not limited to, cabinets, wires, cables, switches, conduits, ducts, pipes or piping, and any other utility support equipment for the operation of pay-per-use laundry equipment, now located or to be located within the laundry rooms, including the right to access from the nearest source of utilities.

B.3 Water Tank. The Condominium contains a water tank that is part of the Common Area, and is shown as Existing Water Tank on the Site Plan recorded herewith ("Water Tank").

B.4 Open Space. The open space between N.H. Rte. 3 and the Mt. St. Mary's Apartments consisting of a grass lawn, shall be maintained in its current condition, in perpetuity, without any changes, alterations or improvements constructed thereon. Notwithstanding any provisions of this Declaration to the contrary, this provision may not be amended without the affirmative vote of the Planning Board of the Town of Hooksett, in its sole discretion. Said open space is shown on the Site Plan as "Open Space".

C. Allocation of Interest in Common Area and Ownership of the Units. Each Residential Unit Owner owns an equal undivided 1/73rd interest in the Common Area. Each of the Units, as listed in Appendix B attached hereto is held by the Unit Owner in fee simple and may be retained, occupied, conveyed, transferred, encumbered, inherited or devised in the same manner as any other parcel of real property independent of the other individual Units.

## UNIT OWNER RESPONSIBILITIES AND RIGHTS

### Section 1. Maintenance of the Units

1.1 General Maintenance Responsibility. Each Unit Owner is responsible for the maintenance of the Owner's Unit and the Unit related items as described in this Section. By definition, any "maintenance responsibility" as used herein includes the responsibility to maintain, repair, and replace.

1.2 Definition of a Unit Owner. A Unit Owner (referred to herein as **Owner**) is defined as the owner(s) of record, whether one or more persons or other entities, of the fee simple title to a particular Unit. Said definition of an Owner does not include any mortgagees, unless the mortgagee takes title to the Unit as a result of foreclosure or through a deed in lieu of foreclosure.

1.3 Unit Boundaries. A Unit is comprised of all of that area which is inside of and bounded by the unfinished interior surface of the lowermost floor, its unfinished interior surface of the uppermost ceiling's joists or rafters (for cathedral ceilings), and by its unfinished interior surfaces of the perimeter walls' studs and framing. Excepted from this interior space are: i) the floor joists of any floor in a Unit and/or building, ii) the lowest single layer of plywood attached to the floor joists, iii) the load bearing columns, iv) the interior studs and framing for load bearing walls; and v) plumbing and utility chases.

1.4 Owner's Specific Maintenance Responsibility. The Owner is responsible for the maintenance of all items, property, materials, appurtenances, and things which are within a Unit's boundaries or wherever located which serve only that Unit, as more particularly described as follows:

A. Floors. The Owner is responsible for maintaining all flooring throughout the Unit, which includes all flooring materials except for the lowest

single layer of plywood attached to the floor joists. Therefore, all carpet, carpet pads, vinyl, tile, paint, finished flooring, finished wood, floor coverings, gypcrete, plywood, and all other flooring materials above the lowest single layer of plywood attached to the floor joists are all deemed to be part of the Unit and are the Owner's responsibility to maintain. The joists between the floors, the lowest single layer of plywood attached to the floor joists, the insulation between the floors, the concrete foundation, and the concrete footings are part of the Common Area.

B. Ceilings. The Owner is responsible for maintaining all ceiling and related ceiling materials (sheet rock and finished surfaces) throughout the Unit up to but not including the ceiling's joists, rafters, and insulation. Therefore, all trim, paint, texturing, drywall/plaster board, plaster, paneling, wood boards, and any other finished materials are all deemed to be part of the Unit and the Owner's responsibility to maintain. The ceiling's joists, rafters, insulation, roof framing and roofing materials are all deemed to be part of the Common Area.

C. Walls. The Owner is responsible for maintaining all walls and related materials throughout the Unit out to, but not including: the insulation, vapor barrier, studs, and framing of the outermost perimeter walls. Therefore, all sheet rock, wall board, drywall/plaster board, trim, paint, wall paper, plaster, paneling, interior studs and framing for non load bearing interior walls, moldings, and any finished materials are all deemed to be part of the Unit and the Owner's responsibility to maintain. The exterior perimeter walls' framing, studs, insulation and siding as well as all interior load bearing walls' framing and studs are all deemed to be part of the Common Area.

D. Windows, Skylights, and Exterior Doors. All windows, skylights, exterior doors (except bulkhead doors and metal frames), sliding doors, garage doors and panels, pull down steps, attic or crawl space doors, thresholds, and all associated rails, tracks, springs, lifting and opening mechanisms, weather stripping, glass, screens, and all related hardware are deemed part of the Unit and the responsibility of each Owner. The related pre-hung Units and framing for all such doors, skylights, and windows are also deemed to be part of the Unit and the Owner's responsibility. The Unit boundary extends to the exterior, unpainted surface of the windows, skylights, doors, and pre-hung frames, and includes the exterior surface of all glass. The exterior paint, any exterior trim required for windows/doors, bulkhead doors and metal frames, and all rough opening building framing in which pre-hung windows, skylights, and door assemblies as installed are deemed to be part of the Common Area.

E. Appurtenances. The Owner is responsible for the maintenance of

all items, property, materials, appurtenances, and things wherever located, which serve only the Owner's Unit (**Unit Related Items**). All heating systems, piping, tubing, wiring, cables, chutes, conduits, utilitylines, fireplace boxes and flues, wiring, air-conditioning systems, electrical components and fixtures, radon systems and piping, air exchangers, venting and flues, including dryer vents, bathroom vents, ventilation or other ducts, water and sewage pipes, plumbing systems and fixtures, and/or other appliances or appurtenances serving only one Unit, wherever located, are deemed to be part of the Unit served, deemed to be owned by and are the maintenance responsibility of the Owner, and are included in the description of "Unit Related Items."

1.5 Contents of a Unit Not the Owner's Responsibility. The Owner of a Unit does not own and is not responsible for maintaining the following items which are utilized for or serve more than one Unit, or which serve any portion of the Common Area: heating and plumbing systems or components, venting or air conditioning systems, wires, pipes, ducts, cables, chutes, vents, flues, conduits, utility (including water, sewer, gas, electrical, telephone, and cable) connections and service, fixtures, load bearing walls, and columns or structural portions of the building running through a Unit or Common Area. Instead, these items are the responsibility of the Unit Owners' Association to maintain.

1.6 Unit Condition and Repair Responsibility. Each Owner is to keep the Unit and its interior, equipment, appliances, and appurtenances of the Owner's Unit and those items the responsibility of the Owner, including the Unit Related Items, in good order and clean condition. Each Owner is to do all restoration, repair, redecorating, painting, and finishing which may from time to time be necessary to maintain the good appearance and condition of the Owner's Unit. In addition, each Owner is responsible to and must reimburse the Association and the other Unit Owners for all damage to other Units and/or to the Common Area resulting from the Owner's failure: i) to maintain the Owner's Unit and Unit Related Items in good condition, ii) to perform maintenance, including preventive maintenance, on a periodic basis, iii) to timely make repairs to the Unit and to the Unit Related Items, and iv) to take preventive actions to reduce the effects and damages associated with equipment, fixtures, flues, ducting, vents, wiring, piping, plumbing, and system failures relating to Units and Unit Related Items. Any Owner or Unit causing damage to other Units and/or to the Common Area shall be subject to the enforcement remedies as provided for in this Declaration and Bylaws, including the full cost of repair and replacement of the damaged items and areas. Maintenance to be performed by the Owner is to be undertaken in such a manner as not to unreasonably disturb or interfere with the other Owners or with the use of the Common Area, and replacement shall not be of a lesser quality than that originally installed. "Normal Maintenance" for this section includes all those activities required by this section and includes such activities as may be required by the Board from time to time.

1.7 Maintenance Responsibility of the Limited Common Area. Each Owner is

responsible for performing "Normal Maintenance" for any Limited Common Area assigned to or appurtenant to the Owner's Unit. This responsibility shall pertain to all Limited Common Area including, but is not limited to, decks, balconies and porches, but shall not include parking slips assigned as Limited Common Area appurtenant to any Unit. Responsibility for the maintenance of all parking areas and parking slips shall be the responsibility of the Association and the costs thereof shall be treated as a Common Expense. "Normal Maintenance" under this section includes all those activities which involve maintaining the Limited Common Area in a clean and sanitary condition, and includes the periodic painting of such area as may be required by the Board of Directors. The Owner is to make, at the Owner's expense, all repairs to the Limited Common Area caused or necessitated by the Owner's negligence, misuse, or neglect. All other repair or replacement of the Limited Common Area is the duty of the Association.

1.8 Owner Compared to Association Responsibilities. All of the other items or space not constituting a Unit or the Unit Related Items, and all of the other items which are not the specific maintenance responsibility of the Owners as described herein, are the responsibility of the Association to maintain, repair, and replace and are considered part of the Condominium's Common Area (referred to herein as the **Common Area**). Section 8 of this Declaration describes the Association's maintenance responsibilities.

1.9 Damage Responsibility. Any damage to the Unit and the Unit Related Items is the responsibility of the Owners to repair and/or replace. If the damage is not the result of the negligence of the Owner or Unit causing the damage, and if the damage is covered by the Association's master insurance coverage, then the Owner's responsibility may be limited to the amount of the Association's insurance deductible for any such loss. Additionally, each Owner is liable for the expenses of all maintenance (including repair and replacement) rendered necessary by the Owner's acts, neglect, or carelessness, or the act, neglect, or carelessness of any member of the Owner's family, tenant, guests, employees, agents, invitees, and licensees, but only to the extent that such expense and damages are not first covered by the proceeds of the insurance carried by the Owner, and only to the extent that such damage is not also covered under the Association's master insurance policy. Such liability of the Owner includes any increase in insurance rates incurred by the Association resulting from the Owner's negligent or careless acts, prior losses, damages, or from the Owner's misuse or abandonment of any Unit or its appurtenances. Each Owner is to promptly report in writing to the Association's Board of Directors (**Board**), or the Board's authorized Managing Agent (**Manager**), any defects or need for repairs for which the Association may be responsible. Each Owner will further be responsible to the Association for any increased damage resulting from the Owner's failure to provide immediate and timely written notice of any defects or need for repairs to the Board or Manager.

1.10 Manner of Repair and Replacement. All repairs and replacements which are the responsibility of the Owners to undertake are to be similar in appearance, are to be of a quality equal to or greater than the original construction and installation, and are to have

received the prior written approval of the Board or the Manager.

Section 2. Owners' Assessment Responsibility

2.1 Payment of Common Expenses. All Residential Unit Owners shall pay the Common Expenses and all assessments which are established and levied from time to time by the Board or by the Association. No Owner may exempt him or herself from liability for his or her contribution toward Common Expenses or assessments by waiver of the use or enjoyment of the Common Area or by abandonment of his or her Unit. However, the Board of Directors may, in their discretion, accept contributions in kind or in services from the Declarant in lieu of payment of assessments. Such acceptance of in kind or service contributions shall not affect the Declarant's right to vote with respect to its Units.

2.2 Payment of Additional Liability Assessments. Each Owner shall be liable for the expenses of all maintenance, repair, or replacement to the Condominium rendered necessary by the Owner's acts, neglect, or carelessness as well as from the acts, neglect, or carelessness of any member of the Owner's family or the Owner's tenants, guests, employees, agents, or invitees (collectively referred to herein as the **Owner's Negligence**), but only to the extent that such expense is not covered by the proceeds of insurance carried by the Association. Any such additional liability expenses as a result of the Owner's Negligence may be assessed directly to the Owner by the Board of Directors based on the actual expenses incurred by the Association, or based on reasonable estimates received by the Association (with an adjustment back to or from the Owner once the actual work has been completed based on the actual costs incurred by the Association). Such expense which may be charged to an Owner for the Owner's Negligence shall include any increase in the fire insurance rates occasioned by the use, misuse, occupancy or abandonment of any Unit or its appurtenances. Nothing contained herein, however, shall be construed as modifying any waiver by an insurance company of its rights of subrogation.

2.3 Creation of the Lien and Personal Obligation of Assessments by Owners. Each Residential Unit Owner by acceptance of a deed to a Unit, hereby covenants and agrees, whether or not it shall be so expressed in any such deed, to pay to the Association annual and special assessments for the Common Expenses to be determined and collected from time to time by the Board. The annual and special assessments include the payments of any and all fines, interest charges, late fees, filing fees, lien costs, administrative charges, insurance deductibles, legal fees, termination of service costs, and all other costs and fees (an **assessment**, collectively, the **assessments**) as provided for in this Declaration, Bylaws, or the Rules and Regulations of the Association (**Rules**), as established and amended from time to time. The annual and special assessments shall be a charge and a continuing lien upon the Unit pursuant to the provisions of Section 46 of The Condominium Act (R.S.A. 356-B:46) against which each such assessment is made and shall be the personal obligation of the Owner of such Unit at the time when the assessment falls due, as well as an obligation of the Unit. Therefore, any assessments which are not paid when due shall be deemed delinquent and are, together with such interest thereon and the costs

of collection, including the Association's attorneys' fees, a lien on the Unit and on the appurtenant interests of the delinquent Owner, which shall bind such property in the hands of said Owner and the Owner's heirs, devisees, representatives and assigns. Any Owner acquiring a Unit shall be liable personally for any prior and outstanding assessments levied against the Unit, unless as exempted by State Law.

2.4 Acceleration of Assessment Installments. In any case where an assessment against an Owner is payable in installments, upon a default by such Owner for any installment which continues in default by more than ten (10) days, the Board may accelerate the maturity of the remaining assessments and the then remaining balance may be declared to be due and payable upon notice from the Board or the Manager to the Owner. Monthly assessments of Common Expenses are deemed to be installment payments of the total annual assessment. Periodic assessments of any special assessments are deemed to be installment payments of the total special assessment. The Board may file a lien against the Unit and initiate legal action against the Owner for the entire remaining assessment installments due for any given annual period or for any type of special assessment.

2.5 Foreclosure of Lien and Legal Action. The assessment lien may be foreclosed in the manner provided by the laws of the State of New Hampshire for the foreclosure of a power of sale mortgage and/or by suit brought by the Board on behalf of the Association, in addition to any other remedies of the Association. Legal suit, which may include any small claim actions to recover a money judgment for unpaid assessments, may be brought by the Board or the Manager on behalf of the Association against the Owner without foreclosing or waiving the Association's lien securing the amount of the unpaid assessments and collection costs.

2.6 Termination of Services and Use of the Common Area. In addition to the above remedies, and pursuant to the Condominium Act (R.S.A. 356-B:46), the defaulting Owner and Unit's occupants, tenants, invitees, and guests shall lose their common privileges and services relating to the use of the Common Area for failure to pay assessments when due pursuant to the provisions set forth later in Section 6 of this Declaration.

2.7 Collection of Rental Payments from Tenants. In addition to the above, and pursuant to the provisions of the Condominium Act (R.S.A. 356-B:46-a), the Association may collect rents directly from the tenant of a Unit to offset assessments and common expenses assessed to the Unit in the event the Owner of a rented Unit fails to pay assessments and Common Expenses assessed to the Unit.

### Section 3. Unit Owner Restrictions

#### 3.1 Improvements and Alterations by Owners.

A. Common and Limited Common Areas. Owners may never make



any addition, alternation, or improvement (collectively referred to herein as "Improvements") of a structural or non-structural nature in or to any Common Area, Limited Common Area, or a Unit not owned by the Owner without the prior written approval of the Board. Such written Board approval must be based on detailed descriptions and/or plans that have been submitted in writing by the Owner to the Board by return receipt requested mail at least thirty (30) days prior to any planned Improvements being made by the Owner. Written copies of any such Board approvals shall be retained by the Owner. All such Board approved descriptions and plans must be strictly adhered to and completed within time frames established by the Board.

B. Unit. No Owner shall make any structural Improvements in or to the Owner's Unit, including load bearing walls, without the prior written approval of the Board pursuant to Section 3.1(A) above. An Owner may make non-structural Improvements within or to the Owner's Unit, including interior non load bearing walls that do not concern or relate to the structural integrity or safety of the structure, or which do not affect the availability or cost of insurance concerning the Condominium. However, the Owner shall provide prior written notice to the Board of all Improvements intended to be made within or to the Owner's Unit to ensure that the Improvements will not impact the structural integrity or safety of the Owner's Unit and/or the adjoining Units, Common and Limited Common Areas. Such notice of any Improvements planned to be made by the Owner within or to the Owner's Unit shall be in writing to the Board and sent by return receipt requested mail at least thirty (30) days prior to any planned Improvements.

C. External Appearance of Unit. No Owner is to paint, decorate, or otherwise change the external appearance of the Owner's Unit, any other Units, the Limited Common Area, or the Common Area (including any building exterior, windows, window grids and coverings, or doors) without the prior written consent of the Board.

D. Board Approval. No Board member or Manager may approve any Improvements of any nature without the vote and prior written approval of the Board. Furthermore, no Owner may rely on any approvals unless the Board's approval is signed by either the President of the Association or by the Manager.

E. Standards. The Board may establish, adopt, or revise from time to time, standards for certain Improvements typically requested by the Owners.

F. Code Compliance. All Improvements made by any Owner must be approved when required, prior to any work being undertaken by the

Owner, by the appropriate governmental and regulatory agencies, including approvals by all municipal building, safety, sanitation, and public works departments. All work must be in compliance with all applicable building, sanitation and safety codes in existence at the time of the Improvements. Copies of all applicable building, sanitation and safety code permits and approvals must be provided to the Board or the Manager thirty (30) days prior to the commencement of any work on or Improvements in or to any Unit by an Owner.

G. Board Consent May Be Withdrawn. The consent of the Board may be withdrawn at any time by the Board for any approval required under **Section 3.1** by the Board whenever the Board, reasonably and for good cause, deems that the Owner has misrepresented any matter relating to the Improvements, or fails to maintain same as required by any such approval, or where circumstances have changed and any such Improvements are not in the best interest of the other Owners or the Association. The Board shall notify the affected Owner(s) of such withdrawn consent.

3.2 Restrictions of Use. The Condominium and the Units may be used only for residential use subject to the following limitations, which are to be in addition to any Rules established by the Board from time to time:

A. Residential Use and Use of Common Area. Each Residential Unit shall be occupied and used only for residential purposes by the Owner and the Owner's family, and by the tenants, guests, invitees or licensees of the Owner. No Owner, or the Owner's family, tenants, guests, invitees, or licensees shall damage the Limited or Common Area, the plantings or improvements thereon, cause an increase in the maintenance of the Common Area, or cause unreasonable disturbance or annoyance to others in their enjoyment of the Condominium. No nuisance shall be allowed on the Condominium, nor shall any use or practice be allowed which is a source of annoyance to its residents or which interferes with the peaceful possession or proper use of the Condominium by others. No litter or waste shall be disposed of on the property.

B. Tenancies. An Owner may lease the Owner's Unit as long as: i) the tenant occupies and uses the Unit in accordance with the provisions of this Declaration, the Bylaws, and the Rules, and ii) the Board or the Manager has received in writing the name of the tenant and occupants. All leases, rental, use or occupancy arrangements for Units shall be in writing and are to include a copy of the Condominium's Declaration, Bylaws, and Rules with each lease. No lease or other monetary occupancy arrangement shall be for a period of less than ninety (90) days. Each and every Tenant, by agreeing to lease a Unit in the Condominium, agrees to pay all condominium fees,

assessments, late fees, and all collection costs related to the Unit leased, if any, in the event that the Owner fails to make timely payment to the Association for all Common Area assessments and related charges, fines, and costs incurred during the term of the Tenant's lease of the Unit.

C. Occupancy Limitation. No Residential Unit shall be occupied by more persons than are allowed by state law and applicable municipal ordinance.

D. Electrical and Related Installations. No Owner, tenant or guest shall allow the installation of wiring for electrical or telephone use, television and radio antennas, satellite receiver or dish, air conditioning unit or other machine or equipment, which protrudes through the walls or the roof of the building or is visible in any way from the exterior of the building except as originally installed by the developer, or as authorized in writing by the Board. The Board shall comply with all applicable laws and regulations in granting or denying any such approvals.

E. Illegality and Compliance with Laws. No Unit, Limited Common Area, or Common Area may be used for any unlawful, immoral or improper purpose. All Owners shall use the Condominium and the Units in conformance with all federal and state laws, zoning laws, city ordinances, and any other valid governmental restrictions and regulations.

F. Structural Integrity. Nothing shall be done in any Unit which may impair the structural integrity of the Condominium, or which would structurally change a building or any improvements except as provided herein, and only with the prior written consent of the Board.

G. Insurability. No activity shall be done or maintained in any Unit, Limited Common Area, or any Common Area which will increase the rate of insurance on any Unit or on any portion of the Condominium, including the Common Area and Limited Common Area, or result in the cancellation of any insurance.

H. Exterior. No interior or exterior changes to a Unit which affect the exterior appearance of the buildings, including but not limited to, decorations, awnings, weather stations, television and radio antennas, radon systems and vents, heating/cooling systems, satellite receivers, signs, screens, window shades and coverings, deck sun shades and covers, air conditioning equipment, fans or other changes shall be permitted without the prior written approval of the Board.

I. Easement. Each Unit shall be subject to an easement in favor of

the Owners of all other Units to use; and the Manager, Board, Association employees and contractors, and public utility companies to service; the pipes, ducts, cables, wires, conduits, public utility lines and other Common Areas serving other Units and located in the Unit. The Board or the Manager and the Association's employees and contractors shall have the right to access each Unit to inspect the Unit, Limited Common Area, and the Common Area located within or adjacent to all of the Units and to remove violations, to terminate services, and/or to maintain, repair or replace the Limited Common Area or the Common Area contained within or adjacent to the Unit.

J. Right of Access and Passkey. All Owners grant a right of access to each Owner's Unit to the Board, Manager, or the Manager's authorized employee or contractor, or to any other person authorized by the Board for the purpose of inspections; correcting any condition originating in the Unit and threatening another Unit or the Common Area; or performing installations, alterations or repairs to the mechanical or electrical services or other Common Area in the Unit or elsewhere in the building. All requests for entry shall be made in advance and scheduled for a time reasonably convenient for the Owner. In the case of emergency, such right of entry shall be immediate regardless of whether the Owner or any occupant is present. Each Owner shall provide the Board or Manager with a passkey to each Owner's Unit. No Owner may alter any lock or install a new lock on any door leading to any Unit without immediately providing the Board or Manager a key for its use, and the Owner will be liable for all damages to the Unit and expenses incurred by the Association necessitated by forced entry to the Unit in cases where a passkey was not provided to the Board or Manager.

K. Pets. No animals, livestock or poultry of any kind shall be raised, bred or kept on any portion of the premises other than common household pets, which are approved and registered by the Board, pursuant to such rules and regulations as the Board may from time to time adopt, and provided that the latter are not kept, bred or maintained for any commercial purpose. Where pets are permitted they shall be leashed or otherwise under control at all times when outside a Unit or outdoors and may be subject to such rules and regulations as the Board or Association shall adopt from time to time. The Board may make rules governing the keeping of pets and may by rule impose reasonable fines or monetary penalties for violation of said rules. Any such fine or penalty shall be a lien upon the affected unit, which lien may be perfected and enforced in accordance with RSA 356-B:46, or other relevant provision of the Condominium Act, as it may be amended from time to time.

L. Other General Rules. The Board may make Rules from time to time concerning the use, maintenance, alteration, improvement, and

management of the Condominium including, but not limited to, rules and regulations concerning: the assessment and collection of payment responsibilities, use of amenities, signs, public view restrictions, refuse, pets, nuisance and restricting nuisance (including noise and light restrictions), recreational equipment, vehicles, storage, Common Area use, passkeys, condominium employees, outside activities, roads and driveways, Units, Limited Common Area, guests, tenants, invitees, violations and enforcement penalties, fines, maintenance requirements of Owners, and parking. Prior to being effective, all Owners shall receive notice of any new or amended Rules through the Association's newsletter, mailings, or other forms of communication to the Owners from the Board or the Association's Manager. The Board may by rule impose reasonable fines or monetary penalties for violation of said rules. Any such fine or penalty shall be a lien upon the affected unit, which lien may be perfected and enforced in accordance with R.S.A. 356-B:46, or other relevant provision of the Condominium Act, as it may be amended from time to time.

M. Compliance with the Association's Rules, Declaration, and Bylaws.

Each Owner and the Owner's family, tenants, guests, invitees, and licensees, shall comply with all Rules of the Association, this Declaration and the Association's Bylaws. Each Owner shall be responsible for all actions or inactions of the Owner's family, tenants, guests, invitees, and licensees, and shall be subject to the penalty or fines as may be established by the Board for failure to abide by the conduct and requirements of the Declaration, Bylaws and Rules. Any fine schedule established by the Board, once assessed against an Owner, will constitute an "assessment" pursuant to the provisions of Section 2 of this Declaration, and may be enforced and collected as such.

3.3 Withdrawing of the Board's Consent. The Board's consent, authorization and approval, pursuant to any approvals granted under the preceding **Section 3.2** restrictions, and in general to any approvals required by the Board pursuant to this Declaration, Bylaws, and Rules, may be revoked or withdrawn by the Board whenever the Board reasonably and for good cause deems such withdrawal to be in the best interest of the Association. The Board shall notify affected Owners of such withdrawn consent, authorization or approval in writing.

Section 4. Unit Owner Insurance Requirements

4.1 Owner's Insurance Responsibility. Each Owner should obtain for the Owner's benefit and at the Owner's expense the following insurance coverage:

A. Unit Related Personal Property, Fixtures and Improvements. Each Owner should obtain loss and casualty insurance at the Owner's cost

insuring all personal property, fixtures, and improvements made by the Owner and presently or hereafter located in the Owner's Unit or on the Limited or Common Area, including all Unit Related Items. Said Owner's insurance responsibility also includes the insuring by the Owner of the Unit's and Unit Related Items' contents, fixtures, appliances, decorations, heating, cooling, plumbing, and electrical fixtures, window treatments, doors, windows, skylights, bulkheads, wall and floor coverings, finished materials, furnishings, and all personal property items in or related to the Owner's Unit, for which such items are either: i) not insured by the Association's master insurance policies, and ii) not covered from loss due to the amount of the Association's master insurance policy's deductible. All improvements made to a Unit in excess of One Thousand Dollars (\$1,000.00) must be reported in writing by the Owner to the Association's insurance carrier and to the Board immediately when made for potential inclusion in the Association's master policy, assuming such improvement is insurable under the Association's policy.

**B. Owner's Deductible Exposure.** Each Owner should obtain the Owner's own insurance for the Owner's Unit equal to or greater than the deductible amount of the Association's master policy insurance as it may relate to any and all claims affecting the Owner, the Owner's Unit, the Condominium building and structure, and the Unit Related Items. The Owner is liable for the cost of the Association's master insurance policy deductible.

**C. Loss Assessment.** Each Owner is encouraged to obtain insurance for the Owner's benefit and at the Owner's expense insuring adequate coverage in the event of any general loss assessment levied by the Association.

**4.2 Owner's Policy Coverage.** No such Owner's policy shall be written so as to decrease the coverage under any of the master policies of the Association, and each Owner hereby assigns to the Board the proceeds of any such Owner's policy to the extent that if any such Owner's policy does in fact result in a decrease in the Association's master policy coverage, then said Owner's policy proceeds are to be applied pursuant to the terms hereof as if provided by such coverage.

**4.3 Master Condominium Insurance.** See **Section 10**, Association's Master Insurance Coverage.

## Section 5. Unit Owner Voting Rights

**5.1 Membership and Voting.** Every Owner of a Residential Unit shall be a member of the Association, and each Residential Unit shall have one vote in the

Association. The Owners' membership and voting rights are further described in the Association's Bylaws, and the voting rights are further constrained by the "active" or "inactive" status of an Owner, based on current payment or assessments, costs and charges.

5.2 Bylaws. The Association shall be subject to and governed by an initial set of Bylaws, a copy of which are attached hereto as **Appendix C**.

5.3 Incorporation of the Association. The Board, from time to time, may take all such action to incorporate the Association and/or to modify such incorporation without the need for a vote or approval by the Owners, and all Owners consent hereby to such action. The Board may draft, execute, and file articles and amendments of incorporation for the Association as long as the articles are consistent with the purpose and function of the Association as provided for in the Condominium's Declaration and Bylaws, and in compliance with the Condominium Act (NH R.S.A. 356-B).

#### Section 6. Compliance and Default Responsibilities

6.1 Owner's Default Relief. Each Owner shall be governed by, and shall comply with, all of the terms of the Declaration, Bylaws, and Rules, as amended from time to time. A default by an Owner shall entitle the Association acting through the Board or the Board's authorized agent, including its Manager, to the following relief:

A. Legal Proceedings. Failure to comply with any of the terms of the Declaration, Bylaws, and Rules are grounds for an action by the Association, the Board, the Manager, or other Owners to recover any sums due, for money damages, injunctive relief, foreclosure of the lien for payment of all assessments, the payment of the Association's legal fees and costs, or any other relief in law or equity afforded by a court of competent jurisdiction in the State of New Hampshire, including the bringing of any small claim actions on behalf of the Association by the Manager against any Owner. The Association shall be entitled to all costs and attorneys' fees incurred in any proceeding under The Condominium Act (including R.S.A. 356-B:15), and/or as otherwise provided in the Declaration, the Bylaws, and the Rules. However, if litigation is filed by the Association against the Unit Owner, then the prevailing party in any such litigation shall be entitled to the reimbursement from the other party of the prevailing party's reasonable litigation costs, collection costs, and attorneys' fees.

B. Removal, Abatement, and Enjoining of Violations. The Association, through its Manager or authorized agent, may seek to correct any violation or breach of the Declaration, Bylaws, Rules, and/or of any zoning or governmental regulations or laws (collectively referred to as the **Applicable Covenants and Laws**) of an Owner, the Owner's family, tenants, guests,

invitees, and licensees by taking any and all action to abate, enjoin, or remove at the Owner's cost and expense (to be billed back to the Owner as a specific Owner assessment) any structure, thing, condition, or action which is in violation or in breach of the Applicable Covenants and Laws, but only after the Owner has been provided prior written notice from the Board, the Manager, or the Board's authorized agent requesting that any such breach or violation be remedied within a defined period of time. For most cases of a non-emergency basis, twenty (20) days shall be deemed to be a reasonable time to remedy any such breach or violation, unless the time frame is otherwise determined by the Board. During any such breach or violation of any Applicable Covenants and Laws, the Board, Manager, or the Board's authorized agent may suspend or limit the right of the Owner to use any part of the Common Area during the continuance of any such violation or breach.

C. Termination of Association Supplied or Paid for Services and Suspension of the Use of the Common Area. The Board is authorized, after thirty (30) days prior written notice to an Owner and the Owner's first mortgagee of record of the nonpayment of the Owner's assessments, to terminate the delinquent Unit's common privileges and cease supplying a delinquent Unit with any and all services normally supplied or paid for by the Association. The Board is thereby authorized to terminate all water paid for by the Association, or any water provided to the Units which use any of the Unit's or Common Area piping and conduits, to individual Units delinquent in the payment of the Association's assessments. Any terminated services and privileges shall be restored upon payment of all assessments, including all costs of termination and of reconnecting any terminated service. The Board is authorized from time to time to establish and adopt Rules regarding: i) the termination and suspension of any and all services normally supplied or paid for by the Association, and ii) the termination and suspension of the use of the Common Area, including the right of the Association to tow and remove vehicles from the Common and Limited Common Areas. If the Owner has not notified the Board in writing as to the first mortgagee of record, then the Board may research and identify the mortgagee's name and address and charge all such expenses to the Owner.

D. Interest Charges, Late Fees, and Fines. The Board may establish, from time to time, Rules regarding the amount of interest charges, late fees, administrative fees, and/or fines required to be paid by defaulting and/or delinquent Owners, or from Owners who violate any term, provision, or requirement of the Declaration, Bylaws, and Rules. The interest charges, late fees, administrative fees, and fine schedule, as adopted and revised by the Board from time to time, shall be documented in the Rules.

E. Attorneys' Fees and Costs of Collection/Litigation. In any



proceeding arising out of any alleged default or lack of compliance by an Owner (and/or all those entitled to occupy Units), with any such default including: i) the failure to pay assessments when due, or ii) the breach of or the lack of compliance to the lawful provisions of The Condominium Act and the Condominium Instruments (which include the Declaration, the Bylaws, and Rules), the Association is entitled to the reimbursement of all of its costs and attorneys' fees incurred as a result of any legal proceeding or review of the matter in controversy. In any action of the Board, Manager, or the Board's authorized agent on behalf of the Association in the collection of delinquent assessments against any Owner and/or Unit, including the foreclosing on the Association's lien, and in settlement of any action by the Board, Manager or the Board's authorized agent, the Association may be reimbursed for all of its legal fees, litigation and collection costs by the Owner and/or from the Unit.

6.2 No Waiver of Rights of Enforcement and Cumulative Remedies. The failure by the Board, Manager, or the Board's authorized agent on behalf of the Association, or by an Owner, to enforce any right, provision, or covenant of the Declaration, Bylaws, or Rules shall not constitute a waiver to enforce any such right, provision, or covenant at a later time, and shall not constitute a waiver as to any condition in the future. All such rights and remedies in the Declaration, Bylaws, and Rules, and especially those listed in **Section 6.1** above, are cumulative and the exercise of any one or more of the remedies shall not be deemed to constitute an election of remedies.

6.3 Non-Compliance by the Association. Failure by the Association to comply with the provisions and terms of the Declaration, Bylaws, and Rules may be grounds by any Owner for complaint against the Association, but only after the Association has been provided at least thirty (30) days prior written notice of the violation and breach, and where such failure concerns a substantive matter, and where the Association has reasonably failed to take action on the Owner's complaint. The Association shall not be liable for breaches or violations stemming from a reasonable interpretation of the Declaration, Bylaws, Rules, the Condominium Act, or of any other applicable laws or ordinances. In no case shall the Board members or officers be liable to the Owners for any of their mistakes of judgment or for any unintentional negligence. Notice under this section shall require notice to the Association's President, with a copy of such notice being provided by the Unit Owner to the Association's Manager and Treasurer.

6.4 Owner Complaints. All complaints by the Owners, whatever the subject matter, shall be made to the President of the Association and to the Manager in writing and signed by the complainant, unless as more specifically required in **Section 6.3** above.

## **ASSOCIATION RESPONSIBILITIES**

### Section 7. Organization

7.1 Administration of the Condominium. The administration and operation of the Condominium shall be governed by an Owners' Association, which Association may be dissolved and new Associations created from time to time by the Owners by amendment of this Declaration (and the Bylaws). Initially, the Association will be known as the "Mount Saint Mary's Condominium Association, Inc." and shall include any subsequent Unit Owners' Association for the Condominium (either known as the **Association**). However, any other Association may be formed by the Owners in the event of the illegality or non liquidity of any then existing Association. Any new Association may be formed if approved by a 2/3rds vote of the Owners in the Condominium. The Association will be governed by and through the Board and its Officers. All Owners of Units in the Condominium shall be members of the Association subject to the provisions of the Declaration, Bylaws and Rules. If the Association does not have officers at the time of the creation of the Condominium, the Declarant shall, until there is such an election of Officers, have the power and the responsibility to act in all instances where the Condominium Instruments or the Act requires action by the Association, its Board, or by its Officers. The initial Association shall be initially controlled by the Declarant, with the Declarant reserving the right to elect the Board and the Association's Officers until either two (2) years from the recording date of this Declaration, or when 3/4ths of all of the Units are sold, whichever occurs first. Any management contract or agreement entered into by the Declarant on behalf of the Association or the Declarant shall not extend for any time beyond the Declarant's time frame of control as described in this section.

7.2 Adoption and Amendment of Bylaws. The Association is authorized to adopt and amend, from time to time, a set of Bylaws to be used to govern the Association. The Bylaws and any amendments thereto, shall be recorded in the Merrimack County Registry of Deeds, prior to the commencement date of any new Bylaw or amendment taking effect.

7.3 Adoption and Amendment of Rules. The Association's Board is empowered to adopt and amend, from time to time, Rules concerning the use, maintenance, alteration, and improvement of the Property, Common Area, Limited Common Area, the Units, and the various parts thereof, as well as Rules concerning the conduct and actions of the Owners, guests, invitees, tenants, and other users and occupants of the Condominium. Said Rules, or additions and amendments thereto, shall be furnished in writing to all Owners prior to any particular rule's effective date, and may be communicated to the Owners in Association mailings and/or newsletters. The Rules and any amendments thereto, shall be recorded from time to time in the Merrimack County Registry of Deeds prior to the commencement date of any new rule or amendment taking effect.

7.4 Organizational Instruments. The provisions of the Declaration, Bylaws, and Rules shall not be violated, and the Owners shall be liable to the Association for violations pursuant to fines, costs, charges, and/or fees established by and/or documented in the Declaration, Bylaws, and/or the Rules, as amended from time to time. All Owners, guests, invitees, tenants (and their guests and invitees) hereby agree to be bound to and shall

abide by the provisions of this Declaration, and of the governing Bylaws and Rules, as amended and/or replaced from time to time.

7.5 Financial Liability of the Owners. Individual Owners are not to be personally liable for the debts, obligations, awards, and judgments against the Association or the Condominium without the prior approval by an affirmative majority vote of the Unit Owners, except for an Owner's responsibility to: i) pay all assessments and special assessments relating to the maintenance, alteration, repair, and replacement of the Condominium's improvements, and the routine operating expenditures of the Condominium, ii) maintain each Owner's Unit and the Unit Related Items, iii) pay for damage caused to other Units and the Common Area, iv) reimburse the Association for all insurance deductibles (e.g., amounts under the insurance coverage), and v) pay all charges and fees to the Association relating to violations of the Declaration, Bylaws, and the Rules as provided for herein. To the extent that the Association is formed or incorporated pursuant to New Hampshire law, each Owner shall be entitled to the full statutory liability indemnification provided by New Hampshire law for business corporations and/or for non profit corporations and associations. The Association shall initially be organized as a non profit association, pursuant to NH RS.A. 292, as other condominium associations have been organized. However, such organization may not provide the Owners with any individual or personal liability protection and each Owner should obtain personal insurance for any such liability not covered by the Association's master insurance policy.

#### Section 8. Association's Maintenance Responsibility

8.1 Association's Duty and Exceptions. The Association shall provide for the maintenance, repair, alteration, and replacement (collectively referred to herein as "Maintenance" or "Maintain") of all of the Common Area (which shall specifically include, without limitation, the Water Tank and the chimney) as a Common Expense to all Owners. The Association's Maintenance responsibility excepts the following: i) the Unit Related Items and Limited Common Area specifically required to be maintained by the Owner as listed and described in this Declaration, ii) any maintenance which is necessitated by the willful act or negligence of the Owner (including the Owner's family, tenants, guests, invitees, or licensees) which damages the Common Area, or iii) the Owner's failure to maintain the interior of the Unit or the Unit related items, which causes damage to the Common Area. In the case of the above exceptions, it will then be the responsibility of the Owner to Maintain any such damaged property. The Association shall be responsible for maintenance of all parking spaces, whether assigned to a Unit as Limited Common Area or not. As provided for in **Section 1.6 and Section 1.7** of the Declaration, the Owner is also responsible for any damages resulting from the Owner's failure to perform the Owner's Normal Maintenance of the Owner's Unit and/or the Limited Common Area appurtenant to the Owner's Unit.

8.2 No Maintenance Duty for Units or Unit Related Items. The Association will not be obligated to maintain or repair: i) any of the Unit Related Items, ii) anything stated in

**Section 1** of this Declaration as being the responsibility of the Owner to maintain, and iii) the space previously defined herein as "Unit" or anything contained therein excepting the structural components (load bearing wall framing, floor joists).

8.3 Approval of Maintenance Projects. The Board may, at its discretion, approve or disapprove any maintenance project that it deems to be in or against the best interest of the Association.

8.4 Additions, Alterations, or Improvements by the Association. Whenever, in the judgment of the Board, Common Area additions, alterations, removal, or improvements which shall in total cost more than Ten Thousand Dollars (\$10,000.00) for the construction of the entire project, the Board shall be required to obtain a majority vote of the Owners at any special or regular meeting of the Association prior to making the expenditure. Any additions, alterations, or improvements which in total cost less than Ten Thousand Dollars (\$10,000.00) for the entire project and which benefit the entire Association shall be authorized by the Board without the need for Owner approvals. Ongoing Common Area maintenance responsibilities of the Association are not subject to Owner approvals.

8.5 Common Area Defined. The Common Area, owned in common by all Owners, consists of the entire Condominium other than the Unit and Unit Related Items, and includes, without limitation, all of the Limited Common Areas as well as the following:

A. Grounds. All land, roads, driveways, walkways, parking areas, shrubbery, trees, and other plantings, and other land and interests that are part of the Common Area.

B. Common Systems and Services. The water supply, sewage disposal, electrical, cable and other future systems, telephone systems, and other utilities serving the Condominium to the extent such systems are located within the Common Area and serve more than one Unit are part of the Common Area. Any portion of these systems wherever located and which serve only one Unit are part of the Unit and not part of the Common Area.

C. Structures. The roofs, foundations, columns and supports of the building, the perimeter wall framing, upper most ceiling joists, the lowermost floor all of which are outside of the boundary of the Unit, and the Water Tank and all chimneys on any structure are all part of the Common Area. All load bearing walls (studs and frames only), bearing columns, structural floor joists, or major structural portions of the building wherever located serving one or more Units are also defined as being part of the Common Area. However, the Association shall not be responsible for sealing minor cracks in the foundation or in the basement floors which occur from time to time.

D. Building Access Areas. Any storage areas or closets, balconies or decks adjacent to the Units, and any stairs and stairway landings not located within a Unit, and which serve more than one Unit, and any of the Condominium's roadways and walkways as shown on the Floor Plans and/or the Site Plan are part of the Common Area. Otherwise, if they serve only one Unit, they are part of the Limited Common Area appurtenant to the particular Unit.

E. Building Services. All chimneys, pipes, fireplace flues, chutes, conduits, plumbing, wires, piping, cables, public utility lines, ventilation or other ducts, meters, meter housings and other facilities for the furnishing of utility services or waste removal wherever located that serve more than one Unit are deemed to be part of the Common Area. Conversely all those that serve only one Unit are defined herein as being part of a Unit or the Unit Related Items.

F. All Other Areas. All other parts of the Condominium, not including the Units and the Unit Related Items, and including easements and personal property acquired by the Association, necessary or convenient to its existence, maintenance and safety, or normally in common use, are deemed to be part of the Common Area.

8.6 Limited Common Area Defined. All Limited Common Area is part of the Common Area and is owned in common by all Owners. However, Limited Common Areas are restricted to the use and benefit of the appurtenant Unit. Limited Common Area may include all entranceways, steps, decks, porches, patios, balconies, and parking spaces, stairways, and stairway landings not part of a Unit that serve only one Unit. The Limited Common Area appurtenant to a given Unit may not be assigned or separated from the Unit.

#### Section 9. Association's Assessment Responsibility

9.1 Preparation and Approval of Budget. In advance of each fiscal year (January 1st - December 31st), the Board shall adopt a budget for the Condominium containing an estimate of the total amount which it considers necessary to pay the cost of maintenance, management, operation, repair and replacement of the Common Area and any parts of the Units which are the responsibility of the Association to maintain, repair and replace, the cost of wages, materials, insurance premiums, services, supplies and other expenses that may be declared to be Common Expenses by The Condominium Act, the Declaration, Bylaws, Rules, or a resolution of the Association, and which will be required during the ensuing fiscal year for the administration, operation, maintenance and repair of the property and the rendering to the Owners of all related services. Such Budget (**Budget**) shall also include any previous year's operating deficit from the maintenance of the Condominium, as well as such reasonable reserves for an operating working capital

reserve, insurance deductible reserve, capital replacement reserve, an operating contingency reserve, and any other reserve as the Board considers necessary. The Board shall make reasonable efforts to forward to each Owner a copy of the Budget in a reasonably itemized form which sets forth the amount of the Common Expenses (which includes all reserves) and assessments payable by the Owner, at least fifteen (15) days in advance of the fiscal year to which the Budget applies. The Budget may be forwarded to the Owners by inclusion in the Association's newsletter. Said Budget shall constitute the basis for determining each Owner's contribution towards the Common Expenses and assessments of the Condominium. Notwithstanding the above, or anything to the contrary in the Condominium Instruments, the Budget shall not include any debts, obligations, awards, or judgments of the Association unless the requisite prior approval from the Owners pursuant to **Section 9.7** herein has been first obtained.

**9.2 Initial Budget.** The Board is authorized to establish an initial budget without a vote of the Association for any period of operation preceding January 1 of the first year after the Declaration is recorded.

**9.3 Assessment and Payment of Common Expenses and Other Expenses.** The Budget for the fiscal year adopted by the Board shall be assessed against each Owner of a Residential Unit in proportion to each Unit's equal undivided interest in the Condominium, and shall be a lien against each Owner's Unit in accordance with The Condominium Act. Each Owner shall be obligated to pay assessments made pursuant to this Paragraph and the Bylaws to the Board in equal monthly installments on or before the first day of each month during such year, or in such other reasonable manner as the Board shall designate.

Within sixty (60) days after the end of each fiscal year, the Board shall provide to all Owners a balance sheet, and an itemized income and expense statement comparing actual expenses to that of the annual Budget. The amount accumulated in excess of the amount required for actual expense and budgeted reserves shall, in the discretion of the Board, either be: i) rebated to the Owners in accordance with each Owner's percentage of the undivided interest in the Common Area, ii) added to the next successive fiscal year's Budget, or iii) added to the Association's existing reserves. If required by the IRS, the Association shall vote on the Board's application of the excess income accumulation. Any net shortage of the Common Expenses and Common Area Assessments must be assessed according to each Owner's percentage of undivided interest in the Common Area and added to the following year's Common Area assessments.

**9.4 Capital Reserves.** The Board shall maintain an adequate capital reserve account for replacement of the Common Area, which shall be funded by regular monthly condominium fee payments. At the end of each fiscal year, all funds accumulated during such year for reserves for replacement of the Common Area shall be placed in a separate account, segregated from the general operating funds, and used only for such purposes. Such capital reserve funds must be kept in interest bearing accounts with the Manager and the Association's President and Treasurer being the joint signatories for all reserve accounts. Such reserves and accrued interest must be 100% secured, protected, or

insured at all times. If for any reason, including nonpayment of any Owner's assessment, the capital reserves are inadequate, the Board may at any time levy a further assessment, which shall be assessed against the Owners according to their respective undivided interest (and votes appertaining to same) in the Unit Owners' Association and which may be payable in a lump sum or in installments as the Board may determine. All Owners shall be obligated to pay the further assessment. All capital reserve accounts are to be held in an escrow account by the Association in trust for the Unit Owners as a whole with ownership of the reserve accounts vested in the Owners as a whole in proportion to their undivided interests in the Common Area. Said capital reserve accounts are not to be subject to attachment by any creditors of the Association or of any of the individual Unit Owners. Said capital reserve escrow account funds may only be applied and used by the Board and the Association for the repair, replacement, and maintenance of the Common Area.

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

9.6 Collection of Assessments. The Board shall take or cause to be taken prompt action to collect any and all delinquent and/or past due assessments from any Owner which are more than ten (10) days late, and may promulgate collection policies and procedures in the Association's Rules to be enforced against the Owner pursuant to the enforcement provisions of the Declaration, the Bylaws, and the Rules.

9.7 Limitations on Assessment Authority and Liability of the Owners. Notwithstanding any provision of the Declaration and Bylaws to the contrary, the Board and/or the Association do not have the authority to automatically assess any judgment, award, damages, obligation, or liability incurred by and rendered against the Association to the Unit Owners without the prior consent and approval of an affirmative vote of the majority of the Owners at a duly called and held meeting of the Association. Such Owner approval is not required for the maintenance (maintenance, repair, operation, and/or replacement) responsibility of the Association for the Units, Limited Common Area and Common Area, and such Owner approval is not required for the assessment of the routine operating expenditures and charges budgeted by the Association, or legal fees and costs incurred by the Association relating to collection and enforcement of violations against Owners which have been assessed against individual Owners by the Board. The intent of this provision is to limit the liability of the Association, and the Owners comprising the Association, to: i) any insurance coverage carried by the Association and to ii) any assets

owned by the Association, and not by the Owners.

**9.8 Recordable Statements.** Any Owner, or purchaser having executed a contract for the purchase of a Unit, shall be entitled upon request to a recordable statement setting forth the amount of unpaid assessments currently levied against any particular Unit. Such request shall be made in writing, and directed to the Manager, and must include the payment of ten dollars (\$10.00), or any additional amount as permitted by The Condominium Act, to the Association for the request to be processed by the Association.

#### Section 10. Association's Master Insurance Coverage

**10.1 Insurance Required.** Pursuant to Section 43 of the Condominium Act, the Board shall obtain (i) a master casualty policy affording fire and extended coverage in an amount equal to the full replacement value of the structures within the Condominium, (ii) a master liability policy covering the Association, the Board, the Manager and agents or employees of the foregoing with respect to the Condominium, and all Owners and other persons entitled to occupy any portion of the Condominium, and (iii) such other policies as specified herein below, which insurance shall be governed by the following provisions to the extent obtainable or possible:

**A. Fire and Casualty Insurance.** Fire and general casualty insurance in an amount of at least \$1,000,000.00 with standard extended coverage endorsement, vandalism and malicious mischief endorsements insuring all the buildings, structures, and Common Area (and Limited Common Area) improvements in the Condominium, including without limitation all such portions of the interior of such buildings as are for insurance purposes normally deemed to constitute part of the building and customarily covered by such insurance, such as heating and air conditioning and other service machinery, electrical and plumbing systems, cable and other networks and wiring, telephone wires, insulation, trim, fireplaces and other heating devices, shades, blinds, window treatment and coverings, doors, windows, skylights, walls, all finished wall surfaces, ceilings and floors, including all finished floor and ceiling surfaces, including any wall to wall floor coverings, tile, hardwood, or vinyl, bathroom and kitchen cabinets and plumbing fixtures, mirrors, appliances, and heating and electrical fixtures, and including reported improvements made by individual Owners that exceed a total value of One Thousand Dollars (\$1,000.00). Such insurance is to be in an amount at least approximately equal to the replacement value of the buildings, structures, and amenities, and to be payable to the Board as trustee for the Owners and their mortgagees as their respective interests may appear.

**B. Public Liability.** Public liability insurance in such amount as the Board may from time to time determine, but in no event shall the limits of liability be less than One Million Dollars (\$1,000,000.00) for bodily injury and



property damage per occurrence, assuming said coverage may be reasonably obtained, insuring the Association and all individuals referred to in section 10.1 (ii) above, against any liability to anyone or to any entity, and with cross liability coverage with respect to liability claims of any one insured thereunder against any other insured thereunder.

C. Worker's Comp. Worker's compensation insurance as required by law.

D. Blanket Common Elements. A master or blanket policy of property insurance covering all the general common elements and limited common elements, including fixtures and building service equipment to the extent that they are part of the common elements of the Condominium, as well as common property and supplies, and other common property belonging to the Association, including all facilities and amenities of the Condominium. Such coverage shall extend to any fixtures, equipment, or other property within the Units which are defined as part of the Common or Limited Common Areas. The policy shall be in an amount equal to One Hundred Percent (100%) of the current replacement cost less the deductible amount of the policy. The name of the insured under such policies shall be the Board. The loss shall be payable to the Board as trustee for the Unit Owners and the Owner's mortgagees, if any. Each Owner and such Owner's mortgagee, if any, shall be beneficiaries of the policy in the percentage of common ownership set forth in the Declaration.

E. Director's and Officer's Liability. Director's and Officer's liability insurance shall be obtained for reasonable coverage amounts determined by the Board.

F. Other. Such other insurance as the Board may determine or may be required for qualification to mortgage holder programs, including earthquake and flood insurance.

10.2 Claims. The Board and/or the Manager shall deal with the insurer or insurance agent in connection with the adjusting of all claims covered by insurance policies provided for in **Section 10.1** above and shall review with the insurer or insurance agent, at least annually, the coverage under said policies. The review shall include an analysis of improvements within the Condominium, and shall make any necessary changes in the policy provided for under **Section 10.1 A** above (prior to the expiration date set forth in any agreed amount endorsement contained in said policy) in order to meet the coverage requirements of such Section.

10.3 Policy Provisions. The Board shall be required to make every effort to see that all policies of physical damage insurance provided for under **Section 10.1** above: (i) shall

contain waivers of subrogation by the insurer as to claims against the Association, its employees and agents, members of the Board, the Manager, Owners and members of the family of any Owner who reside with said Owner, except in cases of arson and fraud; (ii) shall contain a waiver of defense of invalidity or prejudice on account of the conduct of any of the Owners over which the Association has "no control"; (iii) shall contain a waiver of defense of invalidity or prejudice by failure of the insured, or Owners collectively, to comply with any warranty or condition with regard to any portion of the Condominium over which the insured, or Owners collectively, have no control; (iv) shall provide that such policies may not be cancelled or substantially modified without at least thirty (30) days written notice to all of the insured thereunder and all eligible mortgagees (see Section 13 for definition) of Units in the Condominium; (v) shall provide that in no event shall the insurance under said policies be brought into contribution with insurance purchased individually by Owners or their mortgagees except where there is fault or negligence; (vi) shall exclude policies obtained by individual Owners for consideration under any "no other insurance" clause unless there is fault or negligence; and (vii) shall provide that until the expiration of thirty (30) days after the insurer gives notice in writing to the eligible mortgagee of any Unit, the eligible mortgagee's insurance coverage will not be affected or jeopardized by any act of conduct of the Owner of such Unit, the other Owners, the Board, or any of their agents, employees or household members, and not cancelled for non-payment of premiums.

10.4 Notice of Changes in Policies to Owners. When any policy of insurance has been newly obtained, substantially changed, or altered by the Board, written notice of the new policy or of the changed coverage, including notice of any termination, shall be promptly furnished to each Owner by the Secretary of the Association. Such notice shall be sent to all Owners of record at the address of their respective Units and to such other addresses as any Owner may have designated to the Secretary in writing; or such notice may be via the newsletter or be hand delivered by the Secretary or Manager.

10.5 When Repair and Reconstruction are Required. In the event of damage to or destruction of all or part of the buildings in the Condominium as a result of fire or other casualty, the Board shall either: i) arrange for and supervise the prompt repair and restoration of the damaged or destroyed portion of the buildings, or ii) distribute to the mortgagees and Owners the insurance proceeds pursuant to Section 34 of The Condominium Act if all of the Owners vote to terminate the Condominium. Notwithstanding the Board's responsibility to repair the damaged portions of buildings, each Owner shall have the right to reasonably supervise the redecorating work in the Owner's Unit subject to the limits and amounts of insurance proceeds available for any redecoration.

10.6 Board Appointed as Irrevocable Agent. The Board is hereby irrevocably appointed the agent for each Owner of a Unit and for each mortgagee of a Unit, and for each Owner of any other interest in the Condominium, with authority to adjust all claims arising under any Association insurance policy, or otherwise resulting from any insurable damage, and to execute and deliver releases upon the payment of claims, and to represent the Owners in any proceedings, negotiations, settlement or agreements. Any proceeds

from the settlement shall be payable to the Association for the benefit of the Owners and their mortgage holders.

10.7 Procedure for Reconstruction and Repair. The Board is authorized to take the following action after a casualty loss:

A. Estimates. Immediately after a fire or other casualty causing damage to a building, the Board shall obtain reliable and detailed estimates of the cost of repairing and restoring the damage to a condition as good as that existing before such casualty, provided that if a casualty causing damage is limited to a single Unit, then it shall be the responsibility of that Owner to obtain estimates of the cost of replacement as aforesaid. Such costs may also include professional fees and premiums for such bonds as the Board determines to be necessary.

B. Deficiency. If the proceeds of insurance are not sufficient to defray the said estimated costs of reconstruction and repair, or if upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, assessment in sufficient amounts to provide payment of such costs shall be made against all Residential Unit Owners in proportion to their respective 1/73rd undivided interest (and votes appertaining thereto) in the Association.

C. Replacement. Any such reconstruction or repair shall be substantially in accordance with the plans, specifications, and reported improvements under which the damaged building was originally constructed. Encroachments upon or in favor of Units which may be created as a result of such reconstruction or repair shall not constitute a claim or basis for any proceeding or action by the Owner upon whose property such encroachment exists, provided that such reconstruction is substantially in accordance with original plans and specifications under which the damaged building was originally constructed. Such encroachments shall be allowed to continue in existence for so long as the building (as reconstructed) shall stand. Any restoration or repair of the Condominium, after partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the Declaration and the original plans and specifications, unless other action is approved by first mortgagees holding mortgages on at least fifty-one percent (51%) of the Units.

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

by the Board in appropriate progress payments, to such contractors, suppliers and personnel engaged in performing the work or supplying materials or services for the repair and reconstruction of the buildings or other professional services as are designated by the Board.

E. Disbursement Priority. It shall be presumed that the first monies disbursed in payment of the cost of reconstruction and repair shall be from insurance proceeds; and if there is a balance in the construction fund after the payment of all of the costs of the reconstruction and repair for which the fund is established, such balance shall be distributed to the Owners, put into reserves, or credited to succeeding operating budgets as the Board deems appropriate. When the damage is to the Common Area, Limited Common Area, and the Units, the insurance proceeds shall, to the extent practical, be applied first to the cost of repairing the Common Area and then the Limited Common Area, with the balance applied to the cost of repairing the Units.

F. Termination and Condemnation. After substantial destruction of the Condominium, or after a substantial taking in condemnation of the Property, an election to terminate the Condominium must have the approval of first mortgagees holding mortgages on at least fifty-one percent (51%) of the Units. No reallocation of interests in the Common Area resulting from a partial condemnation or partial destruction of the Condominium may be affected without the prior approval of first mortgagees holding mortgages on at least fifty-one percent (51%) of the Units.

10.8 Owner's Insurance Responsibility. Section 4 specifically describes the Owner's recommended personal insurance requirements under the Declaration, with all such personal insurance to be at least in the amount of the Association's master policy deductible, which deductible amount may vary from policy period to policy period at the discretion of the Board.

## PROPERTY RIGHTS AND RESTRICTIONS

### Section 11. Description of Property Interests

11.1 Title to Units. Each of the Units is declared to be held in fee simple and may be retained, occupied, conveyed, transferred, encumbered, inherited or devised in the same manner as any other parcel of real property independent of the other individual Units. **Appendix B**, attached hereto, lists all Units, their respective identifying numbers or Unit designations, locations (all as shown more fully on the existing floor plans of record which are also incorporated herein).

11.2 No Severance of Ownership. No Owner shall execute any deed, lease, mortgage, or instrument conveying the title to a Unit without including the undivided interest

each Unit has in the Common Area, and failure to include same, will automatically presume that each such undivided interest in the Common Area is transferred or mortgaged by each instrument. Any interests in the Unit, or in the Unit's undivided interest in the Common Area or the Limited Common Area appurtenant to each Unit, shall not be subdivided or partitioned and any such attempt shall be rendered void. All Owners hereby appoint the Association as their agent in the event of a condemnation of any part of the Condominium or of the Owners' Units.

11.3 Leasing of Units. All leases, rental or use and occupancy arrangements for Units shall be in writing and in no event shall the initial term of any lease, rental or use and occupancy of any Unit be less than ninety (90) days in duration.

11.4 Payment of Assessment Required Prior to Transfer or Mortgage. Except as provided by the Condominium Act (RSA 356-B:46) relating to first mortgagee's rights, no Owner may transfer the title to the Owner's Unit, or lease, or mortgage the Unit if any of the Association's assessments and/or any outstanding liens are unpaid. In such an event, any such transfer, mortgage, or lease is void unless the unpaid assessments and/or all liens against the Unit are paid in full at the time of the transfer. Upon payment of all outstanding assessments against a Unit, including all lien amounts, the Association shall provide the Owner and/or mortgagee with a lien release and a certificate signed by the Manager or Board for the Unit stating that all assessments and liens have been paid in full as of a particular date. However, in the event that a first mortgagee succeeds to the interests of an Owner through foreclosure or other exercise of rights under a mortgage, the mortgagee's liability for unpaid assessments accrued as of the date of acquisition of title by the mortgagee shall not exceed six (6) months of unpaid assessments. The limit on the liability of the mortgagee shall have no bearing on the obligations of the Owner as set forth in this section.

11.5 Submitted Property of the Condominium. **Appendix A** is the legal description of the land submitted to the Condominium, subject to all easements, covenants, agreements, and restrictions of record, with the Condominium, the Units, and the Common Area as more particularly shown in the Condominium Site Plan recorded on or about the same date as this Declaration in the Merrimack County Registry of Deeds. The Site and Floor Plans of record further label and describe the location of the limited common area for each Unit.

11.6 Easement for Ingress and Egress. All Owners shall have an easement in common with the other Owners and Units for ingress and egress through, and the use and enjoyment of the Common Area by all persons legally entitled to use same, subject to the Association's rights to terminate and/or suspend the use of same in the event of a breach or violation by the Owner of the Declaration, Bylaws and Rules. The Condominium is also subject to all easements for ingress and egress by all utility company employees and equipment, as well as by the Association's employees, and by any other person or company with lawful purpose authorized by the Board or Manager.

11.7 Easement for Structural Encroachments. There shall be valid easements for the maintenance of any reasonable and minor encroachments of one Unit with another Unit based on the settling or shifting of the structures in which the Units are located, so long as that said encroachment did not occur due to the willful conduct of the Owner receiving the benefit of the easement.

11.8 Easement for Access to Units. The Board and Manager, and its employees and contractors, shall have a right of access to each Unit to inspect the Unit and its structural support and/or safety and to remove violations concerning support and/or safety from the Unit at the Owner's cost to terminate or to suspend services and use of the Common Area, and to maintain, repair, or replace the Common Area contained in each Unit or elsewhere in the structure by access through the Unit. Every portion of a Unit which contributes to the integrity of the building structure or contains Common Area items (e.g., pipes, utilities) shall be burdened with this easement for access by the Board and the Manager (and the Association's and utility companies' employees and contractors). Each Owner shall have an easement in common with Owners of all other Units to use all pipes, wires, ducts, cables, conduits, public utility lines and other Common Areas located in any of the other Units and serving the Owner's Unit.

11.9 Easement for Access to Common Area. Prior to the recording of this Declaration, the Declarant entered into a long-term commercial lease ("Lease") with Millyard Laundry Services, LLC ("Lessee") for the purpose of installing, operating and maintaining at the Condominium pay-per-use laundry equipment and related apparatus installed by Lessee (the "Equipment"). Lessee and its successors and assigns shall have a perpetual easement for access, entry, use and operation of the Equipment at the Condominium. The Equipment is contained in those portions of the Common Area of the Condominium described as Laundry Room on the Floor Plans. All Units sold, transferred and conveyed hereunder are subject to the Lease. It is Lessee's intention to continue to operate said laundry rooms or to assign or lease them as pay-per-use laundry rooms.

11.10 Restrictions on the Use of the Limited Common Areas and Common Area. The Common Area shall be limited to use by the Owners, their tenants, guests, invitees, and licensees. All Limited Common Area shall be restricted to use by the Owner of the Unit to which the Limited Common Area is appurtenant, and to the Owner's tenants, guests, invitees and licensees. The Common Area and the Limited Common Areas shall not be maintained in such a manner so as to create a nuisance or waste. No activity shall be permitted in the Limited Common Areas or the Common Area which is a source of annoyance to the residents of Units or interferes with the peaceful occupancy of Units.

11.11 Declaration, Bylaws, and Rules. The Declaration, Bylaws, and Rules adopted by the Board, and the decisions and resolutions of the Association or the Board, or its representatives, as lawfully amended from time to time, all contain or will contain certain restrictions as to the use of the Units and the Condominium, and will contain

covenants as to the obligations of the Units and the Owners. All present or future Owners, tenants and occupants of the Units, including all children, guests, servants, agents, employees, family members, licensees, and invitees of the Owners, or any other person who might use the Condominium or the Units in any manner, are subject to the provisions of the Declaration, Bylaws and Rules of the Condominium and the Association. The acceptance or the entering into the occupancy of any Unit or the use of any portion of the Condominium, including the receipt of any Condominium Unit deed, shall constitute an agreement that the provisions of the Declaration, Bylaws and Rules, as they may be lawfully amended from time to time, are accepted and ratified by such Owner, guests, invitees, tenants or occupants, and all of such provisions shall be deemed and taken to be enforceable servitudes and covenants running with the land and shall bind any person having at any time any interest or estate in such Unit, as though such provisions were recited and stipulated at length in each and every deed of conveyance or lease thereof. Each Owner, guest, invitee, and tenant shall comply with all restrictions, provisions, and covenants in the Declaration, Bylaws, and Rules, and failure to comply with any such provision, decision or resolution shall be grounds for an action to recover sums due for damages, for injunctive relief, and/or to terminate or suspend the Association's services and/or use of the Common Area, which by definition includes the use of the Limited Common Area. All such actions in law or at equity shall be authorized by the Board, and the Association shall be entitled to recover all reasonable costs and expenses of such actions, including its attorneys' fees.

11.12 Resale of Units. Pursuant to the Condominium Act (R.S.A. 356-B:58), in the event of any resale of a Unit, the prospective Owner shall have the right to obtain from the Owners' Association, prior to the contract date of the disposition, the following information in statement form: (a) the amount of unpaid assessment currently levied against that Unit; (b) the capital and major maintenance expenditures anticipated by the Unit Owners' Association within the current or succeeding two fiscal years; (c) the reserve for the major maintenance or replacement fund and any portion of such fund earmarked for any specified project by the Board; (d) the income statement and balance sheet of the Unit Owners' Association for the last fiscal year for which such statement is available; (e) the status of any pending suits or judgments in which the Unit Owners' Association is a party defendant; (f) what insurance coverage is provided for all Owners by the Unit Owners' Association and what additional insurance coverage would normally be secured by each individual Owner; and (g) a statement that any improvements or alterations made to the Unit, or the Limited Common Areas assigned thereto, by the prior Owner are not known to be in violation of the Condominium instruments. The principal officer of the Unit Owners' Association, or the Board's authorized agent, shall furnish the statements prescribed by this Section upon the written request of any prospective Owner with a sale agreement in effect within ten (10) days of receipt of such request.

11.13 Easement to Facilitate Completion and Sales. The Declarant shall be deemed to be the Owner of any Units under construction or not initially sold and its duly authorized agents, representatives and assigns may make such reasonable use of the

Condominium as may facilitate the completion of construction and such sale, including, without limiting the generality of the foregoing, the right to enter all Units and Common Area for construction purposes, and the right to store materials, the maintenance of a sales office and a rental office, the showing of property and the displaying of signs, and the right to perfect any easements of record without the approval of the Owners for utilities and other services provided by others to the Condominium and/or Units. In addition, the Declarant and its duly authorized agents, representatives and employees shall have the right to use any and all unsold Unit or Units as sales offices and/or model Units. Such Units shall be Units within the meaning of this Declaration and the Condominium Act, and not parts of the Common Area. The Declarant shall have the absolute right to convey or lease such Units. Further, the Declarant reserves the right to enter into certain agreements with other Unit Owners who may agree to lease their Units to the Declarant for use by the Declarant as model Units and/or sales offices. The Declarant's completed Units shall not be subject to assessment of any Association or Condominium fees, charges, or assessments until the date that the Unit is sold, occupied, or leased. Although an Owner, the Declarant, successor Declarant and any other successor in interest shall not be bound by any restraints on building, construction, remodeling, repairs, or Improvements which may be contained in the Declaration, Bylaws or Rules with respect to any Unit or the Common Area.

11.14 Condemnation. The rights of Unit Owners in the event of a total or partial taking by eminent domain shall be governed by Section 6 of the Condominium Act (R.S.A. 356-B:6). In the event of a taking or acquisition of part or all of the Common Areas by a condemning authority, the award or proceeds of settlement shall be payable to the Association for the use and benefit of the Unit Owners and their mortgagees as their interests may appear in accordance with the provisions of said Section 6. The Association, by and through its Board, shall represent the Unit Owners in any condemnation proceedings or in negotiations, settlements and agreement with the condemning authorities for the acquisition of the Common Areas or any part thereof, and the Association's Board is hereby appointed Attorney-in-Fact for each Unit Owner for such purpose.

#### Section 12. Conversion of Expandable Land

12.1 Option to Convert. The Declarant reserves the right, for the maximum period permitted under the Condominium Act, to expand the Condominium by creating additional Units or structures thereon or assigning portions of such parcel as Limited Common Area to one or more of the Units. The option of the Declarant to create additional Units or expand existing Units shall be assignable and unlimited except for the provisions of this Declaration and the Act, and the consent of Unit Owners shall not be required as a condition for the exercise of the option. This option to expand is subject to Town of Hooksett site plan approval.

12.2 Legal Description. A legal description of the Expandable Land is appended as part of Exhibit A.



12.3 Restrictions on Use. The creation of additional Units or the construction of additional structures may require subdivision/site plan and approval by the Hooksett Planning Board.

12.4 Construction of Compatible Structures. There is no assurance that any structures constructed within the Expandable Land will be compatible with the existing structures within The Condominium.

12.5 Reallocation of Interests. If the Declarant elects to create additional Units within the Expandable Land, the interest of all Unit Owners in common property shall be reallocated in accordance with the Act.

12.6 Maximum Number of Units. The maximum number of Units to be added shall be determined by the maximum number of Units which may be approved by the Hooksett Planning Board.

12.7 Restrictions on Use. All Units created within the Expandable Land are intended for residential use as such uses are broadly defined and permitted under the provisions of the Hooksett Zoning Ordinance.

12.8 Reallocation of Interest in the Common Property. If the Declarant elects to create additional units, or expand existing Units, then the interests of all Unit Owners in the common property shall be reallocated in accordance with the Act. A Condominium Plan and Floor Plans, together with an amendment to the Declaration shall be recorded, reallocating undivided interests in the common property so that the Units depicted on such Condominium Plan and Floor Plans shall be allocated undivided interests in the common property.

12.9 Easement to Facilitate Conversion. The Declarant shall have transferable easements over all common property of The Condominium for the purpose of constructing or renovating portions of the Units and of doing all things reasonably necessary and proper to convert any Expandable Land.

### Section 13. Amendment Provisions

13.1 Amendments of Declaration and Bylaws. The Declaration and Bylaws may be amended by the agreement of at least sixty-seven percent (67%) of the Residential Owners cast in person or by proxy at a meeting duly held pursuant to the provisions of the Bylaws, and/or by written consent signed by the Residential Owners agreeing to the amendment. Any amendment is subject to the following restrictions:

A. Recording. No such amendment shall be effective until the amendment has been duly recorded at the Merrimack County Registry of

Deeds, executed pursuant to Section 34 of the Condominium Act (R.S.A. 356-B:34).

B. No Unit Alteration. No amendment which alters the dimensions of any Unit shall be of any force or effect unless signed by the Owner of the Unit so altered.

C. Declarant. As long as the Declarant owns one or more Units, no amendment to the Declaration shall be adopted that could interfere with the sale, lease or other disposition or completion of such Unit(s) or the Common Area.

D. Common Area. No instrument of amendment which alters the percentage of the undivided interest to which any Unit is entitled in the Common Areas, or the liability for common expenses or rights to common profits appertaining thereto, or the number of votes in the Association appertaining thereto, shall be of any force and effect unless signed by the Owners of one hundred percent (100%) of the Units, unless, otherwise provided for in this Declaration, or allowed by the Condominium Act. No such amendment shall be contrary to the provision of the Condominium Act.

E. Mortgage Security. No portion of any instrument of amendment affecting any Unit in a manner which impairs the security of a first mortgage of record thereon held by a bank or insurance company or of a purchase money first mortgage shall be of any force or effect against the mortgage holder unless the same has been assented to by such mortgage holder. No portion of any amendment which would in any manner disqualify mortgages of Units in the Condominium from sale to the Federal National Mortgage Association (FNMA) or the Federal Home Loan Mortgage Corporation (FHLMC) shall be of any force and effect.

F. Parking Spaces. The Declarant reserves the right to amend the Declaration to assign certain parking spaces as limited common area. The Declarant shall sign any amendment assigning a parking space as limited common area and such amendment shall be effective upon recording. Such amendment shall be delivered to the unit owner or unit owners of the unit upon payment by them of all reasonable costs for the preparation and acknowledgment thereof, said amendment shall be effective when the aforesaid owners have executed and recorded it.

13.2 Consent of Eligible Mortgage Holders. If mortgagee approval of any amendment is required pursuant to **Section 12.3**, then the Secretary shall certify in any recorded amendment that the consent of the eligible mortgage holders was obtained.

A. Definition of Eligible Mortgage Holders. Eligible mortgage holders (**Eligible Mortgagees**) are those holders of a first mortgage on any of the Units in the Condominium who have requested the Association in writing to notify the mortgagee on any proposed action that requires the consent of a specified percentage of eligible mortgage holders.

13.3 Eligible Mortgage Holder Consent. In addition to the approval by at least sixty-seven percent (67%) of the Residential Owners, the approval of fifty-one percent (51%) of the eligible mortgage holders shall be required to amend any of the following material provisions of the condominium documents:

- A. Voting; assessments, assessment liens or subordination of such liens.
- B. Reserves for maintenance, repair and replacement of the Common Areas (or units if applicable); insurance or Fidelity Bonds.
- C. Rights to use Common Areas or Limited Common Areas.
- D. Responsibility for maintenance and repair of the Condominium.
- E. Expansion or contraction of the Condominium or the addition, annexation or withdrawal of property to or from the project.
- F. Boundaries of any Unit; the interests in the Common Areas or Limited Common Areas; convertibility of Units into common areas or of common areas into Units.
- G. Leasing of Unit estates; imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his or her Unit.
- H. Any provisions which are for the express benefit of mortgage holders, eligible mortgage holders or eligible insurers or guarantors of first mortgages on Units.
- I. A decision by the Owners' Association to establish self management instead of professional management.
- J. Restoration or repair of the project (after a hazard damage or partial condemnation) in a manner other than that specified in the documents.

13.4 Eligible Mortgagee Consent to Amendment. Any eligible first mortgage holder that does not deliver or post to the Board a negative written response to any proposed amendment

within thirty (30) days from receipt of such written notice of an amendment from the Board or its agent, the eligible mortgage holder shall be deemed to have then consented to the amendment or change pursuant to the approvals required in **Section 13.3** herein. An Affidavit by the President and Secretary of the Association making reference to this section, when recorded at the Registry of Deeds, shall be conclusive as to the fact of mortgage approval.

**13.5 No Revocation or Partition.** The Common Area shall remain undivided and no Owner or any other person shall bring any action for partition or division thereof, nor shall the Common Area be abandoned by act or omission, unless the Condominium is terminated pursuant to Section 34 of the Condominium Act.

**13.6 Termination.** In the event of the termination or abandonment of the Condominium, the consent of at least eighty percent (80%) of the Unit Owners in the Association and the approval of at least seventy-five (75%) of eligible mortgage holders shall be required to terminate the legal status of the Condominium.

**13.7 Termination or Condemnation.** After substantial destruction of the Condominium, or after a substantial taking in condemnation of the Condominium, an election to terminate the Condominium must have the approval of first mortgagees holding mortgages on at least fifty-one percent (51%) of the Units. No reallocation of interests in the Common Area resulting from a partial condemnation or partial destruction of the Condominium may be affected without the prior approval of first mortgagees holding mortgages on at least fifty-one (51%) of the Units, whether existing in whole or in part.

## **GENERAL PROVISIONS**

### **Section 14. Mortgagee's Rights**

**14.1 Consent of First Mortgagee.** Notwithstanding any other provision of this Declaration, Bylaws or Rules to the contrary, and in addition to the consent of sixty-seven percent (67%) of the Owners as described in **Section 12**, unless at least seventy-five percent (75%) of the eligible mortgage holders have given their prior written approval, the Association and Board shall not be entitled to:

A. Change the pro-rata interest or obligations of any Unit for the purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards; or for determining the pro rata share of each Unit in the Common Area; or use hazard insurance proceeds for losses to the Property (whether to Units or to Common Area) for other than the repair, replacement or reconstruction of such improvements, except as provided by statute in case of substantial loss to the Units and/or Common Area.

B. Partition or subdivide any Unit; or by act or omission seek to

abandon, partition, subdivide, encumber, sell or transfer the Common Area. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area by the Condominium shall not be deemed a transfer within the meaning of this clause).

14.2 Priority of First Mortgagees. No provision of this Declaration, Bylaws or Rules shall be construed to grant to any Owner, or to any other party, any priority over any rights of first mortgagees of the Units pursuant to their first mortgages in the case of the distribution to Owners of insurance proceeds or condemnation awards for losses to, or a taking of, Units and/or the Common Area or any portions thereof. Any first mortgagee of record shall have all rights afforded by the Condominium Act for first mortgagees of record.

14.3 Notice to Association. An Owner who mortgages his or her Condominium Unit shall notify the Association in writing of the name and address of the mortgagee. The Association shall maintain suitable records pertaining to such mortgages. Such notice will not qualify the mortgagee as an eligible mortgage holder or eligible mortgagee unless the mortgagee actually notifies the Association or the Manager of the mortgagee's mortgage and the mortgagee's request to be recorded on the Association's records as an eligible mortgagee or eligible mortgage holder.

14.4 Notice to Mortgagee, Insurer or Guarantor of Mortgage. The Association, whenever so requested in writing by an eligible mortgagee, or the insurer or guarantor of such eligible mortgage holder, shall promptly report any of the following: (a) any unpaid assessments for Common Expenses due from, or any other default by, the Owner of the mortgaged Unit; (b) damage to the mortgaged Unit in excess of One Thousand Dollars (\$1,000.00); (c) damage to or loss due to condemnation of Common Area which exceeds Ten Thousand Dollars (\$10,000.00); (d) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Owners' Association; and (e) any proposed action which would require the consent of a specified number or percentage of eligible mortgage holders as specified in this Declaration and Bylaws.

14.5 Notice of Default. The Association shall give written notice to an eligible mortgagee of any default by the Owner in the performance of any obligations under The Condominium Act, Declaration or Bylaws, and shall send a copy of such notice to the eligible mortgagee pursuant to the name and address which have been provided by the eligible mortgagee to the Association or Manager. No suit or other proceeding may be brought to foreclose the assessment lien against a Unit for any assessment levied pursuant to the Declaration of these Bylaws except after ten (10) days prior written notice to the holder of the first eligible mortgage on the Unit which is the subject matter of such suit or proceeding.

#### Section 15. General Provisions

15.1 Examination of Books. Each Owner and each mortgagee shall be permitted to

examine the books of account and the records of the Association at reasonable times, on business days.

**15.2 Notices and Service of Process.** All notices, demands, bills, statements or other communications provided for or required under the Declaration and Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by U.S. Mail, first class postage prepaid, (i) if to an Owner, at the address of his or her Unit or at such other address as the Owner may have designated by notice in writing to the Secretary, or (ii) if to the Association, the Board, or the Manager at the principal office of the Manager or at such other address as shall be designated by notice in writing to the Owners. For any other matter, any member of the Board of Directors residing in the State of New Hampshire, or the Declarant while the Declarant is a Board Member, shall be a person to receive service of process in accordance with the Condominium Act.

**15.3 Invalidity.** It is the intention of the Association and Owners that the provisions of this Declaration are severable so that if any provision, condition, covenant, or restriction in the Declaration shall later be deemed to be invalid or void under any applicable federal, state or local law or ordinance, the remainder of the provisions in the Declaration shall be unaffected thereby. In the event that any provision, condition, covenant or restriction contained herein is, at the time of recording of this Declaration, void, voidable or unenforceable as being contrary to any applicable law or ordinance, the Owners, the Declarant successors and assigns, and all persons claiming by, through or under this Declaration hereby covenant and agree that any future amendments or supplements to the said laws having the effect of removing said invalidity, voidability, or unenforceability, shall be deemed to apply retrospectively to this Declaration, thereby operating to validate the provisions of this instrument which otherwise might be invalid or unenforceable. In the event of any conflict between the Declaration, the Bylaws and the Rules, the Declaration shall control over the Bylaws and the Rules, and the Bylaws over the Rules. Particular provisions within the Declaration, Bylaws or the Rules shall control the more general provisions as contained therein, except that a construction conformable with the Condominium Act (NH R.S.A. 356-B) shall in all cases control over any construction inconsistent with the Declaration, Bylaws, and the Rules. Where required by the Condominium Act, the Act shall control over any contrary provision in the Declaration, Bylaws and the Rules.

**15.4 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.

This Declaration of Mount Saint Mary's Condominium, with the attached Appendices, including the Bylaws, is executed this 29 day of July, 2005, by:


Declarant:

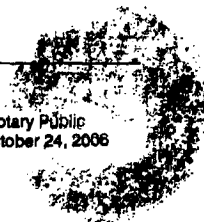
1663 HOOKSETT ROAD, LLC

  
Shane D. Brady, Member of The Brady Family, LLC, its  
Member, duly authorized

STATE OF NEW HAMPSHIRE  
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this 29 day of July, 2005, by Shane D. Brady, Member of The Brady Family, LLC, Member of 1663 Hooksett Road, LLC, the Declarant of Mount Saint Mary's Condominium.

  
Notary Public/Justice of the Peace  
My Commission Ends: JEANETTE M. HOOD, Notary Public  
My Commission Expires October 24, 2006



Appendices of the Mount Saint Mary's Condominium Declaration

- A. Legal Description of Condominium- Submitted Land
- B. List of Units and Undivided Interest in the Common Area
- C. By-Laws

**Appendix A**  
**Legal Description**

A certain tract of land, with the buildings and improvements thereon, situated in Hooksett, Merrimack County, New Hampshire, shown as Lot 14-1-2 consisting of approximately 14.25 acres on a plan entitled "Existing Site Plan, Mount St. Mary's Condominium, Route 3 – Hooksett, NH", dated January 18, 2005, last revised May 2, 2005, prepared by Holden Engineering & Surveying, Inc., prepared for 1663 Hooksett Road, LLC, to be recorded in the Merrimack County Registry of Deeds.

Said plan shows an area entitled: "Open Space in Perpetuity" consisting of approximately 5 acres.

The Declarant reserves the right, for the maximum period permitted under the Condominium Act, to expand the approximately 9.25 acre remaining area of said Lot 14-1-2 by creating additional units or structures thereon, subject to site plan and/or subdivision approval by the Town of Hooksett.

For title reference, see deed recorded with the Merrimack County Registry of Deeds at Book 2123, Page 1355.



**Appendix B**  
**List of Units and Undivided**  
**Interest in the Common Area**

<u>Unit</u>	<u>Square Footage</u>	<u>Interest</u>
001	844	1/73 <sup>rd</sup>
002	792	1/73 <sup>rd</sup>
003	1,115	1/73 <sup>rd</sup>
004	927	1/73 <sup>rd</sup>
005	537	1/73 <sup>rd</sup>
006	544	1/73 <sup>rd</sup>
007	837	1/73 <sup>rd</sup>
008	864	1/73 <sup>rd</sup>
009	1,085	1/73 <sup>rd</sup>
010	1,038	1/73 <sup>rd</sup>
011	863	1/73 <sup>rd</sup>
012	1,391	1/73 <sup>rd</sup>
013	862	1/73 <sup>rd</sup>
014	1,372	1/73 <sup>rd</sup>
015	515	1/73 <sup>rd</sup>
016	1,346	1/73 <sup>rd</sup>
017	1,268	1/73 <sup>rd</sup>
018	955	1/73 <sup>rd</sup>
101	865	1/73 <sup>rd</sup>
102	813	1/73 <sup>rd</sup>
103	1,053	1/73 <sup>rd</sup>
104	881	1/73 <sup>rd</sup>
105	536	1/73 <sup>rd</sup>
106	516	1/73 <sup>rd</sup>
107	835	1/73 <sup>rd</sup>
108	854	1/73 <sup>rd</sup>
109	1,061	1/73 <sup>rd</sup>
110	1,002	1/73 <sup>rd</sup>
111	889	1/73 <sup>rd</sup>
112	974	1/73 <sup>rd</sup>
113	900	1/73 <sup>rd</sup>
201	863	1/73 <sup>rd</sup>
202	829	1/73 <sup>rd</sup>
203	1,115	1/73 <sup>rd</sup>

**Appendix B  
(continued)  
List of Units and Undivided  
Interest in the Common Area**

<u>Unit</u>	<u>Square Footage</u>	<u>Interest</u>
204	988	1/73 <sup>rd</sup>
205	533	1/73 <sup>rd</sup>
206	503	1/73 <sup>rd</sup>
207	847	1/73 <sup>rd</sup>
208	861	1/73 <sup>rd</sup>
209	1,090	1/73 <sup>rd</sup>
210	1,006	1/73 <sup>rd</sup>
211	879	1/73 <sup>rd</sup>
212	1,300	1/73 <sup>rd</sup>
213	859	1/73 <sup>rd</sup>
214	1,591	1/73 <sup>rd</sup>
215	535	1/73 <sup>rd</sup>
216	1,342	1/73 <sup>rd</sup>
301	850	1/73 <sup>rd</sup>
302	782	1/73 <sup>rd</sup>
303	1,155	1/73 <sup>rd</sup>
304	920	1/73 <sup>rd</sup>
305	534	1/73 <sup>rd</sup>
306	562	1/73 <sup>rd</sup>
307	719	1/73 <sup>rd</sup>
308	1,413	1/73 <sup>rd</sup>
309	877	1/73 <sup>rd</sup>
310	1,437	1/73 <sup>rd</sup>
311	539	1/73 <sup>rd</sup>
312	1,157	1/73 <sup>rd</sup>
313	982	1/73 <sup>rd</sup>
314	495	1/73 <sup>rd</sup>
315	1,135	1/73 <sup>rd</sup>
401	715	1/73 <sup>rd</sup>
402	816	1/73 <sup>rd</sup>
403	967	1/73 <sup>rd</sup>
404	1,135	1/73 <sup>rd</sup>
405	1,082	1/73 <sup>rd</sup>
406	1,103	1/73 <sup>rd</sup>
407	1,162	1/73 <sup>rd</sup>
408	1,630	1/73 <sup>rd</sup>
409	1,327	1/73 <sup>rd</sup>

Whittermore House First Floor Unit 1	1,072	1/73 <sup>rd</sup>
Whittermore House Second Floor Unit 2	1,008	1/73 <sup>rd</sup>

Appendix C

**MOUNT SAINT MARY'S CONDOMINIUM**

**BYLAWS**

**ARTICLE I**

**PLAN OF UNIT OWNERSHIP**

1.1 Introduction. These Bylaws (Bylaws) are the Bylaws of Mount Saint Mary's Condominium Association, Inc. (Association), a New Hampshire non-profit corporation, the initial unit owners' association of Mount Saint Mary's Condominium, located at 1663-1704 Hooksett Road, Hooksett, New Hampshire (Condominium). The effective date of these Bylaws shall be the date that they are recorded in the Merrimack County Registry of Deeds. Terms defined in the Declaration shall be similar to the terms used herein.

1.2 Purpose. The administration of the Association shall be governed by these Bylaws which are annexed to the Declaration of Mount Saint Mary's Condominium (Declaration) and are made a part thereof. All Unit Owners (Owners) in the Condominium shall be members of the Association. The Association is a "condominium association" organized and operating to provide for the management, maintenance and care of the Condominium. As specifically provided for in the Declaration, the Association is responsible for establishing the means and methods of collecting the assessments for the maintenance and operation of the Condominium, and for arranging for the management and use of the Common Area, Limited Common Area, and the Units pursuant to the provisions of the Declaration, these Bylaws, and the Rules and Regulations of the Association (Rules).

1.3 Office. The office of the Association and of the Association's Board of Directors (Board) shall be located at the Association's management company or at such other place as may be designated from time to time by the Board.

1.4 Declarant's Control. The Association shall be initially controlled by the Declarant, with the Declarant having the right to elect the Board and the Association's Officers without any vote of the Association until either two (2) years from the recording date of the Declaration, or when three fourths (3/4) of all the Units are sold, whichever occurs first. Any management contract or agreement entered into by the Declarant on behalf of the Association or the Declarant shall not extend beyond the Declarant's time frame of control as described in this paragraph. During the Declarant's control of the Association, by and through the Declarant's control of the Board of Directors, the Owners may not amend the Bylaws of the Declaration to prevent the Declarant's control of the Association, nor vote the Declarant off the Board. However, the Declarant may unilaterally,

and in its sole discretion at any time prior to the expiration of its control as provided herein, release its right of control of the Board and the Association to the Unit Owners by written notice to the Unit Owners.

1.5 Condemnation. As more particularly described in Section 11.14 of the Declaration, the Association, by and through the Board, shall represent the Unit Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authorities for the acquisition of the Common Areas or any part thereof, and the Association's Board is hereby appointed Attorney-in-Fact for each Unit Owner for such purposes.

## ARTICLE II

### UNIT OWNER'S ASSOCIATION

2.1 Membership and Voting. Every Owner of a Unit shall be a member of the Association, and each Residential Unit shall have one vote in the Association. The Association shall have two classes of membership with the voting rights as follows:

a. Active Membership. Active membership shall be held by those Owners who are paid up to date in their Unit's assessments, charges, and fees at the time of any meeting or vote of the Association. Active members shall be entitled to one vote for each Unit that they own. When more than one person or entity is an owner of the same Unit, all such persons and/or entities shall be members of the Association and the vote for such Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Unit.

b. Inactive Membership. Any Owner not current in the Owner's assessments, charges, or fees will be an inactive member. Inactive members shall not participate in Association business, shall not be entitled to vote and will not be counted for the purposes of a quorum or a vote. However, all inactive members shall be liable for the continued payment of all assessments, charges, and fees during their inactive status.

c. "Majority of the Owners" means the Owners of the Units representing more than fifty percent (50%) of the votes in the Association.

2.2 Meetings of the Association. Meetings of the Association shall be held at such suitable place as may be designated by the Board and stated in the notice of the meeting. The Association shall meet as follows:

a. Annual Meetings. The Association shall meet once per year during the month of September and at a time, date, and place determined from time to time by the Board. In the event of a significant conflict with this month, and for good cause only, the Board may schedule the annual meeting of the Association during any other time during the next month.

b. Special Meetings. It shall be the duty of the President of the Association to call a special meeting of the Association if so directed by resolution of the Board of Directors or upon a petition signed and presented to the Secretary of the Association by Owners having not less than thirty percent (30%) of the votes of all Owners. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof.

2.3 Notice of Meeting. It shall be the duty of the Secretary or the Clerk of the Association to mail, by United States first class mail, postage prepaid, a notice of each annual meeting of the Owners at least twenty-one (21) days in advance of each annual or regularly scheduled meeting, and at least seven (7) days in advance of any other meeting, stating the purpose of the meeting as well as the time and place where it is to be held, to each Owner of record at the address of their respective Units or at such other address as each Owner may have designated by notice in writing to the Association. The mailing of a notice of meeting in the manner provided in this Section shall be considered service of notice. The Secretary or other duly authorized officer of the Association who shall also be a member of the Board, shall prepare an affidavit which shall be accompanied by a list of the addresses of all the Owners currently on file with the Association and shall attest that notice of the Association meeting was mailed to all Owners on the address list by first class mail. A copy of the mailing list and affidavit shall be available at the noticed meeting for inspection by the Owners then in attendance, and shall be retained with the minutes for at least three (3) years from the date of the meeting. No business shall be transacted at a special meeting except as stated in the notice. Any and all types of business may be transacted at any and all regular annual meetings and monthly meetings of the Association.

2.4 Quorum. The presence at the meeting of Owners in person, or by proxies from Owners entitled to cast twenty five (25%) of the total votes of the active membership, shall constitute a quorum to start any special or annual meeting of the Owners. Owners not present who submit a proxy, which is received prior to the start of the meeting, shall be considered to be present for purposes of a quorum.

2.5 Proxies. The votes appertaining to any Unit may be cast pursuant to a proxy or proxies in accordance with the provisions of Section 39 IV of The Condominium Act (RSA 356-B:39), as said Act may be amended from time to time.

2.6 Written Consent of Vote. For Association approvals related to amendments and matters which require greater than fifty percent (50%) of the Owners' approval, the Association, at the discretion of the Board, may obtain the necessary approvals in addition to all Owner approvals obtained at a special or annual meeting, by obtaining written consent within ninety (90) days after any such meeting from all those Owners not in attendance in person or by proxy at the Association meeting. During its period of statutory control of the Association, the Declarant may take action on behalf of the Association by written consent without a meeting of the Association.

2.7 Order of Business and Conduct of Meetings. The order of business at all meetings of the Association may be as follows: (a) roll call; (b) recitation of proof of notice of meeting; (c) reading of minutes of preceding meeting; (d) reports of officers and Board; (e) report of Manager; (f) reports of committees; (g) election of directors, if applicable; (h) unfinished business; and (i) new business; any of which may be waived by the President or his/her designate. The President, or his/her designate, shall preside over all meetings of the Association and the Secretary shall keep the minutes of the meeting and record in a Record Book all resolutions adopted by the meeting, as well as a record of all business transacted. Roberts Rules of Order shall govern the conduct of all meetings of the Association when not in conflict with the Declaration, these Bylaws or the Condominium Act.

### ARTICLE III

#### BOARD OF DIRECTORS

3.1 Powers and Duties. The affairs and business of the Association shall be managed by a Board which shall have all of the powers and duties necessary for the administration of the affairs of the Condominium. The Board may do all such acts and things that are not prohibited by The Condominium Act, by the Declaration, or by these Bylaws directed to be exercised and done by the Association that are in the collective best interest of the Owners. The Board shall have the power from time to time to adopt any Rules deemed necessary for the management, regulation, enforcement, and enjoyment of the Condominium provided that such Rules shall not be in conflict with The Condominium Act, the Declaration or these Bylaws. The Board may delegate to one of its members the authority to act on behalf of the Board on specified and Board pre-approved matters which might arise between meetings of the Board. In addition, the Board shall have the power to carry out and be responsible for the following:

a. Budget Preparation. Preparation of an annual budget, in which there shall be established the assessment of each Owner of the Residential Units for the Common Expense assessments and reserves.

b. Assessment Authority. Making assessment against Residential Unit Owners to defray the Common Expenses of the Condominium, establishing the means and methods of collecting such assessments from the Owners, collecting said assessments, depositing the proceeds thereof in a bank depository which it shall approve, and issuing the proceeds to carry out the administration of the Association. Unless otherwise determined by the Board, the annual assessments against each Residential Unit Owner for his proportionate share of the Common Expenses shall be payable in equal monthly installments, each such installment to be due and payable in advance on or before the first day of each month for said month. Decisions regarding replacement, alterations, or improvements to the Condominium, whenever made, shall be at the discretion of the Board of Directors to protect the Common Area or preserve the appearance and/or value of the Condominium. The Board does not have authority to include in any assessments to the Owners any expenditures which are for additions, alterations, or improvements to the Condominium which cost in total over \$10,000.00 (Ten Thousand Dollars), or for any cost or expense assessed against the Condominium and/or against the Association by third parties which are not approved by a majority of the Owners at a duly called meeting of the Association or for expenses which are not considered maintenance, repair, replacement, or routine operating expenses of the Common Area identified in the Association's budget. To the extent the Association incurs an expenditure liability to a third party or to an Owner(s) greater than its assets (reserve and operational accounts) which is not covered by insurance proceeds, the Association may not assess any such loss to the Owners without a majority vote and approval by the Owners at any duly called meeting of the Association. The omission by the Board of Directors before the expiration of any year to fix the Assessments for that or the next year, shall not be deemed a waiver of modification in any respect of the provisions of the Declaration, or a release of the Owner(s) from the obligation to pay the Assessments, or any installment thereof for that or any subsequent year, but the Assessment fixed for the preceding year shall continue until a new Assessment is fixed.

c. Special Assessment to Cure Defaults, Deficiencies and Violations. In the event the Board, after a duly authorized hearing including a written notice sent postage prepaid, return receipt requested, giving at least ten (10) days notice (as evidenced by the return receipt of the Secretary or by in-hand service), determines any Unit Owner or lessee has committed a material breach or violation of these Bylaws, which breach has continued for more than ten (10) days after such notice, the Board may thereafter assess that Unit a Special Assessment for the amount reasonably necessary to cure or correct such violation or breach. Additionally, and not in lieu thereof, the Board may assess the Unit in question a Ten Dollar (\$10.00) per day charge for each day after said ten (10) day "grace" period that such violation or breach continues unabated or incurred, and may, provided only such is undertaken in good faith, proceed upon vote of the Board to continue with the special assessments in order to cure or correct such default using such Special



Assessment (and Additional Special Assessments, if necessary) to pay for such cure or correction without liability for such to the defaulting Unit Owner or its Mortgagee.

d. Default in Payment of Assessments. Each monthly Assessment and Special Assessment shall be separate, distinct and personal debts and obligations of the Owner against whom the same are assessed, at the time the Assessment is made, and shall be enforceable as such. Suit to recover a money judgment for unpaid Common Expenses shall be maintainable without foreclosing or waiving the lien securing the same. The amount of any Assessment, whether regular or special, assessed to the Owner of any Unit, plus interest at the rate of one and one-half percent (1½ %) per month, and costs, including reasonable attorneys' fees, shall become a lien upon such unit upon recordation at the Merrimack County Registry of Deeds of a Notice of Assessment signed under oath by the President of the Association. The said lien for nonpayment of Common Expenses shall have priority over all other items and encumbrances, recorded or unrecorded, except only:

1. Taxes, sewer and water charges, Assessments in lieu of taxes and Special Assessment liens on the Unit in favor of any assessing body and special district; and
2. All sums unpaid on a first mortgage of record of the Unit.

A certificate executed and acknowledged by a majority of the Board of Directors stating the indebtedness secured by the lien upon any Condominium created hereunder, shall be conclusive upon the Board of Directors and the Unit Owners, as to the amount of such indebtedness on the date of the certificate, in favor of all persons who rely thereon in good faith; and such certificate shall be furnished to any Unit Owner or any encumbrancer or prospective purchaser of a Unit upon request, at a reasonable fee, not to exceed Ten Dollars (\$10.00). The validity of any such lien shall be controlled by R.S.A. 356-B:46, VIII as it shall be amended from time to time. Any encumbrancer holding a lien on a Unit may pay any unpaid Common Expenses payable with respect to such Unit and, upon such payment, such encumbrancer shall have a lien on such Unit for the amounts paid of the same rank as the lien of the Association.

Upon payment of a delinquent Assessment concerning which such a certificate has been so recorded, or other satisfaction thereof, the Board of Directors shall cause to be recorded in the same manner as the certificate of indebtedness a further certificate stating the satisfaction and the release of the lien thereof. Such lien for nonpayment of Assessment may be enforced by sale by the Board of Directors or by a mortgage bank, trust company or institutional mortgage lender or title insurance company authorized by the Board of Directors, such sale to be conducted in accordance with the provisions of law applicable to the exercise of

powers of sale or foreclosure in deed of trust or mortgages or in any manner permitted by law. In any foreclosure or sale, the Unit Owner shall be required to pay the costs and expenses of such proceedings and reasonable attorneys' fees.

e. Rent Collection Upon Default of Payment of Assessments. In the event that a Unit Owner fails to pay the Common Expenses assessed to such Owner by the Board within sixty (60) days of the date that it was due, the Board may, subject to the existing rights of a holder of a first mortgage of record, collect from any tenant renting the unit any rent then or thereafter due to the owner of such unit as provided in R.S.A. 356-B:46-a as the same may be amended from time to time.

f. Operation of the Common Area. Providing for the operation, care, upkeep, replacement and maintenance of all of the Common Area and services of the Condominium and/or any Unit, if such maintenance or repair is reasonably necessary in the discretion of the Board of Directors to protect the Common Area or preserve the appearance and/or value of the Condominium, and the Owner or Owners have failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair is delivered. Designating, hiring and dismissing the personnel necessary for the maintenance, operation, repair and replacement of the Common Area, and providing services for the Condominium, and where appropriate, providing for the compensation of such personnel and for the purchase or use of equipment, supplies and material to be used by such personnel in the performance of their duties, which supplies and equipment, if purchased, shall be deemed the common property of the Owners. The Board shall employ, or contract with, a professional manager or management firm ("Manager") for a fee or compensation established by the Board, to perform such duties and services as the Board shall authorize from time to time, including, but not limited to, the duties listed in the Declaration, Bylaws, and the Rules. The term of any employment contract shall provide that such agreement may be terminated without cause upon no more than ninety (90) days notice and without payment of penalty, unless otherwise agreed to by a majority of the Owners at a duly held meeting of the Association. All agreements, contracts, deeds, leases, checks and other instruments of the Association for expenditures or obligations shall be executed by any person or persons designated by a resolution of the Board.

g. Rules and Regulations. Making and amending rules respecting the use of the Condominium and enforcing by legal means the provisions of the Declaration, these Bylaws and such Rules, and bringing any proceeding which may be instituted on behalf of the Association or the Owners.

h. Insurance. Obtaining and carrying out insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof and making, or contracting for the making of, repairs, additions, and improvements to, or altering of the Condominium, and the restoration of the Condominium, in

accordance with other provisions of the Declaration and the Bylaws, after damage or destruction by fire or other casualty.

i. Accounting. Keeping books with detailed accounts of the receipt and expenditures affecting the Association, and the administration of the Association and of the Condominium. The Association's records shall be available for examination by the Owners, their duly authorized agents or attorneys, during general business hours on working days at the times and in the manner that shall be set and announced by the Board. All books and records shall be kept in accordance with generally accepted accounting practices, and the same may be audited annually by means of a certified audit to be conducted by an outside Certified Public Accountant employed by the Board who shall not be a resident, Manager, or Owner. The cost of such certified audit shall be a Common Expense.

j. General Authority. To do such other things and acts not inconsistent with The Condominium Act, the Declaration, and these Bylaws which it may be authorized to do by a resolution of the Association and which are in the best interests of the Owners as a whole. The Board has authority, from time to time, and in the Board's discretion, to incorporate the Owners' Association and to file all necessary incorporation documents with the State and local authorities.

k. Easements. To grant easements and rights with respect to utilities to be installed in, upon, under or over the Common Area and Facilities and to enter into such agreements and undertakings as shall be necessary therefor. To approve the location and relocation of easements and rights for utilities which have been installed in, upon, under or over the Common Area and Facilities and to execute, acknowledge and record such instruments and plans identifying such easements as the Board deems necessary or desirable.

3.2 Number of Board Members. The Board shall be composed of one person during the Declarant's period of control of either two (2) years from the recording date of the Declaration, or when three fourths (3/4) of all the Units are sold, whichever comes first. During this period, the Board shall not be required to meet on a monthly or annual basis. However a record shall be kept of all official actions by the Board during this period, and such record shall be the property of the Association. The Board shall be incrementally increased at the expiration of the Declarant's control to five (5) members. Board Members (Directors) shall consist only of Owners, an officer or member of the Declarant (while the Declarant is constructing or owns Units), or an officer of an entity which owns a Unit.

3.3 Election, Term of Office, Vacancies, Resignation and Removal. During the Declarant's control, the Declarant will choose the member(s) of the Board. After Declarant's control, the authority to elect the Board will be given to the members, and the Directors for such Board will be elected by a majority vote of said members. The term of office for each Director will be two (2) years, provided that three (3) of the members of the

first Board of Directors elected at the first meeting of members, subsequent to the expiration of the time set forth in Paragraph 1.4, herein shall be nominated for and shall serve for a one (1), two (2), and three (3) year term respectively. All other Directors shall serve for a two (2) year term. The Directors shall hold office until their respective successors have been elected and hold their first meeting. Any member of the Board of Directors may resign at any time by giving written notice to the President and Manager. Any vacancies on the Board caused by any reason other than removal of a Director by a vote of the Association shall be filled by vote of the majority of the remaining Directors at a special meeting of the Board held for that purpose promptly after the occurrence of any such vacancy; and each person so elected shall be a Director for the remainder of the term of any Director so replaced. A Director may be removed with or without cause, and his successor elected, at any annual, monthly, or special meeting of the Association at which a quorum, which is defined as thirty percent (30%) of the Units is present, by an affirmative vote of a majority (over 50%) of the votes in attendance at the meeting and/or represented by proxy and voting. Any Director whose removal has been proposed by the Owners shall be given at least ten (10) days notice of the calling of the meeting, and an opportunity to be heard at the meeting.

3.4 Compensation. No Director shall receive any compensation from the Association for acting as such, accepting the reimbursement of Board approved expenses incurred by any Director.

3.5 Board Meetings. Meetings of the Board shall be held and conducted in the following manner:

a. Annual Meetings. Annual meetings of the Board shall be held immediately after the annual meeting of the Association. Prior notice of the annual meeting of the Board is not required to be given in writing to the Directors.

b. Monthly Meetings. Monthly meetings of the Board shall be held on the third Monday of each month, at a time determined by the Board. Prior notice of these regular meetings of the Board is not required to be given in writing to the Directors.

c. Special Meetings. Special meetings of the Board may be called by the President with seven (7) days prior written notice to each Board Member. Special meetings may also be called by the President or the Secretary upon a request by two or more Board Members. Such written notice shall be hand delivered, or given by United States or overnight mail, or electronic mail for those members allowing same. The notice shall state the time, place and purpose for such meeting. No business shall be transacted at a special Board meeting except as stated in the notice. Any notice required to be provided for any meeting may be waived by any member of the Board if the

Board member consents in writing within ten (10) days of the meeting. Such written consent or consents shall be filed with the minutes of the Board's special meeting.

d. Board Quorum. At all meetings of the Board held after such time as the Board is no longer controlled by the Declarant, three Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the directors present at a meeting at which a quorum is present shall be the acts of the Board.

e. Conduct of Meetings. The President, or in the President's absence, the Vice President, or in the absence of both, the president pro tem elected by the Board, shall preside over all meetings of the Board. The Secretary shall keep the minutes of the meetings of the Board, including recording all resolutions adopted by the Board, all transactions, and all proceedings occurring at such meetings. The minutes shall be filed in the Record Book of the Association.

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

3.6 General Board Responsibilities. The presiding member of the Board shall present at each annual meeting, and when called for by vote of the Association at any other meeting of the Association, a statement of the business and condition of the Association and the Condominium.

3.7 Fidelity Bonds. The Board of Directors shall maintain in force fidelity bonds or insurance in an amount based on the best judgment of the Board, but not less than the estimated maximum amount of funds, including reserve funds, in the custody of the Association or management agent, as the case may be, at any given time during the term of each bond, but no less than three (3) months aggregate Assessments on all Units plus reserves, for all officers and employees of the Condominium handling or responsible for Condominium funds. The premium on such bonds shall constitute a Common Expense. All fidelity bonds shall (i) name MOUNT SAINT MARY'S CONDOMINIUM ASSOCIATION, INC. as an obligee; (ii) contain waiver by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions; and (iii) provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days prior written notice to the Association, to the Board of Directors acting as Trustees, and to each first mortgagee.

3.8 Liability of the Board. The Directors shall not be liable to the Owners for any mistake of judgment or unintentional negligence except for their own individual willful misconduct or bad faith. The Owners shall and hereby indemnify and hold harmless each of the Directors from and against all contractual liability to others arising out of contracts made by the Board on behalf of the Owners unless any such contract shall have been made in bad faith, due to willful negligence or misconduct, or contrary to the provisions of the Declaration or of these Bylaws. The Directors are not to be personally liable (except as Owners) with respect to any contract made by them on behalf of the Owners, unless made in bad faith, due to willful negligence or misconduct, or contrary to such provisions. Every written agreement made by the Board or by the Manager on behalf of the Owners shall, if such agreement allows, provide that the Directors or the Manager, as the case may be, are acting only as agents for the Owners, and the person executing the contract shall have no personal liability there under (except as Owners). The Association shall indemnify all Directors from all threatened, pending or completed actions, suits, or other legal proceedings whether or not based in contract, by reason of the fact that the Director is or was a Director, or officer, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement incurred by the Director in connection with such action, suit or proceeding unless the Director acted in bad faith, was guilty of willful negligence or misconduct, or intentionally acted contrary to the provisions of the Declaration or these Bylaws.

3.9 Special Board Approvals Requiring All Members. All of the Board members are required to vote on: i) any proposed annual Budget, or ii) on any addition, alteration, or modification to the Condominium.

#### ARTICLE IV

##### OFFICERS

4.1 Designation and Election. The principal officers of the Association shall be a President, a Vice President, a Secretary (who may also be known as the "Clerk"), and a Treasurer, all of whom shall be elected annually by the Board. With the exception of the Secretary, all officers must be members of the Board. During the Declarant's control, all officers may be the same person. After the Declarant's control, the Secretary, Treasurer, and President are required to be different people. The officers of the Association shall be elected initially by the Declarant, and then by the Board immediately following the annual Association meeting and shall hold office for the term described herein and at the pleasure of the Board. Any vacancy in an office shall be filled by the Board at a monthly meeting or special meeting called for such purpose. The officers shall hold office until their respective successors are chosen and qualify in their stead. Any officer elected or appointed by the Board may be removed at any time by the affirmative vote of a majority of the whole Board, and his successor may be elected at any monthly meeting of the Board, or at any special meeting of the Board called for such purpose.

4.2 President. The President shall: i) be the chief executive officer; ii) preside at meetings of the Association and at meetings of the Board, iii) be an ex-officio member of all committees, iv) have general and active management of the business of the Association, and shall v) insure that all orders and resolutions of the Board are carried into effect. The President shall have all of the general powers and duties which are usually vested in or incident to the office of president of a stock corporation organized under the laws of the State of New Hampshire, except where they may be in conflict with any other provision of these Bylaws and the Declaration.

4.3 Vice President. The Vice President shall have all of the powers and duties of the President when the President is unable to fulfill them or be present at a meeting of the Association or the Board.

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

4.5 Treasurer. The Treasurer shall be responsible for all funds and all reserves held in trust by the Association, and shall have the custody of all funds and securities that are not under the control of the Manager, and, with the assistance of the Manager, shall keep full and accurate records of receipts and disbursements, shall prepare all required financial data, and shall deposit all monies and other valuable effects in such depositories as may be designated by the Board. The Treasurer shall disburse funds as ordered by the Board, and render to the President and Directors, at the regular meetings of the Board, or whenever they may require it, an account of all of his transactions as Treasurer and of the financial condition of the Association

4.6 Liability of Officers. The Officers shall not be liable to the Owners for any mistake of judgment or unintentional negligence except for their own individual willful misconduct or bad faith. The Owners shall and hereby indemnify and hold harmless each of the Officers from and against all contractual liability to others arising out of contracts made by the Board on behalf of the Owners unless any such contract shall have been made in bad faith, due to willful negligence or misconduct, or contrary to the provisions of the Declaration or of these Bylaws. The Officers are not to be personally liable (except as Owners) with respect to any contract made by them on behalf of the Owners, unless made in bad faith, due to willful negligence or misconduct, or contrary to such provisions. Every written agreement made by any Officer or by the Manager on behalf of the Owners shall, if

such agreement allows, provide that the Officers or the Manager, as the case may be, are acting only as agents for the Owners, and the person executing the contract shall have no personal liability thereunder (except as Owners). The Association shall indemnify all Officers from all threatened, pending or completed actions, suits, or other legal proceedings whether or not based in contract, by reason of the fact that the Officer is or was acting in his/her official capacity, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement incurred by the Officer in connection with such action, suit or proceeding unless the Officer acted in bad faith, was guilty of willful negligence or misconduct, or intentionally acted contrary to the provisions of the Declaration or these Bylaws. The above limitations shall not apply to (1) any breach of the Officer's duty of loyalty to the corporation or its shareholders; (2) acts or omissions which are not in good faith or which involve intentional misconduct or a knowing violation of law; or (3) any transaction from which the Officer derived an improper personal benefit.

## ARTICLE V

### COMMON EXPENSES

5.1 Assessments. Within thirty (30) days prior to the annual meeting, the Board of Directors shall estimate the net charges to be paid during the following year (including a reasonable provision for working capital, contingencies and replacements and operation). Said "estimated cash requirement" shall be assessed to the Owners pursuant to the percentage set forth in Exhibit B to the Declaration, or as otherwise determined by the Board. The Declarant will be liable only for the amount of any Assessment against Units which have been completed from time to time, including any units within a Convertible Land and owned by the Declarant. If said estimated sums prove inadequate for any reason, including nonpayment of any Owner's Assessment, the Board of Directors may at any time levy a further Assessment, which shall be assessed to the Owners in like proportions, unless otherwise provided herein. Each Owner shall be obligated to pay assessments made pursuant to this Paragraph (5.1) to the Board of Directors in equal monthly installments on or before the first day of each month during such year, or in such other reasonable manner as the Board of Directors shall designate.

## ARTICLE VI

### COMPLIANCE, CONFLICT, AND MISCELLANEOUS PROVISIONS

6.1 Amendment. These Bylaws may be amended pursuant to the provisions set forth in the Declaration.

6.2 Severability. These Bylaws are set forth to comply with the requirements of the State of New Hampshire. In case any of the Bylaws are in conflict with the provisions of any applicable City, State, or Federal statutes, the provisions of the statutes will apply. If



any provisions of these Bylaws or any section, sentence, clause, phrase, or word, or the application thereof in any circumstances is held invalid, the validity of the remainder of these Bylaws shall not be affected thereby and to this end the provisions hereof are declared to be severable.

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

6.4 Incorporation of the Declaration. All provisions of the Declaration, and as said Declaration may be amended from time to time, are hereby incorporated by reference herein.

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The Bylaws of the Association are adopted this 29 day of July, 2005, by:

Declarant

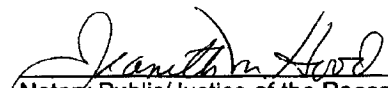
1663 HOOKSETT ROAD, LLC



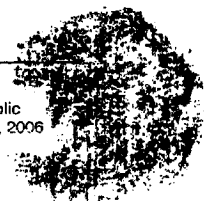
Shane D. Brady, Member of The Brady Family, LLC,  
its Member, duly authorized

STATE OF NEW HAMPSHIRE  
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this 29 day of July, 2005, by Shane D. Brady, Member of The Brady Family, LLC, Member of 1663 Hooksett Road, LLC, the Declarant of Mount Saint Mary's Condominium.

  
Notary Public/Justice of the Peace  
My Commission Expires

JANETTE M. HOOD, Notary Public  
My Commission Expires October 24, 2006



MERRIMACK COUNTY RECORDS

*Kathie L. Gray*, CPO, Register