

DECLARATION OF CONDOMINIUM  
OF  
TOPSAIL WAY CONDOMINIUM  
WELLS, MAINE

This Declaration is made on [●], by Topsail Way, LLC, a Maine limited liability company with a place of business in Wells, Maine (the “Declarant”), as the owner in fee simple of the Real Estate hereinafter described.

**ARTICLE 1**  
SUBMISSION

Section 1.1. Property. Declarant, the owner in fee simple of the Real Estate described in Exhibit A attached hereto and made a part hereof (the “Real Estate”) situated in the Town of Wells, County of York and State of Maine, hereby submits the Real Estate, together with and subject to all easements, rights and appurtenances thereto belonging and the Buildings and improvements erected or to be erected thereon (collectively, the “Property”) to the provisions of the Maine Condominium Act, 33 M.R.S.A. §§1601-101 through 1604-118, as the same may be amended from time to time (the “Condominium Act” or “Act”).

Section 1.2. Name and Address of Condominium. The name and address of the Condominium is:

Topsail Way Condominium  
17 Bayley Road  
Wells, Maine 04090

**ARTICLE 2**  
DEFINITIONS

Section 2.1. Terms Defined in the Act. Capitalized terms are defined herein or in the Plats and Plans; otherwise, they shall have the meanings specified or used in the Condominium Act.

Section 2.2. Terms Specifically Defined in this Declaration. In addition to the terms hereinabove defined, the following terms shall have the following meanings in this Declaration, the Bylaws, and Plats and Plans:

(1) “Assessment” means the Owner’s share of the anticipated Common Expenses, for the Association’s fiscal year as reflected in the budget adopted by the Executive Board for such year.

(2) “Association” means the Owners Association of the Condominium, which is known as Topsail Way Condominium Association.

(3) “Buildings” (or in the singular, a “Building”) means any structure or other improvement now or hereafter constructed on the Property.

(4) “Bylaws” means the document having that name and providing for the governance of the Association, pursuant to Section 1603-106 of the Condominium Act, as such document may be amended

from time to time.

(5.) “Common Elements” (or in the singular, a “Common Element”) means those parts of the Property either described in the Condominium Act as being Common Elements or described herein or in the Plats and Plans as being Common Elements.

(6.) “Common Expenses” means expenditures made by or financial liabilities of the Association together with any allocations to reserves.

(7.) “Condominium” means the Condominium described in Section 1.1. above.

(8.) “Condominium Documents” means the Declaration, Plats and Plans, Bylaws and any Rules and Regulations adopted by the Executive Board from time to time.

(9.) “Declarant” means Topsail Way, LLC, its successors and assigns.

(10.) “Declarant Control Period” means the entire time period which extends from the date of the recording of this Declaration until the earlier of seven (7) years following the conveyance of the first Unit to a Purchaser, other than the Declarant, or sixty (60) days after the conveyance of 75% of the Units to Unit Owners other than the Declarant, whichever shall first occur.

(11.) “Declaration” means this document, as the same may be amended from time to time.

(12.) “Development Rights” means those rights defined in Section 1601-103(11) of the Condominium Act, as it may be amended from time to time.

(13.) “Eligible Mortgage Holder” means the holder of a recorded first mortgage on a Unit, which has requested the Association in writing to notify it of actions by the Association requiring the consent of Eligible Mortgage Holders under this Declaration.

(14.) “Executive Board” means the Executive Board of the Association.

(15.) “Insurance Trust Agreement” means that certain agreement, if any, between the Association and the Insurance Trustee providing for the management and disbursement of insurance proceeds in accordance with Section 15.3 hereof.

(16.) “Insurance Trustee” means that certain entity responsible for the management and disbursement of insurance proceeds pursuant to the Insurance Trust Agreement, if any.

(17.) “Limited Common Elements” (or in the singular, a “Limited Common Element”) means those parts of the Property either described in the Act as being Limited Common Elements or described herein or in the Plats and Plans as being Limited Common Elements.

(18.) “Limited Common Expenses” means (a) the Common Expenses associated with the maintenance, repair or replacement of a Limited Common Element or which shall be assessed against the Units to which that Limited Common Element is assigned in proportion to the relative Common Expense Liabilities of such Units as between themselves, as the Executive Board may periodically determine, and (b) the Common Expenses for services benefiting fewer than all the Units, which are assessed exclusively against the Units benefited in accordance with the use of such services as permitted by Section 1603-115(c) of the Condominium Act.

(19.) “Manager” or “Managing Agent” means the agent of the management company

appointed by the Association to manage the Condominium.

(20.) “Mortgagee” means the holder of any recorded first mortgage encumbering one or more of the Units.

(21.) “Owner” means a record owner of a Unit, but does not include a person or entity having an interest in a Unit solely as security for an obligation.

(22.) “Percentage Interest” means the undivided interest in the Common Elements appurtenant to a Unit, as set forth on Exhibit B attached hereto, as the same may be amended from time to time.

(23.) “Property” means the Property described in Section 1.1. above.

(24.) “Plats and Plans” means the Plats and Plans recorded herewith as such may be amended from time to time, reduced photocopies of which are attached hereto as Exhibit C.

(25.) “Record” means to record in the Registry of Deeds in the county in which the Real Estate is located.

(26.) “Rules and Regulations” means such rules and regulations as are promulgated by the Declarant or the Executive Board from time to time with respect to the use of all or any portion of the Property.

(27.) “Special Assessment” means an Owner’s share of any assessment made by the Executive Board in addition to the Assessment.

(28.) “Special Declarant Rights” means those rights defined in Section 1601-103(25) of the Condominium Act, as it may be amended from time to time, including, but not limited to, those rights the Declarant has reserved to itself to complete improvements, to maintain sales offices, to use easements through Common Elements for the purpose of making improvements within the Condominium, and to appoint or remove any officer of the Association during any period of Declarant control.

(29.) “Unit” means a physical portion of the Condominium created by this Declaration or any amendment thereto and designated for separate ownership or occupancy, the boundaries of which are described in Article 3.

Section 2.3. Provisions of the Condominium Act. The provisions of the Condominium Act shall apply to and govern the operation and governance of the Condominium, except to the extent that contrary provisions, not prohibited by the Act, are contained in this Declaration.

### **ARTICLE 3** **UNITS, UNIT BOUNDARIES, AND MAINTENANCE**

Section 3.1 Number of Units. The Declarant has created pursuant to this Declaration one (1) Unit consisting of a single-family residential building, which Unit is identified in Exhibit B as Unit 1. The Declarant reserves the right, but not the obligation, until seven (7) years from the date of the recording of this Declaration to create up to three (3) additional Units, together with Limited Common Elements appurtenant to such Units, on the land described in the attached Exhibit A, and as depicted on the attached Exhibit B, all pursuant to Section 1602-110 of the Condominium Act. The location of the additional Units and Limited Common Elements appurtenant to such Units are shown on the Plats and Plans as Unit 2 through 4, inclusive. If they are built, said additional Units and Limited Common Elements shall be built in substantially

the same locations as shown on the Plat, and the configuration of each Unit will be substantially the same as those Units which are declared. NOTWITHSTANDING THE FOREGOING, THE DECLARANT EXPRESSLY RESERVES THE RIGHT NOT TO ADD THE UNITS, OR TO MAKE VARIATIONS IN SUCH UNITS, OR LIMITED COMMON ELEMENTS, AND THEIR LOCATIONS, in its discretion. Upon the addition of such Units, which may occur in such stages and in such order as the Declarant determines, they shall be fully integrated into the Condominium as if this Declaration had been originally executed and recorded containing the additional Units, and the Allocated Interests of the Units shall be reallocated in accordance with the formulas set forth in this Declaration and as more particularly set forth in the amendment adding said Units. All such future Units and Limited Common Elements shall be consistent with the initial Units in terms of the quality of construction, general architectural style and principal materials, provided that the Declarant may substitute construction materials and techniques of equal or better quality. All restrictions in or created by authority of this Declaration affecting the use, quality or alienation of Units shall apply to such Units including, without limitation, the restriction on residential use. Declarant need not add said Units or Limited Common Elements to the Condominium and, hence, said Units and Limited Common Elements NEED NOT BE BUILT. The Declarant must exercise its rights hereunder within seven (7) years of the recording of this Declaration.

Upon the addition of such Units to the Condominium, the Allocated Interests of all Units shall be recalculated by a formula based on each Unit having a Percentage Interest expressed as a fraction whose numerator is one (1) and whose denominator is the total number of Units declared, including those added by amendment. Each Unit shall have one (1) vote per Unit in the Association to permit equality among Units. To exercise any rights under this Section, the Declarant shall prepare, execute and record an amendment to the declaration pursuant to the Condominium Act, which amendment shall include a Plat and Plans (or suitable affidavit) as required by the Act to the extent not previously recorded. Said amendment shall become effective upon recording without the consent of any other person.

Notwithstanding anything contained herein to the contrary, no additional Units may be declared from the Common Elements nor any permanent improvements may be added to the Property within the Common Elements without the prior written approval of the Town of Wells.

Section 3.2. Unit Boundaries. The boundary lines of each Unit are as shown on the Plats and Plans and shall conform with unit boundaries as described in the Act to the extent not described herein.

(a) The upper and lower (horizontal) boundaries of each Unit shall be the following boundaries extended to the intersection with the vertical (perimeter) boundaries:

(i) Upper Boundary: There shall be no upper boundary, and the Unit shall include, but not be limited to, the exterior side of the roof shingles, solar panel(s), if any, chimneys, vent pipes, or any other improvements at or above the roofline; and

(ii) Lower Boundary: The ground-side surface of the concrete floor in the crawl space, basement, or anchoring pier under the Unit and the patio or porch, and the ground-side surface of the exterior steps and entrance way of each Unit.

(b) The vertical boundaries of each Unit shall be the vertical planes at the outside surface of such exterior walls as are adjacent to such Unit at the exterior surface of the siding materials forming its vertical walls (including chimneys, fascia, soffit, comers, moldings, trim, and other exterior components), extended to the intersections with each other and with the upper and lower Unit boundaries, and the exterior surface of the concrete foundation walls.

(c) The Unit shall also include the exterior surface of the sash of windows which are set in the exterior walls or roofs of such Unit, the exterior surface of the panes of such windows and the exterior

surface of window sills, moldings, trim, jambs and mullions for such windows, to include the thickness of the finish material.

(d) The exterior surface of doors, and their sills and hardware, and the exterior surface of the door frames in which such doors are set, including the thickness of the finish material, shall be a part of the Unit.

(e) Each Unit consists of all portions of the Building in which it is located within the boundary lines described above. By way of illustration and not limitation, there is included within a Unit: (1) the air space enclosed by such boundary lines, (2) all non-boundary lines including, but not limited to, all doors, door frames, hardware, electrical outlets and wiring, telephone outlets and conduits and other equipment and devices in such partitions serving only such Unit, (3) all fixtures located within such boundary lines and serving only such Unit, and their water and waste connections, (4) heat pumps, exhaust fans and the grilles, registers, ventilation ducts, and related fixtures located within such boundary lines and serving only such Unit, and not any of the foregoing is located in any portion of the Common Elements, (5) lighting devices (including by way of illustration and not limitation, lamps and bulbs which are surface mounted on, recessed in or suspended from, ceilings, walls and partitions within or around the perimeter of such Unit) serving only such Unit, whether or not such lighting devices are themselves located entirely within the boundary lines of such Unit, (6) outlets, wires, cables, conduits, circuits and related equipment transmitting electricity for lighting and power or transmitting electrical impulses and signals (including, but not limited to, impulses and signals for telephone and television transmission, except to the extent otherwise specifically provided herein) which serve only such Unit and which are located entirely within the boundary lines of such Unit.

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

### Section 3.3. Maintenance Responsibilities.

(a) The Association, through the Executive Board, shall be responsible for maintenance, repair and replacement of the Common Elements (including all stormwater systems, landscape buffers, and undeveloped land shown on the Plats and Plans) except for those portions of the Common Elements that are the Limited Common Elements; provided, however, that if damage is inflicted on the Common Elements by any Unit Owner, such Unit Owner's family, guests, tenants, or invitees, such Unit Owner shall be liable for the prompt repair thereof. The Executive Board, in its discretion, may provide the maintenance and other services described in this Section 3.3.(a) either through its own employees or through independent contractors or both. The cost of the provision of such services shall be a Common Expense. Notwithstanding anything contained herein to the contrary, the Executive Board shall be responsible for all snow plowing and clearing of the roadways and driveways contained on the Common Elements.

(b) Generally, the maintenance of the Units and Limited Common Elements shall be allocated to the Unit Owners and the Association shall maintain the Common Elements. Every Unit Owner shall perform promptly all maintenance and repair work on the owner's Unit and Limited Common Elements, including all improvements to the Unit and all landscaping, yard care, snow removal (related to the Limited Common Elements), and grounds maintenance in the Limited Common Elements appurtenant to such Unit; provided, however, that the Association may vote to include lawn mowing and yard care as a Common Expense. In addition the Unit Owner shall be responsible for the maintenance of all utility lines within the boundary of the Limited Common Elements appurtenant to such Unit which, if omitted, would affect the Condominium in its entirety, the Common Elements, or other Units, and the Unit Owner shall be expressly responsible for any damages or liabilities resulting from failure to do so. If any Unit Owner fails to perform such maintenance or repair after reasonable notice from the Association, the Association, through its officers or manager shall have the right but not the obligation to enter the Unit, or the Limited Common Elements appurtenant to such Unit, and perform such maintenance or repair in the name of the Unit Owner; the

Association, after notice to the Unit Owner and opportunity to be heard before the Executive Board, shall be entitled to assess the expense thereof as a Limited Common Expense due in full at the time of the next regular monthly payment.

(c) Sewer, water service, electric, telephone, cable, internet, and natural gas service, if any, will be separately metered, and each Unit Owner will be responsible for the sole cost of such services furnished to his Unit.

(d) Water service to the Property and the Units will be made by a private water main connected to equipment owned and operated by the K K & W Water District under Bayley Road (the "Private Main"). The Private Main will be connected to such public water supply by a valve located at or near the intersection of the Private Main and such public water facility (the "Valve"). The Executive Board shall be responsible for the maintenance of the Private Main. In the event that it is discovered that the Private Main is leaking water, it shall be the responsibility of the Executive Board to ensure that the Valve is closed and the flow of water into the Private Main is dis-engaged. The Executive Board shall not open the Valve and re-engage the flow of water on until such time that the leak or damage to the Private Main is repaired.

Section 3.4. Relocation of Unit Boundaries; Subdivision. Relocation of boundaries between Units will not be permitted.

**ARTICLE 4**  
DESCRIPTION AND ALLOCATION OF  
COMMON ELEMENTS AND LIMITED COMMON ELEMENTS

Section 4.1. Description of Common Elements. The Common Elements shall consist of all of the Property except the individual Units, The Common Elements are shown on the Plats and Plans and are defined in the Act. As provided in Section 1602-102(2) of the Condominium Act, any wires, ducts, pipes, or other fixtures located within a Unit but serving another Unit or Units are part of the Common Elements. Each Owner shall have the right to use the Common Elements in common with all other Owners, as may be required for the purposes of ingress and egress to and use, occupancy and enjoyment of the respective Owners and guests, tenants, and other authorized occupants, licensees, and visitors of the Owner. The use of the Common Elements and the rights of the Owners with respect thereto shall be subject to and governed by the provisions of the Act and the Condominium Documents, including, but not limited to, any Rules and Regulations adopted by the Executive Board from time to time.

Section 4.2. Description of Limited Common Elements. Limited Common Elements shall mean those portions of the Property identified and designated as Limited Common Elements on the Plats and Plans, or by Section 4.3. hereof. Those portions of the Limited Common Elements serving only the Unit above, below or adjacent to such Limited Common Element, as the case may be, are Limited Common Elements allocated only to the Unit which they serve.

Section 4.3. Specified Limited Common Elements. The following portions of the Property are hereby designated as Limited Common Elements: those improvements and land, if any, which are not part of the Unit but which are adjacent to and serve only such Unit.

Section 4.4. Locations of Common and Limited Common Elements. The locations of the Common Elements and Limited Common Elements are shown on the Plats and Plans.

Section 4.5. Reserved Common Elements. The Executive Board shall have the power in its discretion from time to time to grant revocable licenses in designated Common Elements to the Association or to any Owners and to establish a reasonable charge to such Owners for the use and maintenance thereof. Such designation by the Executive Board shall not be construed as a sale or disposition of the Common Elements.

Section 4.6. Alteration of Common Elements by the Declarant. The Declarant reserves the right to modify, alter, remove or improve portions of the Common Elements, including without limitation, any equipment, fixtures and appurtenances, when in the Declarant's judgment it is necessary or desirable to do so, until the expiration of the applicable warranty period.

**ARTICLE 5**  
**ALLOCATION OF PERCENTAGE INTERESTS, COMMON**  
**EXPENSES AND VOTING RIGHTS**

Section 5.1 Percentage Interests. Attached as Exhibit B hereto is a list of all Units by their identifying number and the Percentage Interest appurtenant to each Unit, together with an explanation of the formula by which such Percentage Interest is determined.

Section 5.2 Common Expenses. The liability of each Unit Owner for the Common Expenses of the Condominium shall be the same percentage share as the Percentage Interest set forth on Exhibit B, and as such shall be determined by the same formula by which the Percentage Interest is determined.

Section 5.3 Allocation of Owner's Voting Rights. Each Owner shall be entitled to one vote for each Unit owned by him to permit equality among Units.

**ARTICLE 6**  
**MANAGEMENT**

Section 6.1 Managing Agent. The Association shall have the right to employ a professional experienced property management firm to act as Managing Agent to oversee the daily operation of the Condominium in accordance with the provisions of the Act and the Condominium Documents; provided, however, that no agreement for such professional management of the Condominium may exceed a term of three years but may be renewed upon consent of the Association. Such agreement shall be cancelable by either party without cause and without a termination fee upon not less than 60 days nor more than 90 days written notice and shall be cancelable by the Executive Board with cause upon not less than 30 days written notice. Any agreement for professional management negotiated by the Declarant shall meet the requirements of this Article 6 for such agreements negotiated by the Association and shall not exceed one year, but may be renewed upon consent of the Association.

**ARTICLE 7**  
**EASEMENTS**

Section 7.1 Additional Easements. In addition to the easements provided for by the Act, the following easements are hereby created:

(a) All Units shall be subject to an easement in favor of the Declarant pursuant to Section 1602-115 of the Condominium Act. The Declarant reserves the right to use any Units owned or leased by the Declarant as models, management offices, sales offices for this and other projects or customer service offices; and the Declarant reserves the right to relocate the same from time to time within the Property; upon relocation, the furnishings thereof may be removed. The Declarant further reserves the right to maintain on the Property such advertising signs as may comply with applicable governmental regulations, which may be placed in any location on the Property and may be relocated or removed, all at the sole discretion of the Declarant. The Declarant shall have the right to restrict the use of certain Common Element parking areas for sales purposes and to use such areas for sales purposes. Further, the Declarant shall have the right to erect temporary offices on any Common Element parking areas for models, sales, management, customer service and similar purposes. This easement shall continue until the Declarant has conveyed all Units in the Condominium to Owners other than the Declarant.

(b) The Units and Common Elements shall be, and hereby are, made subject to easements in favor of the Declarant, other Owners, appropriate utility and service companies, cable television companies and governmental agencies or authorities for such utility and service lines and equipment as may

be necessary or desirable to serve any portion of the Property. The easements created by this Section 7.1(b) shall include, without limitation, rights of the Declarant, any Owner or the providing utility or service company, or governmental agency or authority to install, lay, maintain, repair, relocate and replace gas lines, pipes and conduits, water mains and pipes, sewer and drain lines, drainage ditches and pump stations, telephone wires and equipment, television equipment and facilities (cable or otherwise), internet wires, equipment, and facilities, electrical wires, conduits, and equipment and ducts and vents over, under, through along and on the Units and Common Elements. Notwithstanding the foregoing provisions of this Section 7.1(b), any such easement through a Unit shall be located either in substantially the same location as such facilities or similar facilities existed at the time of first conveyance of a Unit by the Declarant or so as not to materially interfere with the use or occupancy of the Unit by its occupants. With respect to any utility lines or equipment serving only the Condominium and located upon the Common Elements, the Executive Board shall have the right and power to dedicate and convey title to the same to any private or public utility company. The Executive Board shall also have the right and power to convey permits, licenses and easements over the Common Elements for the installation, maintenance, repair and replacement of utility poles, lines, cables, wires and other equipment to any private or public utility company. In addition, the Executive Board shall have the right to grant permits, licenses and easements over the Common Elements for the building and maintenance of roads or utilities, and for other purposes necessary for the proper operation of the Condominium.

(c) Until it has conveyed all Units in the Condominium to other Owners, the Declarant reserves an easement on, over and under those portions of the Common Elements not located within a Unit for the purpose of maintaining and/or correcting drainage of surface water in order to maintain reasonable standards of health, safety and appearance. The easement created by this Section 7.1(c) expressly includes the right to cut any trees, bushes, or shrubbery, to grade the soil, or to take any other action reasonably determined to be necessary. If it exercises this easement, the Declarant shall restore the affected property as closely to its original condition as is practicable.

(d) The Common Elements (other than the Limited Common Elements) shall be, and hereby are made, subject to an easement in favor of the Owners and their invitees, employees, tenants and servants, the Association and the agents and employees of the Association for access, egress and ingress over, through and across each portion thereof, pursuant to such requirements and subject to such charges as the Executive Board may from time to time prescribe; provided that nothing contained herein shall create any access easement in favor of Owners with respect to such portions of the Common Elements which are not needed in order to gain access to one or more Units and as to which the Executive Board may from time to time determine it to be necessary or desirable to limit or control access by Owners or the occupants of Units, or both, including, by way of illustration and not limitation, attics, machinery and equipment rooms, and any management agent's office, provided, however, that every Owner shall have an unrestricted right of ingress and egress to his Unit.

(e) Until the expiration of any applicable warranty period, the Common Elements (including, but not limited to, the Limited Common Elements) and Units are subject to an easement in favor of the Declarant for the purposes of construction, reconstruction, maintenance, repair, renovation, replacement or correction of the Units or Common Elements.

(f) The Common Elements (including, but not limited to, the Limited Common Elements) shall be and hereby are made subject to an easement in favor of the Association and the agents, employees and independent contractors thereof for the purpose of the inspection, upkeep, maintenance, repair and replacement of the Common Elements (including, but not limited to, the Limited Common Elements).

(g) The Common Elements (including, but not limited to, the Limited Common Elements) shall be and hereby are made subject to the following easements for the installation, repair,

maintenance, use, removal and/or replacement of pipes, ducts, heating and air conditioning systems, electrical, telephone, internet, and other communication wiring and cables and all other utility lines and conduits which are part of or exclusively serve a single Unit and which pass across or through a portion of the Common Elements.

(h) Intentionally omitted.

(i) The Units and the Limited Common Elements are hereby made subject to the following easements:

(1) In favor of the Association and its agents, employees and independent contractors, (i) for inspection of the Units and Limited Common Elements in order to verify the performance by Owners of all items of maintenance and repair for which they are responsible, (ii) for inspection, maintenance, repair and replacement of the Common Elements or the Limited Common Elements situated in or accessible from such Units or Limited Common Elements or both, (iii) for correction of emergency conditions in one or more Units or Limited Common Elements, or both, or casualties to the Common Elements, the Limited Common Elements and/or the Units, and (iv) to do any other work reasonably necessary for the proper maintenance of the Condominium, it being understood and agreed that the Association and its agents, employees and independent contractors shall take reasonable steps to minimize any interference with an Owner's use of his Unit resulting from the Association's exercise of any rights it may have pursuant to this Section 7.1(i)(1) and the following Section 7.1(i)(2) or both;

(2) In favor of the Owner benefited thereby and the Association and its agents, employees and independent contractors, for the installation, repair, maintenance, use, removal and/or replacement of pipes, ducts, electrical, telephone, cable or other communication systems and all other utility lines and conduits which are part of the Common Elements and which pass across or through a portion of one or more Units.

(j) If construction, reconstruction, repair, shifting, settlement or other movement of any portion of the Condominium results either in the Common Elements encroaching on any Unit, or in any Unit encroaching on the Common Elements or on any other Unit, a valid easement shall exist during the period of the encroachment for the encroachment and for the maintenance thereof.

(k) All easements, rights and restrictions described and mentioned in this Declaration are easements appurtenant, running with the land and the Property, including by way of illustration but not limitation the Units and the Common Elements, and (except as expressly may be otherwise provided herein or in the instrument creating the same) shall continue in full force and effect until the termination of this Declaration.

Section 7.2. Reservation of Easement Rights. Until any construction, marketing and sale of all Units is completed, the Declarant reserves the right to grant to any third party any license or easement in, on, over or through the Property, in addition to and not in limitation of those set forth above, which license or easement is determined by the Declarant, in its reasonable judgment, to be necessary for the development or improvement of the Property. Any such license or easement granted hereunder may be recorded by the Declarant at its sole cost and expense. The Association, at the request of the Declarant, shall execute and deliver in recordable form any instrument or document necessary or appropriate to confirm the grant of such license or easement.

## **ARTICLE 8**

### **RESTRICTIONS ON USE, SALE AND LEASE OF UNITS**

Section 8.1. Use. The following restrictions shall apply to the use of the Condominium:

(a) The Units (with the exception of any such Units during the time period when they are being used by the Declarant as a sample, model or sales office) are restricted to residential use. The Units may not be used for any other purposes by the Owner or any future Owner.

(b) No Owner may obstruct the Common Elements in any way, except as may be set forth above. No Owner may store anything in or on the Common Elements (including but not limited to the attics or other storage area) without the prior written consent of the Executive Board.

(c) No Owner may carry on any practice, or permit any practice to be carried on, which unreasonably interferes with the quiet enjoyment of the occupants of any other Unit. The Property is to be maintained in a clean and sanitary condition, and no Owner may place any garbage, trash or rubbish anywhere in the Property other than in his own Unit and in or on such parts of the Common Elements as may be designated for such purpose by the Executive Board.

(d) No Unit shall be used, occupied or kept in a manner which in any way increases the fire insurance premiums for the property without the prior written permission of the Executive Board.

(e) No Owner (other than the Declarant in connection with its marketing and sale of the Units) may erect any sign on or in his Unit or any Limited Common Element which is visible from outside his Unit or from the Common Elements, without in each instance having obtained the prior written permission of the Executive Board.

(f) The Executive Board shall promulgate reasonable Rules and Regulations, not in conflict with the provisions of this Declaration, concerning the use and enjoyment of the Property. Copies of the then current Rules and Regulations and any amendments thereto shall be furnished to all Owners by the Association promptly after the adoption of such Rules and Regulations and any amendments thereto.

(g) Except as otherwise provided herein, no Unit shall be altered, remodeled or renovated unless such alteration, remodeling or renovation shall be approved in writing by a majority vote of the Executive Board of the Association.

(h) No vehicle of any kind shall be parked or stored in the Common Elements by an Owner, nor any guest, tenant, or other occupant, licensee, or visitor of an Owner. However, this restriction shall not apply to the storage of a vehicle by an Owner in a Limited Common Element associated with such Owner's Unit.

(i) No Unit Owner shall obstruct any of the Common Elements nor shall any Unit Owner place or cause or permit anything to be placed on or in any of the Common Elements without the approval of the Executive Board. If the Executive Board should approve of the placement of any such personal property within the Common Elements, the Executive Board shall first require the Unit Owner to provide evidence of the compliance of the placement and/or construction of such personal property with the ordinances of the Town of Wells; however a Unit Owner may place within the Limited Common Elements associated with its Unit:

(i), Cooking devices, such as a grill;

(ii) Reasonable porch or patio furniture; and

(iii) A canister/bin for household trash and recycling.

(j) No Unit Owner shall place or cause or permit any open fire containment devices to

be constructed or placed in the Common Elements, including the Limited Common Elements, such as a 'fire-pit' or a camp fire enclosure.

Section 8.2. Sale and Lease of Units.

(a) The Declarant shall have the right to operate any Units owned by the Declarant as a rental project. The Declarant may establish and maintain all offices, signs and other accoutrements normally used in the operation of such rental properties in the sole discretion of the Declarant. Such operation shall be for the benefit of the Declarant and neither the Association nor any Owner (other than the Declarant) shall have any right or interest in the profits or losses thereof.

(b) Any rental of any Unit shall be accomplished by a written form of rental agreement or lease (i) requiring the lessee to comply with the Condominium Documents and Rules and Regulations of the Association; (ii) providing that failure to comply therewith constitutes a default under the rental agreement or lease; and (iii) providing that the Executive Board has the power to terminate the rental agreement or lease or to bring summary proceedings to evict the tenant in the name of the lessor thereunder in the event of a default in the observance of the terms of the lease or rental agreement.. Each Unit Owner of a Unit shall, promptly following the execution of any lease or rental agreement for a Unit, forward a conformed copy thereof to the Executive Board. This Section shall not be construed to impair a Mortgagee's right to foreclose, accept a deed in lieu of foreclosure, or sell or lease a Unit so acquired by the Mortgagee or the Association's right to grant easements, licenses, leases and concessions of, through, or over the Common Elements.

(c) A voluntary transfer shall be considered any sale, lease, gift, testate or intestate distribution, or the transfer of ownership of a corporation owning a Unit.

(d) All Unit Owners other than the Declarant must comply with Section 1604-108 of the Act. Except as provided in the Act and this Section, there are no other restrictions governing the voluntary transfer of a Unit.

(e) This Section 8.2. shall not be deemed or construed to impair a Mortgagee's right to foreclose, accept a deed in lieu of foreclosure or sell a Unit so acquired by the Mortgagee.

**ARTICLE 9**  
**SPECIAL DECLARANT RIGHTS**

Section 9.1. Description of Rights. In addition to the easement rights reserved in Article 7, the Declarant reserves to itself and for the benefit of its successors and assigns the right:

(a) Until the marketing and sale of all Units is completed, to connect with and make use of utility lines, wires, pipes and conduits located on the Property for construction and sales purposes, provided that the Declarant shall be responsible for the cost of services so used;

(b) Until the marketing and sale of all Units is completed, to use the Common Elements for ingress and egress, for the repair of Units and Common Elements including the movement and temporary storage of construction materials and equipment, and for the installation of signs and lighting for sales and promotional purposes; and

(c) Until the marketing and sale of all Units is completed, to complete all improvements shown on the Plats and Plans, to relocate any improvements shown on the Plats and Plans, to maintain models and sales offices and to exercise the easements as set forth in Article 7 hereof, to appoint or remove any officer or Executive Board member during any period of Declarant control of the Association and any

and all other Special Declarant Rights as are now allowed or in the future may be allowed by the Condominium Act.

Section 9.2. Exercise of Rights. The exercise of the Special Declarant Rights reserved herein shall be in accordance with and governed by the provisions of the Condominium Act.

Section 9.3. Amendment. Until the sale of all Units in the Condominium to parties other than the Declarant, this Article 9 shall not be amended without the written consent of the Declarant duly recorded in the Registry of Deeds in the county in which the Real Estate is located.

Section 9.4. Development and Special Declarant Rights. Pursuant to Section 1602-105 (a)(8) of the Act, the Declarant hereby reserves the Development Rights to add up to three (3) Units, or any of them, together with the Limited Common Elements associated therewith, to the Condominium, all as set forth in Section 3.1 of this Declaration and as shown on the Plats and Plans. The exercise of these Development Rights must be exercised within seven (7) years from the date of recording of this Declaration, and shall be done and accomplished in accordance with Section 1602-110 of the Act. The Declarant may exercise the Development Rights reserved hereunder at any time prior to seven (7) years from the date of recording of this Declaration by causing the Association to record at the Declarant's expense an amendment to the Declaration in accordance with Section 1602-117 of the Act, and amended Plats and Plans in accordance with Section 1602-109 of the Act, (or, if appropriate, an affidavit that the Plats and Plans previously recorded conform to the requirements of the Condominium Act) whereupon the additional Units shall be deemed part of the Condominium. Such amendment shall include a reallocation of the Percentage Interests, and the Common Elements upon which such Units, and Limited Common Elements associated therewith, are located shall be and become Units and Limited Common Elements subject to the Percentage Interests set forth in such amended allocation. Upon addition of the Units subject to Development Rights, the Executive Board shall cause to be prepared a revised estimated budget in accordance with the Bylaws, and make revised Common Charges based thereon.

Section 9.5 Required Actions. Notwithstanding anything contained herein to the contrary, the Declarant shall satisfy or cause to be satisfied all conditions of approval consistent with the terms contained therein, set by the Planning Board of the Town of Wells related to that certain Application of Subdivision Plan entitled "Topsail Way Subdivision".

## **ARTICLE 10**

### **UNITS SUBJECT TO CONDOMINIUM DOCUMENTS; EMINENT DOMAIN**

Section 10.1. Applicability of Condominium Documents. Each present and future Owner, tenant, occupant and Mortgagee of a Unit therein shall be subject to and shall comply with the provisions of the Act, and with the covenants, conditions and restrictions as set forth in the Condominium Documents and the deed to such Unit; provided that nothing contained herein shall impose upon any tenant of a Unit or Mortgagee any obligation which the Act or one or more of such documents, or both, make applicable only to Owners (including, without limitation, the obligation to pay assessments for Common Expenses). The acceptance of a deed or mortgage to any Unit therein, or the entering into of a lease or the entering into occupancy of any Unit therein shall constitute an agreement that the provisions of the Act and the covenants, conditions and restrictions set forth in the Condominium Documents and the deed to such Unit therein are accepted and ratified by such grantee, Mortgagee or tenant. All of such provisions shall be 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, conveyance, mortgage, contract or lease thereof. The Association and any aggrieved Owner shall have a right of action against Owners who fail to comply with the provisions of the Condominium Documents, the Acts or with decisions made by the Association or the Executive Board. Aggrieved Owners shall have similar rights of action against the Association.

Section 10.2. Eminent Domain. Whenever all or part of the Common Elements shall be taken, injured or destroyed by eminent domain, each Owner shall be entitled to notice thereof and to participate in the proceedings incident thereto, provided, however, that the Association shall officially represent the Owners in such proceedings. In any proceedings for the determination of damages, such damages shall be determined for such taking, injury or destruction as a whole and not for each Owner's interest therein and any award for such damages shall be payable to the Association for the benefit of the Owners and Mortgagees. Notwithstanding the foregoing, if the Association elects to distribute such award of damages to the Owners, any amount payable to an Owner shall be paid instead to the Owner's Mortgagee upon the written request of such Mortgagee to an officer of the Executive Board.

## **ARTICLE 11**

### **EXECUTIVE BOARD OF THE ASSOCIATION**

Section 11.1. The Association, Powers. The membership of the Association at all times shall consist exclusively of all Unit Owners, or, following any termination of the Condominium as provided in Section 1602-118 of the Act, of all former Unit Owners entitled to distributions of proceeds under said Section 1602-118, or their heirs, successors or assigns, but shall not include persons having an interest in a Unit solely as security for an obligation. Each Unit Owner shall automatically become a member of the Association as long as he continues as a Unit Owner and upon the termination of the interest of the Unit Owner in the Condominium his membership and any interest in the common funds of the Association shall thereupon automatically terminate and transfer and inure to the next Unit Owner or Owners succeeding him in interest. The Association shall have all the powers granted pursuant to Section 1603-102 of the Act, including the powers to assign its right to future income and to lease as lessee any real or personal property, accept assignments of leases of real or personal property, cause improvements to be made as a part of such leased property, regulate the use, maintenance and repair of such leased property, and impose and receive any payments, fees or charges for the use, rental or operation of such leased property, and to intervene on behalf of one or more Unit Owners in disputes regarding warranty claims affecting the Common Elements.

Section 11.2. Executive Board Powers; Declarant Control Period. Except as otherwise provided in Section 1603-103(b) of the Act, the Executive Board may act on behalf of the Association, shall have all of the powers necessary for the administration of the affairs of the Association and may do all such acts and things as are not required by the Act or this Declaration or the Bylaws to be exercised and done by the Association. The affairs of the Association shall be governed by an Executive Board composed of no less than three (3) and no more than five (5) natural persons. The Declarant shall have the right during the Declarant Control Period to appoint, remove and replace from time to time any and all members of the Executive Board and officers of the Association, without the necessity of obtaining resignations. The appointees of the Declarant need not be Unit Owners. After the Declarant Control Period, the members of the Executive Board shall be Unit Owners or spouses of Unit Owners, or in the case of a Unit Owner which is a corporation, partnership, trust or estate, a designated agent thereof. The transition from Declarant-appointed members of the Executive Board to Unit Owners other than the Declarant shall occur as follows:

- (a) No later than the earlier of (a) sixty (60) days after the conveyance of 75% of all of the Units contemplated by Section 3.1 of this Declaration to Purchasers or (b) seven (7) years following conveyance of the first Unit to a Purchaser, or at such earlier date as the Declarant in its sole discretion shall hold a meeting of all Unit Owners where all of the members of the Executive Board and officers of the Association appointed by the Declarant shall resign, and the Unit Owners, including the Declarant if the Declarant owns one or more Units, shall thereupon elect successor members of the Executive Board to act in the place and stead of those resigning.
- (b) The Declarant may voluntarily surrender the right to appoint and remove officers and members of the Executive Board before termination of the Declarant Control Period, but in that event it

may require, for the duration of the Declarant Control Period, that specified actions of the Association or Executive Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before such actions can become effective.

Section 11.3. Disputes. In the event of any dispute or disagreement between any Owners relating to the Property, or any questions of interpretation or application of the provisions of the Condominium Documents, the determination thereof by the Executive Board shall be final and binding on each and all such Owners. The Executive Board shall have the authority to seek a declaratory judgment or other appropriate judicial relief in order to assist it in carrying out its responsibilities under this Section 11.3. All costs of obtaining such a judgment shall be borne by the disputants, or in the absence of disputants, by the Association as a Common Expense.

Section 11.4. Abating and Enjoining Violations by Owners. The violation of any Rules and Regulations adopted by the Executive Board, the breach of any provision contained in the Bylaws or the breach of any provision of this Declaration or the Act by any Owner or tenant of such Owner, shall give the Executive Board the right, in addition to any other rights to which it may be entitled, to enjoin, abate or remedy by appropriate legal proceedings, either by law or in equity, the continuance of any such breach.

## **ARTICLE 12**

### **LIMITATION OF LIABILITY**

Section 12.1. Limited Liability of the Executive Board. The Executive Board, and its members in their capacity as members, officers and employees:

(a) Shall not be liable for the failure of any service to be obtained by the Executive Board and paid for by the Association, or for injury or damage to persons or property caused by the elements or by another Owner or person on the Property, or resulting from electricity, gas, water, rain, dust or sand which may leak or flow from the outside or from any part of the Buildings, or from any of its pipes, drains, conduits, appliances, or equipment, or from any other place unless in each such instance such injury or damage has been caused by the willful misconduct or gross negligence of the Association or the Executive Board;

(b) Shall not be liable to the Owners as a result of the performance of the Executive Board members' duties for any mistakes of judgment, negligence or otherwise, except for the Executive Board members' own willful misconduct or gross negligence;

(c) Shall have no personal liability in contract to an Owner or any other person or entity under any agreement, check, contract, deed, lease, mortgage, instrument or transaction entered into by them on behalf of the Executive Board or the Association in the performance of the Executive Board members' duties;

(d) Shall not be liable to an Owner, or such Owner's tenants, employees, agents, customers or guests, for loss or damage caused by theft of or damage to personal property left by such Owner or his tenants, employees, agents, customers or guests in a Unit, or in or on the Common Elements or Limited Common Elements, except for the Executive Board members' own willful misconduct or gross negligence;

(e) Shall have no personal liability in tort to an Owner or any other person or entity, direct or imputed, by virtue of acts performed by or for them, except for the Executive Board members' own willful misconduct or gross negligence in the performance of their duties; and

(f) Shall have no personal liability arising out of the use, misuse or condition of the

Buildings, or which might in any other way be assessed against or imputed to the Executive Board members as a result of or by virtue of their performance of their duties, except for the Executive Board members' own willful misconduct or gross negligence.

Section 12.2. Indemnification. Each member of the Executive Board in his capacity as an Executive Board member, officer or both, shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon him in connection with any proceeding in which he may become involved by reason of his being or having been a member and/or officer of the Executive Board, or any settlement of any such proceeding, whether or not he is an Executive Board member, officer or both at the time such expenses are incurred, except in such cases wherein such Executive Board member and/or officer is adjudged guilty of willful misconduct or gross negligence in the performance of his duties or any other standard imposed by the Condominium Act; provided that, in the event of a settlement, this indemnification shall apply only if and when the Executive Board (with the affected member abstaining if he is then an Executive Board member) approves such settlement and reimbursement as being in the best interests of the Association. The indemnification by the Owners set forth in this Section 12.2 shall be paid by the Association on behalf of the Owners and shall constitute a Common Expense and shall be assessed and collectible as such. Such right of indemnification shall not be deemed exclusive of any other rights to which such Executive Board member and/or officer may be entitled as a matter of law or agreement or by vote of the Owners or otherwise.

Section 12.3. Joint and Several Liability of Owners and Lessees. Each Owner shall be jointly and severally liable with any tenants of the Unit owned by such Owner for all liabilities arising out of the ownership, occupancy, use, misuse or condition of any Unit or any portion of the Common Elements or Limited Common Elements.

Section 12.4. Defense of Claims. Complaints brought against the Association, the Executive Board or the officers, employees or agents thereof in their respective capacities as such, or the Condominium as a whole, shall be directed to the Executive Board of the Association, which shall promptly give written notice thereof to the Owners and the holders of any mortgages and such complaints shall be defended by the Association. The Owners and the holders of mortgages shall have no right to participate other than through the Association in such defense. Complaints of a nature specified in Section 12.3. hereof against one or more but less than all Owners shall be defended by such Owners who are defendants themselves and such Owners shall promptly give written notice of the institution of any such suit to the Association and to the holders of any mortgages encumbering such Unit.

### **ARTICLE 13**

#### ASSESSMENTS; LIABILITY OF OWNERS

Section 13.1. Power to Assess. The Association, acting through the Executive Board in accordance with the Bylaws, shall have the power to fix and determine, from time to time, the sums necessary and adequate to provide for the Common Expenses, including, but not limited to, such amounts as are necessary for the maintenance, repair and replacement of the Common Elements and Limited Common Elements, as set forth in this Declaration such amounts as are necessary for uncollectible Assessments, budget deficits, such reserves as are hereinafter described and such additional reserves as the Executive Board shall deem necessary or prudent, and such other expenses as are specifically provided for in the Condominium Act, this Declaration or the Bylaws. The Association shall establish an adequate reserve fund for maintenance, repair and replacement of those Common Elements and Limited Common Elements for which the Association is responsible which are anticipated to require replacement, repair or maintenance on a periodic basis, and to cover any deductible amount for insurance policies maintained by the Association. The reserve fund shall be funded as a part of the Common Expenses.

Section 13.2. Assessments for Limited Common Expenses. If a Limited Common Expense only

benefits a single Unit, that Limited Common Expense shall be assessed solely against the Unit benefited, as the Executive Board shall determine. If a Limited Common Expense benefits more than a single Unit, that Limited Common Expense shall be assessed solely against all the Units benefited in proportion to the relative Common Expense liabilities of such Units as between themselves, as the Executive Board may periodically determine. If a Limited Common Expense is associated with the maintenance, repair or replacement of a Limited Common Element, that Limited Common Expense shall be assessed against only the Units to which that Limited Common Element is allocated in proportion to the relative Common Expense liabilities of such Units as between themselves, as the Executive Board shall determine.

Section 13.3. Special Assessments. If the cash requirement estimated at the beginning of any fiscal year shall prove to be insufficient to cover the actual Common Expenses for such fiscal year for any reason (including by way of illustration and not limitation, any Owner's non-payment of his Assessment or municipal assessments not yet assessed), the Executive Board shall have the power, at any time it deems necessary and proper, to levy one or more Special Assessments against each Owner. Special Assessments shall be due and payable in the manner and on the date set forth in the notice thereof.

Section 13.4. Payment of Assessments. Each Owner, including the Declarant to the extent it is the owner of any unsold Unit, shall pay all Assessments levied by the Association. Liability for such Assessments shall be determined in accordance with the formula set forth in Exhibit B hereto. They shall be due and payable in such manner as shall be determined by the Executive Board from time to time. Until the first Common Expense Assessment made by the Association, the Declarant shall pay all the Common Expenses. Penalties for delinquent assessments may be set forth in the Rules and Regulations of the Condominium.

Section 13.5. Failure to Fix New Assessments. If the Executive Board shall fail to fix new Assessments for Common Expenses for the subsequent fiscal year before the expiration of any fiscal year, the Owners shall continue to pay the same sums they were paying for such Assessments during the fiscal year just ended and such sum shall be deemed to be the new Assessments for the succeeding fiscal year. If the Executive Board shall change the Assessment at a later date, the difference between the new Assessment, if greater, and the previous year's Assessment up to the effective date of the new Assessment shall be treated as if it were a Special Assessment under Section 13.3. hereof; thereafter each Owner shall pay the new Assessment. In the event the new Assessment is less than the previous year's Assessment, in the sole discretion of the Executive Board, the excess shall be refunded to the Owners, credited against future Assessments, or retained by the Association for reserves.

Section 13.6. No Exemption by Waiver. No Owner may exempt himself from liability for the Common Expenses by waiver of the enjoyment of the right to use any of the Common Elements or by the abandonment of his Unit or otherwise.

Section 13.7. Personal Liability of Owners. All sums assessed by the Association as an Assessment, Special Assessment shall constitute the personal liability of the Owner of the Unit so assessed and also, until fully paid, shall constitute a lien against such Unit pursuant to Section 1603-116 of the Condominium Act. The Association shall take action for failure to pay any assessment or other charges pursuant to Section 1603-116 of the Condominium Act. The delinquent Owner shall be obligated to pay (a) all expenses of the Executive Board, including reasonable attorneys' fees, incurred in the collection of the delinquent assessment by legal proceedings or otherwise, and (b) any amounts paid by the Executive Board for taxes or on account of superior liens or otherwise to protect its lien, which expenses and amounts, together with accrued interest, shall be deemed to constitute part of the delinquent assessment and shall be collectible as such.

Section 13.8. Liability of Purchaser for Unpaid Assessments. Upon the voluntary sale, conveyance or any other voluntary transfer of a Unit or any interest therein, the grantee thereof shall not be personally liable with the grantor thereof for all unpaid Assessments for Common Expenses which are a charge against the Unit as of the date of consummation of the sale, conveyance or transfer, unless such grantee agrees to assume

the obligation therefor. However, a lien against the Unit so purchased for Assessments imposed pursuant to this Declaration or the Condominium Act shall not be affected by such sale, conveyance or other transfer.

Section 13.9. Subordination of Certain Charges. Any Assessments or any fees, charges, late charges, fines and interest that may be levied by the Association pursuant to Section 1603-102 of the Condominium Act or otherwise shall be subordinate to any first mortgage lien recorded before or after such Assessments, fee, charge, late charge, fine or interest was due.

Section 13.10. Surplus. The Budget of the Association shall set forth General Common Expenses. Any amounts accumulated from assessments for Common Expenses in excess of the amount required for actual Common Expenses and reserves for future Common Expenses, unless otherwise directed by the Executive Board, in its sole discretion, shall be credited to each Owner, such credit to be applied to the next Assessments of Common Expenses due from said Owners under the current fiscal year's budget, and thereafter until exhausted, or retained by the Association for reserves.

#### **ARTICLE 14** **RIGHTS OF MORTGAGEES, INSURERS AND GUARANTORS**

Section 14.1. Subject to Declaration. Whether or not it expressly so states, any mortgage which constitutes a lien against a Unit and an obligation secured thereby shall provide generally that the mortgage and the rights and obligations of the parties thereto shall be subject to the terms and conditions of the Act, the Declaration, the Plats and Plans and any Rules and Regulations.

Section 14.2. Rights of Eligible Mortgage Holders.

(a) The Association shall send reasonable prior written notice by prepaid United States mail to Eligible Mortgage Holders of the consideration by the Association of the following proposed actions:

(1) The termination of the Condominium pursuant to Section 1602-118 of the Condominium Act;

(2) A change in the allocated interest of a Unit, a change in the boundaries of a Unit or a subdivision of a Unit;

(3) The merger or consolidation of the Condominium with another condominium;

(4) The conveyance or subjection to a security interest of any portion of the Common Elements;

(5) The proposed use of any proceeds of hazard insurance required to be maintained by the Association under Section 1603-113(a) of the Condominium Act, or of any condemnation proceeds, for purposes other than the repair or restoration of the damaged property;

(6) The adoption of any proposed budget by the Executive Board and of the date of the scheduled Owners' meeting to consider ratification thereof. A summary of the proposed budget shall accompany this notice;

(7) Any default in the performance or payment by an Owner of any obligations under the Declaration, including, without limitation, default in the payment of Common Expense liabilities;

(8) The levying of any Special Assessments;

(9) The imposition or alteration of any restrictions on the creation, use or alienation of Units;

(10) The acceptance or rejection of any capital expenditure or borrowing by the Association, if permitted by the Bylaws;

(11) The award of compensation to an Executive Board member if permitted by the Bylaws;

(12) The acceptance of a new management agreement or a material revision to the then existing management agreement; and

(13) The taking by the Executive Board, or the formal consideration by the Executive Board of any proposal to take, any action pursuant to Section 11.3 of the Declaration.

(b) In the event of any proposed actions described in subsection (a), paragraphs (1), (2), (3), (4), (5), (9), (12), or (13) hereinabove, an Eligible Mortgage Holder shall have the right, but not the obligation, in place of the Owner to cast the votes allocated to that Unit or give or withhold any consent required of the Owner for such action by delivering written notice to the Association with a copy to the Owner prior to or at the time of the taking of the proposed action, which notice shall be sent by prepaid United States mail, return receipt requested, or by delivery in hand. Failure of the Eligible Mortgage Holder to so exercise such rights shall constitute a waiver thereof and shall not preclude the Owner from exercising such right. In the event of any default described in subsection (a), paragraph (7), the Eligible Mortgage Holder shall have the right, but not the obligation, to cure such default.

(c) In addition, an Eligible Mortgage Holder or its representative shall have the right to attend Association and Executive Board meetings for the purposes of discussing the matters described in subsection (a).

Section 14.3. Liability for Use and Charges. Any Mortgagee who obtains title to a Unit pursuant to the remedies provided in a mortgage for foreclosure of such mortgage or a deed in lieu of foreclosure shall not be liable for such Owner's unpaid assessments or charges which accrue prior to the acquisition of title to such Unit by the Mortgagee, except to the extent otherwise provided for in the Act and except to the extent that such Mortgagee is liable as an Owner for the payment of such unpaid assessment or charge that is assessed against the Mortgagee as a result of all Owners being reassessed for the aggregate amount of such deficiency.

Section 14.4. Condemnation Rights. No provision of this Declaration shall give an Owner, or any other party, priority over any rights of the Mortgagee of a Unit pursuant to its mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation award for loss to or a taking of one or more Units and/or Common Elements.

Section 14.5. Books and Records. Any Mortgagee shall have the right, exercisable by written notice to the Executive Board, to examine the books and records of the Association and to require that it be provided with a copy of each annual report of the Association and other financial data of the Association reasonably requested by such Mortgagee.

## **ARTICLE 15** **INSURANCE**

Section 15.1. Policies. Commencing no later than the time of the first conveyance of a Unit other than as security for an obligation to a person other than the Declarant, the Executive Board on behalf of the Association shall obtain, or cause to be obtained, and shall maintain as a Common Expense, the policies of insurance described in this Article to the extent such policies shall be reasonably available from reputable insurance companies. To the extent that said insurance described in this Article is not reasonably available as described in the preceding sentence, the Executive Board on behalf of the Association shall give written notice of that fact to the Unit Owners and the Eligible Mortgage Holders of Mortgages of their Units by hand delivery securing a receipt therefor, or by prepaid United States mail, return receipt requested. To the extent that any of the insurance described in this Article shall become in the future no longer available, the Association shall obtain in substitution therefor such comparable insurance as shall then be available. The Executive Board of the Association is hereby irrevocably appointed as attorney-in-fact for each Unit Owner and for each Mortgagee and Eligible Mortgage Holder and for each owner of any other interest in the Property for the purpose of purchasing and maintaining the insurance described in this Article, the collection and appropriate disposition of the proceeds thereof with any Insurance Trustee pursuant to the Insurance Trust Agreement as trustee for all Unit Owners and their Mortgagees as their respective interests may appear to hold any insurance proceeds in trust for disbursement as provided in this Declaration, the Bylaws and Section 1603-113(e) of the Act, the negotiation of losses and execution of releases of liability, the execution of all documents, and the performance of all other acts necessary to accomplish such purposes.

Section 15.2. Property Insurance. Property insurance on the Common Elements, insuring against all risks of direct physical loss commonly insured against. The total amount of insurance after application of any deductibles shall be not less than 80% of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies. Such insurance shall cover the interest of and naming as insured, the Association, the Executive Board and all Unit Owners and their Mortgagees and their Mortgagees' successors and assigns, as their insurable interests may appear, and shall contain a standard Maine Mortgage Clause in favor of each Mortgagee of a Unit whether or not named therein with provisions that the proceeds of loss, if any, shall first be payable to each Mortgagee, its successors and assigns, as its insurable interest may appear, subject, however, to the loss payment and adjustment provisions in favor of the Insurance Trustee or Association contained in this Section, the Bylaws and Section 1603-113(e) of the Act. This blanket or master hazard insurance policy may, at the option of the Executive Board, contain a "deductible" provision in an amount to be annually determined by the Executive Board but not to exceed the lesser of One Thousand Dollars (\$1,000.00) or one percent (1 %) of the face amount of the policy. Such policy shall also contain the following provisions:

- (a) A waiver of any right of the insurer to repair, rebuild or replace any damage or destruction, if it shall be determined pursuant to Section 1603-1 13(h) of the Act not to do so;
- (b) The following endorsements (or their equivalent): (1) "no control" to the effect that coverage shall not be prejudiced by any act or neglect of any occupant or Unit Owner or their agents when such act or neglect is not within the control of the insured, or the Unit Owners collectively; nor by any failure of the insured, or the Unit Owners collectively, to comply with any warranty or condition with regard to any portion of the Condominium over which the insured, or the Unit Owners collectively, have no control); and (2) "agreed amount" or elimination of co-insurance clause;
- (c) That any "no other insurance" clause expressly exclude individual Unit Owners' policies from its operation so that the physical damage policy purchased by the Executive Board shall be deemed primary coverage and any individual Unit Owners' policies shall be deemed excess coverage, and in no event shall the insurance coverage obtained and maintained by the Executive Board hereunder

provide for or be brought into contribution with insurance purchased by Unit Owners or their Mortgagees; and

- (d) The recognition of any Insurance Trust Agreement whereby the Executive Board may designate in writing an Insurance Trustee to hold any insurance proceeds in trust for disbursement as provided in Section 15.3, the Bylaws and Section 1603-113(e) of the Act..

Section 15.3. Adjustment and Payment of Insurance Loss; Trustee. Any loss covered by the insurance policy described in Section 15.2 shall be adjusted with the Association by its Executive Board, but the insurance proceeds for said loss shall be payable to the Insurance Trustee designated for that purpose as provided in subsection 15.2(d), or otherwise to the Association, and not to any Mortgagee. The Insurance Trustee or the Association shall hold any insurance proceeds in trust for Unit Owners, Mortgagees and other lien holders as their interest may appear. Subject to the provisions of this Section, the Bylaws and Section 1603-113(e) of the Act, the proceeds shall be disbursed first for the repair or restoration of the damage to the Property. Unit Owners, Mortgagees and other lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus after the damaged Common Elements and Units have been repaired or restored, the decision has been made not to repair or restore the damage as provided in Section 1603-113(h) of the Act, or the Condominium is terminated.

Section 15.4. Liability Insurance. The Executive Board shall obtain and maintain as a Common Expense comprehensive general public liability insurance (including medical payments insurance) and property damage insurance in such limits as the Board may from time to time determine, insuring each Executive Board member, the managing agent, each Unit Owner and the Declarant against any liability to the public or other Unit Owners, their tenants, invitees, agents and employees, covering all occurrences commonly insured against for death, bodily injury or property damage, relating in any way to the use and/or ownership of the Common Elements, public ways and any other areas under the supervision of the Association or any part thereof. Such insurance shall be issued on a comprehensive liability basis and shall contain (a) cross-liability endorsement under which the rights of a named insured under the policy shall not be prejudiced with respect to his action against another named insured; (b) hired and non-owned vehicle coverage; and (c) a "severability of interest" endorsement which shall preclude the insurer from denying liability to a Unit Owner because of negligent acts of the Association or of another Unit Owner. The Executive Board shall review such limits once each year, but in no event shall such insurance be less than one million dollars (\$1,000,000.00) covering all claims for bodily injury or property damage arising out of one occurrence.

Section 15.5. Other Insurance. The Association may obtain such other insurance as it deems reasonable or necessary as a Common Expense.

Section 15.6. Proof of Insurance and Notice of Cancellation. All insurers that shall issue an insurance policy or policies under this Article shall issue certificates or memoranda of insurance to the Association, and, upon request, to any Unit Owner or Mortgagee. All such insurers issuing the policy may not cancel (including cancellation for non-payment of premium), substantially modify or refuse to renew such policy or policies until twenty (20) days after notice of the proposed cancellation or non-renewal has been mailed to the Association, the managing agent, each Unit Owner and each Mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last known addresses. All policies under Sections 15.2 and 15.4 shall, in addition, contain the following provisions:

- (a) The insurer waives any right to claim by way of subrogation against the Declarant, the Association, the Executive Board, the managing agent or the Unit Owners, and their respective agents, employees, guests and, in the case of the Unit Owners, the members of their households.

- (b) The Declarant, so long as Declarant shall own any Unit, shall be protected by all such policies as a Unit Owner.
- (c) Each Unit Owner is an insured person under the policy with respect to liability arising out of his ownership of an undivided interest in the Common Elements or membership in the Association.
- (d) The insurer waives its right to subrogation under the policy against any Unit Owner of the Condominium or members of his household.
- (e) No act or omission by any Unit Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery under the policy.
- (f) If, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.
- (g) The insurer must hold (1) a rating of Class VI or better by Best's Insurance Reports, or (2) an equivalent or comparable rating by an equivalent rating bureau should Best's Insurance Reports cease to be issued or (3) an equivalent or comparable rating from Lloyd's of London.

Section 15.7. Separate Insurance. Each Unit owner shall, at his own expense, obtain insurance for his own Unit and for his own benefit and to obtain insurance coverage upon his personal property and for his personal liability as well as upon any improvements made by him to his Unit, in such amounts and with such coverage deemed necessary by the Executive Board to protect the interests of the Association and other Unit Owners. All such policies shall contain waivers of subrogation. Upon request, Unit Owners shall file a copy of such individual policy or policies with the Executive Board. Such Unit Owner shall also promptly notify the Executive Board in writing in the event such policy is cancelled. Notwithstanding the individual ownership of such policy of property insurance, any loss involving a Unit shall be subject to adjustment and payment as provided in Section 15.3. Any portion of the Unit which is damaged or destroyed shall be repaired or replaced promptly by the Unit Owner unless: (1) The condominium is terminated; (2) repair or replacement would be illegal under any state or local health or safety statute or ordinance; or (3) 80% of the Unit Owners, including every owner of a Unit or assigned Limited Common Element which will not be rebuilt, vote not to rebuild.

**ARTICLE 16**  
**ASSIGNABILITY OF DECLARANT'S RIGHTS**

The Declarant may assign any or all of its rights or privileges reserved or established by this Declaration or the Act in accordance with the provisions of the Act.

**ARTICLE 17**  
**AMENDMENT OF DECLARATION**

Pursuant to Section 1602-117 of the Condominium Act and except as provided herein for amendments which may be executed by the Declarant, the Association or certain Owners, this Declaration may be amended only by vote or agreement of owners of Units to which at least 67% of the votes in the Association are allocated. In addition, approval of amendments of a material nature must be obtained from Eligible Mortgage Holders representing at least 51% of the votes of Units that are subject to mortgages held by Eligible Mortgage Holders. A change to any of the following, except where such change may be effected by the Declarant, the Association or certain Owners under the Act or this Declaration, would be considered as material:

- (a) voting rights;

- (b) assessments, assessment liens, or subordination of assessment liens;
- (c) reserves for maintenance, repair and replacement of Common Elements;
- (d) responsibility for maintenance and repairs;
- (e) reallocation of interests in the Common or Limited Common Elements, or rights to their use;
- (f) boundaries of any Unit;
- (g) convertibility of Units into Common Elements or Common Elements into Units;
- (h) expansion or contraction of the Condominium, or the addition, annexation of or withdrawal of property to or from the Condominium;
- (i) insurance or fidelity bonds;
- (j) leasing of Units;
- (k) imposition of any restrictions on an Owner's right to sell or transfer his or her Unit;
- (l) a decision by the Association to establish self management when professional management had been required previously by an Eligible Mortgage Holder;
- (m) restoration or repair of the Condominium (after a hazard damage or partial condemnation) in a manner other than that specified in the Condominium Documents;
- (n) any action to terminate the legal status of the Condominium after substantial destruction or condemnation occurs; or
- (o) any provisions that expressly benefit holders, insurers or guarantors of mortgages on the Units.

If the amendment is not of such a material nature, such as the correction of a technical error or the clarification of a statement, the approval of an Eligible Mortgage Holder may be assumed when that Eligible Mortgage Holder has failed to submit a response to any written proposal for an amendment within 30 days after the proposal is made.

#### **ARTICLE 18** **TERMINATION**

The Condominium may be terminated only by agreement of the Owners of Units to which 80% of the votes in the Association are allocated; provided, however, that if the Condominium is being terminated for reasons other than substantial destruction or condemnation of the Condominium, the termination of the Condominium must also be approved by Eligible Mortgage Holders of Units to which at least 67% of the votes of Units subject to mortgages held by Eligible Mortgage Holders are allocated. Termination of the Condominium will be governed by the provisions of Section 1602-118 of the Condominium Act.

#### **ARTICLE 19** **GENERAL PROVISIONS**

Section 19.1. Headings. The headings used in this Declaration and the table of contents are inserted solely as a matter of convenience for the readers of this Declaration and shall not be relied upon or used in construing the effect or meaning of any of the provisions of this Declaration.

Section 19.2. Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or unenforceability of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion hereof unless such deletions shall destroy the uniform plan of development and operation of the Condominium which this Declaration is intended to create.

Section 19.3. Applicable Law. This Declaration shall be governed and construed according to the laws of the State of Maine.

Section 19.4. Interpretation. The provisions of this Declaration shall be liberally construed in order to effect Declarant's desire to create a uniform plan for development and operation of the Condominium.

Section 19.5. Effective Date. This Declaration shall become effective when it and the Plats and Plans have been recorded.

Section 19.6. Notices. All notices and other communications required or permitted to be given under or in connection with this Declaration shall be in writing and shall be deemed given when delivered in person or on the fifth business day after the day on which mailed by certified mail, return receipt requested, addressed to the address maintained in the register of current addresses established by the Association.

Section 19.7. Exhibits. All exhibits attached to this Declaration are hereby made a part of this Declaration.

Section 19.8. Pronouns. Wherever used, the singular number shall include the plural, the plural the singular and the use of any gender shall include all genders.

*[Space Intentionally Left Blank – Signature Page Follows]*

IN WITNESS WHEREOF, Topsail Way, LLC has caused this Declaration to be executed as of the date written above.

SIGNED, SEALED AND DELIVERED  
in the presence of:

Topsail Way, LLC

\_\_\_\_\_

By: \_\_\_\_\_  
Zachary Pappas  
Its Manager

STATE OF MAINE  
YORK COUNTY, ss

Date: [●]

Then personally appeared the above-named Zachary Pappas, Manager of Topsail Way, LLC, and acknowledged the foregoing instrument to be his free act and deed, in his said capacity, and the free act and deed of Topsail Way, LLC.

Before me,

\_\_\_\_\_  
Notary Public / Maine Attorney-at-Law  
Printed Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

Exhibit A  
(Real Estate)

Exhibit B  
(Percentage Interests)

Unit 1:           100%

Exhibit C  
(Plats and Plans)

NOTE: This Exhibit C is a reduced copy of the Plats and Plans recorded with this Declaration and is attached hereto only for the convenience of the reader of this Declaration. All references to the “Plats” and “Plans” contained in this Declaration are references to the full-sized recorded Plats or Plans and not to this reduced copy.