

**OLYMPIC VILLAGE  
HOMEOWNERS ASSOCIATION, INC.**

**HOMEOWNER DOCUMENTATION**

THE ASSOCIATION'S BYLAWS  
LEGAL EASEMENTS  
COVENANTS AND REGULATIONS  
HISTORICAL ASSOCIATION DOCUMENTS

OLYMPIC VILLAGE  
MERRIMACK, NEW HAMPSHIRE



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## Document Revision History

Title: Olympic Village Homeowners Association Bylaws

Dated: June 7, 1998; July 23, 2008

Revision: B

1. Amended Article II (3) and Article III (4)  
Vote required to elect a Director changed from 67% to a majority.
2. Amended Article II (7)  
Meeting notification process changed.
3. Amend Article IV (1), (2)  
Clerk and Treasurer changed to positions elected by Association vote.
4. Amend Article V (C)  
Assessment payment changed to due annually on July 1.
5. Corporate name corrected
6. Appendix A Added  
Original filing of legal easements which impact the Association property.
7. Appendix B Added  
Current to date list of Covenants, Regulations, and Rules collected in one location.
8. Appendix C Added  
Collection of Historical Documents relating to corporate formation of the Association.
9. Deletion of Board of Directors Policy Statement "Installation of Satellite Dishes," dated October 27, 1997 and addition of Board of Directors Policy Statement "Installation of Satellite Dishes," dated July 30, 2008.

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**OLYMPIC VILLAGE  
HOMEOWNERS ASSOCIATION, INC.**

**ASSOCIATION BYLAWS**

**ARTICLE I INTRODUCTION**

**1. INTRODUCTION**

This Declaration (the "Declaration") is made and declaration on April 14, 1993 by K and P Incorporated a/k/a K and P, Inc. a/k/a K & P, Inc. a corporation having a place of business at 40 Lowell Road, Salem, Rockingham County, N.H. (hereinafter referred to as the "Developer").

Developer is the owner of the land, subdivided into 72 lots (the "Lots"), situated in Merrimack, Hillsborough County, New Hampshire, (the "Property"). It is the intention of the Developer to develop the Property in three phases as a residential community to be known as Olympic Village (the "Development"). A Homeowners Association, known as the Olympic Village Homeowners Association, Inc. a New Hampshire non profit corporation (referred to hereafter as the "Association" or as "Olympic Village Homeowners Association"), has been created.

It is the purpose of this Declaration to provide the Association with a means for maintaining various easements, open spaces, and other common areas, more specifically defined and described in the legal descriptions (copies of which are attached hereto as Appendix A), and site plan recorded as Plan number 26072 which will serve to the benefit of all Lot owners in the Development. Accordingly, the provisions hereof shall be understood and construed to achieve that purpose.

The administration of the Development shall be governed by the Bylaws of the Association which are set forth herein and are made part hereof, and all present and future holders of any interest in the Development shall be members of OLYMPIC VILLAGE HOMEOWNERS ASSOCIATION which is a New Hampshire non profit corporation organized and operated to provide for the management, maintenance and care of Association Property as those terms are defined and described herein.

Unless the context otherwise specifies or requires, the terms defined in ARTICLE I shall, for all purposes of this Declaration, have the meanings herein specified.

**Declaration**

The terms Declaration and ByLaws shall mean the Olympic Village Declaration of Covenants,

Conditions, Restriction, Easements and ByLaws establishing the Olympic Village Homeowners Association.

**Developer**

The term "Developer" shall mean K & P, Inc., 40 Lowell Road, Salem, New Hampshire.

**Common Area**

The term "Common Area" shall mean all easements, open space, partial open space, walking paths, access and emergency roads (prior to being accepted or deeded to the Town), and other common areas (more specifically described on the Plan recorded as Plan number 26072), in the Development which shall serve to benefit all Lot Owners as defined in this section. It shall also include all cul-de-sacs, which the Association has the responsibility of landscaping and maintaining.

**Lot Owner**

The term "Lot Owner" shall apply to each such owner of a lot which has been subdivided by the Developer and more specifically described on the plan of the Property herein referred to, and is in a developmental phase in which Developer has conveyed at least one lot. It is the intent hereof that the Developer not be considered a Lot owner relative to those lots which are in phases for which development has not begun or is incomplete, and from which Developer has conveyed no lots. Once a lot is conveyed in any given phase, all the owners of lots within that phase are considered Lot Owners for the purposes hereof.

**Applicability**

The provisions of these Covenants, Conditions, Restrictions, Easements and Bylaws are applicable to the Property, and the use, occupancy, sale, lease, and other transfer thereof. All present and future Owners, tenants, future tenants, their guests, licensees, servants, agents, employees, and any other Person who shall occupy the Property shall be subject to these Covenants, Conditions, Restrictions, Easements and Bylaws. The acceptance of a deed of conveyance shall constitute an acknowledgment that such Owner, tenant, or occupant has accepted and ratified these Bylaws and will comply with them.

**2. RESTRICTIONS, USE OF COMMON AREA**

**(a) Roadways: Permitted Uses and Restrictions**

The fee to and portions of Wintergreen Drive, Scotchpine Lane, Whitewood Lane, Sycamore Lane, and the Emergency Access Lane is held by Developer and shall be so held until such time as such streets are accepted by and transferred to the Town of Merrimack, New Hampshire or are conveyed to the Homeowners Association. Each of such streets shall be subject to the rights and easements for the benefit of all owners of Units as hereunder provided.

There is reserved to the Developer the right, from time to time, to install in said streets such additional utility lines (including pipes, conduits and the like) as Developer may determine.

Prior to acceptance by the Town of Merrimack, New Hampshire the maintenance, repair and improvement (including snow removal) of Sycamore Lane, Wintergreen Drive, Whitewood Lane, Scotchpine Lane and Emergency Access Road shall be the responsibility of the Association. The Association's responsibility is, however, limited to those streets, ways and access roads located in a phase from which at least one lot has been conveyed by the Developer.



**(b) Sewer, Water and Drainage Easement/Drainage Easement Retention Area**

No improvement, structure, barrier or other work, which in any manner unreasonably interferes with the common rights and purposes of the areas of land marked or noted on the Plan as Sewer, Water and Drainage Easement and Drainage Easement Retention Area, shall be made or done at any time.

**(c) Conveyance of Easements and/or Roadways to Town**

The Grantor reserves the right to convey the sewer, water, drainage easements and roadways to the Town and upon such conveyance they shall no longer be part of the Common Area.

**(d) Restriction on "Open Space" and "Green" land**

Except as provided elsewhere, the area designated as "open space" shall be restricted as follows:

1. The property shall be maintained as open space for the following purposes: recreational uses, playground, playfield, park, or picnic area, walking and jogging trail or similar passive recreational use;
2. The property shall not be further subdivided;
3. There shall be no dumping or burial of materials;
4. There shall be no mining, quarrying, excavation or removal of minerals, gravel, topsoil or similar material; and
5. No tree with a diameter of six inches or more shall be cut or felled.

**(e) Common and Open Space Not Current Use**

The Common and Natural Areas, including the open space land are part of the residential use and do not qualify for "current use" real estate tax appraisal and assessment under RSA 79-A.

**3. PAYMENT OF TAXES**

Each lot owner is responsible for the payment of all real estate taxes assessed against his or her lot which shall include the tax on their undivided interest in the common area.

## **ARTICLE II HOMEOWNERS ASSOCIATION**

### **1. COMPOSITION**

All of the Lot owners, acting as a group in accordance with the within Declaration and Bylaws, shall constitute the members of the OLYMPIC VILLAGE HOMEOWNERS ASSOCIATION, INC. which shall have the responsibility of administering, maintaining, and managing all easements, open spaces, roads, and other common areas which benefit all lot owners of Olympic Village Development. Except as to those matters which the within Declaration and Bylaws specifically require to be performed by the vote of the Lot Owners, the administration of the Association shall be performed by the Board of Directors (as more particularly set forth in Article III).

### **2. PERIOD OF CONTROL BY DECLARANT**

Notwithstanding any other provision of the within Declaration and Bylaws, until the earlier of two (2) years after recordation of the Declaration or the date on which seventy-five percent (75%) of the Lots have been conveyed by Developer (the "Transition Date"), the Developer shall have the power, in its sole discretion, to (a) appoint or remove any or all officers and Directors of the Homeowners Association at any time, without cause, and (b) exercise any or all powers and responsibilities otherwise assigned to the Homeowners Association, its officers, or its Board of Directors. For purposes of the proceeding sentence, "75% of the Lots" means Lots to which would ultimately appertain seventy-five percent (75%) of the undivided interests in the easements, open spaces, and other common areas. The Developer may relinquish its powers hereunder at any time by recording an appropriate statement at the Registry, in which event the date of such relinquishment shall be the "Transition Date." This section may not be amended without the written consent of the Developer.

### **3. VOTING**

Each Lot Owner shall be entitled to a vote in the Association. Since an owner may be more than one Person, if only one of such Persons is present at a meeting of the Association, that Person shall be entitled to cast the votes appertaining to that Lot. If more than one such Persons is present, the vote appertaining to that Lot shall be cast only in accordance with the agreement of a majority of them, and such consent shall be conclusively presumed if any one of them purports to cast the vote appertaining to that Lot without protest being made forthwith by any of the others to the individual presiding over the meeting. As applied to a Person which is not a natural person, the word "Person" shall be deemed for the purposes of this Section to include, without limitation, any one natural person having authority to execute deeds on behalf of such Person which is not a natural person and which is, whether alone or in conjunction with another Person or Persons, an Owner. Except where a greater number is required by the within Declaration and Bylaws, a sixty seven percent (67%) vote is required to adopt decisions at any meeting of the Association. The election of Directors, the Clerk, and the Treasurer shall be by a simple majority (51%) of the votes cast. If the Developer owns or holds title to one or more Lots, the Developer shall have the right at any meeting of the Association to cast the votes to which such Lot is entitled.

### **4. PLACE OF MEETING**

Meetings of the Homeowners Association shall be held at any suitable place as may be designated by the Board of Directors and stated in the notice of the meeting.

## **5. ANNUAL MEETING**

The first annual meeting of the Homeowners Association shall be held on a date to be determined by the Developer, which date shall be within one year after the formation of the Association by the recordation of the within Declaration and Bylaws at the Registry. Notice of such meeting shall be given in accordance with the provisions of Section 7 of this Article II. Thereafter, the annual meetings of the Association shall be held on the same date of each succeeding year, or on such other date, as may be designated by the Board of Directors and reflected in the said notice. At such annual meetings following the Transition Date (as defined in Section 2 of this Article II, above), the Board of Directors shall be elected by ballot of the Lot Owners in accordance with the requirements of Section 4 of Article III. The Association may also transact such other business as may properly come before it at such meetings.

## **6. SPECIAL MEETINGS**

It shall be the duty of the President to call a special meeting of the Homeowners Association if so directed by resolution of the Board of Directors or upon a petition signed and presented to the Clerk by Owners having not less than 40% of the votes of all Owners. The notice of any special meeting shall state the time and place of such meeting and purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

## **7. NOTICE OF MEETING**

It shall be the duty of the Clerk to deliver personally as provided in Article XI, or mail by United States mail, return receipt requested, a notice of each annual meeting or special meeting of the Owners, at least twenty one (21) days in advance of an annual meeting and at least seven (7) days in advance of a special meeting, stating the purpose thereof as well as the time and place where it is to be held, to each Owner of record, at the address of his respective Unit and at such other address as each Owner may have designated by notice in writing to the Clerk. The mailing of a notice of meeting in the manner provided in this Section shall be considered service of notice.

## **8. VOTING REQUIREMENTS**

An Owner shall be deemed to be in good standing and entitled to vote at any annual meeting or at any special meeting of the Homeowners Association if, and only if, he shall have fully paid all assessments made or levied and due against him and his Lot by the Board of Directors as hereinafter provided, together with all interest, costs, attorney's fees, penalties and other expenses, if any, property chargeable to him and against his Lot, as of the third business day prior to the date fixed for such annual or special meeting.

## **9. QUORUM**

A quorum shall consist of 50% of the total votes in the Association.

## **10. ORDER OF BUSINESS**

The order of business at all meetings of the Homeowners 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;
- (e) Report of Board of Directors;

- (f) Reports of committees;
  - (g) Election of Directors if applicable;
  - (h) Unfinished business, and
  - (i) New business;
- any of which may be waived.

## **11. CONDUCT OF MEETING**

The President or his/her designee shall preside over all meetings of the Homeowners Association and the Clerk shall keep the minutes of the meeting and record in a Record Book, all resolutions adopted by the meeting as well as all transactions.

## **ARTICLE III BOARD OF DIRECTORS**

### **1. POWERS AND DUTIES**

The affairs and business of the Homeowners Association shall be managed by a Board of Directors (sometimes herein referred to as the "Board") which shall have all of the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by these Bylaws, directed to be exercised and done exclusively by the membership of the Homeowners Association. The Board of Directors shall have the power from time to time to adopt any Rules deemed necessary for the enjoyment of the Homeowners Association provided that such Rules shall not be in conflict with the Declaration or these Bylaws. The Board of Directors may delegate to one of its members the authority to act on behalf of the Board of Directors on all matters which might arise between meetings of the Board of Directors. In addition to the general duties imposed by these Bylaws, the Board of Directors shall have the power to and be responsible for the following:

- (a) Preparing and adopting an annual budget, in which there shall be established the assessment of each Lot Owner for the Common Expenses and Special Assessments for the expenses for the maintenance and upkeep of the covenants, restrictions and common area as defined in Article I of these Bylaws.
- (b) Making assessments (including Special Assessments) against Owners to defray the Common Expenses of the Homeowners Association, establishing the means and methods of collecting such assessments from the Owners, collecting said assessments, from the Owners, collecting said assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to carry out the administration of the Property;
- (c) Providing for the operation, management, care, upkeep, replacement, and maintenance of all the easements, restrictions, roads, and other common areas which benefit all of the Lot Owners;
- (d) Designating, hiring, and dismissing all personnel necessary for the maintenance, operation, repair and replacement of the easements, restrictions, roads, and other common areas which benefit all of the Lot Owners, 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 Lot Owners;
- (e) Making and amending the Rules respecting the use and enjoyment of the Property and enforcing by legal means the provisions of the within Declaration and Bylaws, and such rules and bringing any proceedings which may be instituted on behalf of the Owners;
- (f) Obtaining and carrying insurance against casualties and liabilities, as provided in Article VI of these Bylaws, and paying the premium cost thereof and making, or contracting for the making of, repairs, additions and improvements to, or alterations of the Property and repairs to, and restoration of the Property, in accordance with the other provisions of these Bylaws, after damage or destruction by fire or other casualty;
- (g) Opening bank accounts on behalf of the Homeowners Association and designating signatories required therefor, and keeping books with detailed accounts of the receipts and expenditures affecting the Property, and the administration of the Homeowners

Association. The said books shall be available for examination by the Owners and their duly authorized agents or attorneys, at reasonable times and places following reasonable advance notice. All books and records shall be kept in accordance with the generally accepted accounting principles. A copy of the annual financial statement shall be supplied to any first mortgagee of any Lot Owner in the Homeowners Association who requests the same in writing to the Clerk;

- (h) The Board of Directors shall be the irrevocable power, which it may delegate to the President or other officer, as attorney in-fact on behalf of all of the Owners, their heirs, successors, and assigns to do the following things:
  - (i) To grant easements through the Property and to accept easements benefiting the Homeowners Association or any portion thereof;
  - (ii) To negotiate, settle, and litigate, including execution of any necessary documents, any proceeding by any governmental authority to condemn all or any portion of the Property, any dispute concerning the location of the boundaries of the Property, disputes concerning title to all or any portion of the Property, and any other disputes which affect the Property;
  - (iii) To execute any documents necessary to encumber all or any portion of the common area to secure any borrowing, providing that such borrowing is authorized pursuant to the within Declaration and ByLaws; and
  - (iv) To do such other things and acts not inconsistent with the Declaration and Bylaws which it may be authorized to do by a resolution of the Homeowners Association.

## **2. MANAGING AGENT**

The Board of Directors, in its discretion, may employ, or contract with, a professional manager or management firm (“Manager”) for a fee or compensation established by the Board of Directors, to perform such duties and services as the Board of Directors shall authorize, including, but not limited to, the duties listed in Section I of this Article III. The Board of Directors may delegate to the Manager all of the powers granted to the Board of Directors by these Bylaws; provided that any actions by the Manager with respect to the powers set forth in paragraphs (a), (b), (e), (g) and (h), of Section I of this Article III shall require the written consent of the Board of Directors. Any employment contract entered into before the Transition Date (as defined in Article II, Section 2 above) shall provide that the Association may terminate the contract at any time following the Transition Date, without cause and without penalty, upon no more than 90 days' written notice.

## **3. NUMBER OF DIRECTORS AND INITIAL SELECTION OF BOARD**

The Board of Directors shall be composed of three persons. Until the Transition Date, all Directors shall be appointed by the Developer and may be any natural persons. After the Transition Date, all elected Directors must be Lot Owners or spouses of Lot Owners, or, where a Person which is a Lot Owner is not a natural person, any natural person having authority to execute deeds on behalf of such Person.

## **4. ELECTION AND TERM OF OFFICE**

Subject to the Developer's right to designate set forth herein, at the first annual meeting of the Homeowners Association three Directors shall be elected. The term of office of one Director shall be fixed at one year and the term of office of two Directors shall be fixed at two years. Subject to the provisions of Section 3 above, at the expiration of the initial term of office of each respective Director, each successor shall be elected at subsequent annual meetings of the Homeowners Association to serve a

term of two years. The term of the Clerk and the Treasurer shall be one year. The Directors, Clerk, and Treasurer shall hold office until their respective successors have been elected and hold their first meeting. Election of Directors, Clerk, and Treasurer shall be by a simple majority (51%) of those present.

## **5. ORGANIZATIONAL MEETING**

The first meeting of the members of the Board of Directors following the annual meeting of the Homeowners Association shall be held immediately afterward, and no notice shall be necessary in order legally to constitute such meeting, provided a majority of the whole Board shall be present there at.

## **6. REGULAR MEETINGS**

Regular meetings of the Board of Directors may be held without call or notice at such time and place as shall be determined, from time to time, by a majority of the Directors, provided that notice of the first regular meeting following any such determination shall be given to Directors not present when such determination is made. At least two such meetings shall be held during each twelve month period after the annual meeting of the Homeowners Association. When required, notice of meetings of the Board of Directors shall be given personally or by mail, telephone or telegraph, at least five business days prior to the day named for such meeting. No notice shall be required for a regular meeting held immediately after, and at the same place, as the annual meeting of the Association.

## **7. SPECIAL MEETINGS**

Special meetings of the Board of Directors may be called by the President on five business days' notice to each Director. Such notice shall be given personally or by mail, telephone or telegraph, and such notice shall state the time, place and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Clerk in like manner and on like notice on the written request of a majority of the Directors.

## **8. WAIVER OF NOTICE**

Before or within ten days after any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all the Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

## **9. BOARD OF DIRECTORS QUORUM**

At all meetings of the Board of Directors, a majority of the 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 of Directors, if there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

## **10. VACANCIES**

After the Transition Date vacancies on the Board of Directors caused by any reason other than removal of a Director by a vote of the Homeowners Association shall be filled by vote of the majority of the remaining Directors, at a special meeting of the Board of Directors held for the purpose promptly after the

occurrence of any such vacancy, even though the Directors present at such meeting may constitute less than a quorum of the Board; and each person so elected shall be a Director for the remainder of the term of the Director so replaced.

## **11. REMOVAL OF DIRECTORS**

After the Transition Date a Director may be removed without cause, and his successor elected, at any duly called regular or special meeting of the Homeowners Association at which a quorum is present, by an affirmative vote of sixty seven (67%) of the voters represented and voting. Any Director whose removal has been proposed by the Lot Owners shall be given at least ten days notice of the calling of the meeting and the purpose thereof and an opportunity to be heard at the meeting.

## **12. COMPENSATION**

No Director shall receive any compensation from the Homeowners Association for acting as such.

## **13. CONDUCT OF MEETINGS**

The President, or, in his/her absence, a president pro tem elected by the Board, shall preside over all meetings of the Board of Directors and the Clerk shall keep the minutes of the meetings of the Board of Directors, recording therein all resolutions adopted by the Board of Directors and all transactions and proceedings occurring at such meetings, which minutes shall be filed in the Record Book of the Association.

## **14. REPORT OF BOARD OF DIRECTORS**

The Board of Directors shall present at each annual meeting, and when called for by vote of the Homeowners Association at any special meeting of the Association, a full and clear statement of the business and condition of the Association.

## **15. DISPENSING WITH VOTE**

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

## **16. LIABILITY OF THE BOARD OF DIRECTORS**

The members of the Board of Directors shall not be liable to the Owners for any mistake of judgment, negligence, or otherwise except for their own individual willful misconduct or bad faith which are contrary to the provisions of the Declaration or the ByLaws. The Owners shall indemnify and hold harmless each of the Directors from and against (a) all liability to others arising out of contracts made or action taken or omitted on behalf of the Owners unless any such contract shall have been made, or action taken or omitted, in bad faith, due to willful misconduct contrary to the provisions of the within Declaration and ByLaws, and (b) against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement incurred by such Director in connection with any threatened, pending, or completed action, suit or proceeding unless he acted in bad faith, was guilty of willful misconduct contrary to such provisions. It is intended that the members of the Board of Directors shall have no personal liability (except as Owners) with respect to any contract made or action taken or omitted by them on behalf of the Owners, unless made, taken or omitted in bad faith, due to willful misconduct contrary to



such provisions. It is also intended that the liability of any Owner arising out of any contract, action or omission made by the Board of Directors or out of the aforesaid indemnity in favor of the members of the Board of Directors shall be limited to the same percentage of the total liability thereunder as his/her Lot's undivided percentage interest in the Property. Every written agreement made by the Board of Directors or by the Manager on behalf of the Owners shall, if obtainable, provide that the members of the Board of Directors or the Manager, as the case may be, are acting only as agents for the Owners and shall have no personal liability thereunder (except as Owners' Liability), and that each Owner's liability thereunder shall be limited to the same percentage of the total liability thereunder as his/her Lot's undivided percentage interest in the Property.

## **ARTICLE IV OFFICERS**

### **1. DESIGNATION**

The principal officers of the Homeowners Association shall be a President, a Clerk, and a Treasurer. The President shall be elected by the Board (subject to the provisions of Article II, Section 2), the Clerk and the Treasurer shall be officers elected by a vote of the Association. The Board may appoint such other officers as in its judgment may be necessary. With the exception of the President, no officer need be a member of the Board. The offices of Treasurer and Clerk may be held by the same person.

### **2. ELECTION OF OFFICERS**

The President of the Association shall be elected annually by the Board at the organization meeting of each new Board and shall hold office at the pleasure of the Board. The Clerk and Treasurer shall be elected at the annual meeting by a vote of the Association. Any vacancy in an office shall be filled by the Board at a regular meeting or special meeting called for such purpose.

### **3. REMOVAL OF OFFICERS**

Subject to the provisions of Article II, Section 2, the officers shall hold office until their respective successors are chosen and accept their offices. Any officer elected or appointed by the Board of Directors may be removed at any time without cause by the affirmative vote of a majority of the whole Board, and his successor may be elected at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors called for such purpose.

### **4. PRESIDENT**

The President shall be the chief executive officer; he/she, or his/her designate, shall preside at meetings of the Homeowners Association and, if present, at meetings of the Board of Directors and shall be an ex officio member of all committees; he shall have general and active management of the business of the Association and shall see that all orders and resolutions of the Board are called into effect. He 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.

### **5. CLERK**

The Clerk shall attend all meetings of the Board of Directors and all meetings of the Homeowners Association, shall record the minutes of all proceedings in the record book current and in his/her custody. He/She shall give, or cause to be given, notice of all meetings of the Homeowners Association, the Board and committees and shall perform such other duties as may be prescribed by the Board or President. The Clerk shall compile and keep current at the principal office of the Association (a) a complete list of the Owners and their last known post office addresses, and (b) copies of the Association instruments. These documents shall be open to inspection by all Owners and other persons lawfully entitled to inspect the same, at reasonable hours during regular business days.

**6. TREASURER**

The Treasurer shall have the custody of funds and securities that are not under the control of the Manger, 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. He/She shall disburse funds as ordered by the Board, where possible taking proper vouchers for such disbursements, and shall 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/her transactions as Treasurer and of the financial condition of the Association. Owners shall have the right to examine the books of the Association at reasonable times and places following reasonable advance notice.

**7. AGREEMENT, CONTRACTS, DEEDS, CHECKS, ETC**

All agreements, contracts, deeds, leases, checks and other instruments of the Association for expenditures or obligations shall be executed by any officer of the Association or by such other person or persons as may be designated by the Board of Directors.

**8. LIABILITY OF OFFICERS**

The provisions of Article III, Section 16, with regard to liability and indemnification of Directors shall apply equally to officers of the Association.

**9. NOTIFICATION OF THE TOWN OF MERRIMACK OF OFFICERS**

The Clerk shall notify the Town of Merrimack of the names and addresses of each officer of the Association and of any changes.

## **ARTICLE V OPERATION OF THE PROPERTY**

### **1. DETERMINATION OF COMMON EXPENSES AND ASSESSMENTS AGAINST OWNERS**

#### **(a) Fiscal Year**

The fiscal year of the Association shall consist of the twelve (12) month period commencing on January 1 of each year and terminating on December 31 of the same year, except that the first fiscal year shall begin at the date of the organization and terminate on December 31. The fiscal year herein established shall be subject to change by the Board of Directors.

#### **(b) Preparation and Approval of Budget**

Each year the Board of Directors shall adopt a budget for the Association containing an estimate of the total amount which it considers necessary to pay the cost of maintenance, management, operation, repair and replacement, and the cost of wages, materials, insurance premiums, services, supplies and other expenses that may be declared to be Common Expenses by the Declaration and Bylaws 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 Lot Owners of all related services. Such budget shall also include such reasonable reserves as the Board of Directors considers necessary to provide, including those specified below. The budget shall consist of expenses allocated to the Property and the Homeowners Association. Such expenses being allocated between the Lots affected in proportion to the extent to which that expense is incurred by or benefits each Lot. The Board shall deduct from the appropriate items charged, all expenses for which the Lot Owners so served by such expenses have obtained written approval from the Board of Directors to incur direct responsibility for. The Board of Directors shall make reasonable efforts to send each Owner a copy of the budget, in an itemized form which sets forth the amount of common expenses payable by each Owner, at least fifteen days in advance of the fiscal year to which the budget applies. The said budget shall constitute the basis for determining each Owner's contribution for the common expenses of the Association. If the Lot Owners, to whom exclusive use of a common area, easement, covenant, restriction, open space, road, or other benefit as defined in these Bylaws or in the Declaration is reserved, have obtained written approval from the Board of Directors to incur the sole and direct responsibility for all expenses charged to those areas described immediately above, used by and benefiting their particular Lots, the Board of Directors may delete such common area expense itemization upon the Lot Owner's acceptance of full responsibility for all expenses charged to such common area.

#### **(c) Assessments and Payment of Common Expenses**

The total amount of the estimated funds required for the operation of the Property set forth in the budget for the fiscal year adopted by the Board of Directors shall be assessed against each Lot Owner, as defined in Article I, in proportion to the number of votes in the Homeowners Association appertaining to his Lot, and shall be a lien against each

Owner's Lot in accordance with the laws of the State of New Hampshire. Any Special Assessments for the common area or any additional insurance premium shall be calculated separately for each Lot so assessed, based on the separate budgets adopted by the Board of Directors under the preceding subsection. Payments of the assessment for each fiscal year made pursuant to the foregoing provisions shall be made in equal, annual payments due on July 1 of each year. Within sixty (60) days after the end of each fiscal year, the Board of Directors shall supply to all Owners an itemized income and expense statement for that fiscal year. Any amount accumulated in excess of the amount required for actual expense and budgeted reserves shall, in the discretion of the Board of Directors, either be rebated to the owners in accordance with each Owner's votes in the Homeowners Association by crediting same to the next successive installment due from Owners under the then current fiscal year's budget, until exhausted, or shall be added to reserves. Any net shortage shall, if the Board of Directors deems it advisable, be added, according to each Owner's percentage assessment charge, to the next succeeding installment due after the rendering of the accounting. As lots in each phase are added, the Association shall recompute the budget and the amount of the assessment for each lot and the new lot owner shall be responsible for the pro rated share of the annual expenses from date that the phase has been added.

**(d) Reserves**

The Board of Directors shall build up and maintain both an adequate operating reserve and a separate reserve for replacement of the common areas, which shall be funded by the end of each fiscal year. All funds accumulated during such year for reserves for replacement of common areas shall be placed in a separate bank account, segregated from the general operating funds, and used only for such purposes. If for any reason, including nonpayment of any Owner's assessment, the reserves are inadequate, the Board of Directors may at any time levy a further assessment, which shall be assessed against the owners according to their respective votes in the Homeowners Association, and which may be payable in a lump sum or in installments as the Board of Directors may determine. The Board of Directors shall serve notice of any such further assessments on all Owners by a statement in writing giving the amount and reasons therefor, and such further assessment shall, unless otherwise specified in the notice, become effective with the next monthly payment which is due more than ten (10) days after the delivery or mailing of such notice of further assessment. All owners shall be obligated to pay the adjusted semi-annual amount or, if the additional assessment is not payable in installments, the amount of such assessments. This procedure for additional assessment for inadequate reserves shall also apply to any Special Assessment for maintenance of the common areas. The Additional Special Assessment, however, shall only be levied against the Lot Owner's who benefit from the particular common area that was deemed to have inadequate reserves.

If all or any portion of such assessments are not available to the Board prior to the time that the amounts thereof are needed to provide payment of the authorized costs, and Board may borrow such amounts, on behalf of the Association, and may secure such borrowing by assignment of the liens relative thereto arising pursuant to Section 2 of Article XII of these ByLaws.

**(e) Initial Assessment**

When the first Board of Directors takes office, it shall determine the budget, as defined in this section, for the period commencing upon the recordation of the Declaration and ending on the last day of the fiscal year in which their election occurs. Assessments shall be levied against the Owners during said period as provided in Paragraph (c) of this section. The Board of Directors shall set the initial assessment prior to the conveyance of any lots from the Declarant. At each closing whereby a lot is purchased from the Declarant an amount equal to the annual assessment shall be collected from the purchaser.

**(f) Effect of Failure to Prepare or Adopt Budget**

The failure or delay of the Board of Directors to prepare or adopt the annual budget for any fiscal year shall not constitute a waiver or release in any manner of an Owner's obligation to pay his allocable share of the common expenses 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 semi-annual charge at the then existing rate established for the previous fiscal period until ten (10) days after a statement has been mailed or delivered, showing the payment which is due under the new annual or adjusted budget.

**2. PAYMENT OF COMMON EXPENSES**

All owners shall be obligated to pay the common expenses assessed by the Board of Directors pursuant to the provisions of Section 1 of this Article V. No Owner may exempt himself/herself from liability for this contribution toward common expenses by waiver of the use or enjoyment of any of the common area or by abandonment of his/her Lot. No Owner shall be liable for the payment of any part of the common expenses assessed against his/her lot subsequent to a sale, transfer or other conveyance by him/her of such Lot. The purchaser of a Lot or other acquiring Owner by virtue of any transfer or other conveyance shall be jointly and severally liable with the transferring owner for all unpaid assessments against the latter for his proportionate share of the common expenses up to the time of the conveyance without prejudice to the acquiring Owner's right to recover from the transferring owner the amounts paid by the acquiring therefor. The acquiring Owner shall be entitled to a recordable statement from the Board of Directors or the Manager setting forth the amount of the unpaid assessments against the transferring owner and such acquiring owner shall not be liable for, nor shall the Lot conveyed be subject to a lien for any unpaid assessments in excess of the amount therein set forth. Failure to furnish or make available such a statement within ten (10) business days from receipt of such request shall extinguish the lien for unpaid assessments.

Payment of a fee of the maximum allowable under the laws of the State of New Hampshire may be required as a prerequisite for issuance of such a statement.

If a holder of a first mortgage of record or other purchaser of a Lot obtains title to the Lot as a result of foreclosure of a first mortgage, or through the enforcement of any other remedy provided for in the mortgage, or by virtue of a deed in lieu of foreclosure, such mortgagee or purchaser, its successors and assigns, shall not be liable for, the payment of common expenses assessed prior to the acquisition of title to such Lot by such mortgagee or purchaser pursuant to the aforesaid remedies, and the Lot shall not be subject to a lien for same. Such unpaid share of common expenses assessed prior to the acquisition of title to such Lot by such mortgagee or purchaser pursuant to the aforesaid remedies shall be collectible from

all Owners, including the purchaser from a first mortgagee, in proportion to their respective votes in the Homeowners Association.

### **3. COLLECTION OF ASSESSMENTS**

If any assessment is not paid within 30 days of the due date, there shall be added to said assessment interest at the rate of 12% per annum accruing from the original due date. The Board of Directors shall take prompt action to collect any assessments for common expenses due from any Owner which remain unpaid for more than sixty (60) days from the due date for payment thereof.

### **4. MAINTENANCE AND REPAIR**

#### **(a) By the Board of Directors**

Except as otherwise provided in Section 4(b) below, the Board of Directors shall be responsible for the maintenance, repair and replacement (unless necessitated by the negligence, misuse, or neglect of an owner, or a person gaining access with said Owner's actual or implied consent, in which case such expense shall be specially assessed to such owner), of all of the Common Area whether presently existing or hereafter constructed, the cost of which shall be charged as a common expense to Owners of Lots in proportion to the extent to which each item of such costs is incurred by or benefits each Lot; provided that the cost of any item of maintenance, repair, or replacement which is incurred by or benefits only one or more of the Lots shall be specially assessed against such Lot or Lots, and not against all Lots as a class. Any special assessments under the preceding sentence shall be billed and payable immediately. The Board of Directors may offer, or may permit or direct a managing agent to offer, certain maintenance and repair services not otherwise required by these Bylaws, individually or in one or more packages, to Lot Owners, according to designated guidelines and for designated charges to be approved by the Board.

#### **(b) By the Owner**

Except for any portion of his/her Lot required above to be maintained, repaired or replaced by the Board of Directors, each Owner shall be responsible for the maintenance, repair and replacement, at his/her own expense, of his/her Lot. Each Owner or Owners shall be responsible for performing the normal maintenance for any common area which is appurtenant to his/her Lot or their Lots, including keeping it in a clean and sanitary condition and free and clear of snow, ice and any accumulation of water, and shall make, at his/her own expense, all repairs thereto, beyond normal maintenance, caused or necessitated by his/her negligence, misuse or neglect. In addition, each Owner shall be responsible for all damage to any and all other Lots or to the Common Area resulting from his/her failure to make any of the repairs required to be made by him/her by this section. Each Owner shall perform his/her responsibility in such a manner as shall not unreasonably disturb or interfere with the other Owners. Each Owner shall promptly report to the Board of Directors, or the Manager any defects or need for repairs for which the Board of Directors is responsible. If an Owner fails to discharge any duty imposed by this subsection, or pay for any damage caused by such failure, the Board may, after sixty (60) days written notice or reasonable notice in an emergency, itself discharge the duty or pay for the damage and specially assess the expense against the Owner or Owners.

## ARTICLE VI INSURANCE

### 1. INSURANCE REQUIRED

The Board of Directors shall obtain (i) in the event that a structure is erected on the land maintained by the Homeowners Association, a master casualty policy affording fire and extended coverage in an amount equal to the full replacement value of the structures within the Property in the name of the Homeowners Association, for the use and benefit of the individual owners and their mortgages; (ii) a master liability policy covering the Association, the Board, the Manager and agents or employees of the foregoing with respect to the Association, and all Owners and other persons entitled to occupy any portion of the Property (nothing herein shall be deemed to require that the Board obtain what is commonly known as "officers and directors liability" insurance coverage); (iii) such other insurance as authorized by a majority vote of the Association; and (iv) such other policies as specified herein below, which insurance shall be governed by the following provisions to the extent obtainable or possible:

- (a) Public liability insurance in such amounts 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, insuring the Association and all individuals referred to in Section 1 (ii) above, against any liability to anyone, and with cross liability coverage with respect to liability claims of any one insured thereunder against any other insured thereunder. This insurance, however, shall not insure against individual liability of an Owner or other person entitled to occupy a Lot or within the common area to which a Lot has exclusive use.
- (b) Blanket fidelity bonds for the Board, the Association, and any management agent, covering all persons who either handle or are responsible for funds, whether or not they received compensation for their services, in the amount of the greater of (i) the maximum funds that will be in the custody of the Association or management agent at any time, or (ii) the sum of three months assessments on all Lots plus the Association's reserve fund.
- (c) Workmen's Compensation insurance as required by law.
- (d) Such other insurance as the Board may determine.

### 2. GENERAL INSURANCE PROVISIONS

- (a) The Board shall be required to make every effort to see that all policies of liability insurance provided for under Article VI, Section 1 above: (i) shall cover all common areas, public ways and any other areas under the supervision of the Association, and any commercial spaces owned by the Association, even if leased to others; (ii) shall provide coverage for bodily injury and property damage resulting from the operation, maintenance or use of the common area; (iii) shall provide coverage for any legal liability resulting from lawsuits relating to employment contracts in which the Association is a party; (iv) shall, if they do not include "Severability of interest" clauses, provide that no Lot Owner's claim will be denied because of negligent acts of the Association or other Lot Owners; and (v) shall provide that such policies may not be canceled or substantially



modified without at least thirty (30) days written notice to all of the insurers thereunder and all first mortgagees of Lots named in the policies.

### **3. INDIVIDUAL POLICIES**

Since the master casualty policy specified in Section 1 above does not cover any part of the Lots, Owners of those Lots are encouraged to maintain their own casualty insurance in sufficient amounts to cover any loss. Such policies should contain the same waiver of subrogation provision as that set forth in Section 2 above.

### **4. NOTICE TO LOT OWNERS**

Excepting such policies as are obtained on behalf of the Association prior to the conveyance of the first Lot in the Property, when any policy of insurance has been obtained on behalf of the Association, written notice of the obtainment thereof and of any subsequent changes therein or in such initial policies, or termination thereof shall be promptly furnished to each Lot Owner by the Clerk of the Association. Such notice shall be sent to all Lot Owners of record at the address of their respective Lots and to such other addresses as any of them may have designated to the Clerk; or such notice may be hand delivered by the Clerk or Manager.

## **ARTICLE VII DISBURSEMENTS**

### **1. DISBURSEMENTS OF CONSTRUCTION FUNDS AFTER CASUALTY**

- (a)** The net proceeds of insurance collected on account of a casualty and the funds collected by the Board of Directors from assessments against owners on account of such casualty (or borrowed by the Board as provided in this Declaration) shall constitute a construction fund which shall be disbursed in payment of the cost of reconstruction and repair by the Board of Directors.
- (b)** The construction fund shall be paid by the Board of Directors in appropriate progress payments, to such contractors, supplies and personnel engaged in performing the work or supplying materials or services for the repair and reconstruction of the Property as designated by the Board of Directors.
- (c)** 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 cost of the reconstruction and repair for which the fund is established, such balance shall first be applied to any borrowing pursuant to Article XIII below, and the remainder, if any, shall be distributed to the owners to repay them for assessments, if any, or shall be added to the reserve for contingencies and replacements of common area, at the discretion of the Board of Directors.

## **ARTICLE VIII SALES, LEASES, AND MORTGAGES OF LOTS**

### **1. NO SEVERANCE OF OWNERSHIP**

No Owner shall execute any deed, lease, mortgage, or instrument conveying or mortgaging the title to his/her Lot without including therein, the undivided interest of such Lot in the common area, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, lease, mortgage, or other instrument purporting to effect one or more of such interests, without including all such interests, omitted, even though the latter shall not be expressly mentioned or described therein. Except to the extent otherwise expressly provided by the Declaration and Bylaws, the undivided interest in the common area allocated to any Lot shall not be altered, and any purported transfer, encumbrance, or other disposition of that interest without the Lot to which it appertains shall be void.

### **2. PAYMENT OF ASSESSMENTS**

No Owner shall be permitted to convey, mortgage, sell, lease, give or devise his/her Lot unless and until he/she (or his/her personal representative) shall have paid in full to the Board of Directors all unpaid common expenses theretofore assessed by the Board of Directors with respect to his/her Lot, and shall have satisfied all unpaid liens with respect to his/her lot, except mortgages. In the event that the Lot is subject to outstanding assessment previously levied against such Lot, and the acquiring owner or the transferring owner requests a recordable statement pursuant to Section 2 of Article V, the statement shall expressly state any waiver of, or failure or refusal to exercise, the right of the Association to prevent the disposition of any Lot, in any case where such waiver, failure or refusal may exist. Failure or refusal to furnish such a statement as provided in Section 2 of Article V shall not only constitute a waiver of such assessment, but also make the above mentioned prohibition inapplicable to any such disposition of the Lot.

### **3. RESALES**

In the event of a resale of a Lot or any interest in a Lot by any person other than the developer, the prospective Buyer shall have the right to obtain from the Association prior to the contract date of the disposition, the following:

- (a) A recordable statement setting forth the amount of unpaid assessments currently levied against the Lot.
- (b) A Statement of any capital expenditures and major maintenance expenditures anticipated by the Association within the, current or succeeding two fiscal years.
- (c) A statement of the status and amount of any reserve for the major maintenance or replacement fund and any portion of such fund earmarked for any specified project by the Board of Directors.
- (d) A copy of the income statement and balance sheet of the Association for the last fiscal year for which such statement is available.
- (e) A statement of the status of any pending suits or judgments in which the Association is a party defendant.

## **ARTICLE IX AMENDMENT OF BYLAWS**

### **1. AMENDMENTS**

Except as otherwise provided herein the Declaration and Bylaws may be modified or amended by the procedure, set forth in Article II of the Declaration and Bylaws. Notwithstanding the foregoing, so long as the Developer is the owner of one or more Lots, no amendment to the Bylaws or Rules may be adopted which could interfere with the construction display, sale, lease, or other disposition of such Lot or Lots. And further, notwithstanding the foregoing, no amendment of Article I, paragraph 2, subparagraph (e), Article I, paragraph 3, Payment of Taxes, and Article VIII, paragraph 1, shall be permitted without approval in writing and recorded at the Registry of Deeds issued by the Merrimack Planning Board or its designated agent.

### **2. RECORDING**

A modification or amendment of these Bylaws shall become effective only when it has been duly evidenced in accordance with the recording laws of the State of New Hampshire.

### **3. CONFLICTS**

No modification or amendment of these Bylaws may be adopted which shall be inconsistent with the provisions of the Declaration. A modification or amendment once adopted and recorded as provided for herein shall then constitute part of the official Bylaws of the Association and all Owners shall be bound to abide by such modification or amendment. Such provisions in these Bylaws are to be construed as covenants for the protection of the mortgagees on which they may rely in making loans secured by mortgages on the Lots. Accordingly, all Mortgage Holders that have provided the Association with a written statement requesting notice of any amendment or modification of the Bylaws and an address for mailing such notice (hereinafter Eligible Mortgage Holders) shall be given thirty days notice of all proposed amendments, and no amendment or modification of these Bylaws materially impairing or affecting the rights, priorities, remedies or interest of such Eligible Mortgage Holders (including the use of a secondary mortgage market, i.e., the salability of mortgages to Mortgage Guaranty Insurance Corporation, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, etc.) shall be adopted without the prior written consent of at least fifty-one percent of such mortgagees (based upon votes appurtenant to Units subject to their mortgages).

## **ARTICLE X MORTGAGES**

### **1. NOTICE TO BOARD**

An Owner who mortgages his Lot shall notify the Board of the name and address of his mortgagee, and shall file a conformed copy of the mortgage with the Board. The Board shall maintain suitable records pertaining to such mortgages.

### **2. NOTICE OF UNPAID ASSESSMENTS FOR COMMON EXPENSES**

The Board, whenever so requested in writing by a mortgagee of a Lot, shall promptly report any then unpaid assessments for common expenses due from, or any other default by, the owner of the mortgaged Lot.

### **3. NOTICE OF DEFAULT**

No suit or other proceeding may be brought to foreclose the lien for any assessment levied pursuant to the Declaration of these Bylaws except after ten days' written notice to the holder of the first mortgage on the Lot which is the subject matter of such suit or proceeding, provided that the Board has been given notice of such mortgage in the manner set forth above and in the Declaration.

## **ARTICLE XI NOTICE**

### **1. MANNER OF NOTICE**

Except as otherwise provided in the Declaration and these Bylaws, all notices, demands, bills, statements or other communications provided for or required under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by U.S. Mail, return receipt requested, first class postage prepaid, (i) if to an owner, at the address of his/her Lot and at such other address as the owner may have designated by notice in writing to the Clerk, or (ii) if to the Homeowners Association, the Board of Directors 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 Owner pursuant to this Section.

### **2. MANNER OF NOTICE**

Whenever any notice is required to be given under the provisions of the statutes, the Declaration or these Bylaws, a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether signed before or after the time stated therein, shall be deemed equivalent thereto, unless such waiver is ineffective under the laws of the State of New Hampshire.

## ARTICLE XII DEFAULT

### 1. DEFAULT

Each Owner shall be governed by, and shall comply with, all of the terms of the Declaration, these Bylaws and the Rules, and any amendments of the same. The Board shall give written notice to an Owner in the performance of any obligation under the Declaration and Bylaws or Rules. A default by an Owner shall entitle the Association acting through the Board of Directors or the Manager, to the following relief:

**(a) Legal Proceedings**

Failure to comply with any of the terms of the Declaration, and Bylaws, or the Rules shall be grounds for relief, which may include, without limiting the same, an action to recover the sums due, for money damages, injunctive relief, foreclosure of the lien for payment of all assessments, any other relief provided for in these Bylaws, or any combination thereof, and any other relief afforded by a Court of competent jurisdiction, all of which relief may be sought by the Homeowners Association, the Board of Directors, the Manager, or, if appropriate, by an aggrieved Owner.

**(b) Additional Liability**

Each Owner shall be liable for the expenses of all maintenance, repair, or replacement rendered necessary by his/her acts, neglect, or carelessness, or the act, negligent, or carelessness of any other member of his/her family or his/her tenants, guests, employees, agents, or invitees, but only to the extent that such expenses is not covered by the proceeds of insurance carried by the Association. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy or abandonment of any Lot or its appurtenances. Nothing contained herein, however, shall be construed as modifying any waiver by an insurance company of its rights of subrogation.

**(c) Costs and Attorneys Fees**

In any proceeding arising out of any alleged default by an Owner, the prevailing party shall be entitled to recover the costs of the proceeding, and such reasonable attorneys' fees as may be determined by the Court.

**(d) No Waiver of Rights**

The failure of the Homeowners Association, the Board of Directors, or of an Owner to enforce any right, provision, covenant, or condition which may be granted by the Declaration and Bylaws, or the Rules shall not constitute a waiver of the right of the Association, the Board of Directors, or any Owner to enforce such right, provision, covenant, or condition in the future. All rights, remedies, and privileges granted to the Association, Board of Directors or any Owner pursuant to any term, provision, covenant, or condition of the Declaration and Bylaws, or the Rules shall be deemed to be cumulative, and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such privileges as may be granted to such party by the Declaration and Bylaws, or the Rules, or any law or in equity.

**(e) Interest**

In the event of a default by any Owner which continues for a period in excess of 30 days, such Owner shall be obligated to pay interest on the amounts due at 12 percent per annum, from the due date thereof. In addition, the Board of Directors shall have the authority to impose a late payment charge on such defaulting Owner in an amount not to exceed \$15.00 or six percent of any amount so overdue, whichever is greater.

**(f) Abatement and Enjoinment of Violations by Owners**

The violation of any Rule adopted by the Board of Directors, or the breach of any Bylaw contained herein, or the breach of any provision of this Declaration, shall give the Board of Directors or the Manager the right, in addition to any other rights set forth in the Declaration and Bylaws: (a) to enjoin, abate, or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach; or (b) to suspend or limit the right of the Owner committing the violation to use any part of the common area during the continuance of such violation.

**2. LIEN FOR ASSESSMENTS**



- (a) The total annual assessment of each Owner for the common expenses or any special assessment levied pursuant to the Declaration and Bylaws, is hereby declared to be a lien levied against the Lot of such Owner or Owners.
- (b) In any case, where an assessment against an Owner or owners is payable in installments, upon a default by such Owner in the payment of any single installment, which continues for ten (10) days after written notice of such default has been sent to the Owner, the maturity of the remaining total of the unpaid installments of such assessments may be accelerated, at the option of the Board of Directors, and the then balance owing may be declared due and payable in full by the service of notice to such effect upon the defaulting Owner by the Board of Directors or Manager. The Association, in order to perfect such lien, shall file before the expiration of six (6) months from the time that the delinquent assessment (or installment, where such assessment is payable in installments) became due and payable, a memorandum in the Hillsborough County Registry of Deeds in the form and manner prescribed by law.
- (c) The lien assessments shall include interest, costs and attorneys' fees as provided in Section 1 of this Article XII and may be foreclosed in the manner provided by the laws of the State of New Hampshire for the foreclosure of power of sale mortgages (including, without limitation, RSA 479:25-27-a) or by suit brought in name of the Board of Directors, acting on behalf of the Homeowners Association.
- (d) Suits to recover a money judgment for unpaid assessments shall be maintainable without foreclosure or waiving the lien securing the same, and foreclosure shall be available without bringing suit to recover a money judgment.

## **ARTICLE XIII BORROWING**

The Board of Directors, by an unanimous vote, may borrow funds from a financial lending institution to improve, construct, reconstruct or repair common area upon such terms and conditions as they deem appropriate.

## **ARTICLE XIV COMPLIANCE, CONFLICT, AND MISCELLANEOUS PROVISIONS**

### **1. COMPLIANCE**

This Declaration and Bylaws is set forth in compliance with the requirements of the laws of the State of New Hampshire.

### **2. SEVERABILITY**

This Declaration and Bylaws is set forth to comply with the requirements of the State of New Hampshire. In case any portion of the Declaration and Bylaws are in conflict with the provisions of any statutes, the provisions of the statutes will apply. If any provisions of the Declaration and Bylaws or any section, sentence, clause, phrase or word, or the application thereof in any circumstance is held invalid, the validity of the remainder of the Declaration and Bylaws, shall not be affected thereby and to this end, the provisions hereof are declared to be severable.

### **3. WAIVER**

No provision of the Declaration and Bylaws shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same (except where a right is dependent upon notice to be given within a specified period), irrespective of the number of violations or breaches which may occur.

### **4. CAPTIONS**

The captions contained in this Declaration and Bylaws are for convenience only and are not part of the Declaration and Bylaws and are not intended in any way to limit or enlarge the terms and provisions of the Declaration and Bylaws.

### **5. GENDER, ETC.**

Whenever in the Declaration and Bylaws the context so requires, the singular number shall include the plural and the converse; and the use of any gender shall be deemed to include all genders.

## **APPENDIX A EASEMENTS**

### **LEGAL DESCRIPTION**

#### **20' WIDE SEWER EASEMENT**

20' wide sewer easement running from Candy Lane through the open space across Lot 4C-227-52 and Lot 4C-227-53 to the Whitewood Lane cul de sac as shown on Sheet No. 3, on a plan of land entitled, "Revised Cluster Residential Subdivision Plan of Lot 227 Map 4C, Olympic Village, Turkey Hill Road, Merrimack, New Hampshire, prepared for K & P Corporation, 40 Lowell Rd, Salem, NH 03079, Scale 1" = 50, June 15, 1992, prepared by George F. Keller, Inc."

### **LEGAL DESCRIPTION**

#### **20' WIDE SEWER EASEMENT**

A 20' wide sewer easement from Wintergreen Drive to Sycamore Lane across, over, under, and through Lot 4C-227-12, Lot 4C-227-13, Lot 4C-227-7, and Lot 4C-227-6 all as shown on Sheet No. 4 on a plan of land entitled, "Revised Cluster Residential Subdivision Plan of Lot 227 Map 4C, Olympic Village, Turkey Hill Road, Merrimack, New Hampshire, prepared for K & P Corporation, 40 Lowell Rd, Salem, NH 03079, Scale 1" = 50, June 15, 1992, prepared by George F. Keller, Inc."

### **LEGAL DESCRIPTION**

#### **20' WIDE SEWER EASEMENT**

A 20' wide sewer easement running from the Sycamore Lane cul de sac to a point near Turkey Hill Road as shown on Sheet No. 4 (including insert) on a plan of land entitled, "Revised Cluster Residential Subdivision Plan of Lot 227 Map 4C, Olympic Village, Turkey Hill Road, Merrimack, New Hampshire, prepared for K & P Corporation, 40 Lowell Rd, Salem, NH 03079, Scale 1" = 50, June 15, 1992, prepared by George F. Keller, Inc."

### **LEGAL DESCRIPTION**

#### **40' CONSTRUCTION EASEMENT**

A 40' construction easement from the existing brook to the southerly boundary of Turkey Hill Road across and through the open space all as shown on Sheet No. 3 on a plan of land entitled, "Revised Cluster Residential Subdivision Plan of Lot 227 Map 4C, Olympic Village, Turkey Hill Road, Merrimack, New Hampshire, prepared for K & P Corporation, 40 Lowell Rd, Salem, NH 03079, Scale 1" = 50, June 15, 1992, prepared by George F. Keller, Inc."

**LEGAL DESCRIPTION**  
**50 FOOT WIDE EMERGENCY ACCESS EASEMENT**

A fifty foot wide emergency access easement running from Sunrise Drive to Wintergreen Drive cul de sac as shown on a Plan entitled "Revised Cluster Residential Subdivision Plan of Lot 227 Map 4C, Olympic Village, Turkey Hill Road, Merrimack, New Hampshire, prepared for K & P Corporation, 40 Lowell Rd, Salem, NH 03079, Scale 1" = 50, June 15, 1992, prepared by George F. Keller, Inc.

**LEGAL DESCRIPTION**  
**DETENTION BASIN EASEMENT**

A detention basin easement located within the 100' buffer and running contiguous to Turkey Hill Road beginning at a point at the southerly end of a 20' drainage easement and continuing along Turkey Hill Road a distance of 245.80 feet all as shown on Sheet No. 4 on a plan of land entitled, "Revised Cluster Residential Subdivision Plan of Lot 227 Map 4C, Olympic Village, Turkey Hill Road, Merrimack, New Hampshire, prepared for K & P Corporation, 40 Lowell Rd, Salem, NH 03079, Scale 1" = 50, June 15, 1992, prepared by George F. Keller, Inc."

**LEGAL DESCRIPTION**  
**DRAINAGE EASEMENT OFF OF WINTERGREEN DRIVE**

A drainage easement over a portion of the open space near the wintergreen drive cul de sac and contiguous to the easterly lot line of Lot 4C-227-39 all as shown on Sheet No. 4A on said plan entitled, "Revised Cluster Residential subdivision Plan of Lot 227 Map 4C, Olympic Village, Turkey Hill Road, Merrimack, New Hampshire, prepared for K & P Corporation, 40 Lowell Rd, Salem, NH 03079, Scale 1" = 50, June 15, 1992, prepared by George F. Keller, Inc."

**LEGAL DESCRIPTION**  
**40' DRAINAGE EASEMENT ON OPEN SPACE**

40' drainage easement running perpendicular to and contiguous with the 50' wide emergency access easement at the point it joins Sunrise Drive as shown on Sheet No. 4A of plan entitled, "Revised Cluster Residential Subdivision Plan of Lot 227 Map 4C, Olympic Village, Turkey Hill Road, Merrimack, New Hampshire, prepared for K & P Corporation, 40 Lowell Rd, Salem, NH 03079, Scale 1" = 50, June 15, 1992, prepared by George F. Keller, Inc."

**LEGAL DESCRIPTION**  
**DRAINAGE EASEMENT**

A drainage easement from the existing brook to the southerly bound of Turkey Hill Road across the open space all as shown on Sheet No. 3 of a plan entitled, "Revised Cluster Residential subdivision Plan of Lot 227 Map 4C, Olympic village, Turkey Hill Road, Merrimack, New Hampshire, prepared for K & P

Corporation, 40 Lowell Rd, Salem, NH 03079, Scale 1" = 50, June 15, 1992, prepared by George F. Keller, Inc."

**LEGAL DESCRIPTION  
DRAINAGE EASEMENTS**

Drainage easements over, under through and across certain areas of land shown on a portion of the lot entitled "open space" and the first area being contiguous to Wintergreen Drive and being 30' in width; the second area being 20' in width on the southerly bound thereof and running to the intersection of Turkey Hill Road and Wintergreen Drive; and the third portion being 20' in width and running 176.92 feet North of the detention basin easement all as shown on Sheet No. 4 on said plan entitled, "Revised Cluster Residential Subdivision Plan of Lot 227 Map 4C, Olympic Village, Turkey Hill Road, Merrimack, New Hampshire, prepared for K & P Corporation, 40 Lowell Rd, Salem, NH 03079, Scale 1" = 50, June 15, 1992, prepared by George F. Keller, Inc."

**LEGAL DESCRIPTION  
FEE IN STREETS**

The fee in the streets and ways shown on a plan of land entitled "Revised Cluster Residential Subdivision Plan of Lot 227 Map 4C, Olympic Village, Turkey Hill Road, Merrimack, New Hampshire, prepared for K & P Corporation, 40 Lowell Rd, Salem, NH 03079, Scale 1" = 50, June 15, 1992, prepared by George F. Keller, Inc.," starting at Turkey Hill Road at the beginning of Wintergreen Drive and including the fee in Whitewood Lane and the Whitewood Lane cul de sac, Scotchpine Lane and the Scotchpine cul de sac, Sycamore Lane and the Sycamore Lane cul de sac, Wintergreen Drive and the Wintergreen Drive cul de sac.

**LEGAL DESCRIPTION  
20' WIDE DRAINAGE EASEMENT**

A 20' drainage easement in, over, and through the open space off of Sycamore Lane all as shown on Sheet No. 4 on a plan of land entitled, "Revised Cluster Residential Subdivision Plan of Lot 227 Map 4C, Olympic Village, Turkey Hill Road, Merrimack, New Hampshire, prepared for K & P Corporation, 40 Lowell Rd, Salem, NH 03079, Scale 1" = 50, June 15, 1992, prepared by George F. Keller, Inc."

**LEGAL DESCRIPTION  
OPEN SPACE**

Lot 227 entitled -Open Space- on a plan of land entitled "Revised Cluster Residential Subdivision Plan of Lot 227 Map 4C, Olympic Village, Turkey Hill Road, Merrimack, New Hampshire, prepared for K & P Corporation, 40 Lowell Rd, Salem, NH 03079, Scale 1" = 50, June 15, 1992, prepared by George F. Keller, Inc."

**LEGAL DESCRIPTION  
OPEN SPACE EASEMENT**

A certain parcel of land on Wintergreen drive shown on a plan of land entitled, "Revised Cluster Residential subdivision Plan of Lot 227 Map 4C, Olympic Village, Turkey Hill Road, Merrimack, New Hampshire, prepared for K & P Corporation, 40 Lowell Rd, Salem, NH 03079, Scale 1" = 50, June 15, 1992, prepared by George F. Keller, Inc." and further bounded and described as follows:

Beginning at a point on Wintergreen Drive at the northerly corner of the lot herein conveyed and then running by an arc having a radius of 175 feet a distance of 204.39 feet to a point; thence turning and running north 34° 23' 53" East a distance of 113.42 feet to a point; thence turning and running North 26° 24' 55" West a distance of 110.32 feet to the point of beginning.

**LEGAL DESCRIPTION  
SITE DISTANCE EASEMENT**

A site distance easement across Lot 4C-227-2 and Lot 4C-227-30 as shown on Sheet No. 4 on a plan of land entitled, "Revised Cluster Residential Subdivision Plan of Lot 227 Map 4C, Olympic Village, Turkey Hill Road, Merrimack, New Hampshire, prepared for K & P Corporation, 40 Lowell Rd, Salem, NH 03079, Scale 1" = 50, June 15, 1992, prepared by George F. Keller, Inc."

**LEGAL DESCRIPTION  
SLOPE AND CLEARING EASEMENT**

A slope and clearing easement across and over the open space on the southerly side of Turkey Hill Road as shown on Sheet No. 3 and Sheet No. 4 on a plan of land entitled, "Revised Cluster Residential subdivision Plan of Lot 227 Map 4C, Olympic Village, Turkey Hill Road, Merrimack, New Hampshire, prepared for K & P Corporation, 40 Lowell Rd, Salem, NH 03079, Scale 1" = 50, June 15, 1992, prepared by George F. Keller, Inc."

**LEGAL DESCRIPTION  
50' WIDE EMERGENCY ACCESS EASEMENT**

A 50' wide Emergency Access Easement running from Sunrise Drive across and over the open space to the Wintergreen Drive cul de sac all as shown on Sheet No. 3 on a plan of land entitled, "Revised Cluster Residential Subdivision Plan of Lot 227 Map 4C, Olympic Village, Turkey Hill Road, Merrimack, New Hampshire, prepared for K & P Corporation, 40 Lowell Rd, Salem, NH 03079, Scale 1" = 50, June 15, 1992, prepared by George F. Keller, Inc."

## APPENDIX B COVENANTS, REGULATIONS AND RULES

### COVENANTS

K & P, Incorporated of 40 Lowell Road, Salem, NH 03079, the owner of 100% of the interest in the subdivision shown on a plan of land entitled "Revised overall boundary plan/phasing plan cluster residential subdivision plan of Lot 227, Map 4C, Olympic Village, Turkey Hill Road, Merrimack, NH" recorded with the Hillsborough County Registry of Deeds as Plan No. 26072 does hereby impose, declare and covenant with its successors and assigns in title for the benefit of all the lots in the subdivision the following common scheme restrictions and covenants which shall take effect and become enforceable as to a lot only when that lot shown on said Plan is conveyed by K & P, Inc. Nothing herein shall be construed to require K & P, Inc., to move or remove any structure which is not in compliance with this Declaration, which structure was erected by K & P, Inc., or its agents prior to the time of the conveyance of a lot.

1. Building setbacks for all building lots within the subdivision shall be as follows:
  - a. 20 feet from the front lot line;
  - b. 10 feet from the side lines or a minimum of 20 feet between houses.
  - c. 0 feet from the back lot line.These setbacks are to be measured from dwelling structures which include houses, steps, garages, and porches and is not intended to include storage sheds, fences, etc.
2. All sheds on the building lots within the subdivision shall be in the backyard of the property.
3. All play equipment, i.e. but not limited to swings & slides, shall be in the backyard of the property.
4. No mobile homes may be parked or maintained within the subdivision.
5. No unregistered motor vehicles may be parked in the subdivision for more than ten (10) days unless said vehicle is placed within the confines of a garage and not readily visible to adjacent property owners and vehicles and foot traffic on adjacent roadways.
6. No clotheslines are allowed on the property.
7. No fences except post split fences, maximum 3' to 4' in height, are permitted along the front yard or roadway. Fences along the sideline to the front edge or from home dwelling to back lot property lines are permitted.
8. No satellite dishes may be installed or maintained within the subdivision.
9. No animal, other than common household pets, shall be kept or maintained on the Property, nor shall common household pets be kept, bred or maintained for commercial purposes on the Property.
10. K & P, Incorporated, reserves the right to waive any and all restrictions in its sole discretion, by a written notice filed with the Hillsborough County Registry of Deeds.



Signed as a sealed instrument this 16 day of April 1993.

In witness whereof, the said K & P, Incorporated has caused its hand and seal to be hereto affixed by Anastasios Kalogianis, its President and Treasurer, this 16 day of 1993.

K & P Incorporated

## **REGULATIONS AND RULES**

The following is a collection of all the official Policy Statements issued by the Association as of the date of this document's release. All of these statements have been previously approved and distributed.

This information is collected in this document for your reference. However, from time to time additional Policy Statements, Regulations, and Rules may be issued by the Association. The listing in this Appendix is not intended, and shall not be interpreted as an exhaustive compilation of all of the policies currently in effect. An official collection of all the Policy Statements, Regulations, and Rules currently in effect within the Association is maintained by the Association Clerk.

### **Board of Directors Policy Statement**

**August 25, 1997**

## **RULES FOR USE OF THE WALKING TRAILS AND COMMON LANDS**

It is the desire of the Board of Directors to allow our members as much freedom as possible to enjoy the Common lands and Walking Trails which are a part of the Association's property. However in the past there have been problems concerning what are permissible activities on our property. In order to avoid any misunderstanding, and to establish some general guidelines, the Board of Directors is issuing this policy statement. The purpose of this policy statement is to establish general rules and regulations governing the use of the walking trails and Common lands.

1. The walking trails and Common lands are for the exclusive use of the residents of Olympic Village, and their guests.
2. The operation of motorized vehicles of any type on the walking trails and common lands is prohibited, unless specifically authorized by the Board of Directors.
3. Horses and horse riding on Association trails and property is prohibited.
4. Bicycles are permitted. Riders should ride in a safe manner at all times, and must always yield the right of way to pedestrians.
5. Dog walking is permitted. The animal must be under immediate voice control, or on a leash at all times. Pet owners must clean up after their pets.
6. At all times, please exercise proper safety, common sense and courtesy toward others in your recreational activities.

Enjoy our lands but be sensitive to the fact that we are all neighbors and our houses are all closely spaced. Many of our residents have lots which abut the Common areas. Please remember to be sensitive to this proximity and respect your neighbor's property.

## **Board of Directors Policy Statement**

**August 25, 1997**

### **PROXY VOTING AT ASSOCIATION MEETINGS**

At the last annual meeting the Association's membership passed a resolution directing the Board of Directors to investigate ways to provide voting representation at an official meeting of the Association for those individuals who are not able to attend a meeting in person. After discussing this issue, and consulting our attorney on corporate law in the State of New Hampshire, the Board has determined that the correct way to provide this representation is by way of a proxy. The purpose of this policy statement from the Board of Directors is to establish the rules and guidelines for Association members (stockholders) who wish to exercise this option.

A proxy is a legal, written authorization empowering another person to vote for or act on behalf of the member who grants the proxy. This allows you to give someone else the legal right to represent your interests and vote on your behalf at an Association meeting that you cannot attend. If you wish to exercise this option, you must do the following.

1. In advance, request a Proxy Representation Form from the Association Clerk.
2. Find a person who can attend the meeting in your stead, and will accept your proxy.
3. Turn in a copy of the completed form at least 3 days in advance of the meeting to the Association Clerk or a Director.
4. If your Association lot is jointly owned by more than one person, then ALL the owners must sign the proxy form.

In granting a proxy, you are giving another person the legal right to represent your interests as they see fit. It is entirely up to you to discuss with the person you are asking to attend the meeting on your behalf, how you would like them to represent your interests on any and all matters which may be brought to a vote.

**Board of Directors Policy Statement**

**October 27, 1997**

**USE OF OUTSIDE CLOTHES LINES AND CLOTHES DRYERS**

At a previous annual meeting the Association's membership passed a resolution directing the Board of Directors to permit the use of clothes dryers. The purpose of this policy statement from the Board of Directors is to establish and clarify the rules and guidelines for the use of outside clothes dryers within Olympic Village.

1. Consistent with our existing Covenants, "No clothes lines are allowed on the property".
2. This means no permanent clothes lines may be strung on your property. Anything present more than several days is considered permanent.
3. Notwithstanding 1 and 2 above, the installation of a single pole clothes dryer, or the use of a temporary clothes dryer is permitted. When used, these items must be placed in the back of the property.

**Board of Directors Policy Statement**

**July 30, 2008**

**INSTALLATION OF SATELLITE DISHES**

At a previous annual meeting the Association's membership passed a resolution directing the Board of Directors to permit the use of small satellite dishes used typically for the reception of digital television. The purpose of this policy statement from the Board of Directors is to establish and clarify the rules and guidelines for the use of satellite dishes within Olympic Village.

1. Consistent with our existing Covenants, "No full sized satellite dishes may be installed or maintained within the subdivision".
2. Notwithstanding 1 above, the installation of small satellite dishes for the purpose of receiving digital television and Internet access is permitted. The installation should be placed in an inconspicuous location, if possible in the back of the house.
3. Due to recent changes in regulations promulgated by the Federal Communications Commission (FCC) and Federal caselaw involving satellite television companies in the last ten years, home-owner associations, condominium associations and municipalities are prohibited from enforcing bylaws, restrictive covenants, etc., on the placement of satellite dishes. Homeowners are allowed to place the satellite dishes on any location of their house in order to receive the best possible signal reception.

## **APPENDIX C HISTORICAL DOCUMENTS**

The following are copies of documents relating to the original formation of the Association. They are provided here for completeness and reference.

### Proposed changes to the By Laws.

Article 5 section D. **Reserves.** The board shall maintain a minimum of \$10,000 of reserves for replacement of common areas or emergent repairs or issues. If the reserves exceed \$15,000 the overage will be returned. The board will return the excess in reduced fees in the following fiscal year budget.

### Proposed changes to the Covenants:

**10. Homeowner rentals of personal residence:** OVHA owners who rent or lease their home to a third party need to disclose to the board the tenants name and contact information. All tenants and occupants are bound to the bylaws and covenants of OHVA. The homeowner is responsible for ensuring all OHVA Bylaws and covenants are shared with the tenants and that they are responsible for ensuring the tenant complies and abides by all Bylaws and covenants. In addition, no homeowner shall engage in short term leases or rentals less than 6 months, without express approval of the board.

**11. Care and maintenance of OVHA owners home and property:** Homeowners are required to maintain their residence and surrounding lot in a manner that is reflected by the majority of homes and lots in Olympic Village. Homeowners that do not maintain appropriate maintenance of their homes and property will be notified by the board as to what actions need to be taken to meet the community standard. The standard care and maintenance of homes and property includes keeping all exterior siding, roof, and trim in repaired, clean, and painted condition. All exterior structures and decks need to be maintained in a clean, painted, and safe condition. Lawns, landscaping, and hardscape need to be regularly mowed, trimmed and repaired. Maintaining a community standard of maintenance and repair will ensure that the value and integrity of Olympic Village Homeowners will be sustained. The board will have the ability take action on behalf of the OVHA against homeowners that fail to meet the standards when and if required to do so to maintain the value and integrity of the neighborhood. Board actions up to and including fines and legal action to ensure that standard is maintained will be determined on a case by case basis.