

DECLARATION OF CONDOMINIUM
(WITH ATTACHED BY-LAWS)
OF
THE CONDOMINIUMS AT 23 KANE

This Declaration made this 4th day of June, 2010, by 23 KANE LLC in its capacity as owner (hereinafter referred to as "Declarant") for the purpose of submitting certain property described in this Declaration to condominium usage and ownership in accordance with the provisions of the Condominium Act, New Hampshire Revised Statutes Annotated, Chapter 356-B, as amended.

WITNESSETH:

WHEREAS, Declarant is the owner fee simple of a certain parcel of land with the buildings thereon more fully described herein; and

WHEREAS, Declarant intends to and does hereby submit such real estate together with all buildings, structures, improvements and other permanent fixtures of whatsoever kind thereon, and all rights and privileges belonging or in any way pertaining thereto, pursuant to the provisions of the Condominium Act, New Hampshire Revised Statutes Annotated, Chapter 356-B as amended (hereinafter known as the Condominium Act); and

WHEREAS, Declarant intends to convey Units in said hereinafter described property, subject to certain mutually beneficial restrictions, covenants, conditions, equitable servitudes and charges which it desires to impose thereon for the benefit of all condominium Units and future Unit Owners thereof, all subject to the Condominium Act; and,

WHEREAS, Declarant desires and intends that the several unit owners, mortgages, occupants, and other persons hereinafter acquiring an interest in the property shall at all times enjoy the benefits of, and shall hold their interests subject to the rights, easements, privileges and restrictions hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the cooperative aspect of the property and are established for the purpose of enhancing and perfecting the value, desirability, and attractiveness of the property.

NOW, THEREFORE, Declarant hereby makes the following declarations pursuant to the Condominium Act:

- 1. NAME: The name of the condominium shall be **THE CONDOMINIUMS AT 23 KANE.**
- 2. LOCATION: The Condominium is located at 23 Kane Street, City of Portsmouth, County of Rockingham, and State of New Hampshire.

3. DEFINITIONS AND PROVISIONS OF THE ACT:

- a. The provisions of the New Hampshire Condominium Act shall apply to the condominium, except to the extent that contrary provisions, not prohibited by the Act, are contained in one or more of the Condominium Documents. .
- b. Words and terms not defined herein shall have the same meaning as provided for such words and terms in section 356-B:3 of the Condominium Act.
- c. "Act" or Condominium Act shall refer to RSA 356-B.
- d. "Association" or "Unit Owners Association" shall refer to the Unit Owners Association as established by the Declaration and By-Laws for THE CONDOMINIUMS AT 23 KANE.

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ROCKINGHAM COUNTY
REGISTRY OF DEEDS

- e. "Declarant" shall refer to 23 KANE LLC.
- f. "Property" means the land, buildings, improvements, and structures, all easements, servitudes, rights and appurtenances belonging thereto, and all chattels intended for use in connections therewith, which have been or are intended to be submitted to the provisions of the Condominium Act.
- g. "Occupant" whenever used herein shall mean a person or persons, other than the Owner, in possession of one or more Units.

4. **LEGAL DESCRIPTION OF PROPERTY.** A certain lot or parcel of land with buildings thereon as set forth in Exhibit A attached hereto and made a part thereof, located in the City of Portsmouth, County of Rockingham, State of New Hampshire.

5. **UNIT BOUNDARIES (Units 1 and 2).** A description of the boundaries of the Units, including the horizontal and vertical boundaries in accordance with the provisions of RSA 356-B:20 is shown on the following condominium floor plans entitled: "Condominium Floor Plan for 23 Kane LLC, 23 Kane Street, Portsmouth, New Hampshire" dated June 3, 2010, by Ross Engineering, (hereinafter collectively referred to as "Condominium Floor Plan"), which will be recorded with the Condominium Site Plan and as may be amended in accordance with the applicable provisions of the declaration, bylaws and the condominium statute. The boundaries of the Units are further described as follows:

- a. **Horizontal Boundaries.** The upper and lower (horizontal) boundaries of each unit shall be the following boundaries extended to an intersection with the vertical boundaries.
 - (1) The upper boundary of each unit shall be the under surface of the plane of the ceiling joists on the highest level of Units.
 - (2) The lower boundary shall be the exterior surface of the concrete of the basement floor.
- b. **Vertical Boundaries.** The vertical boundaries of each Unit shall be the inner surface of the exterior perimeter wall and/or the centerline of the studs of any demising walls separating units, and shall include the undercoated exterior surface of all doors and doorframes, as well as the undercoated exterior surface of all windows and window frames. The window glass shall be considered part of the Condominium Unit.

6. **DESCRIPTION OF COMMON AREA AND LIMITED COMMON AREA.**

- a. **Common Area.** The Common Area consists of the entire Property and easements appurtenant thereto, other than the Units and the Limited Common Area, and includes, but not by way of limitation: the land and the asphalt sidewalk, shrubbery and other plantings, and other land interests in the land submitted to the condominium form of ownership, and the water supply, sewage disposal, electrical, telephone, lighting and other utility systems serving the Condominium to the extent said systems are located within the Property and are not owned by the supplier of the utility service (but not including any portions thereof contained within and servicing a single Unit); and the pipes, conduits, plumbing, wires, meter, meter housings and other facilities for the furnishing of utility services, water, or waste removal not located within a Unit and such facilities located within a Unit which serve parts of the Condominium other than the Unit within which they are located; and any other amenities constructed or to be constructed on the land; and all other parts of the Condominium, including all walks, all party walls, floor joists, sub floors, roof and ceiling rafters, not part of any Unit, and wall studs necessary to maintain the integrity of the structure of the condominium buildings; personal property acquired by the Association used normally in common with other Unit Owners or necessary or convenient to the Condominium's existence or maintenance; and any easements serving or the property.
- b. **Limited Common Area.** The Limited Common Areas for the Condominium are:
 - (i) the in-ground swimming pool, pool decking, and adjacent property located within

ten (10) feet of the edge of the pool and is reserved exclusively for the use by Unit 1 and is not deemed Common Area. The use of said pool and adjoining areas noted above are reserved exclusively for the use of the owner(s) of Unit 1;

(ii) the paved driveway area is Limited Common Area reserved exclusively for the use by Unit 1.

(iii) the deck located off of the living room of Unit 2 is Limited Common Area reserved for the exclusive use of Unit 2;

(iv) the small patio off of the rear bedroom of Unit 1 is Limited Common Area reserved for the exclusive use of Unit 1; and;

(v) the patio off the great room of Unit 1 is Limited Common Area reserved for the exclusive use of Unit 1.

7. **ALLOCATION OF INTEREST IN COMMON AREA.** The Common Areas shall be owned by the Unit Owners as tenants in common and shall remain undivided and except as otherwise limited and restricted herein, each Unit Owner shall have the right to use the Common Areas for all purposes incident to the use and occupancy of the Unit as a place of residence in accordance with the purposes for which they are intended, as hereinafter specified, which right shall be appurtenant to and run with the Unit. The shed located in the back yard is considered Common Area and each unit shall have a fifty percent (50%) interest in said shed. The basement shall be considered Common Area and will be used by both Units. The unit owners may decide if certain areas will be separated out for individual use and any other decisions regarding use of basement space will be decided by the unit owners.

With the exception of the shed (see above), each Unit shall be entitled to an undivided interest in the Common Area. Each Unit Owner's Interest shall be determined by the percentage of the square footage of a Unit Owner's Unit as compared to the total square footage of all the Units. The allocation of Common Area Expenses including maintenance, insurance and any other associated expense shall be allocated based on each Unit Owner's percentage of interest and shall be determined based on the figures set forth in the Condominium Floor Plans, as may be amended from time to time. See Schedule A attached hereto.

8. **STATEMENT OF PURPOSES AND RESTRICTIONS FOR THE USE OF UNITS.**

a. **Purposes:** The Declarant, pursuant to the New Hampshire Revised Statutes Annotated, Chapter 356-B, hereby established by this Declaration a plan for the individual ownership of real property known as THE CONDOMINIUMS AT 23 KANE, land and buildings consisting of the area or space contained in each of the Units in said structure as shown on the plans and drawings recorded with the Declaration, and the co-ownership by the individual and separate owners of the Units, as tenants in common, of the remaining real property, which is defined and referred to as the Common Area.

The Condominium and each of the Units are intended and restricted for the use as specified in this Declaration, By-Laws, Site Plan and Floor Plan as amended and recorded in the Rockingham County Registry of Deeds.

b. **Use and Restrictions:** Any of the below mentioned paragraphs under this Section on Use and Restrictions, which restricts all Unit Owners except as otherwise expressly stated, shall also by implication be read to restrict the Unit Owners' heirs and assigns as well as Occupant's guests, invitees, agents or employees. The Units and the Common Areas shall be occupied and used as follows:

- (1) Except as provided herein, each Unit shall be occupied for residential purposes and shall be so occupied and used in conformance with the Condominium Act, all other State laws and local ordinances, and the provisions of this Declaration and the By-

Laws. No commercial business shall be permitted within the Property without written consent of the Association, and as such consent shall only be considered for home businesses that will: (a) not use water at a consumption rate greater than that of a residential unit; (b) not generate sewerage at a rate greater than a residential use; (c) not create a noise level greater than a typical residential use; and (d) maintain business hours not in excess of 9:00 a.m. to 5:00 p.m.

- (2) No Unit owner or agent of any such Owner, shall obstruct or commit any waste in or otherwise cause any damage beyond reasonable wear and tear to any Unit or Common Area. Nothing shall be stored in Common Areas without prior written consent of the Association. Nothing shall be removed from a Common Area without prior written consent of the Association. Nothing shall be altered or constructed in or removed from the Common Areas except upon the prior written consent of the Association.
- (3) No activity shall be done or maintained in any Unit or upon any Common Area which will increase the rate of insurance on any Unit or the Common Area, or result in the cancellation of insurance thereon, unless such activity is first approved in writing by the Unit Owners Association and said Unit Owner agrees to pay in advance for the increase in the rate of the insurance on any Unit or Common Area.
- (4) Nothing shall be done or kept in any Unit or in the Common Area which interferes with the peaceful possession and property use of any other Unit or which would require the alienation of or addition to any of the Common Area in order for the area to be in compliance with any applicable laws or regulations or which would otherwise be in violation of the law.
- (5) Nothing shall be done in any Unit or in, on, or to, the Common Area which may impair the structural integrity of the Unit or the Property, or which would structurally change the Unit or the building or improvements on the Property except as provided in the Declaration or the By-Laws. Consistent with the foregoing, Unit Owners may modify the internal walls and configuration as provided for in RSA 356-B:30.
- (6) The Common Areas and other facilities shall be kept free and clear of rubbish, debris, or other unsightly material. No noxious, dangerous or offensive activity shall be carried on in any Unit or in any of the Common Areas, nor shall anything be done therein which may become an annoyance or nuisance to others.
- (7) Each Owner shall promptly and fully comply with any and all applicable laws, rules, ordinances, statutes, regulations, or other requirements of any governmental agency or authority with respect to the occupancy and use of his Unit, and with the provisions hereof, By-Laws, and rules and regulations promulgated hereunder.
- (8) None of the rights and obligations of the Owners created herein, or by the deeds conveying the Units, shall be altered in any way by encroachments due to settlement or shifting of structures or of any other cause. There shall be valid easements for the maintenance of said encroachments so long as they shall exist; provided however, that in no event shall a valid easement for encroachments be created in favor of an Owner or Owners if said encroachments occur due to the willful conduct of said Owner or Owners.

- (9) Each Unit Owner shall furnish written notice to the Secretary of the Association, or to the Declarant prior to the formation of the Association, of the name and address of each Unit Owner's mortgagee and of any change in the name and address of such mortgagee.
- (10) Each Unit Owner shall hereby furnish written notice to the Secretary of the Association, or to the Declarant prior to the formation of the Association of the name and address of each Unit Owners' tenant. No Unit Owner shall enter into a lease or rent his Unit with duration of less than nine (9) months time except upon the prior written consent of the Association. Said consent shall not be unreasonably withheld.

9. EASEMENTS.

- a. Declarants' Easement for Construction of Condominium Project.
The Declarant, and persons it may select, shall have the right of ingress and egress over, upon, and across the Common Area; the right to grant or accept any easement as may be necessary for the development of the Condominium, and the right to store materials on the Condominium site, and make other use thereof as may be reasonably necessary incident to construction, development, and sales of the Units and operation and overall development of **THE CONDOMINIUMS AT 23 KANE.**
- b. Easement of Access for Repair, Maintenance and Emergencies.
Some of the Common Area utility system or portion of utility system, is or may be located within the Units or may be conveniently accessible only through the Units. The Owners of other Units shall have the irrevocable right, pursuant to RSA 356-B:41 of the Act, to be exercised by the Declarant, or by the Association or their agents, to have access to each Unit and to all Common Areas from time to time during such reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Area or at any time for making emergency repairs to prevent damage to the Common Area or to any Unit or Units. The Declarant shall also have such right independent of any agency relationship.
- Damage to the interior of any part of a Unit or Units resulting from the maintenance, repair, emergency repair or replacement of any of the Common Areas, or as a result of emergency repairs within another Unit at the request of the Association or of any Unit Owner, shall be an expense of all of the Owners. Such damage shall be repaired and the property shall be restored substantially to the same condition as existed prior to damage.
- c. Owner's Right to Ingress, Egress, and Support.
If needed, each Owner shall have the right to ingress and egress over, upon and across the Common Area necessary for access to his Unit, and to any area designated for use in connection with his Unit, and shall have the right to the horizontal and lateral support of his Unit, and such rights shall be appurtenant to and pass with title to each Unit.
- d. Association's Rights to Use of Common Area.
The Declarant and the Association shall have a non-exclusive easement to make such use of the Common Area as may be necessary or permitted pursuant to this Declaration, including the right to construct and maintain in the Common Area, where appropriate, maintenance facilities for use by the Association.

- e. Utility Easement.
The Declarant, and persons it may select, and the Association after said Unit Owners Association has been established by the Declarant, shall have the right to negotiate, grant, and accept any easement as may be needed for the utilities, whether said easement is intended to benefit or burden the Property of **THE CONDOMINIUMS AT 23 KANE**.
- f. Specific Easements The Condominium shall be subject to specific easements, if any, granted to third parties as shown on the Condominium Site Plan to be recorded in the Rockingham County Registry of Deeds or other instruments recorded in the Rockingham County Registry of Deeds which the Declarant or the Association deems to be in the best interests of its members.
- g. Parking. Specific parking spaces designated as follows:

Unit 1: Three spaces located in paved driveway section ;
Unit 2: Two spaces located in gravel area in front of residence.
- h. Declarant's Rights. The Declarant and any other person that it may select shall, until transfer of all Units owned by Declarant, have the right of ingress and egress, over, upon and across the Common Area and the right to store materials thereon and to make such other use thereof as may be reasonably necessary for completion and rental or sale of any Unit.
- i. Additional Easement. The Association may hereafter grant easements for utility or any other purposes for the benefit of the Condominium Property, and for each Unit Owner(s) by its acceptance of a deed to any Unit agrees from time to time to execute, acknowledge, deliver and record for and in the name of such Unit Owner(s), such instruments as may be necessary to effectuate the foregoing.
- j. Easements to Run with Land. Each and every easement and right reserved, granted or described herein are easements appurtenant, running with land, in perpetuity and at all times shall inure to the benefit of the Association and each person for whose benefit such easements have been created, their successors and assigns. Each Unit Owner and his respective mortgagee, by acceptance of a deed of title to the property or mortgage deed, hereby irrevocable appoints the Association, his or her Attorney in Fact, which appointment shall be deemed to be coupled with an interest and authorizes said Attorney to execute such easements or other instruments as may be necessary to effectuate the provisions of this section.
- k. Easement for Encroachments
If any portion of the Common Area shall hereafter encroach upon any Unit, or if any Unit shall hereafter encroach upon another Unit or upon any portion of the Common Area as a result of (a) settling, or (b) alteration or repair to the Common Area made by or with the consent of the Association, or (c) as a result of repair or restoration of any Unit after damage by fire or other casualty, or (d) as a result of condemnation or eminent domain proceedings, then a valid easement shall automatically exist for such encroachment and for the maintenance of the same so long as the Unit stands, pursuant to RSA 356-B:22. The term "Unit" includes the Unit as it may be altered, repaired or restored.

10. ASSOCIATION.

- a. The operation of a Condominium shall be by an unincorporated or incorporated association, and the association shall, at any annual meeting, vote as to which type of organization they prefer.

- b. The Association shall have all of the powers and duties as set forth in the Condominium Act, except as limited by this Declaration and By-laws, and all of the powers and duties reasonably necessary to operate the Condominium as set forth in this Declaration and By-Laws and as they may be amended from time to time.
- c. Membership in the Association:
- (1) Qualification: The members of the Association shall consist of all of the record Owners of the Units.
 - (2) Change of Membership: Change of Membership in the Association shall be established by recording in the Registry of Deeds for Rockingham County, State of New Hampshire, a deed establishing record title to a Unit in the Condominium. The Buyer shall deliver to the Board of Directors of the Association a photostatic copy of the deed showing the book, page and time of the recording of the deed. In the event Buyer fails to deliver such copy within thirty (30) days after such purchase, the Board of Directors may obtain such copy and assess the Buyer a fee of Twenty-five Dollars (\$25.00) therefor. The Board of Directors shall keep such photostatic copy on file as evidence of the Grantee's membership in the Association for all purposes, rights and obligations as set forth in this Declaration and By-laws. The owner designated by such instrument shall thereby become a member of the Association. At such time the membership of the prior owner shall be thereby terminated,
 - (3) Voting Rights: Members of the Association shall be entitled to cast votes as set forth in the By-laws. The Declarant shall be entitled to vote with respect to any unit owned by the Declarant.
 - (4) Restraint Upon Assignment of Shares in the Association: The Share of member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to the unit.
- d. Officers: The affairs of the Association shall be conducted by officers, who shall be designated in the manner provided in the By-laws.
- e. Indemnification: Every director and every officer of the Association shall be indemnified by the Association against all expenses and liabilities including counsel fees, reasonably incurred or imposed upon him in connection with any proceeding to which he may be a party or in which he may become involved, by reason of his being or having been a director or officer of the Association, in accordance with the By-laws.
- f. Limitation upon Liability of the Association: Notwithstanding the duty of the Association to maintain and repair parts of the condominium property, the Association shall not be liable for injury or damage, other than the cost of maintenance and repair, caused by any latent condition of the property to be maintained and repaired by the Association.
- g. Property and Trust: All funds and title to all properties acquired by the Association and the proceeds thereof, shall be held in trust for the membership in accordance with the provisions of this Declaration of Condominium and the By-Laws.

11. FHLMC AND FNMA COMPLIANCE.

Notwithstanding any provisions of this Declaration or the By-Laws, the following provisions shall apply and govern to facilitate and quality mortgages of the Units for sale to the Federal Home Loan Mortgage Corporation (FHLMC) and the Federal National Mortgage Association (FNMA) and Residential Funding Corporation (RFC).

- a. A first mortgage of a Unit in the Condominium shall, at the request of such mortgagee, be entitled to notification from the officers of the Association of any default by the mortgagor of such Unit in the performance of such mortgagors' obligations under this Declaration and/or the By-Laws which is not cured within sixty (60) days.
- b. Any first mortgagee of a Unit who obtains title to the Unit pursuant to the remedies provided in the mortgage, or through foreclosure of the mortgage, or through deed (or assignment) in lieu of foreclosure, shall not be liable for, and shall take the Unit free of any claims for unpaid Common Expenses and assessments and charges against such Unit which accrue prior to the acquisition of title to such Unit by mortgagee.
- c. Prior written approval of all first mortgagees of Units in the Condominium will be required for any material amendment to the Declaration, including, but not limited to, any amendment which would change the percentage interests of the Unit Owners in the Condominium.
- d. Unless one hundred percent (100%) of the holders of first mortgages have given their approval, the Unit Owners shall not:
 - (i) by act or omission, seek to abandon or terminate the Condominium except as a result of substantial destruction or condemnation;
 - (ii) change the percentage interests or obligations of any Unit for purposes of (a) determining the prorata share of ownership of each Unit in the Common Area, (b) levying assessments or charges or allocating distributions or hazard insurance proceeds or condemnation awards, or (c) otherwise;
 - (iii) partition or subdivide any Unit;
 - (iv) by act or omission, seek to abandon, partition, subdivide, encumber, sell, or transfer, the Common Areas. The granting of easements for public utilities or for their purposes consistent with the intended use of the Common Areas by the Condominium shall not be deemed a transfer;
 - (v) use hazard insurance proceeds for losses to any Condominium Property (whether to units or to Common Areas and Facilities) for other than the repair, replacement, or reconstruction of such Condominium Property, except as provided in this Declaration, the By-Laws, or by statute in case of substantial loss to the units and/or Common Areas and of the Condominium;
- e. No provision of this Declaration, the By-Laws or Rules shall be construed to grant any Unit Owner or any other party priority over any rights of first mortgagee of the Condominium Units pursuant to their mortgages in the case of distribution to Unit Owners of insurance proceeds or condemnation awards for losses to, or for a taking of,

Units and/or the Common Area or any portions thereof. A distribution of insurance proceeds to the Unit Owners Association shall not be deemed to constitute a distribution to Unit Owners.

- f. In the event of substantial damage to or destruction of any Unit or any part of the Common Areas, or if any Unit or portion thereof, or the Common Areas or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, any institutional first mortgagee of a Unit will be entitled to timely written notice of any such damage or destruction and no provision of said Declaration or By-Laws shall be deemed or construed to give a Unit Owner, or any other party, priority over any rights of losses to or a taking of Units and or Common Areas.
- g. An adequate reserve fund for maintenance, repairs, and replacement of those portions of the Common Areas which must be replaced on a periodic basis shall be established and shall be funded by regular monthly payments rather than by special assessments.
- h. A first mortgagee of a Unit shall, at the request of such mortgagee, be entitled to written notice by the Association following:
 - (i) any default by the mortgagor of such Unit in the performance of such mortgagor's obligations under this Declaration or By-Laws which is not cured within sixty (60) days;
 - (ii) any condemnation or casualty loss that effects a material portion of the Condominium or the Unit securing its mortgage;
 - (iii) a lapse cancellation or material modification or any insurance policy or fidelity bond maintained by the Association; or
 - (iv) any proposed action that required the consent of a specified percent of eligible mortgage holders.
- i. Each Unit Owner and any first mortgagee of a Unit in the Condominium will, upon written request, be entitled to inspect the books and records of the Condominium Association during normal business hours.
- j. The approvals required of the mortgagees under Section 11 shall not be unreasonable.

12. MECHANICS LIEN.

Each Unit Owner shall indemnify and hold harmless the remaining Owner(s) from and against liability or loss arising from the claims of any lien against the Condominium, or any part thereof, for labor performed or for materials, furnished in connection with work on that Owner's Unit for which the Association is not responsible. At the written request of any Owner, the Association shall enforce such indemnity by collection from the Owner(s) of the Unit or Owners of an interest in any Common Area on which the labor was performed and materials furnished, the amount necessary to discharge any such lien, including all costs and attorneys' fees incidental thereto, and obtaining a discharge of the client. Such collection shall be made by a special assessment.

13. CONDEMNATION.

Allocation of proceeds from any of eminent domain action or disposition of any property affected by such proceedings, shall be governed in accordance with the provisions of RSA 356-B:6.

14. WARRANTY AGAINST STRUCTURAL DEFECTS.

Notwithstanding any other provisions of this Declaration and By-Laws to the contrary, the Declarant, pursuant to RSA 356-B:41 (II), hereby warrants and guarantees against structural defects, each of the Units for one (1) year from the date each is conveyed, and all of the Common Areas for one (1) year from the date the first Unit is conveyed.

DECLARANT (SELLER) MAKES NO WARRANTIES, GUARANTEES OR REPRESENTATIONS OF ANY KIND OTHER THAN IS REQUIRED BY NEW HAMPSHIRE REVISED STATUTES ANNOTATED 356-B:41 (II) AND PURSUANT TO SAID SECTION, HEREBY WARRANTS AND GUARANTEES (a) INDIVIDUAL UNITS AND THE LIMITED COMMON AREAS AGAINST STRUCTURAL DEFECTS FOR A PERIOD OF ONE (1) YEAR FROM THE DATE THE UNIT IS CONVEYED TO A UNIT BUYER AND (b) ALL OF THE COMMON AREAS FOR ONE (1) YEAR AFTER THE EARLIER OF (i) THE COMPLETION OF THE COMMON AREAS OR (ii) THE DATE ON WHICH THE FIRST UNIT IN THE CONDOMINIUMS AT 23 KANE IS CONVEYED TO A BUYER IN GOOD FAITH FOR VALUE. STRUCTURAL DEFECTS ARE DEFINED AS THOSE DEFECTS IN COMPONENTS CONSTITUTING ANY UNIT OR COMMON AREA WHICH REDUCE THE STABILITY OR SAFETY OF THE STRUCTURE BELOW ACCEPTED STANDARDS OR WHICH RESTRICT THE NORMAL INTENDED USE OF ALL OR PART OF THE STRUCTURE AND WHICH REQUIRE REPAIR, RENOVATION, RESTORATION, OR REPLACEMENT. NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED TO MAKE SELLER RESPONSIBLE FOR ANY DEFECTS WHICH SHALL BE THE RESULT OF NEGLIGENCE OR FAILURE TO MAINTAIN ANY UNIT OR THE COMMON OR LIMITED COMMON AREAS.

15. AMENDMENT TO THE DECLARATION OR BY-LAWS.

This Declaration and the By-Laws may only be amended as provided in NH RSA 356-B:34.

16. TERMINATION OF THE CONDOMINIUM.

The Condominium shall be terminated only in accordance with the provisions of RSA 356-B:34.

17. DECLARANT'S RIGHTS.

Until such time as the Declarant shall have turned over control of the Condominium Association, all those powers and right inuring to the benefit of the Unit Owners Association under the provisions of this Declaration and By-Laws, shall inure to the benefit of the Declarant or its agents, successors or assigns. The intent of this section is to vest in the Declarant, its agents, successors or assigns all of those rights and powers granted to the Association upon recording of the Declaration and By-Laws for **THE CONDOMINIUMS AT 23 KANE**.

So long as the Declarant is the owner of one or more Units, the individual Units Owners and the Association SHALL NOT interfere with the Declarant's construction, display, sale, lease, or other disposition of such Unit or Units.

18. OTHER MATTERS.

- a. Waiver. The failure of an Owner(s), or the Association representative, to insist, in any instance, upon the strict performance of any of the terms, covenants, conditions, or restrictions in this Declaration or in the By-Laws and Rules and Regulations, shall not be construed as a waiver of relinquishment for the future, and no act of the Owner(s) or the Association, to include acceptance of any assessment with knowledge of the breach

shall be deemed such a waiver unless expressed in writing and signed by the Owner(s) or the Association Representative.

- b. Notice. All notices required or permitted hereunder, and under the By-Laws and Condominium Act, to the Association and its agents shall be in writing and shall be sent by registered mail or certified mail, return receipt requested to the Association or its delegates at the address of the Condominium Property or to such other address as the Association may designate from time to time by notice in writing to all Unit Owners. Notices to the Declarant shall be sent by certified mail, return receipt requested, to: 23 Kane LLC, c/o Shane Carter, P.O. Box 185, Deerfield, NH 03037.

Notices to any Unit Owner shall be given by hand delivery or sent by registered mail or certified mail to such Unit Owner's address or to such other address as may be designated from time to time, in writing to the Association. All notice shall be presumed to have been given and, therefore, effective not later than forty-eight (48) hours after the date that such notice is deposited in the U.S. Mail. Any notice required or permitted to be given to any Occupant shall effectively be given if hand-delivered to such Occupant or placed in his mailbox or placed under the door of such Occupant's Unit.

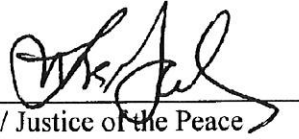
- c. Non-Liability. Subject to the provisions of RSA 356-B:41, except as otherwise provided in the Act, neither Declarant nor its representatives, successors or assigns shall be liable for any claim whatsoever arising out of or by reason of any actions performed pursuant to any authorities granted or delegated to it by or pursuant to this Declaration or the By-Laws in Declarant's (or its representative's capacity as owner), manager or seller of the Condominium Property whether or not such claims, (1) shall be asserted by any Unit Owner, Occupant, the Association, or by any person or entity claiming through any of them; (2) shall be on account of injury to persons or damage to or loss of property wherever located and however caused; or (3) shall arise ex contract or (except in the case of gross negligence) *ex delictu*. Without limiting the generality of the foregoing, the preceding enumeration includes all claims for, or arising by reason of, the Condominium Property or any part thereof being or becoming out of repair or containing any patent or latent defect, or by reason of any act or neglect of any Unit Owner, Occupant, the Association, and their respective agents, employees, guests, and invitees, or by reason of any neighboring property or personal property located on or about the Condominium Property or by reason of the failure to function or disrepair of any utility services.
- d. Invalidity. The invalidity of any part of this Declaration shall not impair or affect in any manner the validity, enforceability, or effect of the balance of the Declaration.
- e. Resolution of Disputes. In the event of a dispute arising with regard to any of the provisions of this Declaration or the By-Laws by and between any Owner or Mortgagees, any part involved may cause the same to be referred to arbitration by requesting arbitration as set forth below, and such arbitration shall be governed by the provisions of RSA Chapter 542. The words "Owners" or "any Owners" shall not be construed to refer to the Declarant. This section on Resolution of Disputes does not apply to disputes involving the Declarant.

In the event of arbitration, the party requesting the arbitration will give immediate notice thereof to all other parties, including the Association and all other Owners and

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM SS:

DATE: June 4, 2010

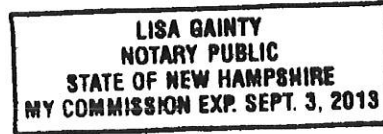
Personally appeared the above-named **Shane A. Carter**, known to me or satisfactorily proven to be the person who subscribed to the within instrument and acknowledged that they executed the same for the purposes herein contained and as their free act and deed.



Notary Public / Justice of the Peace



Seal:



The Condominiums at 23 Kane**SCHEDULE A
PERCENTAGE INTEREST**

As set forth in Section 7 of this Declaration, each Unit shall be entitled to an undivided interest in the areas identified as Common Area, and Unit Owner's percentage interest shall be determined by the percentage of the square footage of a Unit Owner's Unit as compared to the total square footage of all the Units. The initial Percentage Interests, as set forth on the Condominium Floor Plan are as follows:

<u>UNIT #:</u>	<u>UNIT AREA:</u>	<u>PERCENTAGE INTEREST:</u>
Unit #1	1,736 sq ft.	66.87 %
<u>Unit #2</u>	<u>860 sq ft</u>	<u>33.13%</u>
TOTAL	2,596 sq ft.	100.00 %

The Condominiums at 23 Kane

EXHIBIT A

A certain tract or parcel of land with the buildings thereon, situate in Portsmouth, County of Rockingham and State of New Hampshire, further bounded and described as follows:

Beginning at a point on the Northerly side of 23 Kane Street, f/k/a 29 Myrtle Avenue, at the Southwesterly corner of land now or formerly of James M. and Florence M. Butler, thence S $75^{\circ} 50'$ W 109.3 feet along said Myrtle Avenue to a point; thence turning and running N $14^{\circ} 17'$ W 85.00 feet to a point along land now or formerly of Julia V. Kane; thence turning and running in a generally northwesterly direction 90.00 feet more or less along land of said Kane and along land now or formerly of Lawrence V. and Elizabeth Regan to a point at land of the New Hampshire and Maine Bridge Authority; thence turning and running in a Southeasterly direction 105 feet more or less along land of said New Hampshire and Maine Bridge Authority to a point; thence turning and running S $18^{\circ} 49'$ E 165 feet more or less along land of said Butler to the point of beginning.

Meaning and intending to describe as one lot [of] the two lots as shown on "Plan of Lots, Portsmouth, N.H., for M.D. Enterprises, Inc.," dated January 1971, by John W. Durgin, Civil Engineers, and recorded in Rockingham County Registry of Deeds at Book 2058, Page 387.

**BY-LAWS of
THE CONDOMINIUMS AT 23 KANE**

**ARTICLE I
Purpose and Applicability**

Section 1. Purpose. There shall be established, pursuant to RSA 356-B:35, a Unit Owners' Association (hereinafter "Association") to administer the Condominium Property in accordance with and subject to the provisions of the New Hampshire Condominium Act, the Declaration and these By-Laws, and any of the same as may be lawfully amended from time to time.

These By-Laws shall be utilized by the Association in conjunction with the Declaration for the daily governance of the Condominium.

Section 2. Applicability. The provisions of these By-Laws are applicable to the Property, and the use, occupancy, sale, lease or other transfer thereof. All present and future Owners, tenants, future tenants, their guests, licensees, servants, agents, employees and any other person who shall use the facilities of the Condominium, shall be subject to these By-Laws and to the Rules of the Condominium. The acceptance of a deed of conveyance or the entering into a lease or the act of occupancy of a Unit or any other portion of the Condominium shall constitute an acknowledgment that such Owner, tenant or occupant has accepted and ratified these By-Laws, the provisions of the Declaration, and the Rules and will comply with them.

Section 3. Office. The office of the Condominium and of the Association shall be located at the Condominium or at such other place as may be designated from time to time by the Association.

**ARTICLE II
The Association**

Section 1. The Name of this Association will be **THE CONDOMINIUMS AT 23 KANE**.

Section 2. Membership. Each Unit Owner, upon acquisition of an ownership interest in a Unit, shall automatically become a member of the Association, and shall remain a member thereof until such time as the ownership ceases for any reason. Ownership shall be vested at the time of the transfer of title to a Unit. Membership may be held in the name of more than one Owner. Such membership shall terminate upon the sale or other disposition of such Unit Owner of the Unit, at which time the new Owner of the Unit shall automatically become a member of the Association.

In addition to any other rights the Declarant may have pursuant to the Declaration, the Declarant shall be a member of the Association with respect to all Units owned by the Declarant and shall have the right, without limitation to exercise the voting power pertinent to such Units and the power to vote the same.

Section 3. Duties of the Association:

a. Management. The administration, management, maintenance, repair, alterations and improvements of the Condominium Property, that are not the responsibility of Unit Owner, shall be the responsibility of the Association through its Officers; provided, however, that the Association may delegate all or any portion of Its authority to discharge such responsibility as hereinafter provided.

b. General Duties. The Association, through its Officers, shall do any and all other things necessary and/or appropriate to carry out the duties and obligations reasonably intended to be required of it under these By-Laws and the Condominium Act.

c. Delegation of Authority. The Association, through its Officers, or its designated representative shall be responsible for representing the Unit Owners in negotiating any agreements, contracts, settlements, and similar tasks pursuant to managing the Condominium.

The Declarant prior to the formation of the Association and the Association thereafter may, but shall not be required to, delegate all or any portion of its authority and responsibilities to a Manager or Managing Agent and shall have authority to enter into an appropriate contract or agreement for that purpose. Any such contract or agreement shall provide a right of termination with or without cause by the Association upon sixty (60) days written notice.

d. Control by Declarant Pursuant to RSA 356-B:36. The Declarant or some other person or persons to be selected by the Declarant shall have the right to exercise powers and responsibilities otherwise assigned by the Condominium documents and by Chapter 356-B to the Unit Owners' Association, or its Officers for a period not to exceed two (2) years from the date of the transfer of title to the first Unit. Within ninety (90) days of that date, the Declarant shall transfer control to the Unit Owners' Association.

ARTICLE III Meeting of the Unit Owners Association

Section 1. Place of Meetings. Meetings of the Unit Owners shall be held at the Condominium or such other suitable place convenient to the Unit Owners as may be designated by the Officers of the Association.

Section 2. Annual Meeting. The first annual meeting of the Association shall be called by the Declarant within two (2) years from the date of transfer of title to the first Unit. Notice of such meeting shall be given in accordance with the provisions of Section 4 of this Article III. Thereafter, the annual meeting of the Association shall be held on the same date of each succeeding year or on such date within a thirty (30) day period prior to or subsequent to such date (so long as such meeting is held at least once each calendar year), as may be designated by the presiding officer of the Association and reflected in said notice. At such annual meetings the Officers of the Association shall be elected/appointed by ballot of the Unit Owner Association in accordance with Article V, Section 1 of these By-Laws. The foregoing notwithstanding, until the formation of the Association, the Declarant shall be entitled to appoint the Officers of the Association, or otherwise control the Condominium as specified in RSA 356-B:36.

At or prior to the annual meeting, the Officers or their delegates shall furnish to the Unit Owners:

(i) a budget for the coming fiscal year that shall itemize the estimated Common Expenses of the coming fiscal year with the estimated allocation thereof to each Unit Owner; and

(ii) a statement of Common Expenses itemizing receipts and disbursements for the previous and current fiscal year together with the allocation thereof to each Unit Owner.

Within fifteen (15) days after the annual meeting, the budget statement presented at said meeting shall be delivered to the Unit Owners who are not present at the annual meeting. The Association may transact other such business as may properly come before them at such meeting.

Section 3. Special Meetings. Special meetings of the Association may be held at any reasonable time as requested by the President pursuant to a resolution of the Association, or upon petition signed and presented to the Secretary by Owners having not less than one half (50%) of the votes appertaining to the Units. A minimum of seven (7) days notice shall be provided to all members of the Association prior to this special meeting. Notice shall be given by hand carrying to a Unit Owner's premises or by U.S. Mail, return

receipt requested, to all Unit Owners on record at the address of their respective Units or to such other addresses as any of them have designated to the Secretary. The notice shall set forth the time, place and purpose of the special meeting. If such notice is not given within ten (10) days after delivery of a written request to call the meeting, the Owner(s) requesting the meeting may fix the time of the meeting and give notice to all other Owners. No business shall be transacted at a special meeting except as stated in the notice. Special meetings shall be held on the premises of the Condominium or at such other place as designated in the Notice of the meeting.

Section 4. Notice of Regular Meetings. Not less than twenty-one (21) days in advance of the annual meeting or any regular scheduled meeting of the members of the Association, written notice stating the time, place and purpose(s) of such meetings shall be given by or at the direction of the Secretary or by any other person or persons required or permitted by these By-Laws to give such notice. Notice shall be given in hand carrying the notice to a Unit Owner's premises or by U.S. Mail return receipt requested, to all Unit Owners of record at the address of their respective Units and to such other addresses as any of them may have designated to the Secretary. Notice of the time, place and purpose(s) of any meeting of members of the Association, may be waived in writing by any members of the Association, either before or after the holding of such meeting, which writing shall be filed with or entered upon the records of the meeting. The attendance of any member of the Association at such meeting without protesting, either prior to or at the commencement of the meeting, the lack of proper notice, shall be a waiver by him of notice of such meeting.

Section 5. Adjourned Meetings. If any meeting of Owners cannot be organized due to the failure to obtain a quorum, the Owners who are present, either in person or by proxy, may adjourn the meeting to a time not less than forty-eight hours from the time the original meeting was called. If any meeting is adjourned, notice of such adjournment need not be given if the time and place to which such meeting is adjourned are fixed, announced and posted at such meeting.

Section 6. Order of Business. The order of business at all regular or annual meetings of the Association may be as follows: (a) roll call; (b) recitation of proof of notice of meeting or waiver of notice and certification of proxies; (c) reading of minutes of preceding meeting; (d) reports of Officers; (e) reports of committees; (f) election of Officers, if applicable; (g) unfinished business; and (h) new business, any of which may be waived.

The business at each special meeting shall be that business specified in the notice thereof.

Section 7. Actions without a meeting. All actions, except removal of Officers, which may be taken at a meeting of the Association, may be taken without a meeting, so long as all Owners entitled to vote receive written notice of said action by certified mail, return receipt requested, or by in hand delivery, at least seven (7) days prior to the undertaking. Thereafter, the Secretary shall notify all Owners whether said action without a meeting has been approved or denied, by regular U.S. Mail. The Secretary or his designee shall maintain a permanent record of all actions taken without a meeting. Actual notice of said action by a Unit Owner prior to said action being approved, shall be deemed a waiver by him of the requirement that he receive notice of said action without a meeting.

Section 8. Conduct of Meeting. The President or his designee, shall preside over all meetings of the Association and the Secretary shall keep the minutes of the meeting and record in a record book all resolutions adopted by the meeting as well as a record of all transactions occurring there at.

ARTICLE IV
Unit Owners' Association Voting

Section 1. Allocation of Votes. Each Unit shall be entitled to a fifty percent (50%) vote. Each unit shall be entitled to cast its vote at any duly called meeting or for any action taken without a meeting in accordance with the By-Laws, in deciding any issues that effect the Condominium. The unit's vote may be split among the various Owners of the unit. The Ownership of the Unit may be conclusively established by the appearance of the Owner's(s') name on the deed to the Unit, but need not be so established if a different Ownership is indicated in writing and signed by all the individuals whose names appear on the deed. If two or more persons, whether fiduciaries, tenants in common, or otherwise own undivided interest in a Unit, and if only one of those persons is present at a meeting, that person shall be entitled to cast the vote appertaining to that Unit unless the other Unit Owner have reason to believe that the absentee Owner would vote differently. If more than one such person is present, the vote appertaining to that Unit shall be divided and cast in proportion to the equivalent of his proportional interest in the Unit. Should only one vote of the several Owners of a given Unit who are present at a meeting cast the vote for that Unit, consent of the other Owners shall be conclusively presumed unless protest is made forthwith by ant of the others to the person presiding over the meeting in accordance with RSA 356-B: III.

No votes in the Association shall be deemed to appertain to any Condominium Unit during such time as the Unit Owner thereof is the Association.

Section 2. 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 Association if, and only if, he shall have fully paid all assessments made or levied and due against him and his Condominium Unit by the Association as hereinafter provided, together with all interests, costs, attorneys' fees, penalties and other expenses, if any, properly chargeable to him and against his Condominium Unit at least three (3) days prior to the date fixed for such annual or special meeting.

Section 3. Proxies. The votes appertaining to any Unit may be cast pursuant to a written proxy or proxies duly executed by or on behalf of the Unit Owner, or, in cases where the Unit Owner is more than one (1) person, by or on behalf of all such persons. No such proxy shall be revocable except by actual notice to the person presiding over the meeting, by the Unit Owner or by any of such persons, that it be revoked. Revocation shall not affect any vote or act previously taken or authorized.

Section 4. Quorum. A quorum exists if persons entitled to cast fifty-one percent (51 %) of the votes of the Association are present either in person or by proxy at the beginning of such meeting.

Section 5. Transaction of Business. Except as where a greater number is required by the Condominium Act, the Declaration, or these By-Laws, a majority of the votes of the Unit Owners, in good standing and entitled to vote, voting in person or by proxy, is required to adopt decisions at any meeting of the Association, except for the election/appointment of Officers which may be accomplished by the agreement of the Unit Owners or by a vote of at least fifty-one percent (51%) of the votes. All voting undertaken in accordance with this Article V shall be presumed to be valid until proven otherwise. The foregoing notwithstanding, the Declarant or his nominee shall be allocated and entitled to cast a deciding number of votes on any Unit owned by the Declarant.

ARTICLE V
Officers

Section 1. Designation. The principal Officers of the Association shall be President, Secretary, and Treasurer, all of whom shall be elected/appointed by the members of the Association and shall be

Unit Owners, as designated in RSA 356-B:40. The Declarant prior to turning over control of the Condominium to the Association at the first annual meeting, and the Association thereafter, may elect/appoint all Officers. Due to the number of units at The Condominiums at 23 Kane, one unit owner may serve simultaneously as the Secretary and the Treasurer to ensure coverage of all necessary positions.

Section 2. Election of Officers. The Officers shall be elected/appointed annually by the Unit Owners at the annual meeting of the Association and shall hold office at the pleasure of the Unit Owners.

Section 3. Removal of Officers. The Officers shall hold office until their respective successors are chosen and accept such office. Any Officer elected or appointed by the Association may be removed at any time by the affirmative vote of a plurality of the voters of the Association, and his successor may be elected/appointed at any meeting of the Association.

Section 4. President. The President shall be the chief executive officer of the Association and shall be an ex officio member of all committees. He, or his designee, shall preside at meetings of the Association. The President shall have general and active management of the business of the Condominium and shall see that all orders and resolutions of the Association are carried into effect. The President shall have all the general powers and duties that are usually vested in the office of President of a stock corporation organized under the Business Corporation Law of the State of New Hampshire.

Section 5. Secretary. The Secretary shall attend all meetings of the Association, shall keep and record the minutes of all proceedings in the record book of the Association, and shall, in general perform all duties incident to the office of Secretary of a stock corporation organized under the Business Corporation Law of the State of New Hampshire. He shall keep the record book current and in his custody. He shall give, or cause to be given, notice of all meetings of the Association, and meetings of the committees and shall perform such other duties as may be prescribed by the President. The Secretary shall compile and keep current at the principal office of the Association, (i) a complete list of the Owners and their last known post office addresses, (ii) a complete list of names and addresses of Unit mortgagees, together with conformed copies of mortgages, filed pursuant to Section 11 of the Declaration and (iii) copies of the Condominium Documents. These lists and Condominium 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. Upon written approval of the Association, the Secretary may delegate all of the duties herein to a manager or management company that is approved by the Association. However, all Unit Owners shall have the rights to examine the records of the Association at reasonable times and places.

Section 6. Treasurer. The Treasurer shall have the custody of all funds and securities that are not under the control of the Manager, if any, and with the assistance of the Manager, shall keep full and accurate records or receipts and disbursements, shall prepare all required financial data, and shall deposit all money and other valuable effects in such depositories as may be designated by the Association. Such records shall include, without limitation, chronological listings of all assessments and Common Expenses on account of the Common Area and each Unit, and the amounts paid and the amounts due on such assessments by each Owner. The books and records of the Association should be kept in accordance with generally accepted accounting principles and procedures. He shall also disburse funds as ordered by the Association, where possible taking proper vouchers for disbursements, and shall render to the President at the regular meetings of the Association, or

whenever they may require it, an account of all of his transactions as Treasurer and of the financial condition of the Association. Upon written approval of a majority of the members of the Association eligible to vote, the Treasurer may delegate the daily handling of funds and the keeping of records concerning the fiscal affairs of the Association to a manager or managing company that is approved by the Association. All Unit Owners shall have the right to examine the books of the Association at reasonable times and places.

Section 7. Execution of Documents. All agreements, written consents, contracts, deeds, checks, and other instruments of the Association shall be executed by the President and such other officer or persons as may be designated in writing by the Association. However, Amendment to the Declaration may only be executed by members of the Association as provided in Section 15 of the Declaration and not by any Officer of the Association acting on their behalf.

Section 8. Powers and Responsibilities. The affairs and business of the Condominium shall be managed by an Association which shall have all of the powers and responsibilities necessary for the administration of the affairs of the Condominium. The Association may delegate to one of its members the authority to act on behalf of the Association on all matters which might arise between scheduled meetings of the Association. In addition to the general duties imposed by these By-Laws, the Association shall have the power to perform, and shall be responsible for, the following:

(a) Preparation of an annual budget, in connection with which there shall be established the assessment of each Unit Owner for the Common Expenses;

(b) Making assessments against Unit Owners to defray the Common Expenses of the Condominium, establishing the means and methods of collecting such assessments from the Unit Owners, collecting said assessments, depositing the proceeds thereof in a bank depository approved by it, and using the proceeds to carry out the administration of the Property. Unless otherwise determined by the Association, the annual assessments against each Unit Owner for this proportionate share of the Common Expenses shall be payable in equal monthly installments, each such installment to be due and payable in advance on the first day of each month for said month.

(c) Providing for the operation, repair, replacement and maintenance of all of the Common Areas classified under Article VII, Sections 7(a) and 7(b) of the By-Laws including designating, hiring and dismissing the personnel necessary therefore and, where appropriate, providing for the compensation of such personnel and for the purchase or use of equipment, supplies and materials to be used by such personnel in the performance of their duties.

(d) Making and amending Rules that provide detail concerning the operation, use and enjoyment of the Property (subject to the provisions of Article VI, Section 11, Rules of Conduct) and enforceable by legal means the provisions of the Declaration, these By-Laws and such Rules, and bringing any proceedings which may be instituted on behalf of the Owners;

(e) Obtaining and carrying insurance against property damage and liability, as provided in Article VII, Section 1 of these By-Laws, 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 By-Laws, after damage or destruction by fire or other casualty.

(f) Opening of bank accounts on behalf of the Association and designating signatories required therefore, and keeping books with detailed accounts of the receipts and expenditures affecting the Property, and the administration of the Condominium. The said books shall be available for examination by the

Owners, and their duly authorized agents, at reasonable times and places. All books and records shall be kept in accordance with generally accepted accounting practices.

(g) Managing and otherwise dealing with the Common Areas or other properties or facilities for which easements or rights are conveyed to the Association; and

(h) To do such other things and acts not inconsistent with the Condominium Act and with the Declaration which it may be authorized to do by a resolution of the Unit Owners' Association.

Section 9. Managing Agent. The Officers of the Association may employ, or contract with, a professional manager(s) or management firm (hereinafter "Manager") for a fee or compensation established by the Association, to perform such duties and services as the Association shall authorize, including, but not limited to, the duties listed in Section 8 of this Article V. The Association may delegate to the manager all of the powers granted to the Association by these By-Laws; provided that any actions by the Manager with respect to the powers set forth in paragraphs (b), (c), (d), & (g) of Section 8 of this Article V shall require the written consent fifty one percent (51 %) of the Association members. The term of any employment contract for a Manager may not exceed two (2) years, and any such employment contract shall provide, *inter alia*, that such agreement may be terminated by the Association without cause upon no more than sixty (60) days of written notice and without a payment of a termination fee.

Section 10. Fidelity Bond. The association may require all Officers, agents (including the Manager), employees and volunteers of the Association handling or responsible for the handling of funds belonging to or administered by the Association to furnish adequate fidelity bonds at their own expense. To the extent the Association requires a member of the Association to post a fidelity bond it shall be considered a Common Expense.

Section 11. Compensation of Officers. No Officer shall receive any compensation from the Association for acting as such unless and until authorized by vote of the Association at an annual meeting.

Section 12. Liabilities of Members and Officers. Neither the members of the Association nor the Officers of the Association shall be liable to any Unit Owner for any mistake of judgment, negligence or otherwise, in the performance of any function in those capacities, except for their own individual willful misconduct, gross negligence or bad faith. The Unit Owners and the Association shall indemnify and hold harmless each of the members and Officers of the Association from any and all contractual liability arising out of the contracts made by the officers on behalf of the Association unless such contract is in violation of the express provisions of the Declaration or of the By-Laws.

ARTICLE VI OPERATION OF THE PROPERTY

Section 1. Determination of Common Expenses and Assessments Against Unit 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 organization and terminate of the next succeeding December 31. The fiscal year herein established shall be subject to change by the Association should the Association in its sole discretion deem such change to be in the best interest of the Association.

(b) Preparation and Approval of Budget. Each year the Association shall adopt a budget for the Condominium containing an estimate of the total amount which it considers necessary during the ensuing fiscal year for the cost of maintenance, management, operation, repair and replacement of the Common Area and any parts of the Limited Common Area and units as to which it is the responsibility of the Association to maintain, repair and replace, including the cost of compensation, materials, insurance premiums, supplies and other expenses that may be declared to be Common Expenses by the Condominium Act, the Declaration, these By-Laws of the Association. In the case of insurance premiums the Association shall obtain from its insurance carrier an annual statement of premiums for the master property damage coverage required herein. Such budget shall also include such reasonable reserves as the Association considers necessary to provide a general operating reserve and reserves for contingencies and replacements. The Treasurer shall make reasonable efforts to send to each owner a copy of the budget, in a reasonable itemized form and to notify each owner of the amount of the Common Expenses payable by each Owner, at least fifteen (15) days in advance of the fiscal year to which the budget applies. The budget shall constitute the basis for determining the Owner's assessment for the Common Expenses of the Condominium.

(c) Assessment and Payment of Common Expenses. The total amount of the estimated funds set forth in the budget for the fiscal year adopted by the Association shall be assessed by the Treasurer against each Owner of a Unit which has been sold or conveyed, or tented, by the Declarant and the Association thereafter, in proportion to the Interest as defined in the Declaration appertaining to his Unit, (see Section 7 of the Declaration) and shall be a lien against each Owner's Condominium Unit in accordance with the Condominium Act.

On or before the first day of each fiscal year, and the first day of each succeeding eleven (11) months in such fiscal year, each Owner shall be obligated to pay to the Association one-twelfth (1/12) of the assessment for such fiscal year made pursuant to the foregoing provisions; provided, however, that if the first fiscal year, after the Declarant has turned over control of the Condominium to the Association is less than one (1) year pursuant to Section I of this Article VI then the Common Expenses will be prorated based on the number of months remaining in the first fiscal year. It is expressly provided, however, that the Association may, in its discretion, specially assess each Unit Owner annually in advance on or before the first day of the fiscal year for said Unit's allocated insurance premium for master property damage coverage for the fiscal year.

Within sixty (60) days after the end of each fiscal year, the Treasurer shall supply to all Owners an accounting consisting of an itemized income and expense statement. Any amount accumulated in excess of the amount required for actual expenses and budgeted reserves shall, in the discretion of the Association, either be rebated to the Owner in accordance with each Owner's Interest in the Association by crediting same to the next successive monthly installments due from Owners under the then current fiscal year's budget, until exhausted, or shall be added to capital reserves. Any net shortage shall be payable by Special Assessment or, if the Association deems it advisable, be added to the installments due from each Owner in the succeeding six (6) months after the rendering of the accounting.

The Association shall have all rights and powers set forth in the Condominium Act with respect to the assessment and collection of common and other expenses, including but not limited to those set forth in RSA 356-B:45, 356-B:46, and 356-B:46a.

(d) Reserves and Special Assessments. The Association shall build up and maintain both an adequate operating reserve and an adequate capital reserve for contingencies and replacements of the Common and Limited Common Area(s), which shall be funded by regular monthly payments as provided hereinabove. At the end of each fiscal year, all funds accumulated during such year for reserves for contingencies and replacement of Common and Limited Common Area(s) shall be placed in a separate

bank account for capital reserves, 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 Association may at any time levy a further assessment, which shall be assessed against each Unit Owner according to their respective Interests, and which may be payable in a lump sum or in installments as the Association truly determine. The Association shall serve notice of any such further assessment 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 no 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 monthly amount or, if the additional assessment is not payable in installments, the amount of such assessment.

(e) Effect of Failure to Prepare or Adopt Budget. The failure or delay of the Association 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 as herein provided, whenever the same shall be determined, and in the absence of any annual budget or adjusted budget, each Owner continue to pay the monthly charge at the then existing monthly rate established for the previous fiscal period until ten (10) days after a statement has been mailed or delivered showing the monthly payment which is due under the new annual or adjusted budget.

(f) Declarants' Right to Assess Common Changes and Special Assessments. The Declarant or its agent or assignee, prior to turning over the control of the Condominium to the unit Owners Association at the first annual meeting, shall have all of the rights of the Association as specified under Article VI of these By-Laws to determine a budget and assess the Unit Owners Common Expenses and/or special assessments. The Declarant shall have further right to use and expend said assessed funds in the same manner as it provided to the Association in the Condominium Act and the Declaration and By-Laws.

Section 2. Payment of Common Expenses. All Owners shall be obligated to pay the Common Expenses assessed by the Association pursuant to the provisions of Section I of this Article VI. This shall not apply to the amount added over the base price of the Master Insurance policy to cover liability related to the pool. Said pool liability coverage is the responsibility of the owner(s) of Unit 1. With the exception of the aforementioned pool liability coverage, no Owner may exempt himself from liability for his contribution towards Common Expenses by waiver of the use or enjoyment of any of the Common or limited Common Area(s) or by abandonment of his Unit. No Owner shall be liable for the payment of any part of the Common Expenses assessed against his Condominium Unit subsequent to a sale, transfer or other conveyance by him of such Condominium Unit. The purchaser of a Condominium Unit 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 conveyance, without prejudice to the acquiring Owner's right to recover from the transferring Owner the amount paid by the acquirer therefor; subject, however, to the provisions of Section 3 of this Article VI relative to recordable statements of unpaid assessments and subject to the provisions of Section 10(b) of the Declaration relative to certain first mortgagees.

All assessments upon the unit Owners that are assessed on a monthly basis shall be paid on the first day of each month to the Treasurer or Manager as the Association may designate. A failure of any unit Owner to pay any assessment which is assessed on a monthly basis within fifteen (15) days after its due date, shall result in said Unit Owner being automatically assessed a late fee of **twenty-five dollars (\$25.00)** per month, or a late fee of eighteen percent (18%) of said common charges or assessments, whichever is greater, together with all expenses, including attorneys' fees, incurred by the Association in any proceeding brought to collect unpaid charges. Said late charge shall be a lien of the Association similar to the lien

placed on each Unit Owner's Condominium Unit as specified in Section l(c) hereinabove.

Section 3. Recordable Statement of Unpaid Assessments. Any such acquiring Owner or transferring Owner shall be entitled to a recordable statement from the Treasurer or Manager setting forth the amount of unpaid assessments against the transferring Owner and such acquiring Owner shall not be liable for, nor shall the Condominium Unit conveyed by subject to a lien for, any unpaid assessments in excess of the amount therein set forth. Failure to furnish in the manner in which notices are provided pursuant to Section 1 of Article IX or make available such a statement within ten (10) business days from receipt of such request by the Treasurer or Manager, shall extinguish the lien for unpaid assessments. Payment of a fee not exceeding the maximum allowable under the Condominium Act may be required as a prerequisite for issuance of such a statement.

Section 4. Collection of Assessments. The Treasurer or Manager shall take prompt action to collect any assessments for Common Expenses due from any Owner which remain unpaid for more than thirty (30) days from the due date for payment thereof.

Section 5. Uncollectible Assessments. Any assessments which are not collectible due to waiver or limitation imposed by the provisions of Section 3 above or due to the provisions of Section 10(b) of the Declaration relative to certain first mortgagees shall be collectible as a Common Expense from all Owners, including purchasers or first mortgagees.

Section 6. Utility Charges and Utility Services. Each Unit Owner shall be solely liable to pay for any electricity, telephone service, cable TV and other utility service inuring solely to the benefit of his Unit, including City of Portsmouth water and sewer bills. In the event a Unit Owner fails to timely pay its electricity or utility charge, and such charge becomes a lien on the Condominium Property or said Owner is threatened with a shut off of electricity or utility, the Association may pay the electrical or utility charges to avoid the imposition of a lien or a shut off of the electrical or utility service. Thereafter, the Association may take whatever action it may deem necessary to recover the cost of said electrical or utility charges from the Owner along with any interest or costs the Association may have in proceeding against the Unit Owner. The City of Portsmouth Water and Sewer Bill will be divided among the units with Unit 2 being responsible for the amount of each bill equivalent to the amount used as determined by the water flow meter.

Section 7. Maintenance and Repair.

(a) By the Association:

(i) Common Area. Except as otherwise provided in Section 7(b) below, the Association shall be responsible for the maintenance, repair and replacement (unless necessitated by the negligence, misuse or neglect of an Owner, or of a person gaining access with said Owner's actual or implied consent, in which case such expense shall be charged to such Owner), of all of the Common Area, whether presently existing or hereafter added or constructed and keep the Common Area in a state of good working order and in a clean, neat and safe condition, and in conformity with the laws, ordinances and regulations applicable to the Condominium property. The cost of the maintenance, repair and replacement of the Common Area shall be a charge to all Owners as a Common Expense.

(ii) Limited Common Area. Limited Common Area (as outlined in Declaration and/or shown on Condominium Floor Plan). Any expense for any maintenance, repairs or replacements which are caused or necessitated by the negligence, misuse or neglect of an Owner, or a person gaining access with said Owner actual or implied consent, shall be charged to such Owner.

(iii) Snowplowing and Landscaping. Snowplowing of all walkways and other Common Areas and any landscaping may be determined to the responsibility of the Association by decision of the Unit Owners. If the Unit Owners decide to make such expenses part of the Condominium Association, the cost of which shall be charged to all Owners as a Common Expense and paid pursuant to ownership percentage interest.

(iv) Improvement and Repair Within Units. Except as may otherwise be expressly provided herein, and except for repairs and maintenance necessitated by the negligence, misuse or neglect of an Owner, or of a person gaining access with the Owner's actual or implied consent, in which case such expense shall be charged to such Owner, those parts of the Unit boundaries which are all a part of the exterior of the Condominium building shall be maintained and replaced by the Association including but not limited to, any exterior window glass, exterior glass doors, entrance doors, exterior door and window frames. In addition, the Association shall keep and maintain in a state of good condition and repair those parts of the Condominium Property within each Unit which contribute to the support of the building by making all repairs, replacements, alterations and other improvements necessary, excluding, however, the finished surface of the interior walls, the ceilings and floors.

The cost of said maintenance and repair of the Condominium Property within each Unit that contribute to the support of the building shall be charged to all Unit Owners as a Common Expense.

If a Unit and facilities appurtenant to a Unit become impaired, in a neglected state or otherwise in need of repair or restoration, and if the Unit Owner fails after notice from the Association to repair, restore or correct the condition, the Association may, but shall not be obligated to, repair, restore, or otherwise correct the condition. The Association shall charge and assess the cost and expenses thereof to the unit Owner(s) who should have performed the work.

(b) By the Owner.

(i) Except for the portions of his Unit required to be maintained, repaired and replaced by the Association, and except as provided in Article VIII hereof rehiring to repair and reconstruction after fire or other casualty, each Owner shall be responsible for the maintenance, repair, or replacement, at his own expense, of his Unit, and any part thereof, including but not limited to, all walls, interior and exterior of the walls, appliances, and heating and air conditioning, plumbing and electrical systems which are wholly contained within his Unit and serve no other.

(ii) Each Unit Owner shall keep his Unit and its equipment and its appurtenances in good working order, and condition, and shall do all redecorating, painting and varnishing which may at any time be necessary to maintain the good appearance of his Unit.

(iii) Finally, each Owner shall be responsible for all damage to any and all other Units or to the Common Area(s) resulting from his negligence, misuse or neglect or by his failure to make any of the repairs required to be made by him by this Section. Each Owner shall perform his responsibility in such manner as shall not unreasonably disturb or interfere with the other Owners. Each Owner shall promptly report to the President of the Association, or the Manager, any defects or need for repairs for which the Association is responsible.

(c) Manner or Repair and Replacement. All maintenance, repairs and replacements shall be substantially similar to the original construction and installation, and shall be of first class quality. The method of approving payment vouchers for all repairs and replacement shall be determined by the Association.

Section 8. Additions, Alterations or improvements By the Association. Whenever in the judgment of the Association, the Common Area shall require additions, alterations or improvements costing in the aggregate an excess of Two Thousand Dollars (\$2,000) during any period of twelve (12) consecutive months, and the making of such additions, alterations or improvements shall have been approved by a majority of the Owners, the Association through its Officers shall proceed with such addition, alterations or improvements and shall assess all Owners for the cost thereof as a Common Expense. Any additions, alterations or improvements costing Two Thousand Dollars (\$2,000) or less during any period of twelve (12) consecutive months may be made by the President and Treasurer jointly without approval of the Owner and the cost thereof shall constitute part of the Common Expense. Notwithstanding the foregoing, *if*, in the opinion of not *less* than fifty percent (50%) of the members of the Association, such additions, alterations or improvements are exclusively or

substantially exclusively for the benefit of a limited number of Owners requesting the same, such requesting Owners shall be assessed therefor in such proportion as they jointly approve or, if they are unable to agree thereon, in such proportions as may be determined by the Association.

Section 9. Delegation of Authority. The Association, acting through its members at any validly constituted annual or special meeting, may vote to delegate any powers vested in the Association by these Declaration and By-Laws to any individual(s), officer(s), manager(s), or committee of the Unit Owners. Pursuant to the authority vested in the Secretary of the Association as prescribed under Article V, Section 5 of these By-Laws, any vote delegating the Association powers or appointing person or persons to act on the Association's behalf must be in writing and kept in the records of the Association by the Secretary.

Section 10. Rules and Regulations Restricting the Use of Units. To assist the Association in providing for congenial occupancy and the protection of the value of the Units, it is necessary that the Association have the right and authority to exercise reasonable controls over the use of the Units. The Association is, therefore, authorized to make Rules from time to time as provided in Article VI, Section 12. Until amended, the following Rules shall be in effect; violation of the following enumerated prohibitions shall not be permitted, and the Association is hereby authorized to take all steps necessary to prevent or discontinue any violations thereof, all at the expense of the violator. HOWEVER, THE RESTRICTIONS HEREINAFTER MENTIONED IN SECTION 10 OF THESE BY-LAWS SHALL NOT APPLY TO ANY UNIT SO LONG AS IT IS OWNED BY THE DECLARANT OR ANY AFFILIATE.

These restrictions and Rules are adopted for the benefit of Owners of **THE CONDOMINIUMS AT 23 KANE**. They are intended to assist in preserving a clean and attractive environment, assuring the peaceful enjoyment of the Condominium, and protecting and enhancing the value of the Owners' property. They are not designed to unduly restrict or burden the use of the Property.

All Owners and their tenants, guests, invitees and licensees are bound by the following:

(a) No nuisance shall be allowed on the Property nor shall any use or practice be allowed which is an unreasonable source of annoyance or which unreasonably interferes with the peaceful possession or proper use of the Condominium.

(b) In the use of the Units and the Common Area of the Condominium, Owners shall obey and abide by all valid laws, ordinances and zoning and other governmental regulations affecting the same and all applicable Rules adopted by the Board. The Common Area shall be used only for the furnishing of the services and facilities for which they are reasonably suited and which are incident to the use and occupancy of the Units.

(c) Owners shall not commit any violation of applicable statutes, ordinances or regulations, including, but not limited to restriction on the storage, use or disposal of toxic or hazardous substances.

(d) There shall be no use of Common Area which injures or scars the Common Area or the trees or plantings thereon, increases the maintenance thereof, or causes unreasonable embarrassment, disturbance or annoyance to other Owners in their enjoyment of the Condominium.

(e) All assessments for Common Expenses are due and payable by check or money order on the first day of each month. Payment shall be mailed to the Treasurer of the Condominium Unit Owners Association or manager at the address designated for that person.

(f) Any consent or approval of the Association or its authorized agent given under these Rules shall be revocable at any time.

(g) Complaints of violation of these Rules and restrictions should be made to the Association's Officers or the Association's authorized agent, either orally or in writing. If the Owner does not receive satisfaction from such authorized agent, or if there is no authorized agent at that time, he should submit his complaint in writing to the President of the Association. If the Association feels that the complaint is justified, it will take whatever action it deems necessary. The complainant will be notified in writing by the Association's authorized agent or the President of the Association as to what action has been taken.

(h) These Condominium Rules may be revised in any way at any time by the Association as conditions warrant, and a written communication will be sent to each Owner advising him of the change.

(i) The Association, in its discretion, may delegate its powers and duties with respect to the granting of consents, approvals and permission under these Rules, to any person or other agent.

(j) Each unit is entitled to have no more than two (2) domestic animals residing within the owner's unit. Said animals must be predominantly domiciled within the confines of the unit and will not be housed or kenneled in any Limited Common Area or Common Area. Use of any Common Area for such pets shall be determined by agreement of the Unit Owners (or Unit Owner and Declarant until such time as both units are sold). Both unit owners agree to take all reasonable precautions to keep their pets as quiet as possible and to take all reasonable steps to ensure said pets are not interfering in any way with the other unit owner's right to quiet peace and enjoyment of the premises. Any damage to the animal owner's unit caused by the owner's pet(s) shall be the sole responsibility of said owner. Each animal owner shall be responsible to maintain any area within the boundaries of The Condominiums at 23 Kane where their pets are allowed or have access to. Each unit owner shall disclose the presence of a domestic animal that will reside at The Condominiums at 23 Kane to any insurance agency providing insurance coverage either via a master insurance policy and/or for individual coverage.

Section 11. Right of Access. A right of access shall exist to each Unit in favor of the Manager, or any other person authorized by the Association for the purpose of making inspections or the purpose of correcting any condition violating his Unit and threatening another Unit or Common Area, or for the purpose of performing installation, alterations or repairs to the mechanical or utility services or other Common Area, provided that requests for entry are made in advance and that any such entry is at a time reasonably convenient to the Owner. In case of any emergency, such right of entry shall be immediate whether the Owner is present at the time or not. However, this shall apply only to a bonafide emergency such as fire, water damage, structural problems, or other such emergent matter, and the Unit Owner must be notified within twenty-four (24) hours after entrance to his unit informing him of who entered the Unit and for what purpose.

Section 12. Rules of Conduct. The Rules may be promulgated and amended by the Association, provided that such Rules are not contrary to or inconsistent with the Condominium Act, the Declaration or these By-Laws. Copies of the Rules shall be furnished by the Secretary of the Association to each Owner prior to the time when the same shall become effective. A vote of the majority of Owners present in person or by proxy at a meeting of the Association may overrule and declare void any rule adopted; provided that notice of the proposal to overrule shall be included in the notice of such meeting.

ARTICLE VII INSURANCE

Section 1. Insurance Required. Pursuant to RSA 356-B:43 of the Condominium Act, the Association shall obtain (i) a master property damage policy affording all risk coverage with the usual exclusions written on an agreed amount basis in an amount equal to the full replacement value of the structures within the Condominium. The base price of the Master Insurance policy is the responsibility of the unit owners according to their percentage of ownership. The amount added to the base price of the Master Policy for liability

coverage for the in-ground pool is the responsibility of the owner(s) of Unit 1. With that said, the Unit 2 owner(s), any member of his family or his tenants, guests, employees, agents or invitees, and/or any other person(s) at the property in any way associated with the owner(s) of Unit 2 are prohibited from use of the pool, the pool decking, and any area(s) located within ten (10) feet of the pool edge. If this restriction of use is breached, whether willfully or negligently, neither the Declarant or Declarants, the owner(s) of Unit 1, nor the Condominium Association, will be held responsible for any liability incurred by such breach.

For the purposes of this Article VII the language "structures within the Condominium" shall include without limitation all structures located on and part of the Condominium property AND all structures serving the Condominium and located on easements appurtenant to said Condominium, including, but not limited to, those structures providing vehicular and pedestrian access and parking; (ii) a master liability policy covering the Association and agents or employees of the foregoing with respect to the Condominium, and easements appurtenant thereto, and all Owners and other persons entitled to enter on or occupy any portion of the Condominium and easements appurtenant thereto; (iii) officers' and directors liability insurance coverage; and (iv) such other policies as specified hereinbelow, which insurance shall be governed by the following provisions to the extent obtainable or possible.

(a) Property damage and fire insurance with standard all risk coverage with the usual exclusions written on an agreed amount basis, vandalism and malicious mischief endorsements, flood and quake endorsements insuring all the structures in the Condominium including without limitation all such portions of the interior of such structures as are for insurance purposes normally deemed to constitute part of the structure and customarily covered by such insurance, such as heating and air conditioning and other service machinery, interior walls, all finished wall surfaces, ceiling and floor coverings, bathroom and kitchen cabinets and fixtures, including appliances which are affixed to the buildings, and heating and lighting fixtures, except for improvements made by an individual Owner which are not reported to the insurer, such insurance to be in amount at least equal to the replacement value of the structures and to payable to the Treasurer as trustee for the Owners and their mortgagees as their respective interests may appear. The Association shall obtain from its insurance carrier an annual statement of premiums for master property damage coverage and property liability allocated to each Unit in accordance with each Unit's valuation. The Association may, in its discretion, specially assess each Unit Owner annually in advance on or before the first day of the fiscal year for said Unit's allocated insurance premium for master property damage coverage for the fiscal year.

(i) Such insurance shall include all Common Areas and shall be in an amount of not less than full replacement value of the insured property at the time the insurance is purchased or at any subsequent renewal date less the deductibles.

(ii) Such insurance shall be written in the name of the Association and the proceeds thereof shall be payable to the officers of the Association as trustees for the Owners and their respective mortgagees, and to the Declarant until all Units are conveyed, as their interests may appear, and provisions shall be made for the issuance of certificates of such insurance to the Owners and their respective mortgagees. All proceeds from claims made under the Master Policy shall be immediately utilized for repair and replacement of any damaged items unless otherwise agreed by all Unit Owners.

(iii) Notwithstanding the above, until the Association shall be formed, the insurance may be written solely in the name of and the proceeds thereof shall be payable to the Declarant and the Declarants' mortgagees, as their respective interest may appear.

(b) Comprehensive general liability including "broad form general liability" endorsement or its equivalent insurance to include liability coverage for the pool in such amounts as the Association 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 Declarant to the extent he shall retain an interest in the Condominium and insuring the Association and all individuals referred to in Section 1 above, against any liability to anyone, and with cross liability coverage with respect to liability claims of anyone insured thereunder. This insurance, however, shall not insure against individual liability for negligence occurring within a Unit.

(c) Worker's compensation insurance as required by law.

(d) A fidelity bond covering the Treasurer of the Association, the Manager and other Association Officers, employees, or volunteers handling Association funds.

(e) Such other insurance as the Declarant prior to the formation of the Association and the Association thereafter may determine to be desirable.

(f) The Association shall be required to make every effort to see that all policies of property damage insurance provided for under Section 1 above:

(i) shall contain waivers of subrogation by the insurer as to claims against the Association, its employees and agents, Owners and members of the family of any Owner;

(ii) shall contain a waiver of defense of invalidity or prejudice on account of the conduct of any of the Owners over which the Association has "no control";

(iii) shall contain a waiver of defense of invalidity or prejudice by failure of the insured, or Owners collectively, to comply with any warranty or condition with regard to any portion of the Condominium over which the insured, or Owners collectively, have "no control";

(iv) shall provide that such policies may not be cancelled (including cancellation for nonpayment), jeopardized or substantially modified without at least sixty (60) days' written notice of all of the insureds thereunder and all mortgagees of Units in the Condominium. Notwithstanding the foregoing, ten (10) days written notice shall be sufficient notice of cancellation when the cancellation is due to nonpayment of the premium;

(v) shall provide that in no event shall the insurance under said policies be brought into contribution with insurance purchased individually by Owners or their mortgagees; and

(vi) shall exclude policies obtained by individual Owners for consideration under any "other insurance" clause.

(vii) shall include stipulated amount clause or determinable cash adjustment clause, or similar clause to permit a cash settlement covering specified value in the event of destruction and a decision not to rebuild;

(viii) The Master Policy may contain a deductible; and

(ix) UNTIL THE EXPIRATION DATE OF THIRTY (30) DAYS AFTER THE INSURER GIVES NOTICE IN WRITING TO THE MORTGAGEE OF ANY UNIT, THE MORTGAGEE'S INSURANCE COVERAGE WILL NOT BE AFFECTED OR JEOPARDIZED BY ANY ACT OF CONDUCT OF THE OWNER(S) OF A UNIT, THE OTHER UNIT OWNER(S), OR ANY OF THEIR AGENTS, EMPLOYEES, OR

HOUSEHOLD MEMBERS. NOTWITHSTANDING THE FOREGOING, TEN (10) DAYS WRITTEN NOTICE SHALL BE SUFFICIENT NOTICE OF CANCELLATION WHEN THE CANCELLATION IS DUE TO NONPAYMENT OF THE INSURANCE PREMIUM(S).

Section 2. General Insurance Provisions.

- (a) The Association through its President shall deal with the insurer or insurance agent in connection with the adjusting of all claims covered by insurance policies provided for under Section 1 above and shall review the coverage under said policies with the insurer or insurance agent at least every other year, said review to include a valuation of the Units and of improvements with the Common Area and shall make any necessary changes in the policy provided for under Section 1 (a) above (prior to the expiration date set forth in any agreed amount endorsement contained in said policy) in order to meet the coverage requirements of such Section.
- (b) Original of all policies and endorsements shall be deposited with an insurance agent to be agreed upon by the Association.
- (c) The exclusive authority to adjust losses under the policies hereafter enforced on Condominium Property shall be vested in the Association or any individual agreed upon by the Association.

Section 3. Individual Policies.

(a) Any Owner or any mortgagee may obtain, at his own expense, additional insurance including without limitation "Condominium Unit Owner's Coverage" written on an "all risk" or loss basis for improvements and betterments to a Unit made or acquired at the expense of the Owner and not covered under the master casualty policy referred to in Section 1 (a) above. Such insurance should contain the same waiver of subrogation provision as set forth in Section 1 (f) of this Article VII. Such policy should insure against loss or damage to personal property used incidental to the occupancy of his Unit or Common Area. additional living expense, vandalism or malicious mischief, theft, personal liability and the like. Any such insurance should cover any bodily injury or damage to persons or to floor coverings, appliances and other personal property, not covered in the master policy, and all improvements to his Unit that are not reported to the Association.

(b) No policy described in this Section 3 shall be written to decrease the coverage under any of the policies obtained by the Association pursuant to Section 1 (a) above, and each Owner thereby assigns to the Association, as trustee for the Owners and their mortgagees, the proceeds of any such policies to the extent that such policies, in fact, result in a decrease in such coverage, such proceeds to be applied pursuant to the terms hereof as if produced by said coverage. Copies of all such policies (except policies covering only personal property, owned or supplied by individual Owners) shall be filed with the Association.

Section 4. Notice to Unit Owners. Excepting such policies as are obtained on behalf of the Association prior to the conveyance of the first Unit in the Condominium, when any policy of insurance has been obtained on behalf of the Association, written notice thereof and of any subsequent changes therein or in such initial policies, or of termination thereof shall be promptly furnished to each Unit Owner by the Secretary of the Association. Such notice shall be sent to all Unit Owners of record at the address of

their respective Units and to such other addresses as any of them may have designated to the Secretary; or such notice may be hand delivered by the Secretary of the Association or other person as may be designated by the Association.

**ARTICLE VIII
REPAIR AND RESTORATION AFTER FIRE OR OTHER CASUALTY**

Section 1. When Repair and Reconstruction are Required. In the event of damage to or destruction of all or part of any Unit or other buildings or improvements in the Condominium as a result of fire or other casualty, the Association shall arrange for and supervise the prompt repair and restoration of the damaged or destroyed portions of the Units, buildings or improvements, subject to the rights of the Unit Owners to vote to terminate the Condominium pursuant to Section 34 of the Condominium Act. Notwithstanding the foregoing, each Owner shall have the right to supervise the work in his own Unit.

Section 2. Procedure for Reconstruction and Repair.

(a) Immediately after a fire or other casualty causing damage to a Unit or improvement within the Common Area, the Association shall obtain reliable and detailed estimates of the cost of repairing and restoring the damage to a condition as good as that existing before such casualty. Such costs may also include professional fees and premiums for such bonds as the Association determines to be necessary. The Association shall contract for such repair and restoration and, in doing so, shall exercise its sole discretion in selecting from among said estimates.

(b) Improvements in Common Area and Improvements in the Units.

(i) Improvements in Common Area. If the proceeds of insurance, paid to the Association as trustee for the Owners and their mortgagees pursuant to Sections 1 (a) (n) and (iii) of Article VII hereof, are not sufficient to defray the said estimated costs of reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs thereof are insufficient, assessments in sufficient additional amounts to provide payment of such costs shall be made against Owners in proportion to their respective Interest as defined in the Declaration. If all or any portion of such assessments are not available to the Association prior to the time that the amounts thereof are need to provide payment of such costs, the Association may borrow such amounts and may secure such borrowing by assignment of the liens relative thereto arising pursuant to Section 2 of Article IX of these By-Laws.

(ii) Improvements in Units. If the proceeds of insurance, paid to the Association as Trustee for the Owners and their mortgagees pursuant to Section 1 (a) (ii) and (iii) of Article VIII hereof, are not sufficient to defray the estimated costs of reconstruction and repair the of Unit, or upon completion of reconstruction and repair of a Unit, the funds for the payment of the costs thereof are insufficient, the Owner of said Unit shall be required to provide the Association with such additional amounts necessary to pay said costs prior to commencement of reconstruction and repair of the Unit. If said payment is not forthcoming by the Owner(s) within thirty (30) days of notice by the Association of said insufficiency, an assessment as provided in Declaration may be made against the Owner(s) in a sufficient additional amount to provide payment of such costs related to said Owner's Unit

(c) Any such reconstruction or repair shall be substantially in accordance with the original plans and specifications under which the damaged building was originally constructed.

(d) Encroachments upon or in favor of Units which may be created as a result of such reconstruction or repair shall not constitute a claim or basis for any proceeding or action by the Owner upon whose property such encroachment exists, provided that such reconstruction is substantially in accordance with

original plans and specifications under which the damaged building was originally constructed. Such encroachments shall be allowed to continue in existence for so long as the building (as reconstructed) shall stand.

Section 3. Disbursements of Construction Funds.

(a) The net proceeds of insurance collected on account of a casualty and any additional amounts collected by the Association from assessments against Owners on account of such casualty (or borrowed by the Association as provided in Section 2 (b) above) shall constitute a construction fund which shall be disbursed in payment of the cost of reconstruction and repair by the Association.

(b) The construction fund shall be paid by the Association in appropriate progress payments, to such contractors, suppliers and personnel engaged in performing the work or supplying materials of services for the repair and reconstruction as are designated by the Association.

(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 Section 2 (b) above, and the remainder, if any, shall be distributed to the Owners in accordance with their respective Interests.

(d) When the damage is to the Common Area and the Units, the insurance proceeds shall to the extent practical, be applied first to the cost of repairing the Common Area and the balance to the cost of repairing the Units.

ARTICLE IX SALES, LEASES, AND ALIENATION OF UNITS

Section 1. No Severance of Ownership. No Owner shall execute any deed, lease, mortgage, or other instrument conveying or mortgaging the title to his Unit without including therein the interest of such Unit 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 affect such title or one or more of such interests without it including all such title or interests, shall be deemed and taken to include the title or interest so omitted: even though the latter shall not be expressly mentioned or described therein. Except to the extent otherwise expressly provided by the Declaration, these By-Laws or the Condominium Act, the Interest in the Common Area to any Unit shall not be altered and any purported transfer, encumbrance, or other disposition of that interest without the Unit to which it appertains shall be void.

Section 2. Payment of Assessments. No Owner shall be permitted to convey, mortgage, sell, lease, give or devise his Unit unless and until he (or his personal representative) shall have paid in full to the Association all unpaid Common Area assessments theretofore assessed by the Association with respect to his Unit, and shall be satisfied all unpaid liens with respect to his Unit, except mortgages. Where this provision is satisfied at the time of execution of a mortgage, there shall be no requirement that it again be satisfied at the time of a subsequent foreclosure of such mortgage, or deed in lieu of such foreclosure. In the event that the unit is subject to outstanding assessments previously levied against such Unit, and the acquiring Owner of the transferring Owner requests a recordable statement pursuant to Section 3 of Article VI, the statement shall expressly state any waiver of, or failure or refusal to exercise, the right to the Association to prevent the disposition of such Unit, in any case where such waiver, failure or refusal may exist. Failure or refusal to furnish such a statement as provided in said Section 3 of Article VI shall not only constitute a waiver of such assessment, but also make the above-mentioned prohibition inapplicable to any such disposition of the Unit.

**ARTICLE X
AMENDMENT TO BY-LAWS**

Section 1. Amendments. Except as otherwise provided in the Condominium Act and herein, these By-Laws may be modified or amended by the procedure set forth in Section 15 of the Declaration; provided, however, that so long as the Declarant is the Owner of one or more Units, no amendment of the By-Laws or Rules may be adopted which could interfere with the construction, display, sale, lease or other disposition, of such Unit or Units.

**ARTICLE XI
MORTGAGES**

Section 1. Notice of Default. The Association through its Officers or agents shall give written notice to an Owner of any default by the Owner in the performance of any obligations under the Act, Declaration or By-Laws. No suit or other proceeding may be brought to foreclosure the lien for any assessment levied pursuant to the Declaration or these By-Laws except after ten (10) days written notice to the holder of the first mortgage on the Unit which is the subject matter of such suit or proceeding provided the Association has been given notice of such mortgage in the manner set forth in Section 11 (a) of the Declaration.

**ARTICLE XII
NOTICE**

Section 1. Manner of Notice. Except as otherwise provided in the Declaration and these By-Laws, all notices, demands, bills, statements or other communications provided for or required under these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by U.S. Mail, first class postage prepaid, (i) it to an Owner, at the address of his Unit and at such other address as the Owner may have designated by notice in writing to the Secretary, or (ii) if to the Association, or the Manager, at the Condominium or at such other address as may be designated.

Section 2. Waiver of Notice. Whenever any notice is required to be given under the provisions of the statutes, the Declaration or of these By-Laws, 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 provision of the Condominium Act.

**ARTICLE XIII
COMPLIANCE AND DEFAULT**

Section 1. Default and Relief. Each Owner shall be governed by, and shall comply with, all of the terms of the Declaration, these By-Laws, and the Rules, and any amendments of the same. A default by Owner shall entitle the Association to exercise any/all of its legal remedies as set forth in the Condominium Act, these Declaration and By-Laws, or any other legal or equitable remedy available to the Association. A unit Owner shall be in default when any of the terms of the Declaration, By-Laws, Rules and any amendments thereto are being violated by the Unit Owner.

(a) Legal Proceedings. Failure to comply with any of the terms of the Declaration, these By-Laws, and the Rules shall be grounds for relief which may include without limiting the same, an action to recover any sums due for money damages, injustice relief, foreclosure of the lien for payment of all assessments, and other relief provided for in these By-Laws, or any combination thereof, and any other relief afforded by a court of competent jurisdiction, all of which relief may be sought by the Association, 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 acts, neglect or carelessness or the act, neglect or carelessness of any member of his family or his tenants, guests, employees, agents or invitees, but only to the extent that such expenses are not covered by the proceeds of insurance carried by the Association. Such liability shall include any increase in insurance rates occasioned by use, misuse, occupancy or abandonment of any Unit or its appurtenances. Nothing contained herein, however, shall be construed as modifying any waiver by an insurance company of any 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 Association, the Declarant and its assigns, or of an Owner to enforce any right, provision, covenant, or condition which may be granted by the Declaration, these By-Laws or the Rules shall not constitute a waiver of the right of the Association, or any Owner to enforce such right, provision, covenant, or condition in the future. All rights, remedies and privileges granted to the Association, or any Owner pursuant to any term, provision, covenant or condition of the Declaration, these By-Laws or the Rules shall be deemed to be cumulative and the exercise of anyone or more thereof shall not be deemed to constitute an election of remedies, nor shall it preclude the party from exercising such privileges as may be granted to such party by the Declaration, these By-Laws or the Rules, or at law or in equity.

(e) Interest. In the event of a default in the payment of any financial assessment, award or judgment against any Unit Owner by the Association which shall continue for a period in excess of thirty (30) days, such Owner shall be obligated to pay interest in the amounts due at the highest rate permitted by law, or at eighteen percent (18%), whichever is less, per annum from the due date thereof. In addition, the Association shall have the authority to impose a late payment charge on such defaulting Owner in an amount not to exceed five percent (5%) on any amount so overdue.

(f) Abatement and Enjoinment of Violations by Owners. The violation of any Rule or Provision adopted by the Association, and/or the breach of any Provision of the Declaration, shall give the Association or the Manager the right, in addition to any other rights set forth in these By-Laws:

- (i) to enter the Unit in which, or as to which, such violations or breach exists and summarily to abate and remove, at the expense of the defaulting Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning or provisions hereof, and the Association or Manager shall not hereby be deemed guilty in any manner of trespass;
- (ii) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach; or
- (iii) 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.

Section 2. Assessment of Liens:

(a) The total annual assessment of each Owner for the Common Expense or any special assessment levied pursuant to these By-Laws is hereby declared to be a lien levied against the Unit of such Owner as provided in the Condominium Act (including without limitation the priority provisions set forth in RSA 356-B:46 and 356-B:46a thereof) which lien shall be effective when perfected in accordance with said Act.

(b) In any case where an assessment against an Owner is payable in installments, upon a default by such Owner in the payment of any single installment, which continues for ten (10) business days after written notice of such default has been sent to the Owner, the maturity of the remaining unpaid installments of such assessment may be accelerated, at the option of the Association, 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 Association 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 from the Registry in form and manner prescribed in said Act.

(c) The lien for assessments shall include interest, late charge, costs and attorneys' fees as provided in Section 1 of this Article XIII 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 or by suit brought in the name of the Association. During the pendency of such proceeding or suit the Owner shall be required to pay a reasonable rental for the Unit for any period prior to sale pursuant to any judgment or order of any court having jurisdiction over such sale.

(d) Suit to recover a money judgment for unpaid assessments shall be maintainable without foreclosing or waiving the lien securing the same, and foreclosure shall be available without bringing suit to recover a money judgment.

ARTICLE XIV RESALE BY OWNER

Section 1. In the event of any resale of a Unit or of any interest therein by Owner, the prospective Owner shall have the right to obtain from the Association, prior to the contract date of the disposition, the following:

(a) Appropriate statements pursuant to RSA 356-B:46 (VIII) and, if applicable, RSA 356-B:47;

(b) A statement of any capital expenditures and major maintenance expenditures anticipated by the Association within the current or succeeding two (2) 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 specific project by the Association;

(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;

(f) A statement setting forth what insurance coverage is provided for all Owners by the Association and what additional insurance coverage would normally be secured by each individual Owner; and

(g) A statement that any improvements or alterations made to the Unit, the Common Area assigned thereto, by the prior Owner are not known to be in violation of the Condominium Documents.

**ARTICLE XV
RESOLUTION OF DISPUTES**

In the event of a dispute arising with regard to any of the provisions of this Declaration or the By-Laws between any Owner or mortgagees, any party involved may cause the same to be referred to arbitration by requesting arbitration as set forth below, and such arbitration shall be governed by the provisions of RSA Chapter 542.

In the event of arbitration, the party requesting the arbitration will give immediate notice thereof to all other parties, including the Association and all other Owner and mortgagees as promptly as possible after the reference to arbitration is made, giving all such parties an opportunity to appear at such arbitration proceedings. Thereafter, any dispute referred to arbitration shall be resolved by the picking of a neutral arbitrator satisfactory to both parties. In the event the parties cannot agree on an arbitrator, they shall each pick one arbitrator within ten (10) days of written request from the other party and those arbitrators shall pick the third arbitrator within ten (10) days thereafter. The three arbitrators shall meet and resolve any disputes within thirty (30) days after the choosing of the third arbitrator. In the alternative, either party upon written notice to the other may refer any dispute to the American Arbitration Association. Any award rendered therein shall be final and binding upon the parties and their representatives and judgment may be entered thereon in any court having jurisdiction, and may be enforceable by a decree of a specific performance of injunction, if appropriate.

**ARTICLE XVI
COMPLIANCE, CONFLICT, AND MISCELLANEOUS PROVISIONS**

Section 1. Compliance. These By-Laws are set forth in compliance with the requirements of the Condominium Act.

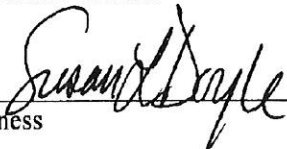
Section 2. Severability. If any provisions of these By-Laws or Rules or any section, sentence, clause, phrase, or word, or the application thereof in any circumstances is held invalid, the validity of the remainder of these By-Laws and Rules shall not be affected thereby and to this end, the provisions hereof are declared to be severable.

Section 3. Waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same (except where a right is dependent upon the notice to be given within a specified period), irrespective of the number of violations or breaches which may occur.

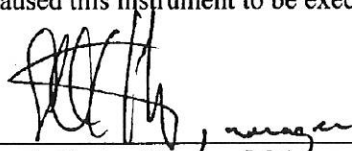
Section 4. Captions. The captions contained in these By-Laws are for convenience only and are not part of these By-Laws and are not intended in any way to limit or enlarge the terms and provisions of these By-Laws.

Section 5. Gender, etc. Whenever in these By-Laws the context so requires, the singular number shall include the plural and the reverse; and the use of any gender shall be deemed to include all genders.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed on the date of year first above written.



Witness



Shane A. Carter, Manager/Member
23 Kane LLC

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

Date: June 4, 2010

Personally appeared the above-named **Shane A. Carter**, known to me or satisfactorily proven to be the person who subscribed to the within instrument and acknowledged that they executed the same for the purposes herein contained and as his free act and deed.



Notary Public / Justice of the Peace



Seal:

