

TRANZON AUCTION PROPERTIES' DISCLAIMER

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**DECLARATION OF PROTECTIVE COVENANTS, RESERVATIONS,
RESTRICTIONS, AND EASEMENTS OF
MADISON HEIGHTS**

WITNESS THIS DECLARATION OF PROTECTIVE COVENANTS, RESERVATIONS, RESTRICTIONS, AND COMMON EASEMENTS, made this 28th day of April, 1988, by Madison Heights Associates, Inc., a corporation organized and existing under the laws of the State of Maine, with a principal place of business in Naples, Maine, hereafter referred to as the "Declarant."

WHEREAS, Declarant has acquired by warranty deed of Madison Heights Associates, a Maine general partnership, dated June 16, 1987, and recorded in the Cumberland County Registry of Deeds at Book 7907, Page 228, a certain lot of parcel of land situated in the Town of Naples, County of Cumberland, and State of Maine, containing approximately 182 acres, more or less, and extending in a general northeasterly direction from Route 35, so-called, in Naples, Maine; and

WHEREAS, Declarant is in the business of developing and selling real estate situated in said Town of Naples, which is a portion of the above-referenced land acquired from Madison Heights Associates, which development is known as Madison Heights and is more particularly described in a Plan entitled "Madison Heights Subdivision", Naples, Maine made for Madison Heights Associates by DeLuca-Hoffman Associates, Inc., dated January 19, 1988, as revised, approved by the Town of Naples Planning Board on February 16, 1988, and April 19, 1988, and recorded in the Cumberland County Registry of Deeds in Plan Book 170, Page 47; and

WHEREAS, Declarant desires to provide for the improvement of Madison Heights in accordance with a harmonious plan for the relative location of residential structures, garages, rights-of-way, easements, roads, common areas, and general land use, all to assure the purchasers of lots of Madison Heights Subdivision, their heirs and assigns owning such lots, that the use, benefit, and enjoyment of the individual lots, common amenities, facilities, easements, and roads will not conflict

WHEREAS, the Declarant desires to create a residential area of Madison Heights providing for the greatest possible degree of health, safety, environmental beauty, and amenity for the property owners and inhabitants thereof, and to effect the foregoing purposes, desires to subject the property to protective covenants and common easements and to the provisions for a homeowners association for the administration and enforcement of same, the maintenance and improvement of certain common facilities, and the establishment, collection and disbursement of assessments, all as set forth hereinafter, each and all of which are for the benefit of the property and of each lot owner of the subdivision;

NOW, THEREFORE, Declarant hereby declares that the property shall be held, occupied, improved, transferred, sold, leased, and conveyed subject to the protective covenants and restrictions, the reservations and exceptions, the common rights and easements, and the provisions for a homeowners association hereinafter set forth, all of which are declared to be in furtherance of a uniform scheme for the development of the property; and that said protective covenants, reservations, common easements, and provisions for a homeowners association are intended to enhance and protect the value and desirability of the property as a whole, to mutually benefit each of the parcels located thereon, to create mutual, equitable, servitudes upon each of the parcels in favor of each and all other parcels therein and to create reciprocal rights and privileges of contract and estate between all persons acquiring or owning any interest in any portion of the property, including Declarant, and its grantees, successors, and assigns and shall be deemed to run with the land and be a burden and benefit to and enforceable by all such persons, including Declarant, and its grantees, successors, and assigns, and by the Association.

ARTICLE I DEFINITIONS

The following words shall, as used herein, have the following meanings, unless the context plainly requires otherwise:

A. Road: All roads and ways as shown on the above-referenced Plan of Madison Heights.

B. Association: The homeowners association named "Madison Heights Homeowners Association" which Declarant has organized as a non-profit corporation for the purpose of

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and easements hereinafter set forth, maintaining and improving certain rights-of-way and other common facilities, and otherwise carrying out the functions of a homeowners association and the provisions and objectives of this Declaration.

- C. Declarant: Madison Heights Associates, Inc., as aforesaid, and any successor to all of its right, title, and interest in and to the property.
- D. Owner: The record owner, whether one or more persons or entities, of the fee simple title to any parcel, but not including Declarant.
- E. Parcel: Any one of the numbered lots within the property as shown upon the Plan, which may hereafter be conveyed by Declarant.
- F. Plan: That Plan labelled "Madison Heights" Naples, Maine, dated January 19, 1988, approved by the Planning Board of the Town of Naples, Maine, on February 16, 1988, and April 19, 1988, and recorded in the Cumberland County Registry of Deeds in Plan Book 170, Page 47.

ARTICLE II
SUPPLEMENTAL DECLARATIONS

This Declaration may be amended from time to time by supplemental declarations duly executed by Declarant, or by Madison Heights Homeowners Association, pursuant to a vote of the owners in accordance with the Bylaws of Madison Heights Homeowners Association, and recorded in the Cumberland County Registry of Deeds. No such amendment shall render invalid any use of land within the property existing in accordance with this Declaration at the time of recording such supplemental declaration, and any such amendment shall be reasonably consistent with the uniform scheme of development established by this Declaration.

ARTICLE III
RESERVATIONS AND EXCEPTIONS

There is hereby excepted and reserved as appurtenant to each of the parcels, a right-of-way over the road as designated on the Plan. There is further excepted and reserved hereby to the Declarant, for so long as he shall own any portion of the numbered parcels, and thereafter to the Association the following:

- A. Road: A right-of-way for all purposes over, across and through the road, together with the right to install and maintain utility poles and lines and water and sewer lines adjacent to, within or under the travelled portion of said roads.

The Declarant specifically excepts and reserves to itself, its successors and assigns a right-of-way for all purposes over, across, and through the road, together with the right to install and maintain utility poles and lines and water and sewer lines adjacent to, within, or under the travelled portion of said roads. Said right-of-way shall be for the benefit of other land of the Declarant located at the southeasterly corner of the development.

- B. Common Areas: The right of access to, across, and through the common areas as shown on the Plan.
- C. Underground Utilities: Declarant reserves the right to grant easements for utility purposes to enter onto any lot within fifteen (15) feet of the road side line for the purpose of constructing, reconstructing, installing, replacing, and maintaining an underground or an above ground utility therein and to extend, connect to, and use in common any previously installed utility by the lot owner providing that promptly after such entry the surface of the ground shall be restored to substantially the same condition as it was in prior to such entry.
- D. Grading and Drainage Easement: Declarant reserves the right to enter onto any lot within thirty (30) feet of the road sideline for the purpose of constructing, reconstructing, installing, replacing, and maintaining any drainage systems as shown on the Plan. Declarant also reserves within said thirty (30) foot strip, an easement for the purpose of grading for the road systems and drainage systems. Promptly after any entry onto any lot for the above purposes, the surface of the ground shall be restored to substantially the same condition as it was in prior to such entry.
- E. Other: The right to exercise throughout the property any rights or powers hereinafter conferred upon the Association by amended Declaration.

- A. Access: A right-of-way for all purposes over and along the road, in the subdivision, as said is shown on the Plan, in common with Declarant and in common with the owners of the other parcels.
- B. Common Areas: A right of reasonable use of the common areas for purposes of passive and active recreation. No improvements shall be made within the common areas except as authorized by the Planning Board of the Town of Naples, provided however, that owners of lots abutting said common areas may be granted easements for the purpose of drilling wells within the common areas. Said easements shall be granted at the discretion of Declarant. The Association shall have the power and duty to set rules and regulations concerning the use of said common areas.

The Declarant reserves for the benefit of other land owned by Declarant at the southeasterly corner of the development, the right to grant others similar rights to use the common areas.

- C. Drainage Easements: All drainage easements as shown on the Plans shall be deeded to the Association and the Town of Naples. The Association shall have the right, duty, and obligation to maintain said drainage easements in proper working order. The Association may rely on the recommendations of a registered professional engineer to determine its maintenance obligations pursuant to this paragraph.

ARTICLE V
PROTECTIVE COVENANTS AND RESTRICTIONS

- A. Residential Use: No parcel shall be improved or used except for single family residential purposes, with no more than one principal residence and improvements accessory thereto. The principal residence shall have a minimum habitable floor area of 1,300 square feet, as measured by the area above the continuous foundation, unless otherwise authorized by Declarant. All houses shall be erected with a continuous foundation and shall include a heating system for year-round occupancy.

- B. Prohibition on Subdividing Land: No parcel shall be subdivided except for the purpose of conveying portions of a single lot to abutting lot owners for the purpose of increasing the lot size of said abutting lot owners.

- C. Road Maintenance: The Declarant shall construct the

the Town of Naples. Madison Heights Homeowners Association shall have the right, duty, and obligation to maintain the roadways.

- D. Design of Dwelling: The design of residential dwelling and other acceptable buildings, including, but not limited to, materials, colors, textures, building shape, roof lines, window treatment, and site orientation shall be of a character harmonious with the natural beauty of the Madison Mountain environment. The design of all proposed residential dwellings shall be submitted to and approved by Declarant prior to the commencement of construction of any such dwelling.
- E. Maintenance: All parcels, including the common areas, shall be maintained in a neat, attractive manner and kept in good repair. Every domestic water supply system and sewage disposal system shall be kept and maintained in compliance with all federal, state, and local requirements.
- F. Surface Water: No owner of a lot, his agents, or successors in interest shall alter the natural course of surface water on any lot in a way which would alter the natural flow of such water across any other parcel, unless such alteration is approved by the owners of all parcels affected.
- G. Compliance with Ordinances: All construction activities, including the siting of buildings, septic systems, and water supply shall be in accordance with all local and state laws, codes, ordinances, and regulations.
- H. Animals: The keeping of poultry, swine, dog kennels, livestock, or other animals shall not be permitted on the property except household pets normally housed in a single family residence.
- I. Siding: No dwelling or other building erected on any lot will be covered with tar paper, asphalt siding, or corrugated metal siding but shall be covered with clapboards, shingles or other suitable material.
- J. Trash: Trash, garbage, and other waste shall be kept in sanitary containers where they are not visible from the road or any other parcel.
- K. Tree Cutting: Prior to lot development, cutting of trees

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- A. A 35 percent selective cut of the trees over 8" DBH over the entire site except as follows:
1. No cutting within 100 feet of the perennial or intermittent streams.
 2. No cutting of softwoods within the deer feeding area.
 3. No cutting in areas along the street frontage of any parcel for width of 15 to 25 feet per town conditions or preliminary approval.
- B. Individual homeowners shall be permitted to cut trees in accordance with the following:
1. Any cutting of trees on any lot shall be limited to such cutting as is necessary for constructing a house, well, driveway, disposal field, and lawn area not be exceed 10,000 square feet (which shall include the work area surrounding the house during construction). There shall be no cutting of trees within buffer zones except as expressly permitted by the definition of the particular buffer zone. Area of tree removal shall be revegetated to the extent practical in an effort to maintain the natural beauty of the environment. This section shall preclude the removal of diseased or naturally damaged trees.
- I. Completion of Construction: Any construction, including landscaping, commenced on any lot shall be completed within a period of 12 months from the date construction originally commenced.
- M. Unregistered Motor Vehicles: No unregistered motor vehicles may be kept on any property located in the subdivision unless it is parked in an enclosed garage. No house trailer, business or commercial vehicle, or vehicle of similar nature shall be brought upon, or be maintained, or be permitted to remain on the property except a business vehicle normally used by a lot owner in his or her occupation may remain on the property provided said vehicle is parked in an enclosed garage.
- N. Tractor Trailers: No tractor trailers may be kept on any property located in the subdivision.

- P. Water Supply: The water supply for each lot shall be provided by means of drilled wells.
- Q. Sediment and Erosion Control Plan: All construction activities shall be in accordance with the Stormwater Management and Erosion and Sediment Control Program prepared by DeLuca-Hoffman Associates, Inc., dated August 4, 1987, and on file with the Town of Naples.
- R. Buffer Zones/Drainage Easement: Four buffer zones and a drainage easement have been created as shown on the Plan. The permitted uses, non-permitted uses, and optional-permitted uses are as shown on a table labelled, "Buffer/Easement" as shown on said Plan.
- S. Septic Tanks: The Association shall have the right and duty to enter, at reasonable times, each parcel for the purpose of pumping, at least once every three (3) years the individual septic tanks located thereon and to perform such other maintenance activities necessary to keep the waste disposal systems located thereon in satisfactory working condition. The Association shall have, in accordance with the Bylaws and this Declaration, the right, duty, obligation, and responsibility for assessing each owner for the costs incurred in maintaining the individual septic tanks.
- T. Mailboxes: Mailboxes shall not be allowed within the subdivision except as provided by Declarant.
- U. Restrictions on Plan: All lots shall be held subject to and with the benefit of any restrictions, covenants, general notes, or other matters, if any, as shown on the Plan.
- V. Road Frontage/Lot Size/Setbacks: All lots shall meet the minimum road frontage requirement of 150 feet and the minimum lot size requirement of 40,000 square feet.

Lot line setbacks for buildings located thereon shall be as follows:

Front	50 feet
Side	30 feet
Rear	75 feet

Lot line setbacks are depicted on the Plans.

accessory buildings shall be located within a drainage easement. Buffer Zones, as shown on the Plans, shall not be reduced by the provisions of this section.

- W. Stump Dump: The stump dump shown on the Plans is for use by the developer only during the construction of the project roadways. Such use by the developer shall be subject to restrictions imposed by the Department of Environmental Protection. Upon completion of construction, the developer shall loam, seed, fertilize, and mulch the stump dump, remove the fencing, and it shall become a portion of the common area of the development.
- X. Maintenance of Infiltration System: A maintenance plan for the infiltration system has been prepared by DeLuca-Hoffman Associates, Inc., of Portland, Maine and has been approved by the State of Maine Department of Environmental Protection. The Association shall have the right, duty, and obligation to maintain the infiltration system in accordance with said plan. Any alterations to such maintenance plan must be approved by the State of Maine Department of Environmental Protection.

ARTICLE VI
MADISON HEIGHTS HOMEOWNERS ASSOCIATION

The owner of each parcel within the property, or his heirs, successors or assigns, shall automatically, during the period of his ownership and by virtue of said ownership, be a member of the Association so long as he retains title to any parcel on the Plan.

- A. Purposes: The purposes of the Association shall be the maintenance of the roads in the subdivision and any other common facilities of limited or general use located within the common areas; the administration and enforcement of the protective covenants and easements set forth in this Declaration; the general protection of the property; and the performance of any functions relating to the use, maintenance or improvement of the property required by this Declaration or which may be approved by vote of the owners.
- B. Bylaws: The Association shall be organized and operated pursuant to the Bylaws of Madison Heights Homeowners Association which Bylaws shall be recorded in the Cumberland County Registry of Deeds, as amended from time to time, by the Association.
- C. Voting: Each owner, by virtue of his ownership of a

D. Assessments:

- (1) Each owner shall be assessed by the Association, at least annually, a fee covering his share of the net cost of carrying out the functions and purposes of the Association. The fees shall be computed and collected in accordance with the Bylaws of the Association. The collection of the assessments may be made in advance and limited reserves may be maintained in order to ensure that the purposes and obligations of the Association are carried out in a timely manner.
- (2) Such assessments as collected by the Association shall include any municipal taxes as charges against the common areas or the road. Each owner shall pay a share of such tax proportionate to the number of parcels owned by him.
- (3) Such assessments, together with interest thereon, and costs of collection as provided in said Bylaws, shall be charged upon each parcel of the owner against whom each assessment is made. If any assessment is not paid when stated to be due, then such assessment shall become delinquent. If the assessment is not paid within 30 days after the due date, the assessment shall bear interest at the rate of eighteen percent (18%) per annum from the due date and any owner or owners, or the Association, may bring an action at law or equity against any owner obligated to pay the same to enforce payment of the same. In the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and reasonable attorneys' fees to be fixed by the court, together with costs of the action.
- (4) In determining the assessment against each individual lot, it is expressly understood that lot 1 and lot 9 of the subdivision shall not be considered as part of the Subdivision. Lot 1 and Lot 9 shall, nevertheless, be subject to the covenants, conditions, easements and restrictions contained herein. Lot 1 and Lot 9 shall have no right of access to the Common Area or to the road system within the subdivision and shall not be liable for any expenses in respect thereof.

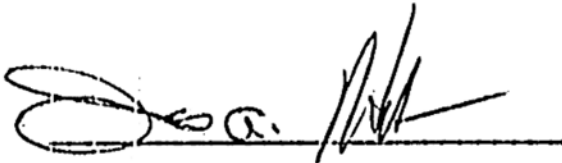
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IN WITNESS WHEREOF, Madison Heights Associates, Inc., has caused this instrument to be signed and sealed in its corporate name by Gerard E. Connelly, its president, therunto duly authorized this 28th day of April, 1988.

WITNESS:

MADISON HEIGHTS ASSOCIATES, INC.





By: Gerard E. Connelly,
President

STATE OF MAINE
CUMBERLAND, S.S.

April 28, 1988

Then personally appeared the above-named Gerard E. Connelly, President of Madison Heights Associates, Inc., and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said corporation.

Before me,


Notary Public/Attorney at Law
James A. Hopkins

BYLAWS OF
MADISON HEIGHTS HOMEOWNERS ASSOCIATION

ARTICLE I
General

Section 1.1 Name. The name of the Corporation is Madison Heights Homeowners Association (hereinafter the "Association").

Section 1.2 Offices. The principal office of the Association shall be located at Route 35, Naples, Maine. The Board of Directors may change the location of the principal offices of the Association.

The registered office of the Association shall be located at 22 Free Street, Portland, Maine. The Board of Directors may change the location of the registered office as the management of the Association may require.

Section 1.3 Seal. The seal of the Association shall be as follows: Madison Heights Homeowners Association, 1987.

Section 1.4 Fiscal Year. The fiscal year of the Association shall begin on the first day of January in each year and end on the last day of December in the same year.

Section 1.5 Membership. The members shall consist of all the owners of lots in Madison Heights as shown on the Plan entitled, "Madison Heights" dated January 19, 1988, and recorded in the Cumberland County Registry of Deeds in Plan Book 170, Page 47.

The membership of each lot owner shall terminate upon the sale, transfer, or other disposition of ownership interest in the lot, whereupon membership shall automatically transfer to and be vested in the successor in ownership. The mortgage of a lot shall not operate to transfer membership until foreclosure of

ARTICLE II
Purposes and Powers of the Association

Section 2.1 Purposes. The purposes of this Association are to establish an Association of lot owners for the government, operation, and maintenance of the residential community in which they live as depicted on the Plan referred to in Section 1.5, and located in the Town of Naples, County of Cumberland, and State of Maine.

Section 2.2 Powers. In addition to all the powers, authority and responsibilities granted to or imposed upon this Association by the laws of the State of Maine, specifically including those set forth or referred to in the Maine Non-Profit Corporation Act, all of which the Association shall have, the Association shall have, to the extent permitted by law, and by the Declaration and the Bylaws as hereinafter set forth, the following specific powers to:

- A. Adopt and amend Bylaws and Rules and Regulations.
- B. Adopt and amend budgets for revenues, expenditures, and reserves, and collect common charges, assessments, and service charges from lot owners.
- C. Hire and terminate managers and other employees, agents, and independent contractors.
- D. Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two (2) or more lot owners on matters affecting the Association.
- E. Make contracts and incur liabilities.
- F. Regulate the use, maintenance, repair, replacement, and modification of common elements and facilities.
- G. Cause additional improvements to be made as a part of the common elements and facilities including, without limitation, connection to common sewage facilities.
- H. Acquire, hold, encumber, and convey in its own name any right, title or interest to real or personal property.
- I. Grant easements for public utilities servicing the property through or over the common elements and facilities, subject to the consent of a majority in interest of the members as provided herein.

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- J. Impose and receive payments, fees, or charges for the use, rental, or operation of facilities located on the common elements and facilities.
- K. Impose charges and interest for late payments of common charges, assessments, and service charges and, after notice and an opportunity to be heard, impose reasonable penalties for violations of the Declaration, Bylaws, and Rules and Regulations of the Association.
- L. Impose reasonable charges for the preparation and recording of amendments to the Declaration or statements of unpaid common charges and assessments.
- M. Provide for the indemnification of its officers and directors and maintain directors' and officers' liability insurance.
- N. Exercise any other powers conferred by Declaration or Bylaws.
- O. Exercise all other powers that may be exercised pursuant to the Maine Nonprofit Corporation Act.

Section 2.3 Non-Profit Status. The Association is not organized for profit and no property or profit thereof shall inure to the benefit of any person except in furtherance of the non-profit making purposes of the Association or in the course of acquiring, constructing or providing management, maintenance, and care of the Association property, or by virtue of a rebate of excess membership dues, fees, assessments, or common charges.

ARTICLE III Definitions

Section 3.1 Association. The term "Association" shall mean and refer to the Madison Heights Homeowners Association, its successors and assigns.

Section 3.2 Properties. The term "properties" shall mean and refer to all existing properties, and additions thereto, as are subject to the following Declaration of Covenants and Restrictions:

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Section 3.3 Common Properties. The term "common properties" shall mean all real property owned by the Association for the common use and enjoyment of the members of the Association and all real property labeled "common area" on the Plan referred to in Section 1.5. The term "common properties" shall include, but is not limited to the common utility easement, drainage easements, roadways, storm drainage system, force mains, lift stations, emergency access easements, and driveway easement, all as shown on the Plan and the Plans submitted for approval to the Town of Naples.

Section 3.4 Lot. The term "lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the properties with the exception of common areas and unnumbered lots shown on such subdivision plans.

Section 3.5 Member. The term "member" shall mean and refer to each person or entity who holds a membership in the Association.

Section 3.6 Owner. The term "owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any lot which is a part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3.7 Declaration. The term "Declaration" shall mean and refer to the Declaration of Covenants and Restrictions as referred to herein in Section 3.2.

ARTICLE IV Meetings of Members

Section 4.1 Place of Meetings. Meetings of the members of the Association shall be held at Naples, Maine or at such other place within or without the state designated by consent of all the members.

Section 4.2 Annual Meeting. The annual meeting of the members shall be held at seven o'clock in the evening of the third Friday in August of each year, if this day is not a holiday, or on the first following day that is not a legal holiday. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the Association.

Section 4.3 Special Meetings. Special meetings of the members

Section 4.4 Notice of Meetings. Written notice stating the place, day, and hour of the meeting and, in case of a special meeting, the purpose or purposes for which a meeting is called, shall be delivered not less than 10 or more than 50 days, before the date of the meeting, either personally or by mail, by or at the direction of the President, the Clerk, or the officer or persons calling the meeting, to each member entitled to vote at such meeting. If mailed, such notice shall be deemed delivered when deposited with postage prepaid in the United States mail, addressed to the shareholder at the address appearing on the stock transfer books of the Association.

Section 4.5 Quorum. A majority of all members entitled to vote, represented in person or by proxy, must be present in order to constitute a quorum at a meeting of the members.

Section 4.6 Voting. Every owner of a lot shall have one vote in the Association.

Section 4.7 Proxies. Any person entitled to vote at a members' meeting may execute a proxy in writing authorizing another member of the Association to act for him. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his lot.

Section 4.8 Action by Consent. Any action required to be taken at a meeting of the members of the Association, or any action that may be taken at a meeting of the members, may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the members entitled to vote with respect to the subject matter thereof. This consent shall have the same effect as a unanimous vote of members and may be stated as such in any articles or documents filed with the Secretary of State.

Section 4.9 Order of Business. The order of business at all meetings of the lot owners shall be as follows, to the extent required:

- (a) Roll call.
- (b) Proof of notice of meeting or waiver of notice.
- (c) Reading of minutes of preceding meeting.
- (d) Reports of Officers.
- (e) Report of Board of Directors.
- (f) Report of committees.
- (g) Election of members of the Board of Directors.

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Section 4.10 Parliamentary Procedure. At all meetings of the lot owners or of the Board of Directors, Roberts' Rules of Order, as then amended, shall be followed, except that in the event of conflict, these Bylaws shall prevail.

Section 4.11 Adjournment. Any meeting of the Association may be adjourned from time to time to such place and time as may be determined by majority vote of the members present, whether a quorum be present or not, without further notice of the time and place of adjournment beyond that given at the meeting. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted by a quorum at the meeting as originally called.

ARTICLE V
The Board of Directors

Section 5.1 Number and Qualifications. The business and affairs of the Association shall be managed by a board of three (3) directors, who need not be residents of the State of Maine or members of the Association. The number of directors may be increased to not more than nine (9) or decreased to not less than three (3), from time to time, by amendment of this section by the members; but no decrease shall have the effect of shortening the term of any incumbent director.

Section 5.2 Election and Term of Office. At the first annual meeting the members shall elect one (1) director for a term of one year; one (1) director for a term of two years; one (1) director for a term of three years; and at each annual meeting thereafter the members shall elect one (1) director for a term of three years.

Section 5.3 Vacancies. Any vacancy in the Board of Directors created by an increase in the number of directors shall be filled only by election at an annual meeting or a special meeting of the members called for that purpose.

Any other vacancy, however occurring, in the Board of Directors may be filled by the majority vote of the remaining directors. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office.

Section 5.4 Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the directors. Notice of regular meetings of the Board of Directors shall be

Section 5.5 Annual Meeting. The Board of Directors shall meet each year immediately after the annual meeting of the members, for the purpose of organization, election of officers, and consideration of any other business that may properly be brought before the meeting.

Section 5.6 Special Meetings. Special Meetings of the Board of Directors may be called by the President or any two directors of the Association.

Section 5.7 Notice of Meetings - Waiver. No notice need be given of any annual meeting of the Board of Directors.

Notice of special meetings of the Board of Directors shall be sent by any usual means of communication not less than three (3) business days before the meeting, and shall specify the time and place of the meeting and the business to be transacted thereat.

Waiver of notice signed by a director either before or after a Board of Directors meeting shall obviate the need of formal notice and call as to that director.

Section 5.8 Quorum and Voting. A majority of directors must be present in order to constitute a quorum at a meeting of the Board of Directors. All Board of Directors' action shall be determined by a majority vote at any meeting at which a quorum is present.

Section 5.9 Action by Consent. Any action that may be taken at a meeting of the directors, may be taken without a meeting, if all of the directors sign a written consent setting forth the action taken or to be taken, at any time before or after the intended effective date of such action. Such consent shall be filed with the minutes of directors' meetings and shall have the same effect as a unanimous vote.

Section 5.10 Powers and Duties. The Board of Directors shall have power to:

- A. Adopt and publish rules and regulations governing the use of the common properties and facilities, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof.
- B. Exercise for the Association all powers, duties, and authority vested in or delegated to this Association and not reserved to the membership by other provisions of

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- C. Declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors.
- D. Employ a manager, an independent contractor, or other employees as they deem necessary, and to prescribe their duties.

It shall be the duty of the Board of Directors to:

- A. Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members or at any special meeting when the statement is requested in writing by one-fourth of the members who are entitled to vote.
- B. Supervise all officers, agents, and employees of this Association, and to see that their duties are properly performed.
- C. As more fully provided herein, and in the Declaration, to:
 - 1. Fix the amount of the monthly assessment against each lot as least 90 days in advance of each assessment period, as hereinafter provided in Article VII.
 - 2. Send written notice of each assessment to every owner subject thereto at least 30 days in advance of each assessment period.
- D. Issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate stating whether or not any assessment has been paid. A reasonable charge may be made by the board for the issuance of these certificates. If a certificate states an assessment has been paid, it shall be conclusive evidence of such payment.
- E. Procure and maintain adequate liability and hazard insurance on property owned by the Association.
- F. Cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate.

Section 5.11 Nomination and Election. Nomination for election to the Board of Directors shall be made by a nominating committee. Nominations may also be made from the floor at the annual meeting. The nominating committee shall consist of a chairman, who shall be a member of the Board of Directors, and two or more members of the Association. The nominating committee shall be appointed by the Board of Directors prior to each annual meeting of the members, to serve from the close of such annual meeting until the close of the next annual meeting and the appointment shall be announced at each annual meeting. The nominating committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. The nominations may be made from among members or non-members.

Election to the Board of Directors shall be by secret written ballot. At the election, the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

Section 5.12 Removal of Directors. Any or all of the directors may be removed, with or without cause, upon the affirmative vote of a majority of the members entitled to vote.

Section 5.13 Executive Committees. The Board of Directors, by a resolution adopted by a majority of the full Board of Directors, may designate from among its members, an executive committee, including, but not limited to, an architectural review committee, consisting of 2 or more directors and may delegate to such executive committee all the authority of the Board of Directors, except that no such executive committee shall have or exercise the authority of the Board of Directors to:

- A. Amend the articles of incorporation.
- B. Adopt a plan of merger or consolidation.
- C. Recommend to the members the sale or other disposition of all or substantially all of the property and assets of the corporation other than in the usual course of its business.
- D. Recommend to the members voluntary dissolution of the

Section 5.14 Other Committees. The Board of Directors may designate such other committees as the Board deems necessary. Such committees may consist of either members of the Board or members of the Association or both. Such committees shall be designated by a resolution adopted by a majority of the full Board of Directors.

Section 5.15 Compensation. No compensation shall be paid to directors for their services as directors or in any other capacity, unless a resolution authorizing such remuneration shall have been adopted by the members before or after the services are undertaken. A director shall be reimbursed for out-of-pocket expenses incurred for the benefit of the Association upon presentation of receipts or other satisfactory evidence to the Treasurer.

ARTICLE VI The Officers

Section 6.1 Officers and Qualifications. The officers of the Association shall consist of a President, Treasurer, Secretary, and such other officers and agents as the Board of Directors may deem necessary. No person shall simultaneously hold more than one office at any one time. Officers need not be directors of the Association.

Section 6.2 Election and Term of Officers. All officers of the Association shall be elected by the Board of Directors at its annual meeting. The officers shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or disqualified to serve. Whenever any vacancies shall occur in any office by death, resignation, removal, increase in the number of offices of the Association, or otherwise, the same shall be filled by the Board of Directors in the manner prescribed for regular election, and the officer so elected shall hold office until his successor is chosen and qualified.

Section 6.3 Resignation and Removal of Officers. Any officer may be removed either with or without cause by the unanimous vote of the Board of Directors. An officer may resign at any time by giving written notice to the Board, the President or the Secretary. Acceptance of such resignation shall not be necessary to make it effective. The resignation shall take effect on the date of receipt of the notice or at any later time specified therein.

Section 6.4 Duties of Officers. The duties and powers of the

President

The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association. He shall have all of the general powers and duties which are usually vested in the office of President of a non-profit corporation, including but not limited to, the power to appoint committees from among the owners or their spouses from time to time as he may in his discretion decide is appropriate to assist in the conduct of the affairs of the Association.

Treasurer

The Treasurer shall be responsible for keeping financial records and accounts of all receipts and disbursements in books belonging to the Association. The Treasurer shall also, in the absence of the President, exercise the powers and perform the duties of the President. He shall be responsible, subject to the direction of the Board of Directors, for the preparation and dissemination to the members of all financial reports, budgets, and notices required, and for the preparation and signing, if necessary, of all financial reports or tax returns required to be filed by the Association.

Secretary

The Secretary shall keep and certify the minutes of all meetings of the Board of Directors or of the Association, shall give all notices as provided by these Bylaws, shall prepare, execute, certify and record amendments to the Declaration, and shall have other powers and duties as may be incidental to the offices of Secretary, given him by these Bylaws or assigned to him from time to time by the directors. If the Secretary or any assistant secretary shall not be present at any meeting, the presiding officer shall appoint a secretary pro tempore who shall keep the minutes of such meeting and record them in the books provided for that purpose. The Secretary shall be responsible for the filing of all reports and documents required to be filed by the Association with any governmental agency.

Auditor

The members may at any meeting appoint some person, firm, or corporation engaged in the business of auditing to act as auditor of the Association and to perform such audits and special duties as may be requested by the Association.

ARTICLE VII
Fiscal Affairs and Administration

Section 7.1 Accounting. Books and accounts of the Association shall be kept under the direction of the Treasurer and in accordance with customary accounting principles and practices. Within ninety (90) days after the close of each fiscal year, the Association shall furnish its members with a statement of the income and disbursements for such prior fiscal year and a balance sheet as of the close of that year. All financial records shall be available for examination by lot owners and their duly authorized agents at reasonable times.

Section 7.2 Budget and Common Charges.

The Board shall cause an estimated annual budget to be prepared based on its estimate of annual income and expenses, and, prior to the adoption of the budget by the Board, it shall send a summary of such budget to each member.

The Board shall adopt a budget for the amount required by the Association to meet its expenses for each fiscal year or such other fiscal period as it deems appropriate, including but not limited to the following items:

1. Management and administration expenses.
2. The cost of operation, repairs, maintenance, replacement, and improvements of common elements and facilities and of roadway and common utilities, benefiting the property.
3. The cost of such insurance, services, and utilities as may be furnished by the Association, other than such items for which a service charge is assessed.
4. Adequate working capital and reserves, which shall be established and maintained by the Board including general operating reserves, reserves for contingencies, and reserves for maintenance, repair, and replacement of the common elements.
5. Such other expenses of the Association as may be approved by the Board of Directors including operating deficiencies, if any, for prior periods.

Section 7.3 Dues and Assessments. The Board of Directors shall have the power to levy, assess and collect, and provide for the

Restrictions recorded in the Cumberland County Registry of Deeds, but not in excess of a maximum rate to be fixed, at a regular or special meeting, by the vote of members holding a majority of the voting power of the entire membership.

Section 7.4 Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety, and welfare of the residents in the properties and in particular for the upkeep, maintenance, development, and further improvement of roads, drives, lanes, paths, and ways as depicted on any Plan showing any portion of the properties not including any private drives servicing an individual residence. The assessments shall also be used for the upkeep, maintenance, development, and further improvement of the common areas, services, and facilities devoted to the purpose stated herein and related to the use and enjoyment of the common area and of the homes situated upon the properties.

Section 7.5 Special Assessments. In addition to the annual assessments authorized above, the Association may levy in any calendar year, a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, or reconstruction, unexpected repair or replacement of a described capital improvement upon the common area, including the necessary fixtures and personal property related thereto, provided that the assessment shall have the assent of 75% of the votes of the members of the Association who are voting in person or by proxy at a meeting duly called for this purpose.

Section 7.6 Uniform Rate. Both annual and special assessments must be fixed at a uniform rate for all lots.

Section 7.7 Creation of Lien for Assessments. The annual and special assessments, together with interest thereon and costs of collection thereof, as hereinafter provided shall be a charge on the land and shall be a continuing lien on the property against which assessment is made. Each assessment, together with the interest, costs, and reasonable attorney's fees shall also be the personal obligation of the person who was the owner of such property at the time when the assessment came due and shall not pass to his successor in title unless expressly assumed by them.

Section 7.8 Due Dates of Assessments. The Board of Directors shall fix the amount of the monthly assessment against each lot at least ninety (90) days in advance of the date that the assessment is due. Written notice of the assessment shall be sent to every owner subject thereto. Notice may be given in

time, furnish a certificate in writing, signed by an officer of the Association, setting forth whether the assessments for a particular lot are current. A reasonable charge may be made by the Board for the issuance of these certificates. A certificate shall be conclusive evidence of the facts stated therein.

Section 7.9 Effect of Non-payment of Assessments; Remedies of the Association. If the assessments are not paid on the date when due, then the assessment shall become delinquent and shall, together with interest thereon and cost of collection thereof as hereinafter provided, become a continuing lien on the property which shall bind the property in the hands of the then owner, his heirs, devisees, personal representatives, and assigns. The personal obligation of the then owner to pay the assessment, however, shall remain his personal successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquent date, the assessment shall bear interest from the date of delinquency at the rate of eighteen (18) percent per annum, and the Association may bring an action at law against the owner personally obligated to pay the same or to foreclose the lien against the property and there shall be added to the amount of the assessment the costs of preparing and filing the complaint in the action, and in the event a judgment is obtained, the judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the court together with the costs of the action.

Section 7.10 Subordination of the lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the properties subject to assessment; provided, however that the subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Any sale or transfer shall not relieve the property from liability for any assessments thereafter becoming due, nor from the lien of any subsequent assessment.

Section 7.11 Exempt Property. The following property subject to the Declaration shall be exempt from the assessments charges and liens created herein: (a) all properties to the extent of any easement or other interest therein dedicated to and accepted by the local public authority and devoted to public use; (b) all common properties as defined in Article III,

ARTICLE VIII
Execution of Instruments

Section 8.1 Instruments Generally. All checks, drafts, notes, vouchers, bonds, acceptances, contracts, deeds, lien notices, certificates, and all other instruments shall be signed or approved by the President or the Secretary or Treasurer, and in addition by any one or more officer(s), agent(s) or employee(s) as the Board of Directors may designate, unless otherwise unanimously voted by the Board of Directors.

ARTICLE IX
Liability of Directors and Officers

Section 9.1 Exculpation. No director or officer of the Association shall be liable for acts or defaults of himself or any other officer or member, or for any loss sustained by the Association or any member thereof, unless the same has resulted from his own willful misconduct or gross negligence.

Section 9.2 Indemnification. The Association shall indemnify any person who was or is threatened to be made a party against any actual, threatened, or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact he is or was an officer, director, agent, or employee of the Association against all expenses including reasonable attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection therewith, excepting, however, such matters in which such person is finally adjudged to have acted with willful misconduct or gross negligence towards the Association or absent a final adjudication thereof, excepting such matters in which the Board of Directors (excluding any interested director determines any such person acted with willful misconduct or gross negligence). This right to indemnification shall be in addition to any other power of the Association to indemnify as permitted by law. The Association may also maintain insurance on behalf of any person who is or was a director, officer, agent, or employee of the Association against any liability asserted against him and incurred by him in such capacity or arising out of his status as such, whether or not the Association would otherwise have the power or duty to indemnify him.

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ARTICLE X
Amendments

Section 10.1 These Bylaws may be amended, at a regular or special meeting of the members, by a vote of a majority of a quorum of members present in person or by proxy.

Section 10.2 In the case of any conflict between the articles of incorporation and these Bylaws, the articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.