

**Declaration of Condominium  
for  
Deacon Hayes Commons Condominium**

THIS DECLARATION OF CONDOMINIUM is made as of this \_\_\_\_ day of \_\_\_\_\_, 2022, by DEACON HAYES COMMONS, LLC, a Maine limited liability company having a place of business in North Yarmouth, Maine (the “Declarant”).

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the Declarant hereby takes the following actions:

**ARTICLE I**

**Submission of the Premises**

Section 1.1 Description of Land Declarant hereby submits the Premises to the provisions of the Act. The Premises are subject to and shall have the benefit of all easements, rights of way and matters affecting title of record on date hereof, including without limitation any described on Schedule A attached hereto.

Section 1.2 Creation of Units The Condominium shall consist of seven (12) Units, numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10,11, and 12.

**ARTICLE II**

**Unit Boundaries**

Section 2.1 Location and Dimensions of Units The location and dimensions of the Units within the Condominium are depicted on the Plans.

Section 2.2 Units and Common Elements Depicted on the Plans The location of Unit boundaries within the building and the approximate Unit dimensions are shown on the Plans. Each Unit shall have appurtenant to it an undivided tenant-in-common interest in and to all Common Elements within the Condominium in the percentages set forth on Schedule B attached hereto, as Schedule B may be amended from time to time.

Section 2.3 Unit Boundaries The boundaries of each Unit are as follows:

(a) Upper and Lower (Horizontal) Boundaries: The upper and lower boundaries of each Unit shall be the following boundaries extended to an intersection with the vertical (perimeter) boundaries:

- (i) Upper Boundary: The horizontal plane of the lower side of the gypsum board or other finished ceiling material.
- (ii) Lower Boundary: The horizontal plane of the top surface of the subfloor.

(b) Vertical (Perimeter) Boundaries: The vertical boundaries of each Unit shall be the vertical plane at the inside of the structural brick exterior walls and the inside surface of the gypsum board or other wall materials bounding the Unit extended to intersections with each other and with the upper and lower boundaries. Boundary lines shall also be the interior surface of doors, windows and storm windows and their frames, sills and thresholds.

Section 2.4 Maintenance Responsibilities Notwithstanding the ownership of the various portions of the Common Elements and the Units by virtue of the foregoing boundary description, the provisions of this Declaration shall govern the division of maintenance and repair responsibilities between the Unit owners and the Association.

Section 2.5 Relocation of Unit Boundaries and Subdivision of Units Relocation of boundaries between Units is permitted subject to compliance with the provisions in Section 1602-112 of the Act. The subdivision of Units is not permitted except as set forth in Section 4.5 below.

### **ARTICLE III**

#### **Common Elements & Limited Common Elements**

##### Section 3.1 Common and Limited Common Elements

(a) The locations of the Limited Common Elements to which each Unit has or Units have exclusive use, in addition to the Limited Common Elements described in Section 1602-108 of the Act, are as follows:

- i. The foundation, structure, exterior siding, windows, roof, and other building elements, and the outdoor yard areas and grounds surrounding Units 1-12, inclusive.

- ii. Heating, ventilation and air conditioning and water heating equipment, fixtures, ducts, pipes and other improvements serving a single unit are Limited Common Elements allocated to such unit served.

(b) Each Unit is served by common public water and septic systems, the fees and charges for which shall be common expenses. All sewer and water system components are Common Elements of the Condominium. Separate services are provided for electricity, telephone, natural gas, and cable television and telecommunications, and the meters, equipment and fixtures relating thereto shall be Limited Common Elements allocated to the Unit(s) served.

(c) Except as indicated otherwise on the Plans, the land, with the benefit of and subject to all easements, covenants, agreements, and restrictions of record as of the date hereof, all exterior elements, including without limitation, the entryways, the parking lot and parking spaces, entry steps and landings, doors, windows and storm windows and their frames, sills and thresholds, roofs, floor joists and pilings, foundation, ceiling joists, rafters, and siding, all attic space, and all other parts of the Premises necessary or convenient to its existence, maintenance and safety or normally in common use, except as otherwise expressly provided in this Declaration, are Common Elements of the Condominium. Some portions of the Common Elements are allocated to the exclusive use of a Unit owner or Units owners as Limited Common Elements as provided in subsection (a) above.

## ARTICLE IV

### **Easements; Development Rights; Special Declarant Rights**

Section 4.1 Easements In addition to the easements created by Section 1602-114 of the Act, the following easements are hereby granted or reserved, as the context requires:

- (a) Easement for Lateral & Subjacent Support Each Unit and Common Element shall have an easement for lateral and subjacent support from every other Unit and Common Element.

Section 4.2. Declarant Control Period The Declarant Control Period shall be the period of time commencing as of the date of recording of the first deed from the Declarant to a purchaser of a Unit in the Condominium until the earlier to occur of the following dates: the date seven (7) years after the date of recording of the first Unit deed or sixty (60) days

after the date upon which Declarant has conveyed seventy-five percent (75%) of the units that Declarant is allowed to create under this Declaration.

Section 4.4. Common Element Association & Board Access The Declarant reserves in favor of the Association and its Board, officers, agents, employees, and the managing agent (if any), and every other person authorized by the Board the irrevocable right and easement to have access to each Unit as may be necessary for the inspection, maintenance, repair, or replacement of any of the Common Elements therein or accessible therefrom or the making of any addition or improvements thereto; or the making of repairs as are reasonably necessary for safety purposes or to prevent damage to any other Unit or Units or the Common Elements; or the abating of any violation of law, orders, rules or regulations of the Association or of any governmental authorities having jurisdiction thereof. In case of an emergency, such right of entry shall be immediate, whether or not the Unit owner or Occupant is present at the time. In the event of an emergency, the Board may, in its sole discretion, bar access to any portion of the Condominium, including access to the Units by Unit owners or Occupants (as hereinafter defined).

Section 4.5 Development Rights. The Declarant reserves for the benefit of itself and its successors and assigns, the following development rights:

- (a) to create additional Units up to a total of twelve (12) Units.

The real estate subject to the development rights is the Premises and any land Declarant may add to the Premises by amendment to this Declaration. The development rights herein reserved may be exercised with respect to different portions of the Premises at different times as Declarant, in its sole discretion, may determine. No assurances are hereby made with respect to the order in which the portions of the Premises subject to the development rights hereof will be subjected to the exercise of such development rights. If any such development right is exercised in some portion of the Premises, such development right need not be exercised in all or any other portion of the Premises. The Declarant agrees that improvements constructed by Declarant in the exercise of its development rights will be generally compatible with the architectural style and quality of construction of other improvements in the Condominium. The development rights must be exercised within twenty (20) years from the date of recording of this Declaration in the Registry of Deeds provided that the Declarant Control Period as permitted by Section 1603-103(d) of the Act, and as reserved in Section 4.2 above, shall terminate in accordance with the provisions thereof. For purposes of this Section, development rights

shall be deemed to be exercised at such time as this Declaration is amended to reflect the exercise of development rights and the amendment is recorded in the Registry, if such exercise requires an amendment to this Declaration.

Section 4.6 Special Declarant Rights. In addition to the Declarant Control Period as set forth in Section 4.2 above, the Declarant reserves, in favor of itself and any successor declarant, the following Special Declarant Rights with respect to the Condominium until the construction of Units, Common Elements and Limited Common Elements are complete and the marketing and sale of all Units are complete:

A. To locate and relocate in the Premises, even though not depicted on the Plans, and grant and reserve easements for the installation, maintenance, repair, replacement and inspection of utility lines, wires, pipes, conduits and facilities servicing the Premises including but not limited to water, sewer, electric, telephone, cable television and other communications, natural gas, and security system and transformers, meters and other equipment related thereto, provided that no such easement shall be effective until duly recorded in the registry of deeds, that no such easements may be granted through Units sold by Declarant to third parties without such Owner's consent, which consent shall not be unreasonably withheld, conditioned or delayed, and that the Common Elements and Limited Common Elements promptly shall be restored upon installation and repair of such utility lines;

B. To connect with and make use of utility lines, wires, pipes and conduits located on the Premises for construction and sales purposes, provided that the Declarant shall be responsible for the cost of services so used;

C. To use the Common Elements for ingress and egress, for the alteration, repair and construction of Units, Common Elements and Limited Common Elements, including without limitation the movement and temporary storage of construction materials and equipment and ingress and egress by construction workers, along with the materials, tools and equipment used by such workers, and to generate noise and dust in connection with Declarant's construction activities, which noise and dust shall be deemed not to be a nuisance; and

D. To use the Common Elements and Limited Common Elements for the ingress and egress for itself, its officers, employees, agents, contractors and subcontractors and for prospective purchasers of Units; to use any Units owned or leased by the Declarant as models, management offices, sales offices for its project or customer service offices and to relocate the same from time to time within the Premises; to maintain on both the interior and exterior of the Premises such advertising and marketing

signs as may comply with applicable governmental regulations, which may be placed in any location on the Premises and may be relocated or removed, all at the sole discretion of the Declarant.

## **ARTICLE V**

### **Condominium Instruments During Declarant Control Period; Required Consent**

**Section 5.1. Amendments** Except for any amendment as set forth in Section 4.5 in the exercise of Declarant Rights, any amendment to this Declaration requires approval from at least sixty-seven percent (67%) of the allocated interests of Unit owners as set forth in Article XVI hereof, except that during the Declarant Control Period, no amendment that eliminates or modifies rights reserved to the Declarant shall be effective unless Declarant approves such amendment in writing. No amendment of the Declaration may be made without the prior written approval of the required percentage of Eligible Mortgage Holders where such approval is required by this Declaration or by the Act.

## **ARTICLE VI**

### **Fraction of Common Element Interests, Voting Rights, and Common Expense Liabilities**

**Section 6.1 Allocated Interests; Voting Rights** The fraction of undivided interest in the Common Elements, voting rights and common expense liabilities appertaining to each Unit is set forth at Schedule B attached hereto and incorporated herein by reference. Such undivided interests are an approximately equal (with rounding to equal 100%) prorata allocation based on the number of Units, which is the methodology that shall be used to reallocate the undivided interests in the event that the Development Rights as set forth in Section 4.5 hereof are exercised. Except in connection with the exercise of a Development Right, no fraction of undivided interest allocated to any Unit shall be altered except upon the unanimous vote of all Unit owners and the required percentage of Eligible Mortgage Holders.

## **ARTICLE VII**

### **Encroachments**

**Section 7.1. Encroachments** If any portion of the Common Elements, or any other Unit, encroaches at any time upon any Unit or upon any portion of the Common Elements, as a

result of minor variations of the actual improvements from those shown on the Plans, settling of the building, alteration or repair to the Common Elements made pursuant to the exercise of Development Rights or by or with the consent of the Board, repair or restoration of a Unit or the building after damage by fire or other casualty or as a result of condemnation or other eminent domain proceedings, an easement shall exist for the encroachment and for its maintenance so long as the building stands.

## ARTICLE VIII

### **Eminent Domain**

Section 8.1. Payment of Eminent Domain Award If a Unit is acquired by eminent domain, or if a part of a Unit is acquired by eminent domain leaving the Unit owner with a remnant that may not practically or lawfully be used for any purpose permitted by this Declaration, any award therefor shall be paid to the Unit owner as compensation for his or her Unit and its allocated interest, whether or not any allocated interest is acquired. Upon condemnation acquisition, unless the decree otherwise provides, that Unit's entire allocated interest, votes in the Association, and common expense liability shall be re-allocated to the remaining Units in proportion to the respective interests, votes and liabilities of those Units before the taking, and the Association shall promptly prepare, execute and record an amendment to this Declaration reflecting the reallocations. Any remnant of a Unit remaining after part of a Unit is taken under this subsection shall be thereafter a Common Element.

Section 8.2. Effect on Allocated Interests Except as provided in subsection 8.1 hereinabove, if part of a Unit is acquired by eminent domain, any award therefor shall be paid to the Unit owner as compensation for the reduction in value of that Unit and that Unit's allocation of Common Element interest and Common Expense liability shall remain unchanged.

Section 8.3. Condemnation of Common Elements If a part of the Common Elements is acquired by eminent domain, the Association shall represent the Unit owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority and the award shall be paid to the Association for the use and benefit of the Unit owners and their mortgagees as their interests may appear. The Association shall divide any portion of the award not used for any restoration or repair of the remaining Common Elements among the Unit owners in proportion to their respective allocated interest before the taking, but the portion of the award attributable to the acquisition of a Limited Common Element must be equally divided among the owners of

the Units to which that Limited Common Element was allocated at the time of acquisition.

Section 8.4. Priority Nothing in this Declaration or the Bylaws, rules or regulations of the Association shall be deemed to give the Unit owner or any other party priority over any rights of a first mortgagee of a Unit pursuant to its mortgage documents in the case of a distribution to such Unit owner of condemnation awards for the taking of Units and/or Common Elements.

## **ARTICLE IX**

### **Restrictions on Use & Occupancy; Services**

Section 9.1. Compliance with Bylaws and Use and Occupancy Restrictions Each Unit owner shall comply strictly with the Bylaws and with the rules and regulations adopted by the Board, with the covenants, conditions and restrictions set forth in this Declaration and with the Act. Failure to so comply shall be grounds for an action to recover damages or for injunctive relief or both maintainable by the Board on behalf of the Association or by an aggrieved Unit owner. An aggrieved Unit owner shall have a right of action against the Association for failure to comply with or to enforce this Declaration, the Bylaws, any rules and regulations duly adopted or any requirements imposed by the Act.

### Section 9.2. Use Restrictions and Association Services

- (a) Units 1 through 12, and any Units created pursuant to Development Rights, shall be used only for residential purposes, except that such restriction shall not prohibit the use of Units as home offices provided that such use complies with applicable zoning or land-use ordinances
- (b) No Unit owner: (i) shall permit or suffer anything to be done or kept upon the Condominium which will materially increase the rate of insurance on the Condominium or on the contents thereof; (ii) shall obstruct or interfere with the rights of Unit owners or Occupants or annoy them by unreasonable noise or otherwise; (iii) shall commit or permit any nuisance or commit or suffer any immoral or illegal act to be performed anywhere in or upon the Condominium; and/or (iv) shall cause or permit any noxious odors to emanate from any portion of the Condominium.



- (c) The Association shall be responsible for providing the following services, in addition to others provided in this Declaration, the expenditures for which shall be a Common Expense: the provision of water and sewer service to the Units; snow plowing and snow removal from sidewalks and the parking area; landscaping and grounds keeping; septic service; sprinkler systems.
- (i) No salt can be used for winter maintenance and only environmentally friendly deicing products can be used.
  - (ii) The advanced wastewater treatment system must have annual effluent testing for Nitrates and results forwarded to the Yarmouth Water District and the North Yarmouth Codes Enforcement Officer promptly.
  - (iii) The District be used as a resource for all items that involve source water protection and be notified of any spills and issues with the advanced wastewater treatment systems.
  - (iv) Each of the septic systems shall be maintained in good working order at all times, and have all permits, licenses, and approvals under applicable codes, statutes, and regulations.
  - (v) The septic tank shall be pumped by a certified septage servicing operator per the manufacturers requirements.
  - (vi) The private sewage system shall be visually inspected by a certified septage servicing operator, inspector or licensed master plumber per the manufacturers requirements.
  - (vii) The HOA shall furnish Yarmouth Water District and the Town of North Yarmouth, a copy of any inspection report verifying the condition of the tank, whether wastewater or effluent is ponding on the ground surface and the date of pumping. Reports shall be signed by properly licensed individuals.
  - (viii) The HOA/or owner will adhere to any other recommendations per the warranty and recommendations provided by the septic manufacturer.
  - (ix) The HOA/or owner is responsible for ensuring that access opening covers (manhole covers) remain locked or secured to prevent unauthorized access to the tanks.
  - (x) HOA members must immediately report; to the HOA/or owner, any leaky toilets or faucets; and any other circumstances that may suggest issues with the septic.
  - (xi) he HOA/or owner will have the advanced wastewater treatment tested with an annual effluent testing for Nitrates and results forwarded to the Yarmouth Water District and the North Yarmouth Codes Enforcement Officer promptly.

- (xii) Restoration, repair and maintenance work (changing oil, radiator fluid, etc.) of vehicles is prohibited, except for emergency repairs to move vehicles to a repair facility. Owners of cars which drip oil onto streets, driveways, alleys, roads or common area parking spaces will be required to remove the cars and reimburse the Association for the repair and cleanup of areas affected by leaking oil.
  
- (d) All land denoted as “Common Open Space and Recreation Land” on the plan entitled Amended Subdivision Plan, Deacon Hayes Commons and recorded in the Cumberland County Registry of Deeds at Book \_\_\_\_, Page \_\_\_\_ shall be reserved for open space and recreation purposes to benefit all Unit owners and occupants and their guests. Structural development shall not be permitted in this area except to serve such open space and recreation purposes. The Town of North Yarmouth shall have the right in common with each Unit owner to enforce this covenant and restriction.
  
- (e) All other land denoted as Common Area on the plan entitled Amended Subdivision Plan, Deacon Hayes Commons and recorded in the Cumberland County Registry of Deeds at Book \_\_\_\_, Page \_\_\_\_ shall be reserved for the common use and benefit of all Unit owners and occupants and shall not be developed unless (1) the Town of North Yarmouth has approved such amendment to the approved plan in accordance with local ordinances then in effect; and (2) any Association formed pursuant to Article XII has consented to such development.
  
- (f) No Unit owner or his or her family, guests, tenants, invitees, employees, agents or contractors (together, “Occupant” or “Occupants”) shall place or store any personal property or other items on the Common Elements of the Condominium, except to the extent allowed by decision of the Board. All Unit owners shall also take appropriate care not to leave rubbish, debris, or waste on any portion of the Common Elements at any time. No Unit owner shall hang or install political or promotional signs in or on the windows of his or her Unit or on the Common Elements or Limited Common Elements.
  
- (g) The keeping, boarding and/or raising of animals, laboratory animals, livestock, poultry or reptiles of any kind, regardless of number, shall be and is prohibited within any Unit or upon the Common Elements, except that the keeping of dogs, cats, caged birds, or aquarium fish is permitted subject to regulation by the Board. All pets and animals shall be kept so

as to not be bothersome or offensive to the Unit owners or Occupants, and pets and animals shall not be permitted on the Common Elements, except being restrained and under the immediate supervision of a responsible person. The Unit owner is responsible for the cleanup of the pet's excrement and for the cost to repair any damage to the Common Elements or another Unit caused by the pet. . The Board shall have the power to further regulate pets and animals under the rules and regulations of the Association as promulgated or amended from time to time, including without limitation the express power to establish additional behavior requirements and to expel any offending pets and animals from the Premises. Notwithstanding the foregoing, dogs that qualify as service animals shall not be prohibited from the Premises.

- (h) No Unit owner shall play or permit to be played any musical instrument or operate or permit to be operated a stereo system, television, or other electronic or mechanical, sound-producing machinery, appliance or device inside or outside his/her Unit between the hours of 10:00 p.m. and 8:00 a.m. if such playing or operation shall disturb or annoy the Unit owner or Occupants of any other Unit.
  
- (i) Unit owners and Occupants shall not park vehicles in the parking spaces such that the vehicles block the access lanes for the parking lot.

Section 9.3. Rules & Regulations Reasonable rules and regulations, not in conflict with the provisions of this Declaration, for the general welfare of Unit owners and Occupants concerning the use and enjoyment of the Common Elements or the occupancy of Units, may be promulgated from time to time by the Board. Copies of any rules and regulations adopted and any amendments thereto promptly shall be provided to the Unit owners by the Board. The Board shall consistently and uniformly enforce the rules and regulations.

Section 9.4. Waste Disposal Trash, garbage, and other waste generated by or in a Unit shall be disposed of in trash receptacles.

Section 9.5. Electrical Wiring No Unit owner or Occupant shall overload the electrical wiring in the building or operate any machinery, appliances, accessories or equipment in such a manner as to cause, in the reasonable judgment of the Board, any unreasonable disturbance, annoyance or risk, or make any alterations, repairs or modifications to or

connections with the electrical or plumbing systems that involves hard wiring or plumbing into such systems, without the prior written consent of the Board.

Section 9.6. Structural Changes No Unit owner or Occupant shall make structural alteration to or within the Unit or any changes to the Common Elements without the written approval of the Board. Non-structural alterations are permitted so long as they are made within the Unit and so long as such alterations do not unreasonably disturb other Unit owners or Occupants and are performed in compliance with any rules and regulations imposed by the Board.

Section 9.7. Restriction Against Changes to Exterior Appearance No Unit owner shall make changes in exterior of the Unit, other than replacement of window glass in compliance with all applicable rules, regulations or codes, without the approval of the Board.

## **ARTICLE X**

### **Common Expenses**

Section 10.1. Common Expenses Except as expressly provided in this Declaration or the Act, each Unit owner shall pay to the Association, or its authorized representative, his or her proportionate share of the budgeted expenses of maintenance, repair, replacement, administration and operation of the Common Elements; management of the Condominium; sprinkler systems, insurance premiums, sewer and water charges; and maintenance of adequate working capital and capital repair and replacement reserves, which expenses are hereinafter referred to collectively as “common expenses.” Such proportionate share shall be in the same ratio as said Unit owner’s percentage of ownership in the common elements, as indicated on Schedule B attached hereto, as Schedule B may be amended from time to time. Each Unit owner shall also pay to the Association, or its authorized representative, his or her share of the budgeted expenses of maintenance, repair, and replacement of all of the Limited Common Elements associated with his or her Unit, which payments may be assessed by the Board in a lump sum or in monthly installments.

Section 10.2. Failure to Pay Common Expenses or Charges In the event of the failure of a Unit owner to pay common expenses when due, the amount thereof together with a late fee equal to five percent (5.0%) of the amount due and default interest at 18% per annum or at such other fees or rates established by the Board, costs and reasonable attorney’s fees incurred in collection (whether or not an action is commenced) shall constitute a lien on the Unit, as provided by the Act, which lien may be foreclosed in like manner as a

mortgage on real estate. The recordation of this Declaration constitutes record notice of the lien. The lien for unpaid common expenses, however, shall be subordinate to the lien of the recorded first mortgage on Unit, and the foreclosure of such mortgage, sale or transfer pursuant to foreclosure or transfer to mortgagee in lieu of foreclosure shall extinguish the subordinate lien for common expenses. Such foreclosure shall not release the delinquent Unit owner from personal liability to the Association for unpaid common expenses.

In addition to the foregoing, the Association shall have the power to separately charge a Unit and the owner thereof for services rendered to that Unit, and interest and costs of collection in connection with service charges, and for fines assessed against a Unit owner for violation of this Declaration, the Bylaws and the rules and regulations of the Association. Such charges and fines shall be a lien on the Unit with the same status as a lien for common expense assessments under the Act and this Declaration, which lien for service charges may be foreclosed in like manner as a mortgage on real estate. The recordation of this Declaration constitutes record notice of the lien.

Service charges shall include without limitation:

(a) If a Unit owner requests the Association or its agent to perform repair and maintenance work on the Unit other than required of the Association by this Declaration, or the Unit owner or Occupants damage the Common Elements or fail to perform maintenance and repair work required by this Declaration and the Association performs such work, the expense thereof as determined by the Board may be assessed to the Unit owner as a service charge.

(b) Fees, if any, which may be established by the Board for the use and maintenance of the utility services and equipment. The expense of charges for water and sewer services and of equipment maintenance and repair and reasonable reserve allowances may also be calculated by the Board in its discretion and assessed in a lump sum or monthly installments as a service charge to each Unit. At the election of the Board, the expense of capital improvements, major repairs or renovations to the water and sewer lines may be assessed either as a common expense or as a service charge.

(c) Insurance premiums on permanent improvements to Units installed by Unit owners and insured by the request of the Unit owner with the Association's hazard insurance carrier.

(d) Any increase in fire and other casualty insurance premiums paid by the Association resulting from the activities of Unit owner or Occupants or improvements made by a Unit owner to its Unit.

Multiple owners of a Unit shall each be jointly and severally liable with one another for all unpaid common expense assessments, service charges, interest, penalties and costs of collection during their period of Unit ownership up to the time of the grant or conveyance. A grantee shall not be prevented from exercising any right to recover from the grantor such amounts paid by grantee for those common expenses assessments, service charges, etc. arising prior to the conveyance. A grantee or proposed purchaser under a purchase and sale contract for a Unit may obtain, upon request and the payment of such reasonable fee as may be established from time to time by the Board, a statement from the Association setting forth the amount of unpaid common expense assessments and service charges, interest, penalties and costs of collection against the Unit as of the date of such statement and containing such other information required by the Act. The grantee shall not be liable for, and the Unit conveyed shall not be subject to a lien for any unpaid amounts due from the grantor before the statement date in excess of the amount set forth in the statement. All regular and special assessments and service charges assessed against a Unit shall be paid without any offset or deduction whatsoever.

Section 10.3 Reserves. The Board may maintain capital repair and replacement reserves for repairs and replacement of those Common Elements which must be replaced on a periodic basis. Any capital replacement reserve shall be funded by reserve contributions that are included in the annual operating budget. The existence of such capital replacement reserve shall not preclude the levy by the Board of a special assessment for the cost of necessary repairs or replacements that exceed the balance of then existing reserves. The Board also shall maintain working capital reserve equal to at least two months' assessments for each existing Unit, which initially shall be partially funded by the payment of two month's assessments by the initial purchasers of Units from Declarant, which payment shall be made by such purchasers to the Association at closing and which payment shall not be credited against regular monthly assessments payable on the Units.

Section 10.4. Access to Common Elements Upon Default Any Unit owner in default in the payment of any amount due the Association or in violation of any provisions of the Act, this Declaration, the Bylaws or the rules and regulations of the Association, which violation continues for ten (10) days after notice thereof by the Association to the Unit Owner, may be prohibited by the Board from voting on Association or Condominium matters and may be prohibited from the use and enjoyment of any and all of the Common Elements not essential to access the Unit, in addition to all other remedies available to the Board.

## **ARTICLE XI**

## **Maintenance**

Section 11.1. Maintenance Each Unit owner shall furnish and be responsible for, at his or her own expense, all the maintenance, repairs and replacements within his or her own Unit; provided, however, such maintenance, repair and replacements as may be required for the supply of water and sewer for the Unit, shall be furnished by the Association as part of the common expenses. Maintenance, repairs and replacements of the electrical or mechanical appliances (including all heating, ventilation and air-conditioning systems) which may be located outside of but serving exclusively the Unit shall be the responsibility of the Association but the cost thereof shall be paid by the Unit owner as a limited common element expense assessment. If due to the negligent act or omission of a Unit owner or of Occupants, damage shall be caused to the Common Elements or to a Unit or Units owned by others, and maintenance, repairs or replacements shall be required which are not covered by insurance and which would otherwise be a common expense, then such Unit owner shall pay for such damage and the maintenance, repairs and replacements, as may be determined by the Board, as a service charge.

Section 11.2. Maintenance of Limited Common Elements The Association shall furnish and be responsible for all the maintenance, repairs and replacements of Limited Common Elements, the cost of such maintenance, repairs and replacements to be paid as a common expense by the Unit(s) to which such Limited Common Elements are allocated.

Section 11.3. Repairs to the Common Elements The Association is responsible for maintenance, repair and replacement of the Common Elements. Each Unit owner shall afford to the Association and the other Unit owners, and to their agents, contractors or employees, access through his or her Unit reasonably necessary for those purposes. If damage is inflicted on the Common Elements or any Unit through which access is taken, the Unit owner responsible for the damage, or the Association if it is responsible, is liable for the prompt repair thereof. If a Unit owner or Occupant causes damage to the Common Elements or another Unit, whether or not the Unit owner or Occupant is negligent in the cause of such damage, the Unit owner shall be responsible for the cost of repairing such damage.

Section 11.4 Property Management Contracts. Any management contract, employment contract and any contract entered into by Declarant which may become binding on the Association shall provide that such contract or lease may be terminated by either party without cause and without payment of a termination fee on not more than ninety (90) days' written notice, the term of any such contract shall not exceed three years, and the Association may terminate said agreement for cause upon thirty (30) days' written notice without payment of a termination fee.

## ARTICLE XII

### **Association of Unit Owners**

#### Section 12.1. The Association & Executive Board.

(a) Prior to the date of this Declaration and the recording hereof, Deacon Hayes Commons Condominium Association (the “Association”), a non-profit and non-stock corporation was duly incorporated under the laws of the State of Maine. The Association shall be the governing body for the Condominium and all of the Unit owners with respect to the operation, administration, maintenance, repair and replacement of the Premises as provided by the Act, this Declaration, in the Bylaws of the Association. The Bylaws may be amended from time to time as provided therein and such amendments need not meet the requirements for amendment to this Declaration and shall not be deemed to be amendments to this Declaration.

(b) The Executive Board (the “Board”) shall be composed of three (3) directors. During the Declarant Control Period, the directors of the Board may be appointed, removed and replaced from time to time by the Declarant without the necessity of obtaining resignations. Upon the expiration of the Declarant Control Period, Board shall be composed of five (5) directors, who shall be appointed by vote of the Unit owners.

(c) The Board shall possess all of the duties and powers granted to the Board by the Act, and in addition shall have the specific requirement of yearly preparation and approval of an Association budget for operating and maintenance expenditures and capital improvements. The proposed budget approved by the Board shall be adopted unless rejected by the vote of at least two-thirds in interest of the Unit owners. The Board shall have the power and authority to assess common expenses benefitting fewer than all of the Units to the Units benefitted. The Board and Association also shall have the power and authority to borrow money for purposes of capital repairs and replacements to the Condominium and to pledge the future income of the association as collateral for the loan.

Section 12.2. Membership in the Association Each Unit owner and/or owners shall be a member of the Association. Membership shall be appurtenant to a Unit, and the transfer of title to a Unit automatically shall transfer the membership appurtenant to that Unit to the transferee(s). The grant of an interest in a Unit by mortgage or other lien, however, shall not transfer membership until foreclosure or sale in lieu of foreclosure.



Section 12.3. Covenants Running with the Land The provisions of this Declaration and the rights and obligations established thereby shall be deemed to be covenants running with the land, so long as the Premises remain subject to the provisions of the Act, and shall inure to the benefit of and be binding upon each and all of the Unit owners and their respective heirs, representatives, successors, assigns, purchasers, lessees, grantees and mortgagees.

Section 12.4. Delivery of Condominium Documents The Association shall make available to Unit owners and Eligible Mortgage Holders current copies of the Declaration, Bylaws and rules and regulations governing the Condominium, and other books, records and financial statements of the Association, all as required by the Act. This requirement may be satisfied by making the documents available for inspection upon request during normal business hours or under other reasonable circumstances.

### **ARTICLE XIII**

#### **Separate Taxation and Utilities**

Section 13.1. Separate Taxation It is understood that real estate taxes are to be separately taxed to each Unit owner for his or her Unit and his or her corresponding percentage of ownership in the Common Elements, as provided in the Act. In the event that for any year such taxes are not separately taxed to each Unit owner, but are taxed on the Premises as a whole or greater than single Units, then each Unit Owner shall pay his or her proportionate share thereof in accordance with his or her respective percentage allocated interest in the Common Elements.

Section 13.2. Utilities Each Unit owner shall pay for his or her own telephone, telecommunications, electricity, natural gas, and other utilities which are separately metered or billed to each user by the respective utility company. Utilities which are not separately metered or billed to Units shall be treated as part of the common expenses.

### **ARTICLE XIV**

#### **Insurance and Related Matters**

Section 14.1. Insurance (a) The Association shall obtain and maintain in effect a broad “special form” insurance policy covering direct physical loss to the Premises with extended coverage, vandalism, malicious mischief, windstorm, debris removal, cost of demolition and water damage endorsements, issued by an insurance company authorized to do business in the State of Maine (which company shall also meet the ratings

requirements of the Federal National Mortgage Association), insuring as a single entity the entire Premises including the Common Elements, the Limited common Elements, the Units as originally constructed by Declarant, and the fixtures, supplies and common personal property belonging to the Association, *excepting* the land, foundations, excavations, and other similar items customarily excluded from property insurance policies and also *excepting* furniture, furnishings or other personal property supplied or installed by Unit Owners. The policy shall cover the interests of and name as insureds the Association, the Board, and all Unit Owners and their mortgagees as their insurable interests may appear.

Such blanket or master insurance policy shall be in an amount equal to one hundred percent (100%) of the then current replacement cost of the insured Premises (exclusive of the land, excavations, foundations and other similar items customarily excluded from such coverage), without deduction for depreciation, together with coverage for the payment of common expenses with respect to damaged Units during the period of reconstruction. Such insurance policy may, at the option of the Board, contain such deductible as the Board shall deem appropriate but not to exceed the lesser of \$10,000 or one (1) percent of the policy's face amount. Unless otherwise established by the Board from time to time, a Unit owner shall pay the expense of repair of damage to his Unit, or any other Unit(s) damaged by the Unit owner's negligence or breach of this Declaration notwithstanding that the Association's insurance shall be primary, in the amount not covered by the insurance (e.g., the deductible). Such casualty insurance policy shall also include the following provisions:

- (1) The following endorsements or their equivalent: (a) "no control," meaning that coverage shall not be prejudiced by any act or neglect of any Occupant or Unit owner or their agents, when such act or neglect is not within the control of the insured, or the Unit owners collectively, nor by any failure of the insured, or the Unit owners collectively, to comply with any warranty or condition with regard to any portion of the Condominium over which the insured, or the Unit owners collectively, have no control; (b) "Construction Code Endorsement" or "increased cost of construction," (c) "agreed amount" or elimination of co-insurance clause; and (d) "inflation guard," when it can be obtained;
- (2) That any "no other insurance" clause shall expressly exclude individual Unit owners' policies from its operation, so that the property damage policy purchased by the Board shall be deemed primary coverage and any individual Unit owners' property damage policies shall be deemed excess coverage, and in no event shall the insurance coverage obtained and maintained by the Board

hereunder provide for or be brought into contribution with property insurance purchased by individual Unit owners or their mortgagees; and

- (3) The recognition of any Insurance Trust Agreement whereby the Board may designate in writing an Insurance Trustee to hold any insurance proceeds in trust for disbursement, as provided under the Act.

The policies shall require the insurer to notify in writing the Board and each Eligible Mortgage Holder named in the mortgagee clause at least twenty (20) days before it cancels or substantially changes the Premises' coverage.

(b) The Board shall obtain comprehensive public liability insurance in such amounts as it shall deem desirable, insuring each Unit owner and the Association, the Board and managing agent, if any, from liability in connection with the Common Elements. Such policy shall provide coverage of at least \$1,000,000.00 for bodily injury and Premises damage for any single occurrence resulting from the operation, maintenance or use of the Common Elements, and coverage for any legal liability resulting from lawsuits related to employment contracts in which the Association is a party. Such policy shall provide for at least twenty (20) days written notice to the Board and to each Eligible Mortgage Holder before the insurer can cancel or substantially modify the insurance coverage. Also, the Board shall have authority to purchase insurance to indemnify the Board and Officers for losses in managing the Association's affairs.

(c) The premiums for all the aforementioned insurance coverage shall be a common expense. Each Unit owner, at his or her own cost, shall be responsible for his or her own insurance on the contents of his or her own Unit and his or her additions and improvement thereto and decorations, floor coverings, wall coverings, appliances, furnishings, personal property therein and stored elsewhere on the Premises, and his or her personal liability to the extent not covered by the liability insurance provided by the Association. The Association will not maintain insurance on the personal property of Unit owners, no matter where located on the Condominium. AS SUCH, UNIT OWNERS ARE STRONGLY ENCOURAGED TO OBTAIN AND MAINTAIN ADEQUATE INSURANCE ON THEIR PERSONAL PROPERTY.

## **ARTICLE XV**

### **Mortgagee Provisions**

Section 15.1. Eligible Mortgage Holders Any holder of record of a recorded first Mortgage encumbering a Unit in the Condominium which has delivered written notice to the Association by prepaid United States Mail, return receipt requested, or by delivery in hand securing a receipt therefor, stating the name and address of the said holder of the Mortgage, the name and address of the Owner of the Unit encumbered by such Mortgage, the identifying number of such Unit, and containing a statement that such Mortgage is a recorded first Mortgage shall become an Eligible Mortgage Holder for purposes of this Declaration.

Section 15.2. Notices of Default to Eligible Mortgage Holders The Board, when giving notice to a Unit owner of a default in paying common expense assessments or other violation of the provisions of this Declaration, the Bylaws or rules and regulations, may send a copy of such notice to each Eligible Mortgage Holder.

Section 15.3. Additional Eligible Mortgage Holder and Mortgagee Rights

Notwithstanding anything to the contrary elsewhere contained in this Declaration or Bylaws, the following provisions shall govern in the case of Eligible Mortgage Holder rights:

- (a) Any Eligible Mortgage Holder will, upon request, be entitled to inspect the books and records of the Association during normal business hours.
- (b) No provision of this Declaration or of the Bylaws shall be deemed or construed to give a Unit owner, or any other party, priority over any rights of first mortgagees of Units pursuant to their mortgages in the case of a distribution to the Unit owners of insurance proceeds or condemnation awards for losses to or a taking of Units and/or Common Elements.
- (c) A first mortgagee of a Unit who requests to the Board in writing shall be entitled to prompt written notification from the Board of (i) any default by the Unit owner in the performance of such Unit owner's obligations under this Declaration and/or the Bylaws, which is not cured within thirty (30) days; (ii) any event of substantial destruction to, or condemnation or governmental taking of, such Unit or any portion of the Common Elements appurtenant thereto; (iii) any lapse or modification of insurance coverage; (iv) any proposed action of which an eligible mortgage holder is entitled to notice under Section 1602-119(b) of the Act.
- (d) 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 in lieu of foreclosure, shall take the Unit free of any claims for unpaid assessments or charges against such Unit which accrue prior to the acquisition of title to such Unit by the mortgagee, but the foregoing shall not preclude the Association from collecting such deficiency in operating expenses from Unit owners in the future, whether by regular or special assessment or for liability for assessments after foreclosure or deed in lieu of foreclosure.

## ARTICLE XVI

### **Method of Amending Declaration**

Section 16.1. Amendments Except to the extent expressly permitted in this Declaration, or required by the Act, this Declaration may be amended by a vote or by written approval of the Unit Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated and written approval from the required percentage of Eligible Mortgage Holders.

Section 16.2. Unanimous Votes Required Regardless of any amendment hereto or revision of the Act that may provide otherwise, and except for amendments made in the exercise of Development Rights, unanimous consent of all Unit owners and the written approval of the required percentage of Eligible Mortgage Holders shall be required for any amendment that would:

- (a) Seek to terminate the legal status of the Premises as a condominium for reasons other than substantial destruction or condemnation of the Premises;
- (b) Change the pro rata interest, common expenses payment obligations or other obligations or voting rights of any Unit;
- (c) Abandon, partition, subdivide, encumber, sell or transfer the Common Elements. The granting of easements for public utilities or for other purposes consistent with the intended use of the Common Elements by the Condominium shall not be deemed a transfer within the meaning of this clause;
- (d) Use hazard insurance proceeds from losses to the Premises (whether to Units or to Common Elements) for other than repair, replacement or

reconstruction of such improvements, except as provided by this Declaration or the Act in case of substantial destruction of the Condominium.

Section 16.3. Special Amendments. Notwithstanding the foregoing, this Declaration may also be amended by special amendment as follows: The Declarant, without the consent of any Unit owner or mortgagee, may execute and record, as long as it owns any Units or holds any Special Declarant Rights, amendments in order to (i) correct any errors and/or omissions in this Declaration, provided no such correcting amendment shall materially and adversely affect the rights of any Unit owner or mortgagee; or (ii) to make this Declaration comply with the provisions of the Maine Condominium Act, any other law, code, permit or approval, or the requirements or guidelines of the Federal National Mortgage Association (“FNMA”), the Federal Home Loan Mortgage Corporation (“FHLMC”) or any other insurer or guarantor of Unit Mortgages.

## **ARTICLE XVII**

### **Removal from the Condominium Act**

Section 17.1 Termination of the Condominium. The submission of the Property to the Act herein shall not be terminated unless (i) in compliance with Section 1602-118 of the Act, and (ii) the required percentage of the Eligible Mortgage Holders, shall agree to such revocation or removal of the Property from the provisions of the Act, their agreement to be established by written instrument duly recorded.

Section 17.2 Ownership upon Termination. Upon removal of the Property from the Act, the Unit owners shall hold the Property and any proceeds thereof as tenants in common in accordance with the Act, with any mortgages or liens affecting a Unit to attach in order of priority against the resulting common ownership interest. Removal of the Property from the Act shall not bar the subsequent re-submission of the Property to the Act.

## **ARTICLE XVIII**

### **Miscellaneous**

Section 18.1. Remedies All rights, remedies, and privileges granted to the Declarant, the Association or a Unit owner pursuant to the terms of this Declaration, the Bylaws, and the rules and regulations shall be deemed to be cumulative to any other right or remedy under said documents or afforded by law or equity.

Section 18.2 Conflict. In the event of any conflict or discrepancy between this Declaration, the Bylaws and the Plans, this Declaration shall govern. If any provision of this Declaration, the Bylaws or the rules and regulations be in conflict with any applicable laws, including the Act, then such laws shall control and such invalid provision shall be of no force and effect, but the validity of the remainder of this Declaration, the Bylaws and rules and regulations shall not be affected thereby and shall remain in full force and effect as if such invalid provision had not been included. A provision in this Declaration which is permissible under the Act shall not be considered to be inconsistent with the Act.

Section 18.3 Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Declaration or the intent of any provisions hereof.

Section 18.4 Context. The use of the singular number in this Declaration shall be deemed to include the plural, the plural the singular, and the use of any one gender shall be deemed applicable to all genders.

Section 18.5 No Waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same irrespective of the number of violations or breaches that may occur or the duration of such breach.

Section 18.6 Invalidity. If any term, covenant, provision, phrase or other element of this Declaration, the Bylaws, or the rules and regulations of the Association is held to be invalid or unenforceable for any reason whatsoever, such holdings shall not affect, alter, modify, or impair in any manner, any other term, covenant or provision, phrase or other element of such documents.

Section 18.7 Dispute Resolution. Except as provided in this Declaration, the Association and/or any aggrieved Unit owner shall have a right of action against any other Unit owner who fails to comply with this Declaration, the Bylaws, the rules and regulations issued by the Association or a decision of the Association.

Section 18.8 Notice. Any notice required or given pursuant to this Declaration to the Association or to any Unit owner may be delivered to any Association director or officer or to such Unit owner respectively either by sending it to the Unit or the Registered Agent for the Association by first-class United States mail, postage prepaid, or by delivering it to the Unit by hand, or as otherwise permitted by the Bylaws.

**[SIGNATURE APPEARS ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, Deacon Hayes Commons, LLC, as Declarant, has caused this Declaration to be executed and sealed by its duly authorized Manager as of \_\_\_\_\_, 2022.

WITNESS

DEACON HAYES COMMONS, LLC

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
Its duly authorized Manager

State of Maine  
Cumberland County

\_\_\_\_\_, 2021

Then personally appeared before me the above-named \_\_\_\_\_, a Manager of Deacon Hayes Commons, LLC as aforesaid, and acknowledged the foregoing to be his free act and deed in said capacity and the free act and deed of said company.

\_\_\_\_\_  
Attorney at Law/Notary Public



## SCHEDULE A

A certain lot or parcel of land with the buildings thereon, situated on the easterly side of Rout 115 in the Town of North Yarmouth, County of Cumberland and State f Maine bounded and described as follows:

Beginning at the intersection of the easterly sideline of said Route 115 and the southerly sideline of Parsonage Road:

Thence South  $86^{\circ} 40' 55''$  East along said Parsonage Road 441.63 feet to an iron pipe and land of Carol A. Dubay et al;

Thence South  $08^{\circ} 31' 40''$  East along said land of Dubya 352.87 feet to an iron pipe:

Thence South  $72^{\circ} 54' 35''$  West along said remaining land of the Grantors herein 71.37 feet to land now or formerly of Stephen K. Libby:

Thence continuing South  $72^{\circ} 54' 35''$  West along said land of Libby 290.00 feet to Route 115;

Thence North  $17^{\circ} 05' 25''$  West along said Route 115 a distance of 502.94 feet to the point of beginning.

All bearings are magnetic of the year 1988 based on a survey by Owen Haskell Inc.

Together with a right of way in common with others 50 feet in width along the easterly side of the premises herein conveyed and the westerly boundary of the property now or formerly of Carol Dubay; said right of way shall be for pedestrian and vehicular ingress and egress and for all utility purposes above and beneath the ground.

## SCHEDULE B

Allocation of undivided interest in the Common Elements,  
voting rights and common expense liabilities appertaining to each Unit.

Unit 1	8.33%
Unit 2	8.33%
Unit 3	8.33%
Unit 4	8.33%
Unit 5	8.33%
Unit 6	8.33%
Unit 7	8.33%
Unit 8	8.33%
Unit 9	8.33%
Unit 10	8.33%
Unit 11	8.33%
Unit 12	8.33%