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BLACK DIAMOND PLACE

DECLARATION OF COVENANTS, RESTRICTIONS, AND EASEMENTS

THIS DECLARATION OF COVENANTS, RESTRICTIONS, AND EASEMENTS is made this ____ day of _____, 2023, by RTL, LLC, a New Hampshire limited liability company, whose address is 87 Hickory Hill Circle, Osterville, County of Barnstable, State of Massachusetts (02655) (hereinafter referred to as “Declarant”).

RECITALS:

- A. Declarant is owner of a certain contiguous parcels of improved and unimproved land (hereafter the “Premises”) situated in the Town of Conway, County of Carroll, State of New Hampshire, on Skimobile Road, being part of the **Village of North Conway**, as depicted on a plan entitled _____ prepared by HEB Engineers, Inc., dated _____ and recorded at the Carroll County Registry of Deeds at Plan Book _____, Page _____;
- B. Declarant has improved the Premises by constructing two (2) two-unit residential buildings, driveways, and related infrastructure as part of a planned unit development to be known as “Black Diamond Place”;
- C. Declarant seeks to promote harmonious enjoyment of the Premises and in furtherance thereof, seeks to impose on the Premises covenants, restrictions, and easements benefitting and burdening all current and future owners thereof; and
- D. Declarant desires to provide for the preservation of the values for all current and future owners of the Premises, and in furtherance thereof, Declarant desires to define covenants, restrictions, and easements ensuring the harmonious development and management of the Premises.

NOW THEREFORE, Declarant in consideration of the recitals hereinabove set forth and intending the Premises and each Unit (as hereinafter defined) situated therein to be perpetually benefited and burdened by the covenants and restrictions herein set forth hereby declares that the Premises shall be held, managed, transferred, conveyed, and owned subject to and together with the provisions of this Declaration of Covenants, Restrictions, and Easements as follows:

ARTICLE 1

DEFINITIONS

- 1.1 “Assessments” shall mean charges payable by Owners for Common Expenses provided herein or by any subsequent Amendment.
- 1.2 “Association” shall mean and refer to Black Diamond Place Owners Association, a New Hampshire voluntary association, and its successors and assigns.
- 1.3 “Board of Directors” or “Board” shall mean and refer to the elected governing body of the Association as provided herein and in its Articles of Association.
- 1.4 “Buildings” shall mean each and/or either of the two (2) three-story, two-unit residential structures constructed or to be constructed on the Premises, which are identified on the Plan as “_____” and “_____”.
- 1.5 “Common Area” means all parts of the Premises other than the Units, as more fully set forth in **Article 7.1** of this Declaration, as more fully set forth in **Article 7.3**.
- 1.6 “Common Expenses” shall mean and include the actual and estimated expenses of operating the Association, including reasonable reserves for maintenance, repair and replacement of Association property and common elements, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the By-Laws, and the Articles of Association of the Association.
- 1.7 “Declaration” shall mean and refer to this Declaration of Covenants, Restrictions, and Easements and any subsequent amendments.
- 1.8 “Owner” shall mean and refer to one or more persons or entities that hold the record title to a Unit but excluding any party holding an interest merely as security for the performance of any obligation.
- 1.9 “Party wall” refers to each wall built as a part of the original construction of the Buildings that forms all or part of the common boundary between two Units.

- 1.10 “Plan” or “Plans” refers to a plan entitled _____ prepared by HEB Engineers, Inc., dated _____ and recorded at the Carroll County Registry of Deeds at Plan Book _____, Page _____, and any other Plans subsequently prepared for Declarant and recorded at the Carroll County Registry of Deeds.
- 1.11 “Premises” or “Black Diamond Place” shall mean and refer to the development or subdivision, in its entirety, including the Buildings, Units, and Common Area as depicted on the Plans.
- 1.12 “Unit” shall mean a portion of the Premises designated and intended for individual ownership and use, together with that portion of land located within the property line of the area to be deeded in fee simple by Declarant to Owner, each of which is shown on the Plan as a “Unit”.

ARTICLE 2

PROPERTY SUBJECT TO THIS DECLARATION

- 2.1 Binding Effect. The Covenants, Restrictions, and Easements herein set forth shall henceforth and forever benefit, burden, and encumber the real property described in **Exhibit A**, which is attached hereto and made a part hereof, and any additional real property submitted to this Declaration by Declarant or its successors as provided in **Article 2.2**.
- 2.2 Additional Lands. Declarant, for itself and its successors and assigns, reserves the right to and may with or without the consent of any Owner or the Association submit additional land to this Declaration provided, however, that such additional land shall be adjacent to and contiguous with land previously submitted to this Declaration. Declarant may, by written instrument making specific reference so this **Article 2.2** assign the foregoing right to any person or entity. The Association shall have no right to an assignment of the rights described in this **Article 2.2** although it shall be obligated to accept such rights if Declarant, in its sole and absolute discretion, assigns such rights to the Association.

ARTICLE 3

BLACK DIAMOND PLACE OWNERS ASSOCIATION

- 3.1 Creation of Association. Black Diamond Place Owners Association is a non-profit corporation created pursuant to RSA Chapter 292 of the New Hampshire Laws and is charged with the duties and empowered with the rights as set forth in this Declaration. The affairs of the Association shall be governed by its Articles of Association and By-Laws, and in conformity with the requirements of this Declaration. The Articles of

Association and By-Laws are attached hereto as ***Exhibits B and C***, respectively. In the event of a conflict among this Declaration, the Articles of Association, and the By-Laws, Declarant, so long as it is the Owner of a Unit, shall determine which provision shall apply and, if Declarant is no longer the Owner of a Unit the Board of Directors shall determine which provision shall apply.

- 3.2 Membership. The Owner or Owners of each Unit, including Declarant, shall have the rights and privileges of a membership interest in the Association, said membership to be appurtenant to each Unit.
- 3.3 Voting Rights. There shall be one (1) vote for each Unit. If a Unit is owned in common by multiple Owners, there shall remain only one (1) vote to be cast as per agreement of the multiple Owners. If the multiple Owners are unable to agree as to how the vote shall be cast, the vote shall not be exercised.
- 3.4 Association Responsibilities. As described more fully in ***Article 4.2*** and ***Article 4.3***, the Association shall be obligated to maintain the Common Area and improvements thereon, as well as the exterior and structural elements of the Buildings, including the roofs, foundations, and exterior walls. The Association shall take action to enforce the covenants, restrictions, and easements contained in this Declaration and shall collect Assessments. The Association shall pay all taxes assessed against said Common Area and improvements thereon.
- 3.5 Meetings of the Association, Notice. The first meeting of the Association shall take place at Declarant's sole and absolute discretion, but at no date later than ninety days after the fourth (4th) Unit is conveyed to an Owner by deed of Declarant. Notice of the meeting shall be provided to all Owners of record not less than thirty (30) days before any and all meeting dates. For purposes of the foregoing an "Owner of record" shall be an Owner who acquired title to a Unit by deed recorded in the Carroll County Registry of Deeds thirty-five (35) or more days prior to the proposed meeting date.

ARTICLE 4

BOARD OF DIRECTORS

- 4.1 Management of Association. The affairs of the Association shall be managed by Declarant, which shall have all powers of the Board of Directors until the first meeting of the Association. Thereafter, the Association shall be managed by a Board of Directors consisting of at least one (1) and not more than three (3) Directors elected or appointed consistent with the Articles of Association and By-Laws.

- 4.2 Powers and Duties of Board. The Board of Directors shall have all the powers and duties of the Association provided by law, its Articles of Association, its By-Laws and by this Declaration, as well as any and all other powers necessary or convenient to accomplish the purposes of the Association.
- 4.3 Enumerated Powers and Obligations. Without limiting the generality of **Article 4.2** above, the Board:
- 4.3.1 Shall maintain the Common Area, including the Exclusive Use Areas (as shown on the Plan), as well as driveways, parking areas, drainage systems, utility rights of way up to the Buildings, and all portions of those systems that service more than one Unit;
 - 4.3.2 Shall maintain the exterior and structural elements of the Buildings, including the roofs, foundations, and exterior walls;
 - 4.3.3 May employ a manager (which may be Declarant) to whom the Board may delegate all or a part of its duties, and such other persons it deems necessary to perform its duties, either directly itself or through the manager;
 - 4.3.4 Shall obtain and maintain in force policies of insurance as described for more fully **Article 12**. The Association shall have no obligation to obtain or maintain any insurance covering the personal and real property of any Owner(s), and each Owner shall be responsible for obtaining and maintaining such personal and real property insurance;
 - 4.3.6 May institute lawsuits on behalf of the Association and employ legal counsel as necessary to properly accomplish the purposes of the Association;
 - 4.3.7 May employ accounting services necessary to properly accomplish the purposes of the Association;
 - 4.3.8 May purchase such equipment and other personal property as is necessary to properly accomplish the purposes of the Association;
 - 4.3.9 May make, amend, and repeal rules and regulations governing the use of the common land and facilities of the Premises, and shall furnish each member a copy thereof and/or record such rules at the Carroll County Registry of Deeds provided, however, that any rules so recorded shall be signed and acknowledged by a majority of the Board. Notwithstanding the foregoing, all rules shall be subject to ratification and approval by Declarant for so long as Declarant owns a Unit;

- 4.3.10 Shall not expend in excess of \$10,000.00 in any year for the acquisition of personal property, or for capital improvements (other than capital repairs), without the prior assent of the Owners by a majority of the votes cast at a duly held meeting of the members of the Association. All such acquisitions shall be subject to ratification and approval by Declarant for so long as Declarant owns a Unit;
- 4.3.11 Shall determine the annual budget and expenses of the Association and determine the amount of Annual Assessments for which provision is made in **Article 5**;
- 4.3.12 Shall adopt rules limiting access to the Common Area such that use of the Common Area shall not unreasonably interfere with exclusive use of any Unit and the immediately adjacent common land by the Owner(s) thereof, their guests, and invitees; and
- 4.3.13 Shall take such other action as may be reasonably necessary to the good and proper management of the Association.
- 4.4 Acquisition and Transfer of Association Property. The Board of Directors shall, on behalf of the Association, have the authority to accept, transfer, and/or convey real and personal property, assignments of easements, and rights and privileges, including those reserved to Declarant by this Declaration.
- 4.5 Board Acceptance of Control and Responsibility. The Board of Directors on behalf of the Association shall be obligated to accept from Declarant conveyance of the Association properties and the Common Area subject to rights reserved to Declarant as provided in **Article 9**.

ARTICLE 5

ASSESSMENTS

- 5.1 Purpose and Minimum Assessment. All Assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the Owners and, in the minimum, shall provide for (i) maintenance of the Common Area, Exclusive Use Areas, and the Association properties, (ii) an adequate reserve funds for maintenance, repairs and replacement of those elements of Association property that must be replaced on a periodic basis, (iii) real estate taxes, (iv) liability and casualty loss insurance, (v) elimination of accumulated deficits, and (vi) estimated unanticipated expenses.
- 5.2 Budget. The proposed annual budget for the Association shall be prepared by the Board and distributed to the Owners forty-five (45) days prior to the first and each succeeding

annual meeting of the Association. The budget shall be the basis for determining the Annual Assessments. Failure of the Board to prepare a budget for a twelve (12) month period in the foregoing manner shall not be interpreted as a waiver or amendment of these provisions, nor a release of an Owner of the obligation to pay Assessments, but the budget and Annual Assessment for the preceding 12 months shall continue, and installments shall be due thereon, until a new budget is prepared and an Annual Assessment is fixed, which new Annual Assessment may be retroactive to the beginning of the then current 12 month period. The Budget as proposed by the Board shall be binding upon the Association and the Owners and may not be rejected or challenged other than Petition to Superior Court by an Owner or Owners demonstrating that the Budget was adopted in bad faith or with reckless disregard for the welfare of the Association.

- 5.3 Accounting Period. The fiscal year of the Association shall be the twelve (12) month period ending December 31st of each calendar year.
- 5.4 Liability for Expenses. Each Owner shall jointly and severally be liable for any and all Assessments levied against a Unit.
- 5.5 Annual and Supplemental Assessments.
 - 5.5.1 Declarant's and each Owner's share of the current year's budget (the "Annual Assessment") as adopted by the Association shall be assessed as of October 1st of each year.
 - 5.5.2 Annual Assessments shall be due and payable in four (4) equal installments, in advance, on October 1st, January 1st, April 1st, and July 1st of each year or on such other dates as the Board may reasonably require.
 - 5.5.3 There is reserved to the Board the right to levy on Units a Supplemental Assessment when necessary to defray unanticipated expenses of the Association, or when directed by more than two-thirds of the full voting strength of the Association, including Declarant. Supplemental Assessments shall be payable immediately upon delivery of notice to Owners or at such later time as may be specified by the Board.
- 5.6 Apportionment of Assessments. The Regular, Supplemental, and Special Assessments shall be levied against each Unit on a *pro rata* basis as determined by the number of Units shown on the then current Plan.
- 5.7 Special Assessments. Expenditures of the Association that arise as a result of the discharge of the Association's responsibilities pursuant to **Articles 9.2, 9.3, and 9.4** shall

be assessed to the Units benefitted by the expenditure. The Directors may assess such expenditures in proportion to the benefit bestowed upon each Unit. Special Assessments shall be payable immediately upon delivery of notice to the Owner(s) or at such other reasonable time as may be specified by the Board of Directors. The Association may additionally specially assess the cost of repairing damage to Common Area to any one or more Owners that caused such damages provided that the Association can establish by clear and convincing evidence that damage to Common Area was caused by an Owner or his or her tenant, guest, or invitee and such damage was not a result of ordinary wear and usage.

5.8 Interim Assessments. At any time during which Declarant exercises its right to appoint all the Directors in accordance with the By-Laws (*Exhibit C*), Declarant may assess common expenses as provided herein.

5.9 Effect of Non-payment.

5.9.1 Each assessment and each installment thereof is a continuing joint and several personal obligation of the parties liable for assessments as described in **Article 5.4**. Any such assessment or installment not paid when due, plus interest at the highest rate permitted by law or eighteen percent (18%) per annum, whichever is lower, and all costs of collection, including reasonable attorney's fees, are a lien upon the Unit to which it relates regardless of whether a Notice of Lien is recorded at the Carroll County Registry of Deeds. Notice of Lien may be recorded at the Carroll County Registry of Deeds by the Association, which notice shall indicate the identity of the Owner(s) of the Unit, the amount of the unpaid assessment, the Unit burdened, and the Book and Page of the Registry in which the Declaration is recorded.

5.9.2 The Association may foreclose said lien in the same manner provided for the power of sale foreclosure of a real estate mortgage under RSA Chapter 479, Section 25. In furtherance of the foregoing, each Owner, upon accepting a deed to a Unit, grants to the Association the statutory power of sale for the purpose of foreclosing a lien arising pursuant to this **Article 5**. In any such action, the proceeds shall be charged with the costs and expenses thereof, including reasonable attorney's fees. The Association may purchase at any such sale and may hold, lease, mortgage or sell any property acquired at such sale.

5.9.3 If an Owner fails to pay common expenses assessed against a Unit by the Association within sixty (60) days of the date it was due, the Association may, as a separate and additional remedy, and subject to the existing rights of the holder of a duly recorded first mortgage deed of the Owner, collect from any tenant

renting the Unit any rent then or thereafter due to the Owner of such Unit. Prior to collecting rent from a tenant, the Association shall provide written notice to the Owner of the Unit and to the tenant thereof by United States certified mail, return receipt requested with a copy by first class mail. Notice to the tenant shall be sufficient if delivered to the Unit occupied by the tenant by a member of the Board of Directors or its designee. Notice shall be deemed received by the Owner if mailed to the Owner's address of record with the Town of Conway and/or the Association on the fifth (5th) day after depositing notice with the United States Postal Service. All rent payable to the owner of the Unit which is due thirty (30) days after delivery of the foregoing notice shall be paid to the Association. In the event tenant fails or neglects to make payment to the Association, the tenant shall be subject to eviction consistent with the laws of the State of New Hampshire. Rent received by the Association shall be applied first to outstanding costs of collection, second to late payment fees, third to accrued interest, and fourth to assessments due and in arrears.

- 5.10 Certificate of Payment. The Association shall issue, upon request of any Owner, a certificate of payment or non-payment of Assessments as to each Unit. A certificate of payment shall be issued within ten (10) days after the Association receives written request of an Owner.
- 5.11 Priority. The lien for Assessments provided for in **Article 5.9** shall be subordinate to any first mortgage lien of an institutional lender of record that is recorded at the Carroll County Registry of Deeds prior to recording a Notice of Lien.
- 5.12 Purchaser Bound. A purchaser of a Unit shall take title to the Unit subject to the lien for all unpaid Assessments made against previous Owners thereof regardless of when such assessments were made, except that a first mortgagee or other purchaser at the foreclosure sale of a first mortgage lien or at a sale in lieu of such foreclosure and a purchaser from a first mortgagee who purchases at such a foreclosure sale or such a sale in lieu of foreclosure, shall not be liable for payment of Assessments unpaid and due as of the time of his acquisition but shall be liable for Assessments becoming due thereafter.
- 5.13 Mortgagee Rights. First mortgagees of Declarant and Owners, may jointly or singly, pay taxes or other charges, including Assessments that are in default and which may or have become a charge against any Association property and may pay overdue insurance premiums on hazard insurance policies or secure new hazard insurance on the lapse of a policy. Any such payment by a first mortgagee, except for payments of taxes on individual Units, Assessments on the same, or policies on the same, shall be entitled to immediate reimbursement from the Association.

ARTICLE 6

UNITS

- 6.1 Units. The Units shall consist portions of the Premises designated and intended for fee simple ownership and use, together with that portion of land located within the property line of the area to be deeded in fee simple by Declarant to Owner, as described more fully in **Article 6.2**.
- 6.2 Description of Units. The number and dimensions of each Unit are shown on the Plan. The boundaries of each Unit are as follows:
- 6.2.1 Each Unit includes all the land, space, and portions of the Buildings within its vertical boundaries, as shown on the Plan.
- 6.2.2 The vertical boundaries of a Unit shall be the planes formed by the exterior boundaries of the Unit, as shown on the Plan. Where Unit boundaries fall along Party walls, the boundaries are the planes containing the midpoints of the Party walls. Each Owner is granted a perpetual easement over that portion of an adjacent Unit, on which such Party wall, roof, or foundation is constructed solely for the purpose of maintenance, repair and use of such Party wall, roof, or foundation as a common structural support or protector for each Unit sharing a Party wall, roof, or foundation.
- 6.2.3 A Unit shall not include any pipes, wires, cables, chutes, flues, conduits, public utility lines, ventilation, or other ducts, bearing walls, bearing columns, or structural portions of the Buildings running through a Unit which are utilized for or serve more than one Unit, all such components being part of the Common Area appurtenant to all Units. Nor shall such boundaries include any decks or patios serving the Units, which decks or patios shall be Exclusive Use Areas appurtenant to the individual Units.
- 6.2.4 A Unit shall include any pipes, wires, cables, chutes, flues, conduits, and other utility installations situated in a Unit, which serve that Unit alone. If any such pipes, wires, cables, chutes, flues, conduits, and other utility installations lie partially within and partially without the designated boundaries of a Unit, any portions thereof serving that Unit shall be deemed a part of that Unit.

ARTICLE 7

COMMON AREA

- 7.1 Common Area. Common Area shall include land, improvements, and easements devoted to the social welfare, use, and enjoyment of Owners, which shall include all land located outside of Units or Exclusive Use Areas as shown on the Plan or land described in a deed

conveying such land or easements to the Association. Common Area includes all those installations described in **Article 6.2.3**. Common Area also includes driveways, utility lines, drainage systems, walkways, firepits and seating and similar infrastructure as identified on the plans referred to in this Declaration, as they may be amended in the future.

7.2 Use and Enjoyment of Common Area. Common Area shall be managed in such a way as to promote the owners' enjoyment of the Common Area in its natural and/or landscaped state, subject to Declarant's rights found in **Article 10** below.

7.3 Exclusive Use Area. Declarant and each Owner shall have an exclusive right to use and enjoy, subject only to reasonable maintenance by the Association, the appurtenant improved or unimproved land identified on the Plan as "Exclusive Use Area".

7.4 Common Easements. Declarant and all Owners shall have rights and easements of enjoyment in common with others in and to the Common Area and all improvements thereon including, but not limited to:

7.4.1 Easements of access to and from the public streets over the access driveways shown on the Plan including the right to delegate such rights to guests and to persons residing in an Owner's Unit;

7.4.2 Easements for utilities to service each Unit;

7.4.3 Easements for installation and maintenance of commonly owned utility systems as well as connections to municipal water and sewer systems serving each Unit;

7.4.4 Easements to permit maintenance and repair of the exterior of the Buildings and to permit any modification of the exterior of the Buildings permitted by the Association.

All of the foregoing easements shall be appurtenant to and shall pass with the title to every Unit whether or not expressly mentioned in a deed thereto.

7.5 Sewer System Infrastructure. The Board of Directors shall have responsibility for maintaining all sewer system infrastructure located on common land and, to the extent not maintained by the municipality, maintenance of water and sewer systems. In furtherance of such maintenance, the Board may establish a capital reserve for the purpose of maintaining and replacing sewer systems, and related infrastructure with all costs thereof being equally assessed to all Units as a common expense. Each Owner shall have sole and exclusive responsibility for maintaining and replacing any component sewer system infrastructure located within a Unit.

ARTICLE 8

USE RESTRICTIONS

Unless modified by subsequent Amendment, the following restrictions are imposed upon each Unit for the benefit of every other Unit and may be enforced by any Owner, Declarant, or the Association:

- 8.1 Each Unit shall be used for residential purposes only which may include the rental of any Unit for any period of time. Notwithstanding the foregoing, Declarant reserves the right to use or convey a Unit for temporary real estate sales or rental offices.
- 8.2 No use shall be made of the Premises to interfere with the quiet enjoyment of such in its natural and/or landscaped state. No sign or advertising structure of any kind shall be erected or maintained on any Unit or structures for any purpose whatsoever, except such signs as may have been approved by Declarant and/or the Board of Directors.
- 8.3 No Unit shall be subdivided.
- 8.4 No motorized off-road vehicles shall be stored or operated on Common Area, including, but not limited to, snowmobiles, trail bikes, and all-terrain vehicles.
- 8.5 No boats, canoes, kayaks, or similar articles shall be stored on Common Area or be visibly stored within Exclusive Use Areas.
- 8.6 No animals shall be kept in any Unit, except that two (2) usual household pets may be kept in owner occupied Units in conformity with Town of Conway animal regulations, if any, and in conformity with those rules from time to time established by the Association. Renters shall not be permitted to have any pets in any Unit. Notwithstanding the foregoing, dog runs, kennels, animal shelters, or other devices for restraining or housing animals shall not be permitted Common Area or within any Exclusive Use Areas; if present within a Unit, they shall not be visible from the exterior of the Buildings. Farm animals shall not be permitted in Units or Exclusive Use Areas.
- 8.8 No rubbish, junk, cuttings, or other refuse shall be deposited or permitted to remain on Common Area or within Exclusive Use Areas, including, without limitation, any firepits and related seating as may be provided by Developer. All household trash and refuse shall be stored within a Unit such that it is not visible from the exterior of the Buildings and shall not remain in any portion of the Common Area. The Association may designate a common area for disposal of household refuse subject to such rules and limitations as may be necessary to preserve the orderly appearances of the Premises.

- 8.9 No clotheslines, hanging of towels, television antennas, satellite dishes, window air conditioning equipment, other personal property of a similar nature shall be maintained, kept, stored, placed on Common Area or be visible within Exclusive Use Areas without the prior written consent of the Board of Directors or Declarant which consent may be withheld for any reason or for no reason. Grills may be used but shall be operated at least ten (10) feet from the Building. Grills shall be stored in garages and not kept outside of any Unit when not in active use.
- 8.10 Owners shall be permitted to install a hot tub on a patio and/or deck serving said Owner's Unit provided that (i) the Owner has received written confirmation from an engineer or such other licensed professional that the structure will support the hot tub and (ii) the hot tub and surrounding area shall be kept in a neat and sanitary manner. Umbrellas shall also be permitted on any patio or decks, provided the same are off-white, black or such other color as approved by the Association from time to time.
- 8.11 All landscaping, including the removal or planting of any vegetative matter shall be the responsibility of the Association.
- 8.12 No unregistered or inoperable motor vehicle shall be moved onto or kept in any Unit or on the Common Area. Vehicles having a gross vehicle weight in excess of eight thousand (8,000) pounds shall not be stored on Common Area. Commercial vehicles having a gross vehicle weight less than eight thousand (8,000) pounds may be stored on Common Area only upon obtaining written approval from the Board of Directors. Commercial vehicles shall be defined as any vehicle with signage painted or otherwise affixed to the exterior and all pick-up trucks, utility vehicles, vans, and similar vehicles. Permission to store commercial vehicles on Common Area shall be granted if the Owner of the commercial vehicle can demonstrate, to the satisfaction of the Board of Directors, that the vehicle is necessary for the day-to-day transportation needs of the Owner and his or her family.
- 8.13 No temporary structure, mobile homes, campers, boats, trailer, or tent shall be permitted, placed, moved onto, or erected on Common Area or Exclusive Use Areas, either temporarily or permanently, without written consent of the Board of Directors or Declarant provided, however, that permission of the Board shall be granted only upon majority vote of all Owners which vote may be taken by secret ballot.
- 8.14 Each Owner shall keep their Unit and its equipment and appurtenances in good order, condition, and repair. Each Owner shall immediately notify the Association or its agents of any damage to or malfunction of any facilities for the furnishing of utility services or waste removal.

- 8.15 No Owner shall, without prior written consent of Declarant and/or Board of Directors, make, or permit to be made, any structural alteration, improvement or addition to the exterior of the Buildings or impair any easement or right or personal property which is part of a Unit. Exterior and interior lighting shall be maintained such that it does not directly project into a Unit other than the Unit served by such lighting. The consent of Declarant for such improvements and alterations shall be required for so long as Declarant or its successor owns a Unit.
- 8.16 No Owner shall, without prior written consent of Declarant and the Board of Directors, paint or redecorate the exterior of the Buildings as to alter the appearance of the Buildings. The consent of Declarant for decoration and/or re-decoration shall be required for so long as Declarant or its successor owns a Unit.
- 8.17 No Owner shall or permit his or her tenants, invitees, agents, or guests to park overnight on any driveways other than parking sites designated for individual Units.
- 8.18 No bicycles, tricycles, scooters, or other similar items shall be stored on Common Area or be visibly stored within Exclusive Use Areas.

Each Owner shall ensure that all tenants, guests, or invitees are familiar with the above restrictions and all rules adopted by the Association. In the event a tenant, guest, or invitee fails to comply with any of the covenants and restrictions herein contained or any rule adopted by the Association then, in such event, the Owner responsible for permitting access to a Unit or Common Area by such tenant, guest, or invitee shall be assessed with all costs of enforcement incurred by the Association, including reasonable attorney's fees.

ARTICLE 9

MAINTENANCE AND REPAIR

- 9.1 Ground Maintenance. Driveway maintenance and maintenance of Common Area and similar services shall be performed by the Association to the extent required by this Declaration or as directed by majority vote of the Owners. Declarant reserves to itself and the Association, the right to perform such maintenance and services, and to make Assessments therefor and impose liens for unpaid Assessments as provided in **Article 5** hereof.
- 9.2 Maintenance of the Buildings. Association shall assume the responsibility of maintaining the exteriors of the Buildings, including, but not limited to, cleaning, painting, and repair of exterior surfaces, periodic repair and replacement of the roofs, and the foundations, with the costs thereof included as capital reserve assessments in each annual budget of the Association.

- 9.3 Removal of Debris. In the event the Buildings, accessory structure, or other improvement is destroyed in whole or in part by fire, windstorm, or other casualty, the Association shall remove the debris and do such other things necessary to render the site of the casualty safe and sightly, and Declarant reserves to itself, and the Association, the right to do said acts and to specially assess the costs thereof as provided in **Article 5**.
- 9.4 Emergency Repairs. Declarant for itself, its successors, and assigns shall have the right to enter any Unit in order to effect emergency repairs or to do any other act necessary to protect the property, health, or safety of any Owner with the costs thereof specially assessed to the Owner thereof.

ARTICLE 10

RESERVED EASEMENTS AND RIGHTS

Declarant reserves in the Common Area and in all Units and each shall be conveyed subject to easements for all or any of the following uses and purposes:

- 10.1 Driveways, Lighting, and Landscaping.
- 10.1.1 Construction. Declarant shall construct all driveways shown on the Plan, and any other access ways it deems necessary to service the Premises. Declarant hereby declares any and all easements necessary or desirable across the Common Area for the construction and maintenance of all of the said driveways, the installation of drainage and utilities around, over or under the said driveways, the installation and maintenance of landscaping around the various entryways to the Premises and along the driveways and the installation, maintenance, and repair of lighting for the said driveways all as may be shown on plans filed with or approved by the Town of Conway Planning Board.
- 10.1.2 Private Ways. Declarant will transfer its title, rights, and obligations pursuant to this **Article 10.1** in and to the driveways, the lighting, and landscaping to the Association, which shall be obligated to accept said title, rights, and obligations. The foregoing transfer may occur in one or more complete or partial transfers and at any time.
- 10.1.3 Maintenance, Costs and Control. Until Declarant makes the transfer referred to in **Article 10.1.2** above to the Association, all decisions relative to construction, maintenance, liability, and insurance and any other decisions necessary to be made and implemented with respect to the driveways shall be made by Declarant and the driveways shall be maintained by Declarant with all costs thereof assessed as provided in **Article 5**. Any damage, maintenance, or repair of the driveways,

landscaping, or lighting, or any liability incurred in connection therewith which is caused by the intentional or negligent acts or omissions of any Owner, its agents, representatives, employees, guests, or invitees shall be paid for solely by said Owner. All charges shall be paid within thirty (30) days of receipt of the bill therefor. The costs herein shall at the option of Declarant be assessed to the Association, which in turn may collect the same as an Assessment pursuant to **Article 5.**

10.2 General Development of the Premises. Declarant hereby declares an easement for the purposes of the development and construction of the Premises over and across Common Area. Declarant hereby declares any and all easements necessary or desirable for the construction and development of the Premises. None of the rights of the various Owners herein shall be construed to inhibit or impede the construction and other easement rights reserved by Declarant. Among the general easements are:

10.2.1 Service boxes, poles, wires, and conduits, above or below ground, for electricity, telephone, cable, internet, and/or other purposes and for necessary attachments in connection therewith;

10.2.2 Facilities (pumps, etc.), ditches, pipes, and culverts for surface water drainage and sewer, water mains, pipes, and appurtenances thereto;

10.2.3 The construction and maintenance of slopes and cuts in conjunction with driveways and pathways upon the property;

10.2.4 Any other method of conducting and performing any public or quasi-public utility or service function over or beneath the surface of the ground;

10.2.5 Cables, conduits, and wires above or below ground for community radio and television antenna services;

10.2.6 Installing, replacing, repairing, and servicing any of the foregoing, including trimming and cutting;

10.2.7 Use of Common Area and Association property for building construction and sales purposes conducive to the completion of this development.

10.3 Improvement of Common Area. Declarant shall have the right to construct improvements on any part of the Common Area regardless of its proximity to any Unit for the benefit of all Owners including, by way of example and not of limitation, communal mailboxes, dumpster facilities, gazebos, walkways, benches, and park areas. All such improvements shall be property of the Association.

- 10.4 Assignment. All the rights, easements, privileges and powers reserved to and retained by Declarant under the terms of this Declaration shall be assignable, at any time, by it to the Association, or to any person or entity who has acquired title to all or part of the Premises now owned by Declarant, for the purpose of completing the construction of Black Diamond Place, or to any person or entity who has undertaken to furnish services such as water, sewer, power, and telephone service to the Owners, but in such latter case only those rights and easements necessary or convenient to the providing of such services shall be assignable. The Association shall accept assignment of any such rights, easements, privileges, and powers.
- 10.5 Costs and Expenses. All operating and maintenance costs, expenses, and taxes incurred by Declarant with respect to the driveways, lighting, landscaping, water, and sewer systems, and drainage systems and any other items described above shall be incurred for the benefit of the Owners (including Declarant to the extent it owns any of the Units), and subject to reimbursement from the Owners in accordance with **Article 5**. Declarant is hereby granted the right to charge a fee for administrative expenses incurred by it in performing its obligations hereunder and Declarant shall have the right to hire employees or property managers as it reasonably deems fit, the cost of which shall be reimbursed to Declarant by the Owners.
- 10.6 Utilities. Declarant reserves the right to grant reasonable utility easements across, under, or over any part of the Premises, including any Unit, for any utilities necessary to service the Premises or any Unit.
- 10.7 Transfer to the Association. Declarant shall, upon sale of its last Unit, transfer the Common Area, and its rights and obligations hereunder to the Association. Declarant may in its sole and absolute discretion make such transfer at any time prior to the transfer of its last Unit. In either event, the Association shall be obligated to accept said Common Area, rights, and obligations.

ARTICLE 11

AMENDMENTS

- 11.1 Amendment by Declarant. Declarant reserves to itself the right to amend the covenants, restrictions, and easements herein set forth for so long as it owns a Unit which amendments may be made with or without advance notice to the Owners provided, however, that such amendments shall not materially alter the terms hereof or have a material adverse effect on any Owner.
- 11.2 Amendment by Owners subject to Ratification. So long as Declarant owns one or more Units the covenants, restrictions, and easements set forth herein may be amended at any

time by a vote of two-thirds (2/3) of the aggregate voting strength of the Association, not including Declarant provided, however that Declarant in its sole and absolute discretion shall ratify such amendment.

11.2.1 No such amendment shall be effective unless written notice of the proposal thereof shall be sent to every Owner and Declarant at least thirty (30) days in advance of the meeting at which the same is considered; and

11.2.2 An instrument setting forth such amendment and signed on behalf of the Association and Declarant, if ratification is required in the same manner required for the conveyance of real property, shall be recorded at the Carroll County Registry of Deeds.

11.3 Amendment by Owners. Upon expiration of Declarant's right of ratification, amendments to this Declaration or any declaration supplementary hereto may be made in the same manner provided in **Article 11.2**, except that the ratification of Declarant shall not be required.

ARTICLE 12

INSURANCE

NOTICE: The Association's insurance policy does not cover Owner's or occupant's personal property and contents of their Unit, nor the personal liability of Owners or their occupants.

12.1 Insurance. The Board shall obtain insurance as required in this Declaration. Insurance premiums shall be a Common Expense. The Association shall have no obligation to obtain or maintain any insurance covering Owners' personal or real property, and each Owner shall be responsible for obtaining and maintaining such insurance.

12.2 Property Insurance. The Association shall maintain a blanket policy of property insurance covering the Common Area, Exclusive Use Areas, the Buildings, and any fixtures or equipment thereon that are the obligation of the Association to maintain. The Association may maintain broader coverage if afforded by the insurance contract. The insurance shall be in such amounts and upon such terms as are determined reasonable by the Board based on the recommendations of an insurance agent licensed in the State of New Hampshire and insured against errors and omissions.

12.3 Owner Responsibility for Payment of Deductible. If a loss occurs to a Unit or Exclusive Use Area appurtenant thereto that is covered by a property insurance policy in the name of the Association:

- 12.3.1 the Association's policy provides primary insurance coverage, and the Owner is responsible for the Association's policy deductible. The Owner's policy, if any, applies to that portion of the loss attributable to the Association's policy deductible.
- 12.3.2 if a loss to more than one Unit and/or Exclusive Use Area results from a single event or occurrence covered by the Association's property insurance policy, the Owner(s) of each Unit damaged is responsible for a percentage of the Association's deductible equal to the percentage of the total damage attributable to that Unit.
- 12.3.3 if an Owner does not pay the amount required under **Article 12.3.2** above within thirty (30) days after substantial completion of the repairs, the Association may levy an individual Assessment against the Owner for that amount.
- 12.4 Right to Not Tender Claims that are Under the Deductible. If, in the exercise of its business judgment, the Board determines that a claim is likely not to exceed the Association's property insurance policy deductible: (a) the Owner's policy is considered the policy for primary coverage to the amount of the Association's policy deductible; (b) an Owner who does not have a policy to cover the Association's property insurance policy deductible is responsible for the loss to the amount of the Association's policy deductible; and (c) the Association need not tender the claim to the Association's insurer.
- 12.5 Additional Insurance. The Association may, if the Board deems appropriate, obtain additional insurance, including but not limited to general liability insurance, Directors' and Officers' liability insurance, fidelity insurance, and worker's compensation insurance. All insurance shall be in such amounts and upon such terms as are determined reasonable by the Board based on the recommendations of an insurance agent licensed in the State of New Hampshire and insured against errors and omissions.
- 12.6 Named Insured. The named insured under any policy of insurance shall be the Association. Each Owner shall also be an insured under any and all property and general liability insurance policies.
- 12.7 Owner's Casualty Insurance. Each Owner shall bear the risk of loss and damage to his Unit and any and all furniture, personal effects, and other personal property belonging to him or carried on his person which property, whether located in the Unit, Exclusive Use Area, or in or on the Common Area. The foregoing shall not apply: (1) to any property constituting a portion of the Common Area; or (2) to fixtures, installations or additions covered by the Association's casualty insurance as provided in **Article 12.2**. Each Owner

shall, at his own expense, obtain insurance coverage for loss of or damage to his Unit and personal property to the extent not covered by the Association's casualty insurance.

- 12.8 Owner's Liability Insurance. Each Owner shall be liable for injuries or damages resulting from an accident in his own Unit, to the same extent that a homeowner would be liable for an accident occurring within his house. Each Owner shall, at his own expense, obtain insurance coverage against personal liability for injury to the person or property of another while within such Owner's Unit or upon the Common Area. No Owner shall be liable personally for any damages caused by the Association in connection with the use of the Common Area.
- 12.9 Requirements Concerning Owner's Insurance. All such insurance obtained by any Owner shall, wherever available, state that the insurer waives its right of subrogation as to any claims against: (1) other Owners; (2) the Association; and (3) the respective servants, agents, and guests of other Owners and shall name the Association as an additional insured.

ARTICLE 13

MISCELLANEOUS

- 13.1 Binding Effect. The covenants, restrictions, and easements of this Declaration shall run with and bind the land in perpetuity, and shall inure to the benefit of and be enforceable by the Association, and all or any Owners, their respective legal representatives, heirs, successors and assigns.
- 13.2 Notice. Any notice required to be sent to any member of the Association under the provisions of this Declaration shall be deemed to have been properly sent when mailed in a sealed envelope postpaid, to the last known address of the person who appears as a member on the records of the Association at the time of such mailing. Notice shall be deemed received three days after the date of posting. Notice shall be to such address provided to the Association by each Owner and may be delivered by email upon request of each Owner. Notice shall, in all instances, be deemed effective five (5) business days following the postmark date on correspondence addressed to the address on file with the Town of Conway Assessor's office which shall be sent by certified, return receipt through the United States Postal Service.
- 13.3 Enforcement. Enforcement of these covenants, restrictions, and easements shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in

no event be deemed a waiver of the right to do so thereafter. Any party who knowingly disregards any covenant, restriction, or easement herein set forth or who knowingly violates a rule of the Association adopted as provided herein shall be liable to the prevailing party for all costs, including reasonable attorney's fees and court costs, incurred in connection with enforcing such covenant, restriction, easement, or rule.

13.4 Severability. Invalidation of any one of the covenants, restrictions, or easements herein set forth by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

13.5 Headings. The title headings as to the contents of particular Articles are inserted only as a matter of convenience and for reference, and in no way are, nor are they intended to be, a part of this Declaration nor in any way define, limit, or describe the scope or intent of the particular section or clause to which they refer.

<signatures appear on following page>

IN WITNESS WHEREOF, RTL, LLC has caused this instrument to be executed on the day and date hereinbefore written.

RTL, LLC

Witness

By: _____
Douglas Mullen,
Manager

STATE OF NEW HAMPSHIRE
COUNTY OF CARROLL, SS.

On this ____ day of _____, 2023, before me personally appeared Douglas Mullen, duly authorized as the Manager of RTL, LLC, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his and RTL, LLC's free act and deed.

Before me,

Justice of the Peace/Notary Public

Print/Type Name: _____

My Commission Expires: _____