

**DECLARATION OF CONDOMINIUM  
OF  
[PENACOOK COMMUNITY CENTER] CONDOMINIUM**

This DECLARATION is made this \_\_\_\_ day of \_\_\_\_\_, 2024 by the **Boys and Girls Club of Central New Hampshire**, a New Hampshire non-profit corporation with a principal place of business at 55 Bradley Street, Concord, New Hampshire 03301, for the purpose of submitting certain property to the condominium form of use and ownership in accordance with the provisions of the New Hampshire Condominium Act, New Hampshire RSA Chapter 356-B.

**RECITALS**

WHEREAS, Declarant owns certain tracts of land, with the improvements heretofore or hereafter constructed thereon, located at 76 Community Drive, Penacook (Concord), New Hampshire known as Tax Map 1424P, Lot 38 on which it proposes to construct a building containing two (2) commercial units with associated access, parking areas and common facilities as shown on the Site Plan.

WHEREAS, the Declarant intends to sell and convey Units in the Condominium, subject to certain mutually beneficial restrictions, covenants, conditions, equitable servitudes, and charges that it desires to impose thereon under a general plan of improvement of the Condominium for the benefit of all of Units and future Owners of Units.

NOW THEREFORE, the Declarant hereby declares that all of the premises described in Exhibit A attached to this Declaration, including all of the Units and other improvements located and to be located thereon, and all easements, rights, and appurtenances belonging thereto are hereby submitted to the provisions of the Act and are held and shall be held, conveyed, encumbered, leased, used, occupied, and improved subject to the following restrictions, covenants, conditions, uses, limitations, and obligations, all of which are declared, intended, and agreed to enhance and protect the value and desirability of the Condominium as a whole, and to mutually benefit each of the Units, and to impose upon them the servitude described herein in favor of each and all other Units therein; to create reciprocal rights and privity of contract and estate between all persons acquiring or owning an interest in any of the Units, including the Declarant, and their grantees, heirs, devisees, successors, and assigns, and shall be deemed to run with the land and be a burden and benefit to all such persons, including the Declarant, its grantees, heirs, devisees, successors, and assigns.

**ARTICLE 1**  
**DEFINITIONS**

Certain of the terms as used in this Declaration and in the Bylaws are defined and shall have meaning as follows, unless the context clearly indicates a different meaning thereof; provided, however, that if any such definition conflicts with the definitions set forth in RSA 356-B:3, the latter definition shall control.

“Act” means the New Hampshire Condominium Act (New Hampshire RSA Chapter 356-B, as amended).

“Amendment” means any amendment to this Declaration including Special Amendments made by the Declarant pursuant to ARTICLE 14 of this Declaration.

“Assessment” means that portion of the cost of maintaining, repairing, and managing the Common Area that is to be paid by each Owner.

“Association” or “Association of Owners” means the Owners acting as a group in accordance with the Act, the Declaration, and the Bylaws.

“Board” or “Board of Directors” means the executive and administrative entity designated in this Declaration or Bylaws as the governing body of the Association.

“Bylaws” means the instrument attached to this Declaration as Exhibit C, which instrument provides for the self-government of the Condominium by the Association, as amended from time to time.

“Common Area” means all that portion of the Condominium, other than the Units, and is more particularly described in ARTICLE 2 of this Declaration. The Common Area includes Limited Common Area.

“Common Expenses” means all expenditures lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation and/or maintenance of reserves pursuant to the provisions of the Condominium Instruments.

“Common Profits” means all income collected or accrued by or on behalf of the Association, other than income derived from Special Assessments against individual Units.

“Condominium” means the real property described in Exhibit A hereto and any interests therein subscribed to the form of condominium ownership under the Act by this Declaration.

“Condominium Instruments” means this Declaration, Bylaws, Site Plan, and Floor Plans, all as amended from time to time.

“Declarant” means the Boys and Girls Club of Central New Hampshire, a New Hampshire non-profit corporation with a principal place of business at 55 Bradley Street, Concord, New Hampshire 03301, and its successors and assigns.

“Declaration” means this instrument, as amended.

“Floor Plan(s)” means any and all floor plans for each Unit, recorded in the Merrimack County Registry of Deeds herewith or subsequently hereto pursuant to Section 20, II of the Act; or any floor plan recorded subsequently for the purpose of amending any previously recorded Plan or plat.

“Future Common Expenses” shall mean Common Expenses for which Assessments are not yet due and payable.

“Institutional Lender” or “Institutional Lenders” means one or more commercial or savings banks, savings and loan associations, trust companies, credit unions, industrial loan associations, insurance companies, pension funds, or business trusts, including any other lender regularly engaged in financing the purchase, construction, or improvement of real estate, or any assignee of loans made by such a lender, or any combination of any of the foregoing entities.

“Limited Common Area” means a portion of the Common Area reserved for the exclusive use of one or more, but less than all, of the Units and as shown on the Floor Plan for the Unit and the Site Plan.

“Manager” means the person designated by the Board, if any, to manage the affairs of the Condominium and to perform various other duties as may be assigned by the Board in accordance with the provisions of this Declaration and the Bylaws. During any such time as the Declarant shall control the Association, the Declarant may appoint a Manager; provided that the term of any management contract shall terminate upon the Association’s assuming control of the Condominium from the Declarant.

“Owner” or “Owners” means one or more entities or individuals who own a Unit.

“Rules and Regulations” means such reasonable regulations as the Board from time to time may adopt relative to the use of the Condominium, or any part thereof, as amended from time to time.

“Site Plan” means the plan entitled Condominium Site Plan entitled “[\_\_\_\_\_]”, dated \_\_\_\_\_, and revised through \_\_\_\_\_, prepared by \_\_\_\_\_ and recorded in the Merrimack County Registry of Deeds as Plan # \_\_\_\_\_ and any and all site plans or plats which concern the Condominium and the land described in Exhibit A and any revisions thereof, recorded in Merrimack County Registry of Deeds with this Declaration or subsequently pursuant to Section 20, II of the Act; or any such site plan recorded subsequently for the purpose of amending any previously recorded Plan or plat.

“Submitted Land” means the land in the Condominium described in Exhibit A of this Declaration.

“Undivided Percentage Interest” means the undivided percentage interest in and to the Common Area attributed to each Unit and as set forth in Exhibit B appended hereto, as amended from time to time pursuant to ARTICLE 9 hereof.

“Unit” or “Units” means a portion or portions of the Condominium designated and intended for individual ownership and use and the undivided interest in the Common Area appertaining to that use.

The name of the Condominium shall be the [Penacook Community Center] Condominium.

**ARTICLE 2**  
**UNITS, COMMON AREA, LIMITED COMMON AREA**

A. Description of Land. A legal description of the land hereby submitted in accordance with the provisions of the Act is contained in Exhibit A attached to this Declaration.

B. Description of Building. There shall be one (1) 8,900± square foot structure in the Condominium, containing two (2) commercial units.

C. Description of Units. The Unit number and the dimensions of each Unit are shown on the Site Plan and Floor Plans, if any, recorded herewith and/or shown on “As-Built” Site Plans and Floor Plans subsequently filed at the time the respective improvements are built. The boundaries of each Unit with respect to floors, ceilings, walls, doors, and windows thereof are as follows:

- (1) Horizontal Boundaries: The horizontal boundaries of each Unit shall be:
  - (i) The Lower Boundary is the upper unfinished surface of the foundation slab.
  - (ii) The Upper Boundary is the lower plane of the roof joists or trusses of each Unit.
- (2) Vertical Boundaries: The vertical boundaries of each Unit shall be:
  - (i) Interior unfinished surface of exterior building wall stud.
  - (ii) Interior unfinished surface of interior shared common wall stud.
  - (iii) Exterior doors, windows, skylights and frames: The unfinished outer surface of the door, window or skylight sash and the corresponding frame. All glass panels are included in the Unit.

Each Unit includes the portion of the building within the above boundaries and the space that is enclosed thereby. All doors and windows serving the Unit, and all lath, wallboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting part of the finished surfaces in the Unit are part of the Unit.

Each Unit shall be separately metered water, sewer, gas, electrical, telephone/data, cable television services. In addition, all electrical services and systems, fire alarm services and systems, fire suppression systems (“sprinklers”), security systems (including intruder alarms and security cameras), water services and related plumbing systems, sewer services and related plumbing systems, mechanical systems, and heating / air conditioning / ventilation (HVAC) systems for each Unit shall be completely separate, independent, and autonomous from the other Unit and shall be part of each Unit.

D. Description of the Common Area. The Common Area includes the following:

The land on which the buildings containing the Units are located and the walks, shrubbery, and other plantings, parking areas, and other land and interests in land included in the description of the Condominium in Exhibit A;

The water supply lines, sewer lines, and all pipes, lines and meters located outside of any Unit, to the extent not the property of a public or municipal utility, the electrical and telephone systems and underground propane tanks serving the Condominium, to the extent said systems are located within the Common Area, and are not owned by the supplier of the utility service (but not including any portion thereof servicing a single Unit unless such portions are entirely encased within other Common Area within the Unit).

All other parts of the Condominium, including Limited Common Area and personal property acquired by the Association, necessary or convenient to its existence, maintenance, and safety, or normally in common use, and including any other easements set forth in Exhibit A or in this Declaration.

All driveways, roadways and walkways within the Condominium, and contained within the Common Area shown upon the Site Plan to be recorded herewith, as amended from time to time, all of which shall be and remain private rights-of-ways as part of the Common Area, to be constructed, owned by and maintained by the Association as a Common Expense.

Any drainage improvements serving the Condominium.

E. Description of Limited Common Area. There is appurtenant to the Units certain Limited Common Area that is limited to the exclusive use of the Owner or Owners of the Unit or Units to which it is appurtenant. Such Limited Common Area includes the following:

- (1) All stairways, ramps and landings giving access to each Unit, together with all awnings, canopies or enclosures covering such entryways shall be Limited Common Area to the Unit which it accesses;
- (2) the playground area, including all relate fixtures, equipment, and utilities, the privacy fence around the perimeter of the playground and the storage shed as shown on the Site Plan shall be Limited Common Area appurtenant to Unit 1; and
- (3) the exterior book bin/drop off facility for library services at Unit 2 shall be Limited Common Area appurtenant to Unit 2.

Each Owner shall be required to keep their respective Limited Common Area clean and neat at all times., except that the Association shall plow and maintain the driveways and walkways as a Common Expense.

F. Unit Percentage Interest in Common Area and Facilities. Each Unit shall have an

undivided percentage interest in the Common Area proportionate to its size, determined by dividing the total square footage of a Unit by the total square footage of all Units. The undivided percentage interest in the Common Area allocated to each Unit is shown in Exhibit B. There shall appertain to each Unit in the Condominium, for voting purposes in connection with meetings of the Association, a corresponding voting percentage equal to its undivided interest in the Common Area as set forth in Exhibit B. Where a particular Unit is owned by more than one person or entity, such Owners may not divide the vote appertaining to that Unit.

G. Statement of the Purposes and Regulation of Condominium Use. The Condominium is intended for commercial use and the following provisions are in furtherance of this purpose:

- (1) Restrictions on Unit 1: Unit 1 shall be used as a childcare center for infants, toddlers, and young adults less than eighteen (18) years of age, including after school programming, or programming during school vacations or any other land use permitted by the City of Concord Zoning Ordinance (including uses permitted by right, special exception, or variance as granted by the Zoning Board of Adjustment). Notwithstanding the foregoing, the Owner of Unit 1 shall be strictly prohibited from operating a substance misuse treatment center for persons addicted to legal or illicit substances (such as drugs and alcohol), a homeless shelter or homeless resource center, a so-called “halfway house” for previously incarcerated persons on supervised release or probation, or any other use which would inhibit the reasonable or lawful operation of a municipal community center with library services at Unit 2.
- (2) Restrictions on Unit 2. Unit 2 shall be used as a community center with recreational programming and services, including library services or any other normal and customary municipal government operations, or any other land use permitted by the City of Concord Zoning Ordinance (including uses permitted by right, special exception, or variance as granted by the Zoning Board of Adjustment). Notwithstanding the preceding, the Owner of Unit 2 shall be strictly prohibited from operating a substance misuse treatment center for persons addicted to legal or illicit substances (such as drugs and alcohol), a homeless shelter or homeless resource center, a so-called “halfway house” for previously incarcerated persons on supervised release or probation, or any other use which would inhibit the safe or lawful operation of a childcare center at Unit 1, which determination shall be made by the owner of Unit 1 and shall not be unreasonably delayed or conditioned.
- (3) The Buyer and Seller will each make commercially reasonable efforts in good faith to avoid direct competition between the services and programs offered at the Buyer’s Unit (Unit 1) and those offered at the Seller’s Unit (Unit 2). “Direct competition” means that the content, time, and ages of the services and programming are substantially the same.
- (4) The Common Area shall not be used in a manner which is inconsistent with the commercial character of the Condominium. No one shall obstruct, commit any

waste in, or otherwise cause any damage beyond reasonable wear and tear to the Common Area or Limited Common Area, and anyone causing such damage shall pay the expense incurred by the Board in repairing the same. No boats, boat trailers, trucks (semi), snowmobiles, or other such personal property shall be stored in the Common Area or Limited Common Area. There shall be no parking allowed, except in areas designated by the Association and shown on the Site Plan. Nothing shall be altered, constructed in, or removed from the Common Area without the prior written consent of the Owners.

- (5) No noxious or offensive use shall be made of any part of the Condominium, and nothing shall be done therein which is or will become an annoyance or nuisance to other Owners. No use shall be made of any part of the Condominium which shall constitute a fire hazard or which will, or could, result in the cancellation of insurance on any part of the Condominium, or which is in violation of any law, ordinance, or governmental regulation applicable thereto. No use shall be made of any part of the Condominium which will increase the rate of insurance on the Common Area without the prior written consent of the Owners.

The administration of the Condominium shall be governed by the Association. Each Owner shall be a member of the Association. The membership of the Association shall consist of all the Owners. The administration, powers, and duties of the Association and its Board of Directors shall be as contained within this Declaration, Bylaws, and the Act.

A. The Board of Directors is empowered to adopt and amend, from time to time, commercially reasonable Rules and Regulations concerning the use of the Condominium and various parts thereof, which Rules and Regulations shall be furnished in writing to all Owners, such Rules and Regulations shall not be contrary to this Declaration, Bylaws and the Act. The right to adopt and amend, from time to time, Rules and Regulations concerning the use of the Condominium and various parts thereof shall not be authorized without the consent of all the Owners, and, without such unanimous consent, said Rules and Regulations shall not be adopted or amended.

H. Rights of Action. The Association shall have the right to enforce the terms of this Declaration, Bylaws, or any Rules and Regulations against any Unit Owner(s), if that Unit Owner fails to comply with requirements of the Declaration, Bylaws or Rules and Regulations, in addition to other remedies, seeking injunctive relief in the Merrimack County Superior Court. The Declarant shall have the right to enforce the terms of this Declaration, Bylaws, or any Rules and Regulations against the Association, if the Association fails to comply with requirements of the Declaration, Bylaws, or any Rules and Regulations, by, in addition to other remedies, seeking injunctive relief in the Merrimack County Superior Court.

I. Persons to Receive Service of Process. An officer of the Association shall be the person to receive service of any lawful process against the Association.

### **ARTICLE 3**

## **INSURANCE AND VOTING IN THE EVENT OF DAMAGE OR DESTRUCTION**

### **A. Purchase of Insurance.**

- (1) The Association shall obtain and maintain in force insurance covering the Condominium, including the Common Areas and the Limited Common Areas, but not the Units, and all insurable improvements therein of the types and in the amounts hereinafter set forth, for the benefit of the Association, all Owners, and their respective Institutional Lenders, as their interests may appear. The premium for such coverage and other expenses in connection with such insurance shall be part of the Common Expenses.
- (2) Notwithstanding the provisions of Subparagraph (1), such insurance policies as obtained by the Association do not insure Units against property damage to the Units or the Units' contents. Each Unit Owner is encouraged to obtain insurance for such losses to the Unit or its contents, as set forth herein.

### **B. Coverage.**

- (1) Casualty. The Association shall procure and maintain property coverage on all buildings, improvements, and structures which are included in the Condominium, including buildings, improvements, and structures in the Common Area and the Limited Common Area or Units owned by or in the control or possession of the Association, and all personal property in the Common Area, and all fixtures, machinery, equipment, and supplies maintained for the service of the Condominium, and all fixtures, improvements, alterations, and equipment within any individual Units but serving more than that Unit, shall be insured in an amount equal to the full replacement cost thereof, all as determined annually by the Board of Directors. Such coverage shall afford protection against:
  - (i) Loss or damage by fire and other hazards normally covered by a standard extended coverage endorsement; and
  - (ii) All such other risks and perils as from time to time shall be customarily covered with respect to use of the buildings included in the Condominium, including but not limited to vandalism and malicious mischief, including those covered by the standard "all risk" endorsement, and shall not be written on policies calling for any deductible amount in excess of the lesser amount of one percent (1%) of the insurance coverage or Ten Thousand Dollars (\$10,000.00), whichever is less.
- (2) Public Liability. The Association shall procure and maintain comprehensive general liability insurance covering the Association, the Board of Directors, the Manager (if any), all persons acting or who may come to act as agents or employees of any of the Association, all Owners, and all other persons entitled to occupy any Unit or other portion of the Condominium. Such insurance shall be written on an



“occurrence” basis and shall provide coverage of not less than One Million Dollars (\$1,000,000.00) for injury to or death of one person, not less than Two Million Dollars (\$2,000,000.00) for injury to or death of more than one person in the same occurrence; and not less than Five Hundred Thousand Dollars (\$500,000.00) for damage to property.

(3) Other Insurance. The Association shall procure and maintain:

- (i) Directors and Officers coverage in such amounts as are reasonable; and
- (ii) Such other insurance as the Board of Directors shall determine from time to time to be desirable.

C. General Insurance Provisions.

- (1) The Board shall deal with the insurer or insurance agent in connection with the adjusting of all claims under insurance policies provided for under this ARTICLE 3 and shall review with the insurer or insurance agent, at least annually, the coverage under said policies, said review to include an appraisal of the improvements within the Condominium, and shall make any necessary changes in the policy provided for hereunder (prior to the expiration date set forth in any agreed amount endorsement contained in said policy) in order to meet the coverage requirements of such section.
- (2) The Board shall be required to make every effort to see that all policies of physical damage insurance provided for under this ARTICLE 3:
  - (i) shall contain waivers of subrogation by the insurer, if available, as to claims against the Association, its employees, and agents, members of the Board, the Manager, and Owners, except in cases of arson and fraud;
  - (ii) shall contain a waiver of the defense of invalidity or prejudice on account of the conduct of any of the Owners over which the Association has no control;
  - (iii) shall contain a waiver of defense of invalidity or prejudice by failure of the insured, or Owners collectively, to comply with any warranty or condition with regard to any portion of the Condominium over which the insured, or Owners collectively, have no control;
  - (iv) shall provide that such policies may not be canceled or substantially modified without at least thirty (30) days written notice to all of the insureds thereunder and all mortgagees of Units in the Condominium;
  - (v) shall provide that in no event shall the insurance under said policies be brought into contribution with insurance purchased individually by Owners

or their mortgagees;

- (vi) shall exclude policies obtained by individual Owners for consideration under any “no other insurance” clause;
- (vii) shall provide that until the expiration of thirty (30) days after the insurer gives notice in writing to the mortgagee of any Unit, the mortgagee’s insurance coverage will not be affected or jeopardized by any act or conduct of the Owner of such Unit, the other Owners, the Board of Directors, or any of their agents, employees or household members, nor canceled for nonpayment of premiums;
- (viii) shall contain a “loss payable” clause showing the Association as trustee for each Owner and the holder of each Unit’s mortgage; and
- (ix) shall contain the standard mortgagee clause naming the mortgagees of the Units.

D. Individual Policies. The Owner may obtain at the Owner’s expense additional insurance. Such insurance should contain the same waiver of subrogation provision as that set forth in ARTICLE 3.C. Notwithstanding herein, the Owner may self-insure to cover any commercially reasonable deductible assessed to it.

- (1) Each Owner should obtain insurance for his or her own benefit and at his or her own expense insuring all personal property presently or hereafter located in his or her Unit, including any floor or wall coverings, appliances, and other personal property not covered in the master policy.
- (2) Each Owner should obtain liability insurance with respect to his or her ownership and/or use of his or her Unit.
- (3) Each Owner should obtain fire and extended coverage for the Unit(s) owned by them to the FULL REPLACEMENT COST of the portions of the building which are within the boundaries of the Owner’s Unit(s) and not otherwise insured by the Association’s policy.

E. Notice to Owners. When any policy of insurance has been obtained on behalf of the Association, written notice thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each Owner by the Board of Directors. Such notice shall be sent to all Owners of record at the address of their respective Units or to such other addresses, including electronic mail addresses, as any of them may have designated; or such notice may be hand-delivered, provided there is a receipt of acceptance of such notice from the Owner.

F. Action Following Casualty Damage. In the event of damage to any portion of the Condominium by fire or other casualty, the proceeds of the master casualty policy shall, pursuant to Section 43, III of the Act, be used to repair, replace, restore the structure or the Common Area

damaged, unless the Owners, to the extent permitted by the Act and this Declaration, vote not to repair, replace, or restore the same, or vote to terminate the Condominium pursuant to Section 34 of the Act.

#### **ARTICLE 4**

#### **EXTENT OF OWNERSHIP AND POSSESSION BY OWNER**

A. Subject to the provisions of this Declaration, each Owner shall be entitled to the exclusive ownership and possession of its Unit. No Owner shall be deemed to own pipes, wires, conduits, or other utility lines, if any, running through the Unit which are utilized for or serve more than one Unit, which items are hereby made part of the Common Area. To the extent the Declarant shall own an unsold Unit, the Declarant shall be deemed to be an Owner.

B. Each Owner shall own an undivided interest in the Common Area as set forth in Exhibit B. No such interest shall be altered in a manner which is contrary to the provisions of the Act, as amended from time to time, and no such interest shall be separated from the Unit to which it appertains, it being deemed to be conveyed or encumbered with the Unit even though it is not expressly mentioned or described in the instrument of conveyance or encumbrance. Subject to the provisions of this Declaration, each Owner may use the Common Area, excepting Limited Common Area, in accordance with the purposes for which it is intended, so long as the Unit Owner does not hinder or encroach upon the lawful rights of the other Unit Owner or otherwise violate the provisions hereof or of any Rules and Regulations adopted pursuant to said provisions.

C. Subject to the provisions of this Declaration, each Owner shall be entitled to the use of the Limited Common Area appurtenant to his or her Unit either exclusively or in common with one or more designated Units as set forth herein or on the Site Plan. The right to use of the Limited Common Area shall not be altered without the consent of all the Owners expressed in an Amendment to the Declaration duly recorded and, without such unanimous consent, shall not be separated from the Unit to which it is appurtenant, it being deemed to be conveyed or encumbered with the Unit even though it is not expressly mentioned or described in the instrument of conveyance or encumbrance.

#### **ARTICLE 5**

#### **MAINTENANCE AND REPAIRS**

A. Owners' Obligation to Repair and Maintain. Each Owner shall, at his or her own expense, keep his or her Unit and its equipment and appurtenances, including the Limited Common Area pertaining thereto, in good order, condition and repair. In addition to keeping the Unit in good repair, each Owner shall be responsible for the maintenance, repair, or replacement of the interior of the Unit, including, any bathroom, kitchen fixtures, plumbing fixtures, water heater, appliances, heating equipment, lighting fixtures, doors, windows and window frames, and such other property that is part of the Unit wherever located. Each Owner shall also, at his or her own expense, keep the Limited Common Area appurtenant to his or her Unit in a neat and orderly condition, and free and clear of obstruction or debris.

In the event an Owner fails to make such repairs after thirty (30) days' written notice of

the need for the same is given to him or her by the Board, the Board may enter and make such repairs, the expense of which shall be borne by said Owner. Such repair or other work shall only be performed in compliance with governmental laws, ordinances, rules, and regulations.

B. Association's Obligation to Maintain. Except as otherwise provided, the Association shall be responsible for:

- (1) the maintenance (including snow removal, landscape maintenance and trash removal), repair, and replacement of the Common Areas, including without limitation, the roads, walkways, parking areas, sidewalks, drainage improvements, culverts, easements and underground facilities (including facilities related to waste disposal and water lines not maintained by a public or municipal utility and not part of a Unit) shown on the site plan; and
- (2) the expense of such repair (unless necessitated by the negligence, misuse or neglect of an Owner, or of a person gaining access with said Owner's actual or implied consent, in which case the expense shall be charged to such Owner) of the Common Area, whether located inside or outside of the Units, whether now existing or hereafter constructed, the cost of which shall be assessed to all Owners as a Common Expense. Maintenance of the Common Areas shall not include the keeping of Limited Common Areas in a neat and orderly condition as provided in this ARTICLE 5 above.

#### **ARTICLE 6**

#### **PROHIBITION AGAINST STRUCTURAL CHANGES BY OWNER**

No Owner shall, without first satisfying the requirements regarding repair or other work set forth in ARTICLE 5 above, and obtaining the written consent of the Owners:

Make or permit to be made any structural alterations, improvement, or addition in or to his or her Unit or in or to any other part of the Condominium;

Tamper with any bearing or party wall or take any action or permit any action to be taken that will impair the structural soundness or integrity or safety of the building or any other structure in the Condominium; or

Impair any easement or right or personal property which is a part of the Condominium.

#### **ARTICLE 7**

#### **ENTRY FOR REPAIRS AND GRANT OF EASEMENT**

A. The Association shall have the irrevocable right, to be reasonably exercised by the Board or its agents, to enter any Unit or Limited Common Area to inspect the same, to remove

violations therefrom, or to perform any repair, maintenance, or construction for which the Board is responsible and shall have the irrevocable right, to be reasonably exercised by the Board and its agents, to enter any Unit or Limited Common Area for the purpose of making emergency repairs necessary to prevent damage to other parts of the Condominium. Such entry shall be made with as little inconvenience to the Owner as practicable and with at least 24 hours' prior notice (verbal or written) except in the case of an emergency, and any damage caused thereby or expenses in connection therewith shall be repaired or satisfied by the Board out of the Common Expenses unless such emergency repairs are necessitated by the negligence, misuse, or neglect of one or more Owners, in which case, the said Owner or Owners shall bear the expense of such repairs.

B. The Association shall have the power and right to grant reasonable, licenses, and easements over the Common Area for utilities, roads and other purposes necessary for the proper operation of the Condominium.

## **ARTICLE 8**

### **CERTAIN PROVISIONS PERMITTED BY THE ACT**

A. Encroachments. If any portion of the Common Area now encroaches upon any Unit, any Unit now encroaches upon any other Unit or upon any portion of the Common Area, or if any such encroachment shall occur hereafter as a result of the following, then a valid easement shall exist for such encroachment and for the maintenance of the same so long as the affected building stands:

- (1) settling of a building;
- (2) alteration of or repair to the Common Area made by or with the consent of the Board of Directors;
- (3) repair or restoration of a building or any Unit after damage by fire or other casualty;  
or
- (4) condemnation or eminent domain proceedings.

B. Alterations Within Units. Subject to the notification requirement of ARTICLE 3 above, an Owner may make alterations, additions, and improvements within his or her Unit which do not violate ARTICLE 6 hereof, including moving, removing, altering, or adding to interior non-load bearing walls and partitions or party walls, provided that no such alteration, addition, or improvement may affect the structural elements or integrity of any structure without the prior written consent by the other Owner, which shall not be unreasonably withheld.

## **ARTICLE 9**

### **AMENDMENT OF CONDOMINIUM INSTRUMENTS**

A. Amendment After Conveyance of a Unit.

(1) Subsequent to the conveyance of a Unit to an Owner other than the Declarant and except as provided below, the Condominium Instruments may be amended only by an instrument which shall require a unanimous vote of the Owners of Units, provided that:

- i. Subject to the provisions of Section 34(V) of the Act, no instrument of amendment which alters the dimensions of any Unit shall be of any force or effect unless the same has been signed by the Owner(s) and any Institutional Lender of record of the Unit so altered;
- ii. Subject to the provisions of Section 34(V) of the Act, no instrument of amendment which alters the percentage of undivided interest in the Common Area, the liability for Common Expense, the rights to Common Profits, or the voting rights in the Association appurtenant to any Unit shall be of any force or effect unless the same is permitted or required by the Condominium Instruments, is consistent with the applicable provisions of the Act and, except as provided in ARTICLE 9 below, has been approved and agreed to by all the Owners and any Institutional Lenders of record of the Units affected thereby;
- iii. No instrument of amendment which alters the Condominium Instruments in any manner which would render any of them contrary to or inconsistent with any requirements or provisions of the Act shall be of any force or effect;
- iv. No instrument of amendment which purports to affect the Declarant's reserved rights of control set forth in ARTICLE 14 of this Declaration shall be of any force and effect unless it is assented to in writing by the Declarant, and this assent is recorded in such Amendment at the Merrimack County Registry of Deeds;
- v. No instrument of amendment which purports to affect the Declarant's reserved rights and easements shall be of any force and effect unless it is assented to in writing by the Declarant and this assent is recorded with such amendment at the Merrimack County Registry of Deeds.

(2) Subsequent to the conveyance of a Unit to an Owner other than the Declarant, the prior written approval of the first mortgagee of Units to which two-thirds (2/3) of the voting power in the Association appertains shall be required in order to adopt any amendment to any or all of the Condominium Instruments which amendment would have the effect of altering;

- i. The voting rights of the Owners in the Association;
- ii. The manner of assessing Common Expenses, assessment liens or subordination of assessment liens;

- iii. The requirement that the Association reserves for replacement, maintenance, and repair of the Common Area; and/or reduction of the assessment for such reserves until fully funded;
- iv. The terms of the Condominium Instruments relating to responsibility for maintenance and repair of the Units, the Common Area or the Limited Common Area;
- v. The terms of the Condominium Instruments relating to the requirements for or the issuance of policies of insurance or fidelity bonds to be provided by the Association;
- vi. The terms of the Condominium Instruments relating to or adding restrictions to an Owner's right to sell or transfer his or her Unit;
- vii. Any term of the Condominium Instruments that expressly benefits mortgage holders, insurers or guarantors;
- viii. The terms of the Condominium Instruments providing for the restoration or repair of the Common Areas and buildings in the Condominium after a hazard, damage, or partial condemnation; or
- ix. Any term of the Condominium Instruments relating to terminating the Condominium's legal status after substantial destruction or condemnation occurs.

Nothing herein shall be deemed to permit or authorize any amendment of the Condominium Instruments which is not authorized under Section 34 of the Act.

B. Recording Required. No amendment to the Condominium Instruments shall become effective until an instrument setting it forth in full shall be recorded at the Merrimack County Registry of Deeds. After the conveyance of a Unit to an Owner other than the Declarant, such instrument shall either:

- (1) be signed by all Owners; or
- (2) be signed by the President and Treasurer of the Association, in which case it shall be accompanied by a certification of vote by the Secretary of the Association and shall recite that the consent and approval of an unanimous vote of the Owners required for its adoption has been obtained. Such instrument, as so executed and recorded, shall be conclusive evidence of the existence of all facts recited therein and of compliance with all prerequisites to the validity of such amendment in favor of all persons who rely thereon without actual knowledge that such facts are not true or such amendment is not valid.

C. Conforming Amendments Permitted. The Declarant reserves the right to itself and its successors in interest to amend the Condominium Instruments without the consent of any Unit Owners or First Mortgagees, but only to:

- (1) correct typographical errors; or
- (2) to bring the Condominium Instruments in compliance with New Hampshire RSA 356-B.

D. Unit Mortgagees (or Guarantors). To the extent the consent of a Unit mortgagee(s) is required for any action to be taken by the Association herein, or by the Board of Directors under the By-Laws, notice of the proposed action shall be required only if the said Unit mortgagee (or the Guarantor of such Unit mortgagee) shall provide the Board of Directors with a written request to receive any such notice and/or that it is the Unit mortgagee entitled to receive notice of such action or amendment. Such request shall specify the name and address of such mortgagee and the Unit number to which the mortgage pertains. After receipt of such notice, the Board of Directors shall notify the respective mortgagee of

- (1) any sixty (60) day delinquency in the payment of assessments or charges owed by the owner of any Unit on which it holds the mortgage;
- (2) a lapse, cancellation, or material modification of any insurance policy maintained by the Owners' Association; and
- (3) any proposed action that requires the consent of a specified percentage of eligible mortgage holders.

## **ARTICLE 10** **ASSESSMENTS**

A. Power to Fix and Determine. The Association through its Board of Directors, shall have the power to fix and determine from time to time the sum or sums necessary and adequate to provide for the Common Expenses of the Condominium and such other fees and charges as are specifically provided for in the Declaration and the Bylaws. The procedure for the determination of all such Assessments shall be as set forth in the Bylaws.

B. Owner's Obligation to Pay Assessments. Each Owner shall pay all Common Expenses, including Limited Common Assessment, assessed against him or her and all other Assessments and charges made against him or her by the Board of Directors pursuant to the Declaration or Bylaws. Any Owner having executed a contract for the disposition of his or her Unit, shall be entitled, upon written request to the President, Treasurer, or Secretary of the Association and payment of a fee which shall be fixed by the Board of Directors but which shall not exceed the largest amount allowed by the Act, to a recordable statement setting forth the amount of unpaid Assessments currently levied against that Unit. Such statement setting forth the



amount of unpaid Assessment shall be binding upon the Association, the Board of Directors, and every Owner. Failure to furnish such statement within ten (10) business days following receipt of such request shall extinguish the lien created by Section 46 of the Act.

C. Unpaid Assessments. Assessments for Common Expenses, maintenance fees and other fees and charges that are unpaid for over ten (10) days after due date shall bear interest at the rate of eighteen percent (18%) per annum (or such other rate as the Board of Directors may determine) provided said interest rate does not violate any then applicable usury statute or regulations (in which case said interest rate shall automatically be reduced to the then highest permitted rate) from due date until paid, and in addition and at the sole discretion of the Board of Directors, a late charge to be determined by the Directors of the Association, but which shall not exceed any limits imposed by the Act, shall be due and payable by Owner within 30 days of receipt of invoice. A purchaser of a Unit, other than a purchaser at a foreclosure sale or a purchaser at a sale in lieu of foreclosure, shall be liable for the payment of any Assessments against such Unit which are unpaid at the time of such purchase.

D. Lien for Unpaid Assessments.

- (1) The Association shall have a lien upon each Unit for unpaid Assessments, together with interest thereon, against the Owner thereof. Expenses incurred by the Association, including reasonable attorney's fees, incident to the collection of such Assessments or the enforcement of such lien, together with all sums advanced and paid by the Association for taxes and payments on account of superior mortgages, liens or encumbrances which may be required to be advanced by the Association, in order to preserve and protect its lien, shall be payable by the Owner and secured by such lien. The Board of Directors may take such action as it deems necessary to collect Assessments by personal action or by enforcing and foreclosing said lien, and may settle and compromise the same if deemed in the best interests of the Association. Said lien shall be effective as and in the manner provided for by the Act, and shall have the priorities established by the Act. The Association shall be entitled to bid at any sale held pursuant to foreclosure of a lien for unpaid Assessments, and to apply as a cash credit against its bid all sums due, as provided herein, and covered by the lien being enforced. In connection with any such foreclosure, the Owner shall be required to pay a reasonable rental for the Unit for the period of time said Unit is occupied by the Owner or anyone by, through or under said Owner, while such foreclosure proceeding is pending;
- (2) In the event an Institutional Lender, or other purchaser of a Unit, obtains title to such Unit as a result of foreclosure by the Institutional Lender, or if an Institutional Lender accepts a deed to such Unit in lieu of foreclosure, the person or entity so acquiring title shall not be liable for any Assessments by the Association pertaining to such Unit, or chargeable to the former Owner which became due prior to acquisition of title as a result of the foreclosure except as provided in the Act; and
- (3) No person who acquires an interest in a Unit, except through foreclosure by an Institutional Lender, or the acceptance by an Institutional Lender of a deed in lieu

of foreclosure, (including, without limitation, persons acquiring title by operation of law, including purchasers at judicial sales), shall be entitled to occupancy of the Unit or enjoyment of the Common Area until such time as all unpaid Assessments due and owing by the former Owner have been paid.

#### **ARTICLE 11** **WAIVER**

The failure of the Declarant, Board, Association, or Owner to insist, in any instance, upon the strict performance of any of the terms, covenants, conditions, or restrictions of this Declaration or of the Bylaws or to exercise any right herein or therein contained, or to serve any notice or to institute any action shall not be construed as a waiver or a relinquishment in the future of such term, covenant, condition, restriction, or right and the same shall remain in full force and effect. The receipt by the Association or Board of payment of any Assessment from an Owner with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach and no waiver by the Association or Board of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Association or Board.

#### **ARTICLE 12** **ENFORCEMENT**

Each Owner shall comply strictly with the provisions of the Declaration, the Bylaws, and the Rules and Regulations, if any, as the same may be lawfully amended from time to time and with decisions adopted in accordance with this Declaration and pursuant to said Declaration, Bylaws, and Rules and Regulations, if any; and failure to comply shall be grounds for an action to recover sums due for damages, or injunctive relief, or both, maintainable by the Board on behalf of the Owners, or in a proper case, by an aggrieved Owner.

#### **ARTICLE 13** **PERSONAL PROPERTY**

The Board may acquire and hold, for the benefit of the Owners, tangible and intangible personal property and may dispose of the same by sale or otherwise; and the beneficial interest in such property shall be owned by the Owners in the same proportion as their respective interests in other Common Area. A transfer of a Unit shall transfer to the transferee ownership of the transferor's beneficial interest in such personal property, whether or not such personal property is specifically mentioned therein.

**ARTICLE 14**  
**SPECIAL AMENDMENTS**

The Declarant reserves the right and power to record a special amendment (“Special Amendment”) to this Declaration at any time and from time to time which amends this Declaration to bring this Declaration into compliance with New Hampshire RSA 356-B or other applicable law or regulation affecting the Condominium, including any amendments to the Concord Zoning Ordinance, designed to more closely conform to applicable federal and state law; or to correct clerical or typographical errors in the Condominium Instruments or any Amendment thereto. The Declarant shall provide each Owner with notice of any Special Amendment at least thirty (30) days prior to recording such amendment.

**ARTICLE 15**  
**TERMINATION OF CONDOMINIUM**

A. Termination Prior to Conveyance of A Unit. Prior to the conveyance of a Unit to an Owner other than the Declarant, the Condominium may be terminated at any time by an instrument in writing signed by the Declarant.

B. Termination After Conveyance of A Unit.

- (1) Required Vote. Subsequent to the conveyance of a Unit to an Owner other than the Declarant, the Condominium may be terminated only by an instrument in writing approved and agreed to by a unanimous vote of the Owners.
- (2) Effect of Termination. If the Owners vote to terminate the Condominium at any time or for any reason, then upon the recording of an instrument terminating the Condominium all of the property constituting the same shall be owned by the Owners as tenants-in-common in proportion to their respective undivided interests in the Common Area immediately prior to such recordation. As long as such tenancy-in-common lasts, each Owner and their respective heirs, successors, and assigns shall have an exclusive right of occupancy of that portion of the Condominium property which formerly constituted his or her Unit.

C. Recording Required. No termination of the Condominium shall become effective until an instrument reciting the fact of such termination shall be recorded at the Merrimack County Registry of Deeds. After the conveyance of a Unit to an Owner other than the Declarant, such instrument shall either;

- (1) be signed by Owners holding the requisite voting power for its adoption; or
- (2) be signed by the President and Treasurer of the Association, in which case it shall be accompanied by a certification of vote by the Secretary of the Association and shall recite that the consent and approval of the Owners required for its adoption has been obtained. Such instrument, as so executed and recorded, shall be conclusive evidence of the existence of all facts recited therein and of compliance

with all prerequisites to the validity of such termination in favor of all persons who rely thereon without actual knowledge that such facts are not true or such amendment is not valid.

## **ARTICLE 16** **NOTICES**

Notice to Owners shall be sent to the address of the Owners at their respective Units and to such other addresses, including electronic mail addresses, as any of them may have designated to the Board. All notices shall be deemed to have been given when sent.

## **ARTICLE 17** **EASEMENTS**

The Declarant reserves the right to convey easements to any utility companies including, without limitation, cable, communications, electric and other utilities, which easements are necessary or desirable for the Condominium. All such easements do hereby take precedence over Unit mortgages, and Owner's right and title in and to their Units and the Common Area. Following the completion and sale of all Units by the Declarant, the Association shall thereafter have the right to convey such easements within the Common Area. The Declarant shall provide each Owner with notice of any easement conveyed at least thirty (30) days prior to recording such easement.

## **ARTICLE 18** **SEVERABILITY**

The provisions hereof shall be deemed independent and severable and the invalidity or partial invalidity of any part of this Declaration shall not affect in any manner the validity, enforceability, or effect of the balance of this Declaration.

## **ARTICLE 19** **INTERPRETATION**

The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a Condominium consistent with the Act.

## **ARTICLE 20** **MISCELLANEOUS**

A. **Exhibits and Schedules.** The Exhibits and Schedules referred to in this Declaration shall be construed with, and as an integral part of, this Declaration to the same extent as if they were set forth verbatim in this Declaration.

B. **Recitals.** The Recitals at the beginning of this Declaration are true and correct and are incorporated into the body of this Declaration.

C. **Successors and Assigns.** This Declaration shall be binding upon and shall inure to the benefit of the Declarant, Owners, and their respective successors and assigns.

D. Governing Law. This Declaration and all matters arising out of or relating to this Declaration shall be governed by and construed in accordance with the internal laws of the State of New Hampshire without giving effect to any choice or conflict of law provision or rule of any other jurisdiction.

## **ARTICLE 21**

### **RIGHT OF FIRST REFUSAL**

Each Unit Owner shall have a right of first refusal on the sale of any Units in the Condominium ("ROFR") pursuant to the following terms and conditions:

A. If either Unit Owner intends to sell, transfer or convey the fee interest in its Unit (or any portion thereof), excepting by means of a merger of the Unit Owner to another entity, the selling Unit Owner shall first provide written notice to the other non-selling Unit Owner of the terms and conditions upon which the Unit Owner would be willing to sell the Unit ("Offer Notice"). The Offer Notice shall set forth the material economic terms and conditions under which the selling Unit Owner is willing to sell the Unit ("Material Terms") but shall not constitute an agreement between the parties or an offer to sell the Unit. Specifically, in accordance with the ROFR, the selling Unit Owner shall provide written notice to non-selling Unit Owner of its intentions to sell the Unit ninety (90) days before listing the Unit on the open market. The selling Unit Owner's notice shall include the selling Unit Owner's asking price for the selling Unit Owner's Unit. The non-selling Unit Owner shall have the exclusive right to negotiate a purchase and sales agreement for the selling Unit Owner's Unit during said 90-day time period. In the event a purchase and sales agreement is executed, closing shall occur no later than ninety (90) days after execution of the purchase and sales agreement, or as otherwise agreed by each Unit Owner in writing. In the event the Unit Owners are unable to negotiate a mutually acceptable purchase and sales agreement within the 90-day period allotted, the selling Unit Owner shall have the right, at its sole discretion, to list its Unit on the open market and sell the Unit to a third party selected by the selling Unit Owner at its sole discretion, pursuant to subsection C. below.

B. If the non-selling Unit Owner has waived or is deemed to have waived its ROFR pursuant to paragraph A, the non-selling Unit Owner shall execute and deliver to the selling Unit Owner a written waiver in recordable form to be recorded in the Registry (a "Waiver Notice"). If the non-selling Unit Owner fails or refuses to deliver a Waiver Notice, the selling Unit Owner shall have the right to record in the Registry an affidavit stating that (i) the conveyance by the selling Unit Owner is made on the Material Terms; (ii) it has given an Offer Notice to the non-selling Unit Owner in connection with such conveyance as required by the provisions of this ROFR and attaching a copy of the Offer Notice; and (iii) after negotiating in good faith, the parties failed to agree on and execute a purchase and sale agreement within ninety (90) days after the non-selling Unit Owner's receipt of the Offer. Any third party shall be entitled to rely upon such affidavit.

C. If the ROFR is waived pursuant to the paragraph A, then the selling Unit Owner shall have the right thereafter to sell the Unit to any party on the Material Terms free and clear of the ROFR. If, however, the selling Unit Owner intends to offer the Unit for sale on more

favorable terms than the Material Terms set forth in the Offer Notice, including at a lower purchase price, the selling Unit Owner shall re-offer the Unit to the non-selling Unit Owner on such Material Terms, and the same procedures shall apply as for the original Offer Notice.

D. The Right of First Offer shall not apply to any mortgages, deeds of trust, or other security instrument (a “Mortgage”) made or granted by the Unit Owner or to conveyances or transfers resulting from the foreclosure of a Mortgage or by deed in lieu of foreclosure of a Mortgage. Any holder of a Mortgage or successor in title to a holder of a Mortgage shall take title to the Unit free and clear of the Right of First Refusal.

*[The signature page follows.]*

DRAFT

IN WITNESS WHEREOF, Boys & Girls Club of Central and Northern New Hampshire, Inc. by its Chief Executive Officer, duly authorized, has executed this Declaration on the day and year first above written.

Boys & Girls Club of Central and Northern New Hampshire, Inc.

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Christopher Emond, Chief Executive Officer  
Duly Authorized

STATE OF NEW HAMPSHIRE  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 202\_\_, by Christopher Emond, the duly authorized Chief Executive Officer of Boys & Girls Club of Central and Northern New Hampshire, Inc., a New Hampshire non-profit corporation, on behalf of the non-profit corporation.

\_\_\_\_\_  
Notary Public/Justice of the Peace

**EXHIBIT A**  
**SUBMITTED PROPERTY**



**EXHIBIT B**

**INTEREST IN COMMON AREA and ALLOCATION OF VOTING RIGHTS**

<b><u>UNIT</u></b>	<b><u>PERCENTAGE INTEREST</u></b>
1	83.6%
2	16.4% %

**EXHIBIT C**  
**BYLAWS**