



Bk: 15038Pg: 246 Page: 1 of 28  
Recorded: 12/26/2023 03:49 PM

Reserved for Registry Use

---

**Second Amended and Restated Declaration  
of the  
Bear Hill Estates Senior Condominium Association**

The Bear Hill Estates Senior Condominium Association (the "Association") with an address at 79 King Street, Northampton, MA 01060, is the organization of unit owners of the Bear Hill Estates Senior Condominium, a condominium established, pursuant to Massachusetts General Laws, Chapter 183A, by a Master Deed dated July 12, 2006, and recorded in the Hampshire County Registry of Deeds in Book 8791, Page 66, as amended and restated by an Amendment and Restatement of Master Deed recorded in said Registry in Book 9378, Page 11 and as may be subsequently amended. By executing and recording this Second Amended and Restated Declaration, the Association hereby restates and amends the entirety of the Bear Hill Estates Senior Condominium Amended and Restated Declaration of Bear Hill Estates Senior Condominium, recorded as Exhibit "A" to the above-referenced Amendment and Restatement of Master Deed and as may be subsequently amended.

WHEREAS owners of units to which at least sixty-seven percent (67%) of the votes in the Association are allocated desire to amend and restate said Declaration, as evidenced by their signatures attached hereto, as follows:

**ARTICLE I**

**The Association and Its Purpose**

The Bear Hill Estates Senior Condominium Association is created as the organization of Unit Owners as required by Massachusetts General Laws Chapter 183A ("Chapter 183A") for the purpose of governing and managing the Association.

## **ARTICLE II**

### **Bylaws of the Association**

#### **A. Board of Directors**

##### **1. Number and Qualifications**

- a) The Board of Directors (the "Board" or "Directors") shall manage the Association. The Board shall consist of an odd number of at least three (3) Directors, a majority of which shall be Unit Owners whose primary residence is in the Condominium. The Board may increase the number of Directors at any Board meeting to maintain an odd number of Directors or for any other reasonable purpose.
- b) The term of each Director shall be three (3) years with the expiration of at least one Director's term annually.
- c) At the end of each Director's three (3) year term, that Director's position becomes open for his or her re-election, or for another person to be elected to the Board by the Unit Owners at the Unit Owners Annual Meeting, whose term shall be effective upon election.
- d) At least one Director must be a Warner Exclusive Use Unit A, B, C or D Owner if a Warner Unit Owner is willing to serve. Any Warner Unit Owners willing to serve shall be added to the ballot for Director openings at the Unit Owners annual meeting.

##### **2. Powers and Duties**

The Board shall have the powers and duties necessary for the administration of the Association and may do all such acts and things except those things which by law, the Master Deed, the Declaration, or these Bylaws may not be delegated to the Board.

The powers and duties necessary for the administration of the Association include, but are not limited to:

- a) Managing the operation, improvement, and maintenance of the Common Areas;
- b) Adopting and amending budgets for revenues, expenditures, and reserves;
- c) Developing and maintaining an adequate reserve fund for future capital expenditures;
- d) Determining the common expenses required for the affairs of the

Condominium including operation and maintenance;

- e) Collecting the common expense charges from the Unit Owners;
- f) Determining and collecting Special Assessments from Unit Owners;
- g) Imposing charges or interest or both for late payment of common expense charges and Special Assessments;
- h) Levying reasonable fines and liens, after Notice and Hearing, for violations of the Master Deed, Declaration, Bylaws, and Rules of the Association;
- i) Employing and dismissing personnel necessary or advisable for the maintenance and operation of the Common Areas;
- j) Contracting for management services and delegating any responsibilities that may be executed by the Board and is permitted by Chapter 183A;
- k) Adopting, amending, and administering the Rules and Regulations covering the details of the operation and use of the Condominium;
- l) Opening and closing bank accounts for the Association and designating signatories;
- m) Obtaining insurance for the Common Areas and Facilities;
- n) Instituting, defending or intervening in litigation or administrative proceedings in the Association's name;
- o) Assigning the Association's right to future income;
- p) Making contracts and incurring liabilities, including borrowing monies secured with assets of the Association;
- q) Acquiring, holding, encumbering, and conveying in the Association's name, any right, title, or interest to real property or personal property;
- r) Granting easements, leases, licenses and concessions over the Common Areas;
- s) Providing indemnification of the Board and maintaining directors and officers insurance;
- t) Establishing by resolution advisory committees, permanent and temporary, to perform specifically designated functions. Committees are advisory only and provide recommendations to the Board unless the Board's resolution

specifies that the committee has the authority to bind the Board; and

- u) Requiring that disputes between the Board and Unit Owners or between two (2) or more Unit Owners regarding the Condominium be submitted to mediation as described in the Rules and Regulations as a prerequisite to the commencement of a judicial or administrative proceeding.

### **3. Officers of the Board**

The Board officers shall be the president, two vice presidents, the secretary and the treasurer, all of whom shall be elected by the Board. Officers serve a one (1) year term and may be reelected. The vice president positions may remain unfilled should the Board so determine.

- a) The president shall preside at all meetings of the Board and of Unit Owners and shall guide the Board in its management and policy development responsibilities.
- b) A vice president shall take the place of the president and perform the president's duties whenever the president is absent. The vice president shall perform other duties as may be requested by the Board.
- c) The secretary shall keep the minutes of all meetings of the Unit Owners and the Board. The secretary shall be in charge of books and papers as the Board may direct and perform all the duties incident to the office of secretary.
- d) The treasurer shall have the responsibility for overseeing that full and accurate financial records are kept, preparing the annual budget, and reporting to the Board.

### **4. Fiscal Year**

The fiscal year of the Association shall be the calendar year.

### **5. Budget**

Within thirty (30) days after adoption of a proposed annual budget for the Association, the Board shall provide a summary of the budget to all the Unit Owners, giving at least 14 days' notice for a Unit Owners Meeting to consider ratification of the budget. Budget ratification requires a majority Unit Owner vote of a quorum, present or by proxy, at the meeting.

### **6. Ratification of Non-budgeted Special Assessments**

If the Board votes to levy a Common Expense Special Assessment on all Unit Owners in an amount greater than fifteen percent (15%) of the current annual operating budget, the Board shall submit such Special Assessment to the Unit Owners for ratification in the same manner as a budget.

**7. Board Vacancies.**

Board or officer vacancies that occur between Unit Owners Annual Meetings may be filled at a meeting of the Board by a majority vote of the remaining Directors. Each person so appointed shall be a Director or officer for the remainder of the term of the Director or officer so replaced.

**8. Board Meetings**

The Board shall meet annually within two weeks of the Annual Unit Owners Meeting to elect officers and to take care of the business at hand. After that meeting, the Board shall meet as needed to conduct the business of the Association. Any Board member may call a meeting with three (3) days' notice of the date, time, and purpose of the meeting for which notice may be sent electronically.

**9. Board Quorum, Majority Vote**

A majority of Directors shall constitute a quorum. A majority vote of the quorum shall constitute a decision of the Board.

**10. Consent to Action.**

Written consent by a majority of the Board shall constitute a valid vote even if not taking place at a meeting. The Consent shall be kept and filed with the Board Minutes.

**11. Standard of Care**

In the performance of their duties, the officers and Directors are required to act in good faith with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner reasonably believed to be in the best interests of the Association.

**12. Conflicts of Interest**

To protect the integrity of the Board's decision-making process, anyone may bring a Director's potential conflict of interest to the attention of the Board. Any Director with a conflict of interest shall bring it to the attention of the Board. A majority vote of the Board, with the conflicted Director excluded from that vote, will determine if a conflict is present that would invoke this section of the Bylaws.

If this section is invoked based on a majority vote of the unconflicted Directors, and the issue at hand requires a Board vote or approval, the Director determined to have a conflict may participate in all, some or none of the Board discussion on the matter at the discretion of the Board President, or designee if the conflict affects the President. The conflicted Director will then be excluded from the remainder of the discussion and from the vote or approval.

For good reason, such as a minor conflict affecting a majority of the Board, the Board by a majority vote of all Directors may waive the conflict of interest. Such waiver shall be recorded in the Board meeting minutes.

**13. Removal of Directors**

The Unit Owners, by the vote of Unit Owners of Units to which at 2/3 of the votes in the Association are allocated, at any meeting of the Unit Owners at which a quorum is present and the subject of removal is listed on the meeting notice and agenda, may remove any Director, with or without cause, provided the Director who is the subject of the removal vote is first provided an opportunity to be heard.

**B. Indemnification**

The Directors and officers of the Board shall be entitled to indemnification, as provided by the federal Volunteer Protection Act of 1997 (42 USC §14501 *et seq.*), and Massachusetts General Laws Chapter 231 §85W, the provisions of which laws are hereby incorporated by reference.

**C. Unit Owners**

**1. Unit Owners Annual Meeting**

Annual meetings of Unit Owners shall be held on the second Tuesday of each December, or on some other date established by the Board within 30 days of the second Tuesday of December. The business of the meeting may include the election of Directors, ratification of the next year's budget, and whatever business as properly may come before them. The meeting may be held electronically or at a convenient place for the Unit Owners as designated by the Board.

**2. Notice of Owner Meetings**

The Board shall provide notice electronically or by the United States Postal Service to all Unit Owners not less than ten (10) days before a meeting stating, the time and place or how to attend electronically, and the general nature of each item on the agenda. No action shall be adopted on any issues not on the agenda.

**3. Voting, Quorum, and Majority Vote**

Each Unit shall have one (1) vote ("Unit vote"). If there are multiple Unit Owners of a Unit, they shall designate among themselves who is the voting Unit Owner whether the vote takes place in a meeting, by ballot, or by written consent.

Unit Owners present in person or by proxy representing a majority of the total interest of Unit Owners at any meeting of Unit Owners shall constitute a quorum at such meeting.

The vote of a majority of the Unit Owners present in person or by proxy at a meeting at which a quorum shall be present shall be binding upon all Unit Owners for all purposes except where a higher percentage vote is required in the Master Deed, Declaration, or applicable law.

**4. Special Meetings.**

Special meetings of Unit Owners may be called by the president, a majority of the Board, or by Unit Owners having twenty percent (20%) of the votes in the Association. Ten (10) days notice of the date, time, place, and agenda items of the meeting shall be provided to Unit Owners.

**5. Place of Meetings.**

Meetings of the Unit Owners shall be held electronically or at such suitable place within the City of Northampton convenient to the Unit Owners as may be designated by the Board.

**6. Waiver of Notice.**

Any Unit Owner may, at any time, waive notice of any meeting of the Unit Owners in writing, and such waiver shall be deemed equivalent to the receipt of such notice. Any Unit Owner attending a meeting where notice is required shall be deemed to have waived notice and such waiver shall be deemed equivalent to the receipt of such notice.

**D. Common Expenses and Funds**

**1. Common Expenses**

All Common Expenses shall be assessed in an equal amount against all Units that are liable for payment of Common Expenses.

**2. Reserve Fund**

The Board shall maintain a sufficiently funded Reserve Fund for future capital repairs and replacements of Common Areas and Facilities.

**3. Additional Contribution to Reserve Fund**

Additional contributions to the Reserve Fund shall be made by Unit purchasers

at the time of purchase in the amount of two (2) months of the then current common expenses fee. Amounts paid by purchasers into the Reserve Fund shall not be considered advance payments of regular common expenses. This Section C.3. does not apply to the Warner Exclusive Use Areas A, B, C, and D.

**4. Time of Payment**

The Board may determine that common expenses and Special Assessments be paid monthly or in other installments and amounts. If not paid when due, interest shall accrue at 12% per annum beginning 45 days after the due date.

**E. Insurance (formerly Section XX)**

**1. Liability Insurance**

Liability Insurance, including medical payments insurance, shall be maintained, to the extent reasonably available, in an amount determined by the Board, to be no less than \$1,000,000, covering all occurrences commonly insured against for death, bodily injury and property damage arising from the use, repair, maintenance, or replacement of the Common Areas.

**2. Property Insurance**

The Association shall obtain property insurance covering the Common Areas and Facilities and all personal property owned by the Association, to the extent reasonably available, for an amount equal to one hundred percent (100%) of its replacement cost at the time the insurance is purchased and at each renewal date.

**3. Other Provisions**

To the extent reasonably available, insurance policies carried pursuant to Sections E.1. and E.2. shall contain the following provisions:

- a. The Association shall be the named insured.
- b. The loss proceeds shall be payable to the Association.
- c. Each Unit Owner is an insured person under the policy for liability arising from their interest in the Common Areas or membership in the Association.
- d. The insurer waives its rights to subrogation under the policy against any Unit Owner or member of his or her household.



- e. No act or omission by any Unit Owner, unless such act or omission is within the scope of his or her authority on behalf of the Association, will void the policy or be a condition to recovery under the policy.
- f. If, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Unit Owner's policy shall provide primary insurance.
- g. The insurer may not cancel or refuse to renew the policy until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association.

4. Fidelity Bonds

The Association may obtain a blanket fidelity bond for anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. The bond shall name the Association as obligee and shall cover the maximum funds held by or for the Association or any authorized designee thereof at any time while the bond is in force, and in no event less than the sum of three (3) months' assessments plus reserve funds.

5. Workers' Compensation Insurance

The Board shall obtain and maintain any Workers' Compensation Insurance necessary to meet the requirements of Massachusetts laws.

6. Directors' and Officers' Liability Insurance

The Board shall obtain and maintain directors' and officers' liability insurance covering all Directors and officers of the Association in such limits as the Board may determine.

7. Unit Owner Policies

Unit Owners shall carry liability and property insurance covering their Units for the full replacement costs at their sole expense.

8. Other Insurance

The Association may carry other insurance which the Board considers appropriate to protect the Association or the Unit Owners.

9. Warner Units

The Units located on Exclusive Use Areas A, B, C & D, shall obtain and pay for their individual Casualty and Liability insurance on their respective Units.

## **F. Damage to or Destruction of Property**

### **1. Duty to Restore**

If there is a property loss to any of the Common Areas or Facilities, the Directors shall promptly adjust and collect for the loss, arrange for the prompt repair or restoration of the damaged areas, and disburse the insurance proceeds in appropriate amounts in a timely basis.

### **2. Plans**

The repairs and restoration must be reasonably similar to the original plans considering updated technology and revised governmental requirements.

## **G. Maintenance, Repair, and Replacement**

### **1. Projected Maintenance**

Projected repair or replacement to the Common Areas and Facilities performed on the approximate timelines and within the approximate costs recommended in the most recent Reserve Fund Study shall be budgeted in and funded from the Reserve Fund. Projected projects shall include, but not be limited to, repaving of roadways and walkways, partial replacement of landscaping, replacing of the generator pumps and pumphouse, replacing of the mail gazebo and mailboxes, and attending to the storm water drainage system.

### **2. Ongoing Maintenance**

Ongoing maintenance, repair, and replacement of the Common Areas and Facilities shall be included in the Association's annual budget. If the expenses exceed the budgeted amount, the Board may impose a Special Assessment to cover the shortage.

## **H. Enforcement**

### **1. Violations by Unit Owners**

The violation or breach of the Master Deed, Declaration, Bylaws or Rules and Regulations ("Condominium Documents") shall give the Board the right, after Notice and Hearing, in addition to any other rights in these Bylaws, to enjoin, abate or remedy by appropriate legal proceedings the continuance of any such breach.

**2. Fine for Violation**

After Notice and Hearing, the Board may levy a fine of up to Fifty Dollars (\$50.00) per day for each day that a violation of the Condominium Documents or Rules persists after such Notice and Hearing, but such amount shall not exceed that amount necessary to assure compliance with the rule or order of the Board.

**I. Financial Records**

**1. Records and Audits**

The Association shall maintain financial records as required by law.

**2. Examination**

All Association records, as defined in paragraph 3 below, shall be available for examination and copying by any Unit Owner, or by any holder of a Security Interest in a Unit within five (5) business days of a request made to the Board. A reasonable, cost-based fee may be charged for paper copies.

**3. Records**

The Association shall keep or cause to be kept the following records:

- a. An account for each Unit which shall designate the name and address of each Unit Owner, the name and address of each Eligible Mortgagee, the amount of each Common Expense assessment, the dates on which each assessment comes due, the amounts paid on the account, and the balance due.
- b. An account for each Unit Owner showing any other fees payable by the Unit Owner.
- c. The current operating budget adopted by the Association.
- d. A record of insurance coverage provided for the benefit of Unit Owners and the Association.
- e. Minutes of meetings of Unit Owners, Directors and Board committees and waivers of notice.
- f. A record of any capital expenditures anticipated by the Association for the current and next succeeding fiscal year.
- g. A record of any unsatisfied judgments against the Association and the existence of any pending suits in which the Association is a party.
- h. A record of the actual cost, irrespective of discounts and allowances, of the maintenance of the Common Areas.

- i. Annually the Association shall prepare and make accessible to Unit Owners a balance sheet showing its financial condition as an Association of a date not more than 45 days before the Unit Owners Annual Meeting, and a statement of receipts and disbursements for twelve (12) months prior to that date. The balance sheet and statement shall be kept for at least ten (10) years with the other records of the Association.
- j. Tax returns for state and Federal income taxation.
- k. All existing tax returns
- l. Any other documents required to be kept by Chapter 183A.

**J. Notice**

Unless the Bylaws or applicable law requires otherwise, all Board notices to the Directors or to Unit Owners may be sent via electronic mail (email) or via the United States Postal Service to each person. If a Director or Unit Owner would prefer notices to be sent via the United States Postal Service, he or she shall notify the Board in writing, and the Board shall comply.

**K. Waiver**

No restriction, condition, obligation, or provision contained in these Bylaws shall be deemed to have been waived by reason of any failure to enforce the same, regardless of the number of violations or breaches which may occur.

**ARTICLE III**

**Persons and Units Subject to Condominium Documents**

All Unit Owners, occupants, guests, and mortgagees of Units shall comply with the Condominium Documents. The acceptance of a deed or the exercise of any incident of ownership or the entering into occupancy of a Unit constitutes agreement that the provisions of the Condominium Documents are accepted and ratified by such Unit Owner, occupant, guest, or mortgagee, and all such provisions recorded in the Hampshire County Registry of Deeds are covenants running with the land and shall bind any Persons having at any time any interest or estate in such Unit.

## **ARTICLE IV**

### **Common Area and Unit Descriptions**

#### **Management, Maintenance, Repair and Replacement**

##### **A. Common Areas and Facilities**

The common areas and facilities of the Condominium consist of:

1. All roadways, walkways, grassy areas, wooded areas, mulched areas, gardens, stone walls, yards, sledding hill, and soccer field;
2. All electrical, plumbing, natural gas, water, telecom and internet service lines and fixtures that service more than one (1) Unit;
3. Storm water drainage system components that serve more than (1) Unit, irrigation system including well and housing, mail gazebo, and water booster system pumps and associated pump house and emergency generator; and
4. All other items described as common areas and facilities in Chapter 183A which are not part of the Unit, but which are located on the Condominium property.

In addition, off-site Common Facility improvements shall include an extension to sanitary sewer mains and water mains running from Bridge Road as more particularly shown in the Plans.

##### **B. Limited Common Areas**

Limited Common Areas are part of the Common Area and include:

1. Concrete, paver or brick Unit patios; Unit driveways; and walkways from driveways to the Unit front steps.
2. Areas directly under Unit deck steps, decks, porches, and sunrooms, if open and not closed in by the foundation of the Unit.

##### **C. Exclusive Use Areas**

When referenced in Condominium Documents, the term "exclusive use areas" refers to the Warner Exclusive Use Areas A, B, C, and D. Exclusive Use Areas are part of the Common Area.

**D. Conservation Restricted Areas**

Conservation Restricted Areas are part of the Common Area and are subject to the regulations of the Northampton Conservation Commission and to a Conservation Restriction and Easement granted by the Declarant to the City of Northampton recorded in the Hampshire County Registry of Deeds Book 8791, Page 28.

**E. Common Areas and Facilities Management and Repairs**

The Association shall maintain, repair and replace all Common Areas and Facilities with the exception of those Limited Common Areas that the Board may determine to be the responsibility of an individual Unit Owner.

The Association shall maintain, repair and replace all Limited Common Area sidewalks and driveways, except for the Warner Exclusive Use Area Units A, B, C & D. The Association may assess costs to a unit Owner for negligent or intentional damage to their driveway or sidewalk.

With the approval of the Board, Unit Owners may assume responsibility for caring for gardens next to their Units. Warner Units do not require Board approval for their landscaping.

The Association shall maintain the detention areas and 20-foot drainage easement and the stormwater system in accordance with the stormwater management plan dated March 17, 2005 and filed with the City of Northampton Planning Board.

The Association shall maintain the Conservation restricted Common Areas pursuant to an easement granted to the City of Northampton dated July 12, 2006 and recorded in the Hampshire Registry of Deeds Book 8791, Page 28, and pursuant to the Regulations and guidance of the Northampton Conservation Commission.

**F. Units**

Units consist of the entire building constituting the Unit, including, but not limited to, the foundation, roof, all outside walls, window wells, doors and windows, porches, decks, all steps, and bulkheads. Unit ownership also includes, but is not limited to, solar panels and systems, awnings, outside HVAC and concrete pad, outside generator and pad if any, rain gutter systems, outside lighting, window screens, underground storm drainage pipes servicing only that Unit, and service lines that service only that Unit.

**G. Owner Responsibilities**

Each Unit Owner shall maintain, repair and replace, at his or her own expense, all portions of his or her Unit.

**H. Access**

The right of entry to a Unit by a Board authorized person is only by consent of the Owner, except in exigent circumstances such as a medical emergency, fire, smoke, gushing water, or other condition threatening a Unit or the Common Areas. Such emergency right of entry shall be immediate whether or not the Unit Owner is present.

**I. Restoration of Common Areas and Facilities**

If a Unit Owner negligently or intentionally disturbs or alters the Common Area, including Limited Common Area, without Board approval, then the Unit Owner shall restore the Common Area, at the Unit Owner's sole expense, as nearly as possible to the same condition that existed before such disturbance or alteration. Should the Unit owner fail to undertake such restoration or repair in a timely fashion, the Association may undertake such repair or restoration and charge the costs to the Unit owner. Such costs will become a lien on the Unit of such owner and may be enforced and collected pursuant to the provisions of Article VI.

**J. Warner Common Areas**

Each Warner Unit Owner shall be responsible for the maintenance of the landscaping, lawns, and improvements located on their respective Exclusive Use Areas A, B, C or D, and keeping their respective Exclusive Use Areas in a good, neat and clean condition at all times. If such Areas are not kept in a good, neat and clean condition at all times, the Association shall notify the offending Unit Owner in writing to conduct such necessary maintenance. If such maintenance is not completed within 10 days, then the Association may do such maintenance and charge the cost of the same to the offending Unit Owner as a Special Assessment.

**ARTICLE V**

**Alterations**

**A. Alterations to Units by Unit Owners**

1. A Unit Owner may make any improvements or alterations to the interior of his

or her Unit that do not impair the structural integrity or mechanical systems and that do not affect the Common Areas.

2. Any exterior alterations or additions to a Unit must be approved in writing by the Board. Approval will not be unreasonably withheld, provided the architectural and aesthetic integrity of the Condominium and Common Areas is not significantly compromised.

**B. Approval by Board**

1. The Board may approve or deny any alteration request and may establish time limits and require conditions for its approval. These conditions may include, but are not limited to, the following:
  - a. That the Unit Owner maintain, repair and replace the alteration or reimburse the Association for the costs of maintenance, repair and replacement.
  - b. That the Unit Owner remove the alteration and restore the property to its prior condition after a certain period of time or upon the happening of a certain event.
  - c. That the Unit Owner indemnify the Association for all loss, cost or expense resulting from the existence of the addition or alteration.
  - d. That the approval and the conditions imposed on the approval be incorporated in a written agreement, signed by the Unit Owner and recorded in the Hampshire County Registry of Deeds.
2. The Association may require the Unit Owner to pay an application fee, at the time the application is made or at such later time as the Board determines, to reimburse the Association for its costs in considering and acting on the application including reasonable fees of attorneys and design professionals.
3. The Board may grant approval for a type or class of modifications or installations by adopting a Rule after Notice and Comment.

**C. General Provisions Relating to Alterations by Unit Owners**

All alterations to the Units and Common Areas and Facilities shall not, except with prior approval by the Board, cause any increase in the premiums of any insurance policies or cancellation or nonrenewal of policies carried by the Association or by the owners of any Units other than those affected by such change.



**D. Warner Units**

This ARTICLE V Alterations does not apply to the Warner Exclusive Use Units A, B, C, and D.

**ARTICLE VI**

**Common Expenses**

**A. Common Expenses (formerly Section XVII)**

Common Expenses shall include:

1. Expenses of administration, maintenance, repair, and/or replacement of those Common Areas and Facilities which the Association maintains;
2. Expenses declared to be Common Expenses by the Condominium Documents or by Chapter 183A; and
3. Expenses agreed upon as Common Expenses by the Association.

**B. Common Expenses Attributable to Fewer Than All Units.**

1. Any Common Expense for services provided by the Association for an individual Unit at the request of an individual Owner shall be assessed against the Unit which benefits from such service.
2. Any Common Expense associated with enforcing a provision of the Master Deed, Declaration, Bylaws or Rules shall be assessed against the Unit violating such provision.
3. If any Common Expense is caused by the misconduct of a Unit Owner, the Association may, after Notice and Hearing, assess that expense exclusively against his or her Unit.
4. The Board may assess the cost of repair or replacement to a single Unit, or to several Units, for repairs or replacement of Limited Common Areas serving those individual Units.
5. Fees, charges, late charges, fines and interest charged against a Unit Owner are enforceable as Common Expense assessments.
6. Any Association insurance premium increase attributable to occurrences at or in a particular Unit shall be assessed against that Unit.

**C. Lien**

1. The Association has a statutory lien on a Unit for any assessment levied against the Unit and for any fine imposed against a Unit Owner from the time the assessment or fine becomes delinquent. Fees, charges, late charges, fines and interest charged pursuant to Chapter 183A or the Condominium Documents, are enforceable as assessments under this Section.
2. A lien under this Section has priority over all other liens and encumbrances on a Unit, except for liens and encumbrances recorded before the recording of this lien.
3. Recording of this Declaration constitutes record notice and perfection of the lien. No further recording of any claim of lien for assessment under this Section is required.
4. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three (3) years after the full amount of the assessments becomes due.
5. This Association may institute actions to recover sums for which this Section creates a lien, including instituting foreclosure proceedings or taking a deed in lieu of foreclosure.
6. Any unpaid assessments not satisfied from the proceeds of sale become Common Expenses collectible from all the Unit Owners, including the purchaser.
7. A judgment or decree in any action brought under this Section in favor of the Association shall include the Association's costs and reasonable attorneys' fees.

**D. Monthly Payment of Common Expenses.**

All Common Expenses shall be payable in equal monthly installments due on the first day of each month.

**E. Acceleration of Common Expense Assessments**

If a Unit Owner defaults for a period of thirty (30) days or more in the payment of any Common Expense assessment levied against his or her Unit, the Board shall have the right, after Notice and Hearing, to declare all unpaid assessments for that Unit for the then current fiscal year to be immediately due and payable.

**F. No Waiver of Liability for Common Expenses**

No Unit Owner may exempt himself or herself from liability for payment of the Common Expenses by waiver of the use or enjoyment of the Common Areas and Facilities, or by abandonment of the Unit against which the assessments are made.

**G. Allocation of Interests**

These interests have been allocated in accordance with the formulas set out in this section. These formulas are to be used in reallocating interest if Units are added to the Condominium. The percentage of the undivided interest in the Common Areas is to be allocated among each of the Units in the Condominium in the percentage set forth herein as Exhibit B of the Master Deed as the undivided Condominium interest of such Unit in the common elements such interest will be calculated on the basis of either the square footage of such Units in relation to the square footage of all Units or the fair market value of such Units in relation to the fair market value of all of the Units in the Condominium. Their percentage interest may be changed by Edwin Warner or his heirs, successors or assigns ("Edwin Warner") from time to time pursuant to his phasing rights.

**H. Warner Units**

1. Units on Exclusive Use Areas A, B, C & D, shall not be assessed for:
  - a. Charges related to Common Area liability and property Insurance coverage.
  - b. Charges related to the maintenance, repair or replacement of the Common Areas of the Condominium, except as noted in Article IV, section J Warner Common Areas.
  - c. Charges for utilities consumed in Common Areas.
  - d. Charges for accounting or for an independent management company to manage the condominium.
2. Units on Exclusive Use Areas A, B, C & D, may be assessed for their percentage interest share for charges including, but not limited to:
  - a. Potential legal fees from which they may benefit
  - b. Fidelity Bond
  - c. Directors and Officers Liability Insurance

## **ARTICLE VII**

### **Amendments to Declaration**

#### **A. General**

This Declaration may be amended by vote or written consent of Unit Owners of Units to which at least sixty-seven percent (67%) of the Unit votes in the Association are allocated, except in cases of phasing amendments that may be executed in the exercise of Warner Development and Phasing Rights under Section 3 of the Master Deed and Article X of this Second Amended Declaration, or when a higher vote for the issue being considered is required by law or by Sections B or C of this Article VII.

#### **B. Issues Requiring 100% Vote**

No amendment may create or increase Edwin Warner's rights, increase the number of Units, change the boundaries of any Unit, or change the Allocated Interest of any Unit in the absence of unanimous consent of the Unit Owners, except in cases of phasing amendments that may be executed in the exercise of Warner Development and Phasing Rights under Section 3 of the Master Deed and Article X of this Second Amended Declaration.

#### **C. Issues Requiring 80% Vote**

No amendment may prohibit or materially restrict the permitted uses in the Unit or the number or other qualifications of Persons who may occupy Units without a vote or agreement of at least eighty percent (80%) of the Unit votes

#### **D. Limitation of Challenges**

No action to challenge the validity of an amendment to this Second Amended Declaration adopted by the Association pursuant to this Article may be brought more than one (1) year after the amendment is recorded.

#### **E. Recordation of Amendments**

Every amendment to this Second Amended Declaration shall be recorded in the Hampshire County Registry of Deeds and will be effective only on recording.

#### **F. Execution of Amendments**

Amendments to this Second Amended and Restated Declaration of the Bear Hill Estates Senior Condominium that are required by Chapter 183A to be recorded by the Association and that have been adopted in accordance with this Declaration and Chapter 183A, shall be prepared, executed, recorded and certified for the Association by any officer of the Board designated for that purpose or, in the absence of designation, by the president of the Board.

**G. Warner Units.**

1. No amendments which adversely affect Units located on Exclusive Use Areas A, B, C and D, or which alter the Exclusive Use Area rights on Exclusive Use Areas A, B, C or D, will be effective without the consent of two-thirds (2/3) of the Units located on Exclusive Use Areas A, B, C and D.
2. The development rights of Edwin Warner to build Units on Exclusive Use Areas A and C shall not be reduced without the written consent of Edwin Warner, his heirs, successors and assigns.

**ARTICLE VIII**

**Termination**

Termination of the Condominium may be accomplished only in accordance with Chapter 183A.

**ARTICLE IX**

**Rights to Notice and Comment: Notice and Hearing**

**A. Right to Notice and Comment**

Before the Board amends the Rules and Regulations and at any other time the Board determines, the Unit Owners have the right to receive notice of the proposed action and the right to comment orally or in writing. The right to Notice and Comment does not entitle a Unit Owner to be heard at a formally constituted meeting.

Written notice of the proposed action shall be given to each Unit Owner. The notice shall be given at least five (5) days before the proposed action is to be taken.

**B. Right to Notice and Hearing**

Whenever the Condominium Documents give the Unit Owner the right to Notice and Hearing, the Board shall give written notice to the Unit Owner(s) affected. The notice shall include a general statement of the proposed action and the date, time and place of the hearing. At the hearing, the Unit Owner shall have the right, personally or through a representative, to give testimony orally, in writing, or both subject to reasonable rules of procedure established by the Board to assure a prompt and orderly resolution of the

issues. Such evidence shall be considered in making the decision but shall not bind the decision makers. The affected person shall be notified of the decision in the same manner in which notice of the meeting was given.

## **ARTICLE X**

### **Warner Units**

#### **A. Warner Exclusive Use Areas A, B, C, and D ("Warner A, B, C and D")**

The two existing houses known as Warner B and Warner D contain a total of 5248 square feet of living space. The two (2) new houses, known as Warner A and Warner C, to be constructed by Edwin Warner, will contain approximately 1600 square feet of living space for each Unit. Included in Exhibit C of the Master Deed are the plans for each of the two existing houses known as Warner B and Warner D.

Edwin Warner is hereby given exclusive rights to use a portion of the common areas as shown on the approved Plan (recorded in the Hampshire Registry of Deeds Plan Book of Plans (book 211, page 51) for the two (2) houses retained and the right to build two (2) additional Units.

Warner Exclusive Use Area D shall have all the rights and responsibilities specified in the Condominium Documents, as long as a lineal descendent of Edwin Warner is the Unit Owner and resides in the Unit. When a lineal descendant of Edwin Warner no longer owns the Unit or no longer resides in it, the Unit shall lose all of its rights and responsibilities as a Warner Unit and shall no longer exist as a Warner Unit. This Unit shall become known as Unit 11 of the Bear Hill Estates Senior Condominium, and its Owner shall abide by all Condominium Documents in the same manner as all other Unit Owners (excluding Warner Exclusive Area A, B, and C Unit Owners).

#### **B. Warner Development and Phasing Rights**

##### **1. Development Rights**

Edwin Warner retains the rights to construct one single family Unit containing approximately 1600 square feet of living space on each of Exclusive Use Areas A and C. Edwin Warner may execute a phasing amendment to amend the Master Deed to add up to two (2) Units (including a driveway, walkway from the driveway to the Unit, and landscaping similar to that generally found on the Common

Areas) to the Condominium at Edwin Warner's discretion pursuant to the Phasing Rights set forth below.

**2. Phasing Rights**

- a. Edwin Warner shall have the right, without the consent of any Unit Owner or of any holder of a mortgage on a Unit, to amend the Master Deed, in conformance to the provisions of Chapter 183A of Massachusetts General Laws, to add two additional Units to the Condominium.
- b. Edwin Warner shall record the phase amendment to the Master Deed in the Hampshire Registry of Deeds, but only after the phased Unit or Units have been issued Certificates of Occupancy by the Northampton City officials. If necessary, Edwin Warner shall also record new Surveys and Plans and/or certifications necessary to conform to the requirements of the law.
- c. Until terminated, the Phasing Rights may be freely sold, granted, assigned, mortgaged or otherwise transferred by Edwin Warner by deed, mortgage or other recorded instrument which makes specific reference to the Master Deed and the Phasing Rights.
- d. The Phasing Rights of Edwin Warner terminate if Edwin waives such rights in writing or adds two Units to the Condominium or if the law so requires.
- e. Edwin Warner shall have the right to post signs and displays on Exclusive Use Areas A and C to promote sales of his Units.
- f. Edwin Warner may perform all work on Exclusive Use Areas A and C without the consent or approval of the Board. Edwin Warner shall have such easements through the Condominium as may be reasonably necessary to discharge his obligations or exercise his rights, whether arising under Chapter 183A or reserved in the Master Deed.
- g. If these Phasing Rights are terminated by reason other than the recording of all additional Phase Master Deeds, the uncompleted Units and improvements existing at the time of such termination shall not be incorporated into the Condominium at the time of termination.
- h. All present and future Unit Owners and all persons now or hereafter claiming an interest in a Unit by, through or under a Unit Owner, including without limitation all holders of mortgages on Units, shall be bound by the provisions of these Phasing Rights.
- i. Each Unit Owner by acceptance of a deed to a Unit hereby consents for themselves and all others claiming through them to Edwin Warner's reserved rights under this section and expressly agrees to the alteration of their Unit's percentage ownership interest in the Common Areas and

Facilities of the Condominium by amendment to the Master Deed pursuant to this section.

- j. Neither the Association nor any Unit Owner may take any action that will interfere with or diminish Edwin Warner's rights or obligations set forth in this section without the written consent of Edwin Warner.
- k. If the Association and/or the Unit Owners commence a legal claim challenging the development rights conveyed to Edwin Warner, such claim or action if successfully prosecuted, shall be considered a "taking" and Edwin Warner shall be entitled to just and fair compensation from the prevailing party for such taking. The Association shall indemnify and hold harmless Edwin Warner from all damages, claims and actions arising from such challenge.

## **ARTICLE XI**

### **Mortgagee Protections**

#### **A. Detached Units**

The Condominium solely contains single family detached dwellings encumbered by a Declaration of Condominium covenants. The Condominium is residential. Unit insurance and maintenance costs are the responsibility of the Unit Owner. All Units comply with all applicable federal, state, and local laws on zoning and Fair Housing, and are easily adaptable for accessibility for persons with disabilities. The Units are complete and ready for occupancy, have been reviewed and approved by the local jurisdiction, and the approved Plans have been recorded in the Hampshire County Registry of Deeds (Book of Plans book 211, page 51).

#### **B. Provisions for the Protection of Mortgagees**

The following provisions shall govern and be applicable for as long as they are required to qualify first mortgages of record of Units in the Condominium for sale to the Federal Home Loan Mortgage Corporation (FHLMC) or Federal National Mortgage Association (FNMA) under laws and regulations applicable thereto.

##### **1. Limitations on Rights to Sell/Right of First Refusal**

Regarding any right of first refusal for the sale of a Unit, such right of first refusal shall not impair the rights of a first mortgagee or its assignee to:

- a. foreclose or take title to a Unit pursuant to the remedies provided in its mortgage; or
- b. accept a deed (or assignment) in lieu of foreclosure in the event of default



- by a mortgagor; or
- c. sell a Unit acquired by the First Mortgagee or its assignee.

## **2. Rights of Mortgagees and Guarantors**

Upon written request to the Board of Directors of the Condominium Association, identifying the name and address of the mortgagee, insurer or governmental guarantor and the Unit number or address, any First Mortgagee or insurer or governmental guarantor of said first mortgage (hereinafter the "Eligible Mortgagee" and "Eligible Insurers or Guarantors" as the case may be) will be entitled to timely written notice of:

- a. And condemnation or casualty loss that affects either a material portion of the project or the Unit securing its mortgage;
- b. Any 60-day delinquency in the payment of assessments or charges owed by the Owner of any Unit on which it holds the mortgage;
- c. A lapse, cancellation, or material modification of any insurance policy maintained by the Association; and
- d. Any proposed action that requires the consent of a specified percentage of Eligible Mortgagees.

## **3. First Mortgagee Rights Confirmed**

No provision of the Master Deed or the Condominium Declaration shall give a Unit Owner or any other party priority over any rights of a First Mortgagee pursuant to its mortgage in the case of a distribution to such Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of such Unit and/or the Common Areas and Facilities.

## **4. Amendment to Condominium Documents**

- a. Amendments materially adverse nature to mortgagees shall be agreed to by mortgagees that represent at least 51% of the votes of Units that are subject to mortgages.
- b. Any action to terminate the legal status of the Condominium after substantial destruction or condemnation occurs or for other reasons to be agreed to by mortgagees that represent at least 51% of the votes of the Units that are subject to mortgages.
- c. Implied approval is assumed when a mortgagee fails to submit a response to any written proposal for an amendment within 60 days after it receives proper

notice of the proposal, provided the notice was delivered by certified or registered mail, with a return receipt requested.

#### **5. Mortgagee Responsibility for Liens**

Subject to Chapter 183A and any other applicable law, any First Mortgagee who obtains title to a Unit by foreclosure or pursuant to any other remedies provided in its mortgage or by law shall be liable for such Unit's unpaid common expenses that were due during the six months immediately preceding the initiation of an action to enforce the lien. A priority lien includes common expenses based on the budget adopted by Owners and related attorney's fees and costs for enforcement. The priority amount does not include special assessments, late charges, fines, interest and penalties assessed by the Association. Nothing in this paragraph affects any remaining liens or lien amounts.

### **ARTICLE XII**

#### **Encroachments**

If any Unit, now or hereafter, encroaches upon any other Unit or upon a portion of the Common Areas, or if any portion of the Common Areas, now or hereafter encroaches upon any Unit as a result of the alteration or repair of any Unit or the settling of a Unit, or as a result of repair or restoration of any Unit after damage by fire or other casualty, or as a result of condemnation or eminent domain proceedings, a valid easement for the encroachment and the maintenance of the same shall exist so long as said Unit stands.

### **ARTICLE XIII**

#### **Miscellaneous**

##### **A. Invalidity**

The invalidity of any provisions of this Declaration shall not impair or affect the validity, enforceability or effect of the remaining provisions of this Declaration.

##### **B. Waiver**

No provision of this Declaration shall have been abrogated or waived by reason of any failure to enforce the same, regardless of the number of violations or breaches that may occur.

**C. Captions**

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

**D. Conflicts**

This Declaration is intended to comply with the requirements of Chapter 183A. If any provisions stated above conflict with the provisions of Chapter 183A, the statute shall control.

**ARTICLES XIV-XVI**

**Intentionally Left Blank**

**ARTICLE XVII**

**See Article VI A - Common Expenses**

**ARTICLES XVII-XIX**

**Intentionally Left Blank**

**ARTICLE XX**

**See Article II E - Insurance**

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF we, the undersigned, being a majority of the Directors of the Bear Hill Estates Senior Condominium Association, having first received the vote of the owners of units to which at least sixty-seven percent (67%) of the votes in the Association are allocated, as evidenced by their signatures attached hereto, have set our hands and seals this 19 day of December, 2023.

Majority of the Board of Directors of the  
Bear Hill Estates Senior Condominium Association  
and not individually

Jeff Caplan  
Print Name: JEFF CAPLAN, as Director

Jenny Frost  
Print Name: JENNY FROST, as Director

Michael Cutler  
Print Name: MICHAEL CUTLER, as Director

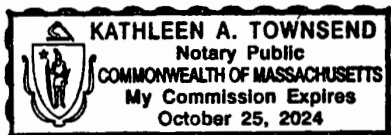
Carol C. Katz  
Print Name: CAROL C. KATZ, as Director

Print Name: \_\_\_\_\_, as Director

# COMMONWEALTH OF MASSACHUSETTS

Hampshire County, ss.

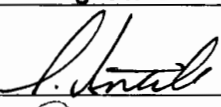
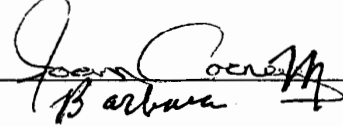


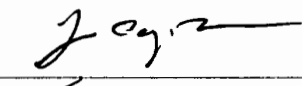
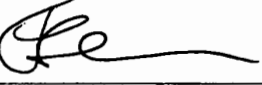
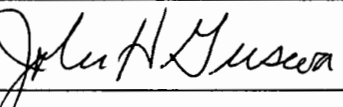
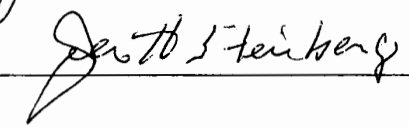
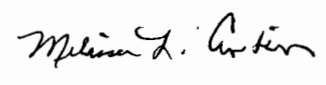
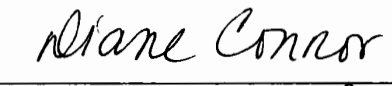
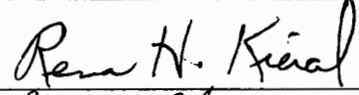

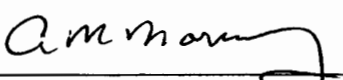
On this 19 day of December, 2023, before me, the undersigned notary public, personally appeared the above signed individuals, proved to me through satisfactory evidence of identification, being (check whichever applies): \_\_\_ driver's license or other state or federal governmental document bearing a photographic image, \_\_\_ oath or affirmation of a credible witness known to me who knows the above signatory, or ☒ my own personal knowledge of the identity of the signatory, to be the persons whose names are signed above, and acknowledged the foregoing to be signed by them voluntarily for its stated purpose, as Directors of said Bear Hill Estates Senior Condominium Association.



Kathleen Townsend  
Notary Public

My Commission Expires: 10/25/24  
Print Notary Public's Name: Kathleen A. Townsend  
Qualified in the State/Commonwealth of MA

The undersigned Unit Owners of Bear Hill Estates Senior Condominiums hereby confirm their consent and vote to approve the Second Amended and Restated Declaration of the Bear Hill Estates Senior Condominium Association.

Unit	Printed Name	Signature	Date
1	Susan Intile		12/8/23
2	Jean Cooney		12/10/23
3	Barbara M. Scher	 Barbara Scher	12/12/23
4	Mark Hamill		12/8/23
5	JEFF PAPIAN		12/8/23
6	Frederick G. Olander		12/7/23
7	John H. Guswa		12/8/23
8	John H. Steinberg		12/10/23
9			
10	Melissa Lo Cortin		12-11-23
11	Diane Connor		12-11-23
12	Rena H. Kieval		12/9/2023
13	Shirley Atwood	 Shirley Atwood by Cheryl Butler as POA	12/20/23
14			
15	Ann Morrissey		12/1/2023

The undersigned Unit Owners of Bear Hill Estates Senior Condominiums hereby confirm their consent and vote to approve the Second Amended and Restated Declaration of the Bear Hill Estates Senior Condominium Association.

Unit	Printed Name	Signature	Date
16	Carleton Townsend	Carleton Townsend	12/8/23
17	Robert Mahar	Robert I Mahar	12/8/23
18	JANET G. HODOS	Janet G. Hodos	12/8/23
19	Thomas Gardner	Th. B. Gardner	12/8/23
20	Jenny Frost	Jenny Frost	12/8/23
21	LISA MINNICK	Lisa J. Minnick	12/8/23
22	JERRY OLAND	Jerry Oland	12/8/23
23	Bradley Katz	Bradley D. Katz	12/7/23
24			
25	Jean Jinks	JEAN JINKS	12/7/23
27	Rod Bartels	Rod Bartel	12/12/23
29	CARLA ROSS WASSERMAN	Carla Ross Wasserman	12/7/23
28	Michelle Kaskey	Michelle Kaskey	12/7/23
30	CHERYL Malmborg	Cheryl Malmborg	12/8/23
26	LARRY RANKIN	Larry S. Rankin	12/8/23

The undersigned Unit Owners of Bear Hill Estates Senior Condominiums hereby confirm their consent and vote to approve the Second Amended and Restated Declaration of the Bear Hill Estates Senior Condominium Association.

Unit	Printed Name	Signature	Date
31	JOHN TIBONI	<i>John Tiboni</i>	12-11-23
32	Norm Metz	<i>Norm Metz</i>	12-7-23
33	ART BUNER	<i>Art Buner</i>	12-7/23
34	Charles Mick	<i>Charles Mick</i>	12/8/23
35	Vin CASAGRANDE	<i>Vin Casagrande</i>	12-8-23
36	Sharon Weinberger	<i>Sharon Weinberger</i>	12-18-23
37	JAMES SAGALYN	<i>James Sagalyn</i>	12-11-23
38	Elizabeth Singer	<i>Elizabeth Singer</i>	12/11/23
39	SUZANNE LEVINE	<i>Suzanne Levine</i>	12/8/23
40	ED DRZECHOWSKI	<i>Ed Drzechowski</i>	12/8/23
41	Marcy Eisenberg	<i>Marcy Eisenberg</i>	12/8/23
42	Patricia Green	<i>Patricia Green</i>	12-8-23
43	Marilyn Levine	<i>Marilyn Levine</i>	12/7/23