



**EDGEWOOD AT HOPKINTON HOMEOWNERS ASSOCIATION, INC.  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

This Declaration is made as of \_\_\_\_\_ 2021 by Toll Northeast V Corp. a Delaware Corporation, with an address of 116 Flanders Road, Suite 1200, Westborough, MA 01581 for itself, its successors, grantees and assigns (the "Declarant").

**Article I  
The Real Estate**

**Section 1.01 The Property.** The Declarant is the owner of certain lots numbered 1-29 located in the Definitive Subdivision Plan, Chamberlain Street and Whalen Road, Hopkinton, Middlesex County, Massachusetts as more fully described in Exhibit 1.01, together with the easements, rights and appurtenances belonging thereto.

**Article II  
Name**

**Section 2.01 Name of Community.** The name by which the Community shall hereafter be identified as Edgewood at Hopkinton.

**Article III  
Definitions**

**Section 3.01 Definitions.** The following terms when used herein and in By-laws (the "By-laws") are to be defined according to the meanings ascribed to them by this Section 3.01.

- a. "Assessments" shall mean those levies, charges, assessments or sums payable by the Lot Owners from time to time upon notification by the Association, as provided herein.
- b. "Association" or "Homeowners Association" shall mean an association of all Lot Owners within the Community organized under Massachusetts G.L. c. 180. For purposes of this Declaration, Association shall specifically mean the Edgewood at Hopkinton Homeowners Association, Inc.
- c. "Common Elements" shall mean the Common Facilities, Community Systems and Community Services, see also Exhibit 3.01.
- d. "Common Expenses" shall mean expenditures made by or financial liabilities of the Association, together with any allocation to reserves, and shall include General Common Expenses.

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- e. "Common Facilities" shall mean all portions of the Community which are owned by, leased to, or subject to easement(s) for the benefit of the Association, as further defined in Exhibit 3.01.
- f. "Community Services" shall mean the operation and maintenance of the Community Facilities all as further defined in Exhibit 3.01.
- g. "Community Systems" shall mean and refer to mean all systems connected or associated with the Common Facilities all as further defined in Exhibit 3.01.
- h. "Declarant" shall mean Toll Northeast V Corp. a Delaware corporation, its successors or assigns. Any change in the Declarant, or in the Declarant's address shall be noticed in writing to the Town,
- i. "Director" shall mean a member of the Board of Directors.
- j. "Dwelling" shall mean any residence erected on or to be erected on a Lot.
- k. "Executive Board" or "Board of Directors" shall mean a board of natural individuals of the number stated herein and in the Bylaws, who as Officers shall manage the business, operation and affairs of the Community on behalf of the Lot Owners and in compliance with and subject to this Declaration, the By-Laws and Rules and Regulations.
- l. "General Common Expenses" shall mean those expenditures for which the Lot Owners are liable as provided herein, including, but not limited to:
- (i) Expenses of administration, management, operation, maintenance, repair, replacement and insurance, together with any allocation to reserves, of the Common Elements; and
  - (ii) Expenses or liabilities agreed upon by the Lot Owners as common.
- m. "Lot" shall mean those parcels designated for separate ownership of occupancy, consisting of Lots 1-29 described on Exhibit 1.01 and shown on the Subdivision Plans.
- n. "Owner" or "Lot Owner" shall mean the record owner, whether one or more Persons, of fee simple title to any Lot which is or are part of the Community, but excluding those having an interest in any Lot merely as security for the performance of an obligation.
- o. "Permits and Approvals" shall mean those certain permits and approvals issued in connection with the development of the Community, including but not limited to the Special Permit for Flexible Community Development, recorded with the Middlesex (South) Registry of Deeds at Book 71124, Page 345, as amended by Notice of Decision, recorded with said Registry at Book 78401, Page 476; a Certificate of Planning Board Action, Definitive Plan Approval, recorded with said Registry at Book 71542, Page 392, as amended by Amended Certificate of Planning Board Action, recorded with said Registry at Book 78401, Page 476; and a General

Order of Conditions (MassDEP No. 188-1648) recorded with said Registry at Book 71600, Page 154, as amended by Amended Order of Conditions, recorded with said Registry at Book 76737, Page 75. In addition, any one Lot may also be subject to an individual Order of Conditions.

p. "Person" shall mean any natural individual, corporation, partnership, association, trust or other legal entity or any combination thereof.

q. "Property" shall mean the entirety of the property as described on Exhibit 1.01.

r. "Recorded" shall mean that an instrument has been duly entered of record with the Middlesex (South) Registry of Deeds. The Property consists of both registered and unregistered land.

s. "Rules and Regulations" shall mean the policies and procedures established from time to time by the Executive Board.

t. "Special Declarant Rights" shall mean all rights reserved for the benefit of the Declarant, which include, but are not limited to, the rights to:

- (i) Complete the Lot improvements indicated on the Subdivision Plans;
- (ii) Maintain offices, signs (including placards, banners, flags and other advertising media) and model homes;
- (iii) Grant and use easements through the Common Elements for the purpose of making improvements within the Community;
- (iv) Appoint or remove a member of the Executive Board during the period of time that the Declarant controls the Association; and
- (v) Subdivide and modify the Lots.

u. "Subdivision Plans" shall mean those plans prepared in accordance with the Permits and Approvals and more particularly described on Exhibit 1.01.

v. "Town" shall mean the Town of Hopkinton, MA.

#### **Article IV Applicability**

**Section 4.01 Applicability.** The Property is subject to this Declaration and to the By-laws and such Rules and Regulations as may be issued by the Executive Board of the Association from time to time to govern the conduct of its members and the use and occupancy of the Property. Ownership, rental or occupancy of any of the Lots in the Community shall be conclusively

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deemed to mean that the Lot Owner, tenant or occupant has accepted and ratified this Declaration, the Bylaws and such Rules and Regulations and will comply with them.

**Section 4.02 Interpretation of Declaration and By-laws.** In the event of a conflict of interpretation between the provisions set forth in the By-laws and this Declaration, this Declaration shall govern.

## **Article V Subdivision Plans**

**Section 5.01 Subdivision Plans.** The Subdivision Plans describe the Property, the name of the Property, the location of the Lots and other areas where the Declarant reserves the right to create single family residences, Common Elements, and such other construction and development information.

## **Article VI Lots and Association Services to Lots**

**Section 6.01 Number of Lots.** The Community shall initially consist of twenty-nine (29) Lots as described on Exhibit 1.01.

**Section 6.02 Description of Lots.** Each Lot is as shown on the Subdivision Plans, as amended to date, which Subdivision Plans may be further amended from time to time. Subject to provisions of applicable law, and the Permits and Approvals, the Declarant reserves the right to modify the design, size and appearance of the Lots.

## **Article VII Common Elements**

**Section 7.01 Common Elements.** The Common Elements shall consist of stormwater basins, piping, swales and other infrastructure located as on the Subdivision Plans and further described in the Permits and Approvals, together with sidewalks, communal mailboxes, drainage improvements, entrance monuments and related landscaping and lighting (if any), shown on that certain Easement Plan entitled “\_\_\_\_\_”, recorded with said Registry as Plan No. \_\_\_\_ of \_\_\_\_\_, and as more completely described in Exhibit 3.01. In addition, the road rights of way as shown on the Subdivision Plan, consisting of an extension of Chamberlain Street and Whalen Road, and an emergency gated roadway connecting the two, are intended to be dedicated to the to Town of Hopkinton and accepted as public ways, to be owned and maintained by the Town of Hopkinton. Only in the event that the Town of Hopkinton fails or refuses to accept the road rights of way, will the road rights of way, together with the emergency gated roadway, be considered as Common Elements. The Community is surrounded by open space as shown on the Subdivision Plans as Open Space Parcel A. Open Space Parcel A is not property of the Declarant and is owned by a third-party. The intent of the third-party is to convey Open Space Parcel A to the Town of Hopkinton for public open space and passive recreational use, and trail linkages will be made available affording public access through the open space. In the event that Chamberlain Street and Whalen Road are not accepted by the Town, the emergency access



connection through Open Space Parcel A, connecting Chamberlain Street and Whalen Road, will be reserved to the Association by easement.

### **Section 7.02 Construction and Transfer of Common Elements.**

a. The Declarant shall cause the Common Elements to be constructed and shall convey all right, title and interest in and to the Association upon substantial completion. The conveyance shall be in the form of a grant of easements on land otherwise defined within individual Lots, together with the conveyance of all structures, improvements and appurtenances constituting personal property associated with the Common Elements. In the event the road rights of way are not accepted by the Town of Hopkinton, the road rights of way will be transferred to the Association by quitclaim deed. The Declarant reserves the right to convey such interest in the Common Elements, in whole or in part, at any time prior to this event, and in the event the Common Elements are not substantially complete at the time of conveyance the Declarant covenants that it shall substantially complete the Common Elements and shall guaranty completion for the benefit of the Association. The obligations of the Declarant in this section shall be a covenant running with the Property and shall be binding on the Declarant and any successor or assign who receives any Special Declarant Rights. For purposes of this Section 7.02, the term "substantial completion" as it relates to Common Elements shall mean completion to a good workmanship standard as determined by the Declarant in its sole discretion. Substantial completion for purposes hereof shall not require final approval and/or acceptance of the Association or of the Town of Hopkinton or any other permit granting authority, as the case may be.

b. The Declarant also reserves the right to grant to the Town, or any other permit granting authority an easement in the Common Elements for purposes of access to and maintenance thereof in the event that the Association fails to operate and maintain the Common Elements in accordance with the terms hereof. Any such grant to the Town shall be consistent with the provisions of Section 10.03 below.

c. The Declarant shall convey to the Association, and the Association shall accept, right, title and interest in the Common Elements for no consideration. The Common Elements are intended to remain the private property of the Association. The Declarant shall be responsible for any recording fees.

d. The Declarant shall be responsible for the maintenance of the Common Elements until substantial completion of such facilities, or such later date deemed acceptable by the Declarant but in no event later than the Transitional Meeting, as defined below. Thereafter, maintenance shall be considered a General Common Expense of the Association.

e. In the event the roadways as shown on the Subdivision Plan or any other Common Elements are to be conveyed to the Town of Hopkinton, such conveyance shall be majority vote of the Executive Board until the Transitional Meeting (as defined below) and thereafter by simple majority vote of the Lot Owners.

**Section 7.03 Liability, Maintenance and Repair of Common Elements.** The Association shall provide for the current, regular and periodic maintenance, repair and replacement of the

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Common Elements in accordance with Operation and Maintenance Schedules attached hereto as Exhibit 3.01. The cost and expense of the foregoing, together with any real estate tax assessment thereon, and other obligations set forth herein, shall be a General Common Expense, and the Executive Board shall include in the annual budget of the Association as part of the Assessments reasonable reserves for replacement of Common Elements, as necessary or prudent. The Town shall bear no responsibility for the costs associated with the maintenance and repair of Common Elements.

**Section 7.04 Use of Common Elements.** The Common Elements shall be restricted in accordance with the terms established herein and otherwise by rules and regulations established from time to time by the Association in accordance with this Declaration, the Bylaws and the Permits and Approvals. The Common Elements shall provide an express function for the benefit of the Association only. When the road rights of way are accepted by the Town they shall be considered as public ways.

**Section 7.05 Alteration to Common Elements by Lot Owner.** No Lot Owner may make any improvements or alterations or do any work to any of the Common Elements, which would disturb or would otherwise be inconsistent with the Operation and Maintenance Schedules attached hereto as Exhibit 3.01.

**Section 7.06 Common Expense Liability.** The Executive Board shall have the sole and exclusive authority to develop an annual budget, and special assessments, as needed, in order to determine General Common Expenses of the Association. Each Lot Owner covenants and agrees to pay the Association his share of the General Common Expenses. All General Common Expenses shall be assessed equally against all Lots. The obligation to pay Assessments is a covenant running with the Property, inseparable from each Lot, and any conveyance, lease, devise or other disposition or mortgage or other encumbrance of any Lot shall extend to and include the Assessment liability, whether or not expressly referred to in the instrument effecting such transfer. No Lot Owner may exempt himself from liability with respect to the payment of Assessments by waiver of the enjoyment of the right to use any of the Common Elements or by abandonment of his Lot or otherwise, the obligation to pay Assessments is absolute and unconditional and shall not be subject to set offs or counterclaims. Any Common Expenses which benefit fewer than all of the Lots shall be assessed exclusively against the Lots benefited. The Declarant shall not be responsible for any General Common Expenses.

**Section 7.07 Administration.** The administration of the Common Elements by the Association shall be in accordance with the provisions of Massachusetts law and this Declaration, the Permits and Approvals, and of any other agreements, documents, amendments or supplements to the foregoing which may be duly adopted or subsequently required by any institutional lender designated by the Declarant or by any governmental or quasi-governmental agency having regulatory jurisdiction over the Common Elements or by any title insurance company selected by Declarant to insure title to any portion of the Common Elements.

**Section 7.08 Conveyance or Encumbrance of Common Elements.** The conveyance or encumbrance of any Lot or Common Element shall be subject and subordinate to this Declaration and the rights and obligations granted herein with respect to the Common Elements.

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**Section 7.09 Obsolescence.** Subject to the provisions of this Declaration, including but not limited to the Permits and Approvals, in the event that the Executive Board shall determine that any Common Element is obsolete, the Executive Board may call for a vote of the Lot Owners to determine whether such Common Element should be demolished or replaced. In the event that sixty-seven (67%) of the Lot Owners shall determine that such Common Element should be demolished or replaced, the costs thereof shall be assessed equally against all of the Lot Owners.

## **Article VIII The Association**

**Section 8.01 The Association.** The Association is the governing body for all of the Lot Owners and, except as otherwise provided in this Declaration, is responsible for the operation and maintenance of the Common Elements and the making of any additions or improvements thereto. The duties of the Association shall be undertaken as provided herein and in the By-laws, but nothing herein contained shall be construed so as to preclude the Association from delegating any of these duties to a manager or agent or to another Person subject to the authority of the Association. The Common Expenses incurred or to be incurred for the maintenance, repair, replacement, Insurance, administration, management, regulation, operation and use of the Common Elements and the making of any additions or improvements thereto shall be assessed by the Association against, and collected from, the Lot Owners in accordance with this Declaration.

### **Section 8.02 Membership in Association.**

- a. Lot Owners upon acceptance of a deed to a Lot become members of the Association. Membership in the Association shall be limited to the Lot Owners of the Community. The Declarant reserves the right to add additional lots to the Community, by amendment to this Declaration.
- b. Every Lot Owner who shall be a member of the Association shall be entitled to all of the rights and shall be bound by all of the obligations accompanying membership, provided that any Lot Owner who is holding the interest in a Lot merely as a security for the performance of an obligation shall not be a member.
- c. Each Lot in the Community shall have one (1) vote associated with such Lot. When more than one Person holds an interest or interests in any Lot, all such Persons shall be members, and the vote for such Lot shall be exercised as provided in this Declaration and in the By-laws, but in no event shall more than one (1) vote be cast with respect to any such Lot.
- d. Only those Lot Owners in good standing and entitled to vote shall be considered "Lot Owners" for purposes of obtaining a quorum, or determining the percentage of Lot Owners voting on a matter. A Lot Owner shall be deemed to be in good standing and "entitled to vote" at any annual meeting or at any special meeting of the Association if, and only if, he shall have fully paid all Assessments made or levied against the Lot Owner and against his Lot by the Executive Board together with all interest, costs, attorneys' fees, penalties and other expenses, if

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any, properly chargeable to the Lot Owner and against his Lot, at least five (5) days prior to the date fixed for such annual or special meeting.

e. In the event that a Lot Owner shall lease or permit another to occupy his Lot in accordance with the provisions of this Declaration, the tenant or occupant shall be permitted to use the Common Elements of the Community (subject however to such limitations on such use as would be applicable to the Lot Owner) but shall not vote in the affairs of the Association, except as the Lot Owner shall permit the tenant or occupant to exercise the proxy vote of the member.

f. Every lawful transfer of title to a Lot shall include membership in the Association and, upon making such transfer, the previous Lot Owner's membership shall automatically terminate. Except as otherwise expressly provided, membership in the Association may not be assigned or transferred without the transfer of legal title to a Lot and any attempt at such assignment or transfer thereof shall be void and of no effect

g. Membership in the Association shall automatically terminate when such Lot Owner sells, transfers or otherwise conveys his Lot.

**Section 8.03 Certificate of Voting.** If a Lot is owned by one Person, the Lot Owner's right to vote shall be established by the recorded title to the Lot. If Lot is owned by more than one Person, the Person entitled to cast a vote for the Lot shall be designated in a certificate signed by all of the record owners of the Lot and filed with the Clerk of the Association. If a Lot is owned by a corporation, joint venture, partnership, limited liability company, nominee trust or unincorporated association, the natural Person who shall be entitled to cast the votes of that Lot shall be designated in a certificate for this purpose, signed by that entity in accordance with its governing documents, and filled with the Clerk of the Association. The natural person designated in such certificate, who is entitled to cast votes for a Lot, shall be known as the "Voting Member." If such a certificate is not on file with the Clerk of the Association for a Lot owned by more than one natural Person or by a corporation, joint venture, partnership or unincorporated association, the votes of the Lot concerned shall not be considered in determining the requirement for a quorum, or for any purpose requiring the approval of a Person entitled to cast votes for the Lot except if such Lot is owned by a couple. A certificate shall be valid until revoked in writing by any owner of the Lot, or until superseded by a subsequent certificate, or until a change in the ownership of the Lot concerned. If a Lot is owned by a couple, the following three (3) provisions are applicable to voting by such Lot:

- a. The Lot Owners may, but they shall not be required to designate a Voting Member,
- b. if they do not designate a Voting Member, and members of the couple are present at a meeting and are unable to concur in their decision upon any subject requiring a vote, they shall lose their right to vote on the subject at that meeting.
- c. Where they do not designate a Voting member and only one is present at a meeting. the Person present may cast the vote for the Lot, without establishing the concurrence of the absent Person, just as though he or she owned the Lot.

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#### **Section 8.04 Executive Board.**

a. Subject to the provisions of this Declaration and the By-laws, the Executive Board shall have the power to act on behalf of the Association. The initial Executive Board shall consist of two (2) Directors. The initial Directors shall be appointed, removed and replaced from time to time by the Declarant without the necessity of obtaining resignations, The Declarant-appointed Directors shall be replaced with Directors elected by the Lot Owners in accordance with the provisions of this section.

b. For purposes of this Declaration, the term "First Election Meeting" shall mean the first meeting of the Association which shall occur no later than sixty (60) days after fifty percent (50%) of the Lots are conveyed to Lot Owners, other than the Declarant.

c. The term "Transitional Meeting" shall mean the meeting of the Association which shall be held no later than the earliest of (i) sixty (60) days after one hundred percent (100%) of the Lots are conveyed to Lot Owners, other than the Declarant, and (ii) two (2) years after the Declarant has ceased to sell Lots in the ordinary course of its business, Subject to the right of the Declarant to alter the following procedure so as to have all or part of the transition process occur earlier than as hereafter described.

d. The transition from an Executive Board comprised solely of Directors appointed by the Declarant to an Executive Board comprised solely of Directors elected by the Lot Owners shall occur as follows:

- (i) At the First Election Meeting the Lot Owners, other than the Declarant, shall elect one (1) Lot Owner to serve as a Director who shall increase the size of the Board to a total of three (3) Directors. The elected Director shall serve a three (3) year term,
- (ii) At the Transitional Meeting, the Lot Owners, other than the Declarant, shall elect two (2) Lot Owners to serve as Directors who shall replace the two (2) initial Directors appointed by the Declarant. The Director elected pursuant to this Subsection with the highest number of votes shall serve a three (3) year term and the Director receiving the next highest number of votes shall serve a two (2) year term. After the Transitional Meeting, the term of each Director election shall be for a period of three (3) years from the annual meeting at which such Director is elected, or such shorter term as may be necessary in order that the Directors shall be elected on a staggered basis so that in any one year not more than two Director terms will expire.
- (iii) Notwithstanding the foregoing, the Declarant shall have the right to appoint one additional non-voting member to the Board to serve until three hundred sixty (365) days after the Declarant conveys the last Lot to a Lot Owner.

c. For purposes of determining whether the period of Declarant control has terminated or whether Lot Owners other than the Declarant are entitled to elect members of the Executive



Board, the percentage of Lots conveyed is presumed to be that percentage of the total number of Lots to be developed within the Community.

d. After the election held pursuant to Subsection 8.04b. above and until the Declarant has conveyed the last Lot in the Community, the Executive Board shall notify the Declarant in advance of all meetings of the Executive Board and the Association at the same time as notices are given to the Executive Board members or the Lot Owners as the case may be. Until the Declarant has sold every Lot in the Community, the Board is prohibited from taking any action which would discriminate against the Declarant, or which would be detrimental to the sale or leasing of Lots owned by the Declarant, in the Declarant's sole discretion. The Board will be required to continue the same level and quality of maintenance, operations and services as that provided immediately prior to the assumption of control of the Association by owners other than the Declarant until the Declarant sells the last Lot in the ordinary course of business.

## **Article IX Insurance**

**Section 9.01 Liability.** The Executive Board shall cause to be obtained "broad-form" comprehensive general liability insurance, "all-risk" hazard insurance coverage covering damage to property, insuring the Common Elements, including fixtures and equipment therein and thereof, and including all personal property owned by the Association (the "Insurable Property").

**Section 9.02 Proceeds From Property Insurance.** Proceeds from property insurance policies maintained by the Association shall be paid to the Association or a designated insurance trustee. The Association or such trustee shall hold any insurance proceeds in trust for the Lot Owners and lien holders as their interests may appear.

**Section 9.03 Association's Power to Compromise Claim.** The Executive Board is hereby irrevocably appointed agent for each Lot Owner and first lien mortgagee for the purpose of compromising and settling claims arising under insurance policies purchased by the Association, and to execute and deliver releases therefore, upon the payment of claims.

**Section 9.04 Other Insurance.** The Executive Board shall also purchase and provide such other insurance as the Executive Board shall determine from time to time to be necessary or desirable.

**Section 9.05 Limitation of Liability.** The Executive Board shall not be liable for injury or damage caused by the failure of the Executive Board to maintain or repair parts of the Community, except to the extent of the proceeds of insurance carried, collected and received by the Executive Board.

**Section 9.06 Exception.** Notwithstanding anything to the contrary contained herein, so long as the Declarant controls the Executive Board, the Declarant reserves the right to include the insurance obligations of the Association within a master insurance program controlled by the Declarant.

## **Article X**

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## **Easements and Declarant Rights**

**Section 10.01 Utility Services Easements.** The Declarant or the Executive Board may grant easements for the operation and maintenance of the Common Elements.

**Section 10.02 Assignment of Rights.** The rights reserved and/or granted herein to the Declarant may be assigned by the Declarant. The Common Facilities and Community Systems shall be the property of the Declarant until transferred by the Declarant.

**Section 10.03 Public Easements.** The Common Elements shall be subject to access easements to the Town, as necessary in connection with the Permits and Approvals, including but not limited to the express right and easement granted herein to the Town for access to all of the roadways and stormwater facilities of the Community as shown on the Subdivision Plans for purposes of inspection and enforcement of the Operation and Maintenance obligations of the Community as set forth herein.

**Section 10.04 Wetland Areas.** The Declarant shall reserve the right of access over those portions of the Lots that are subject to an Order of Conditions to the extent such access is necessary to stabilize disturbed areas, install and remove silt barriers and erosion control structures, re-vegetate disturbed areas and otherwise carry out the purposes and intent of the Order of Conditions until such time as a full and complete Certificate of Compliance has been issued.

### **Section 10.05 Association and Executive Board.**

- a. The Association and its Executive Board, officers, agents and employees, shall have the irrevocable right and easement to have access to the Common Elements as may be necessary for the inspection, maintenance, repair or replacement thereof or the making of any addition or improvements thereto; or to make repairs to the Common Elements if such repairs are reasonably necessary for public safety or to prevent damage to the Common Elements; or to abate any violation of law, orders, Rules or Regulations of the Association or of any governmental authorities having jurisdiction thereof.
- b. The Association and the Executive Board shall have the right to grant permits, licenses and easements over and through the Common Elements for the necessary, useful or proper maintenance and operation of the Community.
- c. The Association shall have an easement over the areas shown on the Subdivision Plans associated with the stormwater facilities.

**Section 10.06 Continuing Easements and Declarant Rights.** The easements and Declarant's rights set forth herein shall run with the land and inure to the benefit of and be binding upon (as applicable) the Declarant, the Association, each Lot Owner, the Town, and each mortgagee, lessee, occupant or other person having any interest in any Lot or in the Common Elements at the time of reference.



**Section 10.07 Recorded Easements and Encumbrances.** Attached to and made a part of this Declaration as Exhibit 10.07 is a list of the recording data for recorded easements and encumbrances appurtenant to or included in the Community or to which any portion of the Community is or may become subject.

## **Article XI Assessment of Taxes**

**Section 11.01 Assessment of Taxes.** Each Lot shall be assessed and taxed as a separate parcel of real estate and each Lot Owner is charged with the payment of all such taxes, municipal claims and liens assessed, lienied or filed against his Lot.

## **Article XII Lot Owner Obligations**

### **Section 12.01 Assessment Obligations.**

a. Each Lot Owner, with the exception of the Declarant, covenants and agrees to pay to the Association all determined by the Association to the Common Expenses. Assessments including, but not limited to: (i) regular Assessments for General Common Expenses to be made annually due and payable on a monthly basis based upon the budget of the Association; (ii) special Assessments, such assessments to be fixed, established and collected from time to time as hereinafter provided; (iii) delinquency Assessments, as established from time to time by the Executive Board, against any Lot Owner whose Assessments are delinquent for a period exceeding ten (10) days after the due date ("Delinquency Assessment"); (iv) any fines or interest charges; and (v) Assessments for what may from time to time be

b. The Assessments and costs of collection (including attorneys' fees) shall be a charge on the lot and shall be a continuing lien upon the Lot from the time each Assessment or costs of collection become due. Each Assessment and costs of collection as hereinafter provided shall be the personal obligation of the Lot Owner at the time when the Assessment first became due.

c. The Association shall base its annual budget on the inclusion of all of the proposed Lots in the Community, which currently constitutes 29 Lots. At least thirty (30) days prior to the commencement of each fiscal year of the Association (and within thirty (30) days after the execution hereof with respect to the portion of a fiscal year then remaining), the Executive Board shall estimate the General Common Expenses expected to be incurred during such fiscal year together with a reasonable provision for contingencies and reserves, and after taking into account any undistributed common profits from prior years, shall determine the assessment to be made for such fiscal year. In the event that the Executive Board shall determine during any fiscal year that the Assessments so made are less than the General Common Expenses actually incurred, it may make a supplemental assessment or assessments and render statements therefor, and such statements shall be payable and take effect as aforesaid. The Executive Board shall determine, in addition, the working capital requirements of the Association (the "Working Capital Fund") and, from time to time, may establish and set aside as a common charge such amount or amounts as

they may deem necessary and/or advisable to establish and maintain adequate working capital reserves.

d. In addition, the Association shall collect from each purchaser of a Lot at the initial settlement, and at any re-sale settlement, a non-refundable contribution of \$588.00 Dollars (the "Settlement Reserve Contribution"). The Settlement Reserve Contribution shall not be considered as an advance payment of regular assessments or directly applicable to any budgetary shortfall. The Settlement Reserve Contribution may be used by the Declarant as reimbursement for any contributions made by the Declarant toward Common Element expenses.

e. In the event a budget deficit is incurred, the Declarant may advance funds to the Association sufficient to satisfy the deficit, if any, between the actual General Common Expenses of the Association (but specifically not including an allocation for reserves) and the sum of the Assessments collected by the Association in any fiscal year, and such advances shall be evidenced by promissory notes from the Association in favor of the Declarant which shall be payable as the Association's cash flow permits.

f. The Declarant may not use the Assessments, or any portion of the Settlement Reserve Contribution to defray any of its expenses, reserve contributions or construction costs. All reserve funds must be transferred to the Association for deposit to a segregated fund from and after the Transition Meeting.

**Section 12.02 General Common Expense Allocation.** Each Lot in the Community shall be assigned a percentage (the "General Common Expense Percentage") which represents such Lot's proportionate share of the General Common Expenses of the Association. The General Common Expense Percentage, as allocated to each Lot in the Community, calculated by multiplying one hundred (100) and the quotient resulting from dividing one (1) by the total of all Lots in the Community.

**Section 12.03 Amount of Assessments.** Each Lot Owner is legally obligated to contribute to the General Common Expenses of the Association providing for the administration and maintenance, replacement and repair of the Common Elements of the Community, the administration and maintenance of the Association and all of its real and personal property, in such amount as shall be determined by multiplying the General Common Expenses Percentage of the Lot (the percentage shall be equally allocated among all Lots in the Community) by the total General Common Expenses for the Community computed on an annual basis based upon amounts established in the budget prepared by the Executive Board, together with any Assessments that are directly metered and billed to the Lot (if any). No Lot Owner may exempt himself from contributing toward such expenses by waiver of the use or enjoyment of any of the Common Elements, or by abandonment of the Lot owned by him or by set-off or counterclaim.

**Section 12.04 Time of Payment.** Except as otherwise provided in this Declaration, payment by the Lot Owner of his share of the expenses aforesaid shall be made at the discretion of the Executive Board, provided that all regular and special Assessments shall be declared by the Executive Board annually and payable on a monthly basis or as otherwise determined by the Executive Board. The failure of the Executive Board to formally declare any such annual

Assessment shall result in the regular Assessment for the immediately preceding period being the payment of the Assessment due and payable for the next period. In the event Assessments are not paid as required, the Executive Board may assess fines, Delinquency Assessments and the costs of collection (including attorneys' fees).

**Section 12.05 Effect of Non-Payment of Assessment.** Any Assessment or installment thereof not paid within thirty (30) days after the due date shall bear interest from the due date at the rate not greater than (a) fifteen percent (15%) per annum; or (b) the highest rate permitted by law. The Association shall have the right to accelerate payment of all remaining proposed monthly payments of any Assessments for a period of twelve (12) months including the amount of any Special Assessments. The Association may bring an action at law or in equity against the Lot Owner personally obligated to pay the same, or foreclose, or execute judgment upon, the lien described in this article against the Lot or do both, or it may seek and obtain any other remedy provided at law or in equity.

**Section 12.06 Lien of Assessments.** All Assessments, including Delinquency Assessments, fines, fees, charges, late charges, interest and costs of collection thereof (including attorneys' fees), shall constitute a lien against said Lot in favor of the Association. If the Assessment is payable in installments and one or more installments is past due, the entire unpaid balance of the Assessment becomes effective as a lien from the due date of the delinquent installment. Upon full payment of all sums secured by the lien and a preparation fee, the party making payment shall be entitled to a recordable satisfaction of lien to be recorded at his sole expense.

**Section 12.07 Method of Enforcing Collection of Assessments.** Any Assessment charged against a Lot, may be enforced by a lawsuit brought by the Executive Board on behalf of the Association or of the members of the Association in an action at law or equity. Any judgment against the Lot Owner and his Lot shall be enforceable in the same manner as is otherwise provided by law. Reasonable attorneys' fees and court costs incurred by the Executive Board incident to the collection of any Assessments or the enforcement of any lien, together with all sums advanced and paid by the Executive Board for taxes and payments on account of superior liens which may be required to be advances by the Executive Board in order to protect its lien, shall be payable by the Lot Owner and secured by such lien.

**Section 12.08 Unpaid Assessments at the Time of Execution Sale Against a Lot.** In the event that title to a Lot is transferred by Sheriff's sale pursuant to execution upon any lien against the Lot, the Executive Board may give notice in writing to the Sheriff of any unpaid Assessments which are a charge against the Lot, but have not been reduced to a lien, and the Sheriff shall pay the Assessments of which he has such notice out of the proceeds of the sale which remain in his hands for distribution after payment of all other claims which he is required by law to pay, but prior to any distribution of the balance to the former Lot Owner against whom the execution issues. The purchaser at such Sheriff's sale and the Lot involved shall not be liable for unpaid Assessments which became due prior to the Sheriff's sale of the Lot. Any such unpaid Assessments which cannot be promptly collected from the former Lot Owner may be reassessed by the Executive Board as a General Common Expense to be collected from all of the Lot Owners, including the purchaser or acquirer of title at the Sheriff's sale, his successors and assigns. To protect its right to collect unpaid Assessments which are a charge against a Lot, the

Executive Board may, on behalf of the members of the Association, purchase the Lot at Sheriff's sale provided such action is authorized by the affirmative vote of the majority of the Executive Board, and if it does so purchase, the Executive Board shall thereafter have the power to sell, convey, mortgage or lease such Lot to any person whatsoever.

**Section 12.09 Voluntary Sale of a Lot.** Upon the voluntary sale or conveyance of a Lot, or any other transfer of the Lot, by operation of law or otherwise, except a transfer described in Sections 12.08 or 12.10, and a transfer by deed in lieu of foreclosure to a holder of a mortgage, the grantee shall be jointly and severally liable with the grantor for all unpaid Assessments for Common Expenses which are charges against the Lot as of the date of the sale, conveyance or transfer, but such joint and several liability shall be without prejudice to the right of the grantee to recover from the grantor, in the amount of any such unpaid Assessments which the grantee may pay, and until any such Assessments are paid, they shall continue to be a charge against the Lot, which may be enforced in the manner set forth in this article; provided, however, any person who shall have entered into a written agreement to purchase a Lot shall be entitled to obtain a written statement from the Association setting forth the amount of unpaid Assessments charged against the Lot Owner and is Lot, and if such statement does not reveal the full amount of the unpaid Assessments as of the date it is rendered, neither the purchaser nor the Lot after transfer thereof, shall be liable for the payment of the amount in excess of the unpaid Assessments shown on such statement.

**Section 12.10 Mortgage Foreclosure.** If a mortgagee of a "first" mortgage of record or other purchaser of a Lot acquire title to such Lot as a result of foreclosure of the first mortgage, or by deed in lieu of foreclosure, such acquirer of title, his successors and assigns, shall be liable only for the share of Common Expenses or other charges by the Association pertaining to such Lot or chargeable to the former Lot Owner which have accrued for a period of no more than six (6) months prior to acquisition of title as a result of the foreclosure. Such unpaid share of the charges shall be deemed to be General Common Expenses collectible from all of the remaining Lot Owners, including such acquirer, his successors and assigns.

**Section 12.11 Assignment of Assessments.** The Association may pledge or assign its right to collect and receive Assessments to a financial institution in order to secure a loan for the financing of the costs of maintaining, repairing or replacing any portion of the Common Elements if the Association does not have sufficient reserves to pay the costs of such maintenance, repair or replacement.

**Section 12.12 Lot Owners' Negligence.** Each Lot Owner shall be obligated to reimburse the Association for any expenses incurred by it in repairing or replacing any part or parts of the Common Elements damaged by his act, omission or negligence or by the act, omission or negligence of his tenants, agents, guests or licensees, promptly upon receipt of the Association's statement therefore. Such reimbursement shall be considered an unpaid Assessment collectable in any manner provided herein in the case of unpaid and past due annual Assessments.

**Section 12.13 Surplus Revenues.** If, after the conclusion of any fiscal year, the Association income exceeds its expenses for that fiscal year, the Executive Board may carry forward the surplus income to the following fiscal year. This carry forward of surplus revenues may be either

applied by the Executive Board as a credit against Current assessments, set aside as a contingency reserve, set aside as a capital reserve or any combination of these choices as the Executive Board shall so elect.

### **Article XIII Transfer of Lots**

**Section 13.01 Transfer of Lots.** Any Lot Owner may, at any time, transfer all of his ownership in his Lot to any other person, and it shall not be necessary to secure the prior consent of the Association, the Executive Board or any other Lot Owner.

**Section 13.02 Outstanding Payments due to the Association.** Upon transfer of any Lot, Lot Owners shall obtain a recordable notice from the Association as to any outstanding fees or assessments due on said Lot at the time of transfer, to be provided to the party(ies) taking ownership of said Lot.

**Section 13.03 Notice of Rights and Obligations Upon Transfer of Lots.** Upon the initial transfer of any Lot by the Declarant, and in all subsequent transfers of Lots thereafter, notice shall be specifically included in each Lot Deed that upon acceptance of a deed to a Lot, Lot Owner's shall become members of the Association, and shall be subject to this Declaration and to the By-Laws and Rules and Regulations of the Association.

### **Article XIV Leasing of Lots [Intentionally Omitted]**

### **Article XV Use Restrictions and Disclosures**

**Section 15.01 Use Restrictions.** The Lots are subject to covenants as follows:

**BEDROOM RESTRICTIONS:** The Lots and the Community are expressly limited to four (4) or five (5) bedroom homes based upon Town of Hopkinton Department of Public Works Water/Sewer Approval. Under the approval, the total number of bedrooms shall not exceed 145 total within the Community. Each Lot Owner is prohibited from having more than five (5) bedrooms under the approval, at any time, including through any expansion or modification to the home.

**OPEN SPACE:** The Community is surrounded by open space area comprising 44.8 acres and shown on the Subdivision Plans as Open Space Parcel A. The open space area is not owned by the Declarant. Under the Permits and Approvals, the owner of the open space must record a Conservation Restriction on the open space prior to deeding the open space to the Town of

16

12-16-2022

12-16-2022



Hopkinton. The open space will be improved with trail access to surrounding open space land and will afford access to the public.

**NUISANCES:** No noxious or offensive activity shall be carried on upon the Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. No trash, garbage, metal, scrap or other waste may be placed or stored upon the Lot, except in approved sanitary containers which may be placed outside only on scheduled collection days.

**TRAILERS, BOATS, VEHICLES, CLOTHESLINES, ETC.:** No trailer, boats, off-road vehicles, unused vehicles, camper or clothesline or any apparatus designed for the purpose of drying clothing may be placed, constructed or stored on the Lot at any time, either temporarily or permanently.

**LIVESTOCK AND POULTRY:** No livestock, poultry or reptiles of any kind shall be kept or bred on the Lot.

**SIGNS:** Other than entrance monuments or other signage identifying the name of the Community, no signs of any kind shall be displayed to the public view on any lot or inside the dwelling unit including, but not limited to Real Estate "For Sale" or "For Rent" signs, Notwithstanding the foregoing or any other term of this Declaration, the restriction against "For Sale" and "For Rent" signs shall terminate upon the conveyance of the last Lot owned by the Declarant.

**EASEMENTS:** Easements for installation and maintenance of utilities and drainage facilities are reserved as referenced herein and as shown on the Subdivision Plans; as may be amended from time to time. Within these easements, no permanent structure or improvements including without limitation any wall, fence or woody vegetation is permitted. The easement area of each Lot and all improvements in it shall be maintained continuously by the owner of the Lot, except for those improvements for which the Association, or a public authority or utility company is responsible. The Declarant shall have the right and privilege to enter upon the Lot at any time (i) to correct any violations of ordinances, including set back requirements or other construction-related matters, (ii) to change the grade of the ground and/or install or change drainage control devices so as to alleviate any possible drainage or run-off problems for the Lot or adjoining Lots, and (iii) to repair, maintain or replace any entrance monuments, community signage or associated landscaping. Drainage swales which have been constructed to facilitate the drainage of one or more adjoining Lots shall have no structures or plantings thereon. Modifications by a Lot Owner to the grade of any swale or placement of obstacles within any swale are prohibited. The grading of any Lot is not to be changed by a Lot owner in any manner that will cause an adverse effect on the adjacent Lots.

**FENCES, POOLS, TENNIS COURTS, STORAGE BUILDINGS, ADDITIONS, LANDSCAPING:** No Lot Owner shall erect or permit to be erected on any lot any fence, pool, tennis court or other outdoor game court, storage shed or other exterior building. addition or improvement, for the period of this Declaration without the prior written consent and design approval of the Association which approval may be withheld in the Association's sole and

absolute discretion. In addition, no above ground pool or stockade or similar fence will be permitted under any circumstances. Post and rail fences and picket fences (with spaces between the vertical picket posts) no greater than five feet high are permitted. Fences up to five feet high are permissible in instances where the fence is enclosing an in-ground pool. All fences or structures must also comply with all federal, state, and local regulations. Storage sheds shall be of material similar to homes constructed in the community (ie. stucco, matching vinyl siding, cedar or similar wood) and shall have a roof with shingles. Metal sheds are not permitted under any circumstances. Under no circumstances may any fences, hedges (more than three feet high) or mass plantings of any type be erected or planted in front of the front wall line of the main house structure.

**SIGHT DISTANCE AT INTERSECTION:** No wall or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadway shall be placed on any corner Lot within the triangular area formed by the street property lines and a line connecting them at a point 25 feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines. In the event any applicable law, ordinance or regulation imposes a more restrictive requirement for maintaining site distances at intersections, then the more restrictive requirement shall govern.

**TELEVISION AND RADIO TOWERS OR ANTENNA:** Except as hereinafter provided, no radio, television or other tower, pole, or antenna or similar structure shall be erected on any part of any Lot or house, including but not limited to radio or television mast antennas. A satellite dish not greater than two feet (2) in diameter may be installed behind the front line of the home.

**RETAINING WALLS:** Retaining walls, and related security fencing, may be constructed on individual Lots. In such instance, no Lot Owner shall perform any work on, in or around the retaining walls that will have any impact on the structural integrity or function of the retaining wall or the grade adjacent to said wall. Any modification to the grade on an individual lot, or adjustments to retaining walls, shall be reviewed and approved in advance by the Association, acting by and through its Board of Directors. In granting approval for modifications to any retaining wall, such modifications may then render the retaining wall, as modified as a Lot Owner responsibility, as the Association shall determine.

**EMERGENCY ACCESS DRIVE:** There is an emergency access roadway connecting Whalen Road and Chamberlain Road is to be gated. The emergency access roadway shall be for use by emergency vehicles only.

**WETLAND PROTECTION:** The Community contains bordering vegetated wetland areas as defined under the Massachusetts Wetlands Protection Act. Specific reference is made to the General Order of Conditions Order of Conditions referenced herein as part of the Permits and Approvals. Individual Lot Orders of Condition may also apply.

**LANDSCAPE MAINTENANCE:** The Pesticides and/or herbicides of any type shall not be used for the establishment or maintenance of landscape plantings or lawn. Use of fertilizer shall be



limited to organic-based, slow release fertilizers in compliance with the MA Plan Nutrient Application Requirements, 330 CMR 31.00. Fertilizer application rate shall not exceed the most recent UMass Guidelines for Nutrient Management which currently specifies a maximum application rate of 2 pounds of Nitrogen (N) per 1,000 sq. ft. of turf per year. This restriction shall be included in any landscape maintenance contracts entered into for any Lot.

**ROADWAY AND DRIVEWAY MAINTENANCE:** The road rights of way, while privately owned and maintained by the Association, and individual driveways shall be maintained using minimal sodium chloride de-icing compounds whenever safety conditions allow. Use of substitute de-icing materials, particularly those that do not contain chloride, are encouraged.

**PROXIMITY OF GUN RANGE:** The Community is located less than 1 mile from an active Sportsman's Club currently going by the name of Hopkinton Sportsman's Association located at 95 Lumber Street, Hopkinton, MA. The Club offers various outdoor activities for its members including but not limited to outdoor gun, rifle, and archery ranges. Noise from this facility may periodically be heard from some Lots within the Community

**Section 15.02 Exemptions for Declarant.** The provisions of this Article are intended to restrict certain uses that may be harmful or affect the ambience or aesthetic appeal of the Community to be constructed by Declarant. The restrictions are not intended to prohibit Declarant from performing such work as may be necessary in the completion of the work in the Community, provided at all times that said work is consistent with the Permits and Approvals. The restrictions of this Article shall therefore not be binding upon Declarant in the performance of any of the work required in order to complete construction of the Community.

## **Article XVI Compliance and Default**

### **Section 16.01 Compliance and Default.**

- a. Each Lot Owner shall be governed by and shall comply strictly with the terms, covenants, conditions and restrictions of this Declaration, the By-laws and the Rules and Regulations of the Association adopted pursuant thereto, and the same as they may be amended from time to time.
- b. The Executive Board shall have the power to adopt, amend and enforce compliance with such reasonable Rules and Regulations relative to the operation, use and occupancy of the Common Elements consistent with the provisions of this Declaration, including, but not limited to such enforcement procedures and penalties for violations as the Executive Board shall deem appropriate. Any such Rules and Regulations shall be adopted or amended, from time to time, by means of appropriate resolutions duly approved by the Executive Board in accordance with the Bylaws. A copy of such Rules and Regulations and copies of any amendments thereto shall be delivered or mailed to each Lot Owner or occupant of a Lot promptly after the adoption thereof and shall become binding upon all Lot Owners, their successors in title and assigns, and occupants.

c. Failure of any Lot Owner, other than the Declarant, to comply with any provisions of this Declaration, the By-laws or any Rules and Regulations shall entitle the Association or the other Lot Owners to the remedies provided in this Declaration, and also to the following relief, none of which remedies shall be exclusive of any other remedies:

- (i) to sue for the recovery of damages or for injunctive relief, or both; and
- (ii) the prevailing party shall be entitled to recover the costs of the proceeding and reasonable attorneys' fees; provided, however, that no attorneys' fees may be recovered against the Executive Board in any such action unless the Court shall first expressly find that the Executive Board acted in bad faith.

d. The failure of the Declarant, Executive Board, or any Lot Owner to enforce any covenant, restriction or other provision of this Declaration, the By-laws or the Rules and Regulations of the Association adopted pursuant thereto, shall not constitute a waiver of the right to do so thereafter.

#### **Section 16.02 Arbitration and Hearing Procedures.**

a. No Lot Owner shall have the right to object, challenge, commence any suit at law or in equity or take any other action under any act, power or authority now in force or hereafter to be enacted except after following such procedures as are established by the Executive Board by rule or regulation consistent with the provisions of this article.

b. Declarant, the Association, its officers, directors, and committee members, Lot Owners, and all parties subject to this Declaration, specifically excluding the Town (collectively, the "Bound Parties"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Community without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any Court with respect to a Claim described below, unless and until it has first submitted such claim to the alternative dispute resolution procedures set forth herein in a good faith effort to resolve such claim.

c. As used in this article, the term "Claim" will refer to any claim, grievance or dispute arising out of or relating to:

- (i) the interpretation, application, or enforcement of the Declaration, the Declaration of Protective Covenants, the By-Laws, and Rules and Regulations adopted by the Board; or
- (ii) the rights, obligations, and duties of any Bound Party under the Declaration, the Declaration of Protective Covenants, the By-Laws, and Rules and Regulations adopted by the Board; or
- (iii) the design or construction of improvements within the Development.

d. The following will not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth above:

- (i) any suit by the Association to collect assessments or other amounts due from any Owner; and

- (ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the Court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of this Declaration; and
- (iii) any suit which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Declaration, the Declaration of Protective Covenants, the By-laws, and Rules and Regulations adopted by the Board; and
- (iv) any suit in which any indispensable party is not a Bound Party: (v) any suit brought by the Town, or any of its boards or commissions, alleging violations of any of the Permits and Approvals; and
- (v) any suit as to which any applicable statute of limitations would expire within one hundred and eighty (180) days of giving the Notice required below, unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this article.

### **Section 16.03 Dispute Resolution Procedures.**

a. Notice. The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") will give written notice to each Respondent and to the Board stating plainly and concisely:

- (i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim; and
- (ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises); and
- (iii) the Claimant's proposed resolution or remedy; and
- (iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

b. Negotiation. The Claimant and Respondent will make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

c. Mediation. If the parties have not resolved the Claim through negotiation within thirty (30) days of the date of the notice described above (or within such other period as the parties may agree upon) the Claimant will have thirty (30) additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the Greater Boston Metropolitan area.

d. If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant will be deemed to have waived the

Claim, and the Respondent will be relieved of any and all liability to the Claimant (but not third parties) on account of such claim.

e. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator will issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant will thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

f. Each Party will bear its own costs of the mediation, including attorneys' fees, and each Party will share equally all fees charged by the mediator.

g. Any settlement of the Claim through negotiation or mediation will be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this section. In such event, the party taking action to enforce the agreement or award will, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including without limitation, attorneys' fees and court costs.

**Section 16.04 Initiation of Litigation by Association.** In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association will not initiate any judicial or administrative proceeding unless first approved by a vote of the Members entitled to cast sixty-seven percent (67%) of the votes in the Association, excluding the votes held by Declarant, except that no such approval will be required for actions or proceedings:

- a. Initiated while Declarant owns any portion of the Property or the Development; or
- b. initiated to enforce the provisions of the Declaration, any Declaration, the Declaration of Protective Covenants, the By-laws, and Rules and Regulations adopted by the Board, including collection of assessments and foreclosure of liens; or
- c. initiated to challenge ad valorem taxation or condemnation proceedings; or
- d. initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- e. to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section will not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings except any such amendment will also be approved by Declarant for so long as Declarant owns any portion of the Property or the Community.

## Article XVII

### Indemnification of officers, Executive Board

**Section 17.01 Indemnification.** The Association shall indemnify every Executive Board member, officer and committee member, his heirs, executors and administrators, against all losses, costs and expenses, including attorneys' fees, reasonably incurred by him in connection with any action, suit or proceeding to which he may be made a party by reason of his being or having been an Executive Board member, officer or a committee member, except as to matters as to which he shall be finally adjudged in such action, suit or proceeding to be liable for gross negligence or willful misconduct. In the event of a settlement, indemnification shall be provided only in connection with such matter covered by the settlement as to which the Association is advised by counsel that the person to be indemnified has not been guilty of gross negligence or willful misconduct in the performance of this duty as such Executive Board member, officer or committee member in relation to the matter involved. The foregoing rights shall not be exclusive of other rights to which such Executive Board member, officer or committee member may be entitled. All losses, costs and expenses incurred or suffered by the Association by reason or arising out of or in connection with the foregoing indemnification provisions shall be treated by the Association as General Common Expenses; provided, however, that nothing contained in this Article shall be deemed to obligate the Association to Indemnify any member, who is or has been an Executive Board member, officer or a committee member of the Association with respect to any duties or obligations assumed or liabilities incurred by him under and by virtue of his membership in the Association.

## Article XVIII

### Amendments

**Section 18.01 Generally.** Subject to the Permits and Approvals and the other provisions of this Declaration relative to amendments, this Declaration may be amended in the following manner:

- a. Prior to the transfer of any Lot by the Declarant to a Lot Owner, the Declarant may amend this Declaration in any legal fashion as the Declarant may deem appropriate, provided such amendment is consistent with the Permits and Approvals. After such first transfer of title, the terms of the following subsections shall apply, provided, however, that any other provisions of this Declaration setting forth other conditions of amendment shall take precedence.
- b. An amendment may be proposed by either the Executive Board or twenty percent (20%) of the Lot Owners. No resolution of the Executive Board adopting a proposed amendment shall be effective unless it has been adopted by the affirmative vote of at least sixty-seven percent (67%) of the Lot Owners, Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting of the Executive Board in which a proposed amendment is considered, and shall be served upon all Lot Owners in the manner hereinafter provided for service of notices.



- c. In the alternative, an amendment may be made by an agreement signed and acknowledged by at least sixty-seven percent (67%) of the Lot Owners in the manner required for the execution of a deed, and such amendment shall be effective when recorded.
- d. No amendment of this Declaration or any action taken by the Association or its Executive Board, shall be made or taken which, in any way would affect any of the rights, privileges, powers and options of the Declarant, its successors or assigns unless the Declarant, or its successors or assigns, shall join in the execution of such amendment or consent, in writing to the action of the Association or Executive Board.
- e. A copy of each amendment shall be attached to or included with a certificate, certifying that the amendment was duly adopted, which certificate shall be executed and acknowledged by the officers of the Executive Board with the formalities of a deed. The amendment shall be effective when such certificate and copy of the amendment are recorded.
- f. If any amendment to this Declaration or the By-laws is necessary in the judgment of the Executive Board to change, correct or supplement anything appearing or failing to appear therein which is ambiguous, incorrect, defective or inconsistent with anything in either this Declaration, or the By-laws, or if such amendment is necessary to conform to the requirements of FNMA or FHLMC, the Executive Board may, at any time and from time to time effect an appropriate corrective amendment without the approval of the Lot Owners upon receipt by the Executive Board of an opinion from independent counsel to the effect that the proposed amendment is permitted by the terms of this paragraph.
- g. No amendment of this Declaration or any action taken by the Association or its Executive Board, shall be made or taken which, in any way would materially adversely affect the proper operation and maintenance of the Common Elements.

## **Section 18.02 Special Powers to Amend.**

- a. The Declarant reserves the right, acting unilaterally, to amend this Declaration by adding or deleting Lots to the Community. In the event of such an amendment, the total number of Lots in the Community shall include the amended total of Lots, and all budgeting and voting rights shall be proportionately adjusted in accordance therewith.
- b. The Declarant hereby reserves for itself, its successors and assigns, the right to execute on behalf of all contract purchasers, Lot Owners, mortgagees, other lienholders or other parties claiming a legal or equitable interest in the Common Elements, any such agreements, documents, amendments or supplements to this Declaration, together with other related documents, which may be so required by any such Institutional lender, governmental or quasi-governmental agency, or title insurance company designated by the Declarant to insure title to any portion of the Common Elements.
- c. By acceptance of a deed to any Lot or by the acceptance of any other legal or equitable interest in the Common Elements, each and every such contract purchaser, Member, mortgagee, or other lienholder, or any party having a legal or equitable interest in the Common Elements

does automatically and irrevocably name, constitute, appoint and confirm Declarant, its successors and assigns, as attorney-in-fact for the purpose of executing such amended Declaration(s) and other instrument(s) necessary to effect the foregoing, subject to the limitations set forth herein.

d. The power of attorney aforesaid is expressly declared and acknowledged to be coupled with an interest in the subject matter hereof and the same shall run with the title to any and all Lots and be binding upon the heirs, personal representatives, successors and assigns, of any of the foregoing parties. Further, said power of attorney shall not be affected by the death or disability of any principal and is intended to deliver all right, title and interest of the principal in and to said powers, said power of attorney shall be vested in the Declarant, its successors and assigns, for a period of five (5) years from the date the first Lot is conveyed to an individual purchaser, or until it conveys title to the last lot within the Development, whichever occurs first. Thereafter, said power of attorney shall automatically vest in the Association and may be exercised by the Board.

## **Article XIX Termination**

**Section 19.01 By Agreement.** This Declaration may be terminated with approval of the Town of Hopkinton Planning Board, along with agreement in writing in the form of a Deed of Revocation, executed by sixty-seven percent (67%) of the Lot Owners, together with the consent of all Lot Owners who own Lots that contain Common Elements. Termination must also be consistent with the Permits and Approvals, as the same may be amended.

**Section 19.02 General Provisions.** Upon termination of the Community, each Lot Owner shall thereby become a tenant-in-common with respect to ownership in fee and easement rights in the Common Facilities.

## **Article XX Notice**

**Section 20.01 Notice.** All notices required to be served upon Lot Owners pursuant to this Declaration or the By-laws shall be sufficient if delivered to the Lot or mailed to the Lot Owner at the Lot mailing address by regular mail. The effective date of a notice shall be the date of delivery to the Lot in the case of actual delivery and a date five (5) days after deposit in the mail in the case of notice sent by mail.

## **Article XXI Miscellaneous Provisions**

**Section 21.01 Severability.** If any provisions of this Declaration are determined to be invalid, that determination shall not affect the validity or effect of the remaining provisions hereof or the Bylaws or any Rules and Regulation, all of which shall continue in effect as if such invalid provisions had not been included herein.



**Section 21.02 Headings.** The headings herein are for reference purposes only and shall not affect the meaning or interpretation of this Declaration.

**Section 21.03 Compliance with Law.** The Association shall comply with all governmental laws, ordinances and regulations.

**Section 21.04 Effective Date.** This Declaration shall become effective when it has been Recorded.

**Section 21.05 Binding.** This Declaration shall inure to the benefit of and shall be binding upon the Declarant's successors or assigns.

**Section 21.06 Construction.** Number and gender, as used in this Declaration, shall extend to and include both the singular and plural and all genders as the context and construction require.

**Section 21.07 Disclaimer as to Community Systems.** In recognition of the fact that interruptions of Community Systems services will occur from time to time, the Declarant, and its successors and assigns, shall not in any manner be liable, and no user of the Community Systems shall be entitled to any refund, rebate, discount or offset in applicable fees, for any interruption in Community Systems services, regardless of whether or not same is caused by reasons within the control of the then-provider of such services.

**Section 21.09 Term; Renewable Term.** The term of this Declaration shall be governed by the provisions of M.G.L c. 184, Section 27, and may be renewed by the provisions set forth therein.

**Section 21.10 Governing Law.** This Declaration shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

**Section 21.11 Excusable Delays.** Whenever performance is required of any person under this Declaration, the Person shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing or other labor disputes, unavailability of labor or materials, damage to work in progress by reason of fire or other Casualty, inability or delays in receiving approvals or permits, provided such person has used all due diligence and good faith in seeking such approvals or permits in a timely manner, unforeseen site conditions, or any cause beyond the reasonable control of such Person, then the time for performance as specified in this Declaration shall be appropriately extended by the amount of the delay actually so caused. This provision shall not operate to excuse any person from the prompt payment of Assessments or other sums required to be paid under this Declaration.

**Section 21.12 Approval Rights.** Nothing contained in this Declaration shall limit the right of the Declarant, the Association and the Executive Board to exercise its business judgment or act in a subjective manner with respect to any matter as to which it has been granted such right and any such exercise shall not be deemed inconsistent with any covenant of good faith or fair dealing Implied by law to be a part of this Declaration. The Declarant, the Executive Board and the

Association may each act in its sole, commercially reasonable discretion and business judgment and, with respect to any requested consent and any such exercise, such action shall not be deemed to be inconsistent with any covenant of good faith and fair dealing otherwise implied by law to be a part of this Declaration.

**Section 21.13 Continuation.** No breach of this Declaration shall (a) entitle any Owner or other Person to cancel, rescind or otherwise terminate this Declaration or the Person's duties and liabilities under this Declaration; or (b) defeat or render invalid the lien of any mortgage or other lien made in good faith and for value as to any Lots; however, this limitation does not impair any other rights or remedies for the breach that a person may have under this Declaration or otherwise under applicable laws.

**Section 21.14 Binding Effect.** This Declaration, unless otherwise provided, shall upon recording run with the Property and the Declarant, Association, Executive Board, all Lot Owners, their successors and assigns shall be bound thereby.

For Declarant's title see the Deed recorded with said Registry at Book \_\_\_\_\_, Page \_\_\_\_\_.

For a Certificate of Vote of Declarant, see the Certificate recorded with said Registry at Book \_\_\_\_\_, Page \_\_\_\_\_.

IN WITNESS WHEREOF, the undersigned on behalf of Toll Northeast V Corp. has hereunto set his hand and seal as of the date first above written.

Toll Northeast V Corp.

\_\_\_\_\_  
By: Shawn C. Nuckolls, Division Senior Vice President

## COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2021, before me, the undersigned notary public, personally appeared Shawn C. Nuckolls, Division Senior Vice President of Toll Northeast V Corp., personally known to me and acknowledged to me that he signed the foregoing document voluntarily on behalf of Toll Northeast V. Corp. for its stated purpose.

\_\_\_\_\_  
Notary Public

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12-16-2022

<sup>DS</sup>  
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12-16-2022

**EXHIBIT 1.01  
PROPERTY DESCRIPTION**

Those certain Lots 1-29, together with easements in Hopkinton, Middlesex County, Massachusetts shown on a plan entitled: "Definitive Subdivision Plan, Chamberlain Street and Whalen Road, Town of Hopkinton, Middlesex County, Commonwealth of Massachusetts," prepared by Bohler Engineering, dated May 18, 2021, recorded with the Middlesex (South) Registry as Plan No. 560 of 2021 (12 Sheets).

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12-16-2022

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12-16-2022

### **EXHIBIT 3.01 COMMON ELEMENTS**

#### **Common Facilities**

Road rights of way and related utilities (until and unless accepted by Town of Hopkinton)  
Entrance Monuments and Landscaping, if any  
Infiltrators and Detention Basins, together with all piping, catch basins, swales and related facilities related thereto, including any gravel access drives to such facilities, and including improvements located within any drainage easement, together with landscape screening, if any, around such facilities  
The “French” drains and piping located on Lots 15-18  
The communal mailboxes located on Lots 1 and 29  
The sidewalk located on Lot 1

#### **Community Systems**

All Stormwater treatment systems associated with the Community Facilities  
The “French” drain system on Lots 15-18

#### **Community Services**

Operation and maintenance of road rights of way and related utilities (until and unless accepted by the Town of Hopkinton)  
Operation and maintenance of entrance monument and landscaping, if any  
Operation and maintenance of the Stormwater treatment system, together with landscape screening, if any.  
Operation and maintenance of the “French” drain system on Lots 15-18  
Operation and Maintenance of the communal mailboxes  
Operation and Maintenance of the portion of the sidewalk on Lot 1

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**EXHIBIT 3.01  
OPERATION AND MAINTENANCE SCHEDULE  
STORMWATER**

**Deep Sump Catch Basins Maintenance:**

Inspect Units,

Four times per year Clean Units

Clean Units

Four times per year or whenever the depth of deposits is greater than or equal to on half the depth from the bottom of the invert of the lowest pipe in the basin.

**Grass Channel Maintenance:**

Remove sediment from forebay annually

Remove sediment from grass channel annually

Mow monthly during growing season

Repair areas of erosion and revegetate as needed, but no less than once per year,

**Wet Water Quality Swale Maintenance:**

Inspect swales to make sure vegetation is adequate and slopes are not eroding. Check for rilling and gulying. Repair eroded areas and revegetate. The first few months after construction and twice a year thereafter

Mow dry swales as needed. Wet swales may not need to be mowed depending on vegetation.

Remove sediment and debris manually at least once per year

Re-seed as necessary

**StormCeptor Unit Maintenance:**

Inspect Units

Four times per year (recommended)

Clean Units

Although annual servicing is recommended, the frequency of maintenance may need to be increased or reduced based on local conditions (i.e. if the unit is filling up with sediment more quickly than projected, maintenance may be required semiannually, conversely once the site has stabilized maintenance may only be required every two or three years

**Cultec Chambers Maintenance:**

Inspect Units

Four times per year

Clean Units

Remove any debris that might clog the system. Include mosquito controls.

**Oil and Grit Separator Maintenance:**

Inspect Units

After every major storm but at least monthly

Clean Units

Twice a year

**EXHIBIT 3.01**  
**OPERATION AND MAINTENANCE SCHEDULE**  
**ENTRANCE MONUMENT AND LANDSCAPING**

Lawn Turf Areas (if applicable)

- Mow all turf areas weekly during growing season
- Apply pre-emergent herbicide in spring
- Fertilize all turf areas four times per year

Mulched Planting Beds (if applicable)

- Apply pre-emergent herbicide in spring.
- Re-apply mulch in spring as needed.
- Remove weeds that may develop in the beds twice during the growing season.
- Remove all leaves, dead Perennial foliage, and annuals in the fall.

Irrigation and Lighting Systems (if applicable)

- Startup irrigation system in spring and make all proper repairs.
- Adjust irrigation system schedule monthly during the growing season
- Winterize irrigation system in the fall.
- Inspect all lights for proper operation annually and repair as needed.

Entrance Sign & Monument (if applicable)

- Inspect all painted surfaces every two years and repair as needed.

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**EXHIBIT 10.07**  
**EASEMENTS AND ENCUMBRANCES**

1. Subject to and with the benefit of a drainage easement as shown on Land Court Plan 6506D.
2. Subject to and with the benefit of rights reserved in the Deed of Open Space Parcel A, recorded at Book \_\_\_\_, Page \_\_\_\_.
3. Subject to matters shown on that certain Easement Plan entitled: “\_\_\_\_\_”