

Declaration of Briggs Hill Covenants and Restrictions of Homeowners Association (Draft)

alpha echo 75 Outlook Limited Liability Company having its principal offices at 75 Outlook Dr. Lexington, ma 02421 and being owners of the property in the same address hereafter referred to as “Declarant” hereby makes the declaration of Covenants and Restrictions of the Homeowners Association for the 4 single family dwelling development hereafter referred to as “Briggs Hill” located in the same address, as follows:

1. Statement of Purposes

The purpose of this Declaration is to provide a mechanism for the continued maintenance of the common areas of the Briggs Hill development including its private street, drainage system, water and sewer lines, other utilities, and services such as landscaping and snow removal.

2. Definitions

The following words used in this declaration shall have the following meaning:

- a. “Briggs Hill” shall mean the 4 single family dwelling special permit development located at 75 Outlook Dr. Lexington, Ma 02421.
- b. “Association” shall mean Briggs Hill Homeowners Association whose members are the owners of Lots A, B, C, and D at Briggs Hill.
- c. “Maintenance Responsibilities” shall include maintenance of the common areas of the Briggs Hill development including its private street, drainage system, water and sewer lines, other utilities, and services such as landscaping and snow removal.
- d. “Common Expenses” shall mean all expenses incurred by the Association related to the Maintenance Responsibilities.
- e. “Common Street” shall mean the area in the Briggs Hill development that provides pedestrian and vehicular access to all the Lots.
- f. “Owner” shall mean the record owner, that can be one or more persons or entities, of the fee simple title to any Lots in the Briggs Hill development, but shall not refer to a holder of a mortgage secured by any Lot unless such mortgage has acquired title pursuant to foreclosure or a proceeding in lieu of foreclosure.
- g. “Lots” shall mean individual land parcels that resulted from the special permit subdivision development of Briggs Hill.

3. Protective Covenants

- a. **APPLICABILITY.** This Declaration shall be binding on the Declarant, successors in interest, and assigns, including subsequent Owners. The Covenants defined herein shall be contained in every deed of each Lot of the Briggs Hill development. Any Grantee who accepts a deed to a Lot in the Briggs Hill development agrees to be bound by the terms of this instrument.
- b. **THE ASSOCIATION.** Prior to conveyance of a Lot, the Declarant shall execute and record this Declaration, thereby forming the Association. The Owners shall be the holders of the obligations and interests of the Association. Each owner shall have an interest in the Association equal to one fourth and shall have one vote. The Owners shall appoint a Manager who shall be agent of and responsible for the duties of the Association. An Owner may be Manager. The Manager shall be entitled to compensation as determined by the owners. The Manager shall be held harmless by the Owners against any amounts paid on account, including reasonable expenses and attorneys' fees incurred in the defense of actions, suits proceedings or claims except for claims in connection with the Manager's willful misfeasance, bad faith, gross negligence, or reckless disregard of duty. The cost of compensation and indemnification shall be borne as Common Expense of Owners. The Manager shall be responsible for performing all obligations and any incidental thereto, of the Association as provided in this instrument. Any contact or other instrument signed by the Manager shall be responsible for performing all obligations and any incidental thereto, of the Association as provided in this instrument. Any contact or other instrument signed by the Manager shall be conclusive evidence in favor of every person relaying thereon or claiming there under that the contract or instrument was authorized by the Owners. No person shall be bound to inquire as to the validity of such instrument.
- c. **MAINTENANCE RESPONSIBILITIES.** The Association shall perform all work related to Maintenance Responsibilities necessary, including, without limitation, cleaning, upgrading, repairing the drainage system, and removing obstructions at such frequency to ensure continued effective functioning per recommendations of the firm that designed the system. If the Association fails to perform these obligations, the Town of Lexington shall have the right, but shall not be required, to perform such obligations. The Associations shall reimburse the Town of Lexington within (30) days for the reasonable costs which the Town of Lexington incurs in performing such obligations. Priors to conveying out the several Lots by recorded deeds, the Declarant shall be responsible for performing such obligations. The Owners shall also be equally responsible for snow removal and maintenance and repair of the Common Street surface serving these Lots.
- d. **ASSESMENTS AND LIEN FOR NON-PAYMENT.** The Declarant hereby covenants for each Lot owned by it, and each Owner by acceptance of Deed of Lot shall be deemed to covenant, to pay to the Association his/her pro rata share of all Common Expenses. Each Owner's pro rata share of Common Expenses shall correspond to such Owner's one fourth interest in the Association. At least thirty (30) days prior to the commence of each fiscal year of the Association, the Association shall estimate the Common Expenses expected to be incurred

during such fiscal year, together with any reasonable provisions for contingencies and reserves and, after considering any surplus profits from prior years. The Association shall promptly furnish copies of each budget on which such assessment is based to the Owners and render statements to the Owners for their respective shares of such assessment. Each Owner shall pay his/her pro rata share of the Common Expenses or any special assessment required by the Association for capital purposes, within thirty (30) days of receipt of a statement thereof. In the event that at any time and from time to time the association shall determine during any fiscal year that the assessment so made is less than the Common expenses actually incurred, or to be incurred, including but not limited to provisions for proper reserve funds, the Association shall make a special assessment and render statements therefore in the manner aforesaid and such statements shall be payable and take effect as set forth in such statements. In addition, the Association shall, to the extent necessary, set aside common funds to create reserves for the purpose of capital improvements to drainage system or any other common asset of the development. The annual and special assessments, if not paid when due, shall accrue interest at a rate equal to 2% (two percent) per month together with all expenses, including reasonable attorneys' fees, incurred by the Association in any proceeding brought to collect such assessments is made. The Association upon request shall issue a notarized, recordable Certificate signed by the Manager or all four Owners stating that the Owner's Common Expenses have been paid.

- e. EFFECT OF NON-PAYMENT OF ASSESMENT. Any assessment not paid when due determined as aforesaid shall be delinquent and a continuing lien on the Lot assessed until satisfied. Such assessment shall also be the personal obligation of the Owner. If the assessment is not paid within ninety (90) days after the date upon which the same is payable, the Association, other Lot Owners or the Town of Lexington may bring an action at law or in equity against the Owner liable therefore and there shall be added to the amount of such assessment costs and interest aforesaid, and the cost of processing the action to conclusion; and in the event a judgement is obtained, such judgement shall include interest on the assessment as above provided and reasonable attorney's fees. Upon written request by a first mortgagee of any Lot, the association shall notify such mortgagee of any default by a mortgagor.
- f. EASEMENTS. The provisions hereof may be enforced by the Declarant, by its successors and assigns I interest and any subsequent Owner or by the Association, and by the Town of Lexington through a civil action in any court of competent jurisdiction. Furthermore, the terms and conditions of the above-referenced decision must be enforced by the trustees of the Homeowners' Association to the extent necessary to comply, including, if necessary, any proceeding at law or in equity against any person or persons violating or attempting to violate any such condition or restriction, either to restrain the violation or to recover damages. If the trustees fail to enforce said conditions and/or restrictions, any Owner, or the Town of Lexington may bring a proceeding at law or in equity against any person or persons of the Association in violation therefore to enforce compliance with said conditions and/or restrictions.

4. General

- a. COUNTERPARTS. This Declaration may be executed in any number of counterparts, each of which, when recorded in the Registry of Deeds, shall be an original instrument, and all counterparts shall constitute one and the same instrument.
- b. ENFORCEMENT. These provisions hereof may be enforced by the Declarant, by its successors and assigns in interest and any subsequent Owner or by the Association, and by the Town of Lexington through a civil action in any court of competent jurisdiction. Furthermore, the terms and conditions of the above-referenced decision must be enforced by the trustees of the Homeowners Association to the extent necessary to comply, including if necessary any proceeding at law or in equity against any person violating or attempting to violate any such condition or restriction, either to restrain the violation or to recover damages. If the trustees fail to enforce said conditions and/or restrictions, any Owner, or the Town of Lexington may bring a proceeding at law or in equity against any person of the association in violation thereof to enforce compliance with said conditions and/or restrictions.
- c. SEVERABILITY. Invalidation of any one or more provisions hereof by Judgement or court order shall not affect the remaining provisions which shall remain in full force and effect.
- d. AMENDMENTS. This Declaration may be amended by written instrument signed by the Owners and approved by the Lexington Planning Board. An Amendment shall reference this Declaration and shall be effective upon recording in the Middlesex South Registry of Deeds.
- e. LIABILITY. Notwithstanding any provision of this instrument, the Declarant, upon conveying a Lot to a Grantee by recorded deed, shall thereupon be released from all liability hereunder for such Lot; and upon conveyance of all Lots as evidenced by recorded deeds, the Declarant shall be released from all duties, obligations and liabilities set forth in this Declaration.

Signed as a sealed instrument on this _____

alpha echo 75 Outlook LLC

Eduardo Alvarez, Manager