**DECLARATION OF COVENANTS**

**RESERVATIONS, RESTRICTIONS**

**AND EASEMENTS**

**FOR**

**TRAIL SIDE AT FRANCONIA NOTCH**

**FRANCONIA, NEW HAMPSHIRE**

 WHEREAS, as of April 24, 2012 **JAMES W. POWERS, INC.** relinquished his rights as Declarant to a common plan known as Trail Side at Franconia Notch, situate in the Town of Franconia, County of Grafton and State of New Hampshire hereinafter described. All such rights have been transferred to the landowners, whom as a group are registered with the State of New Hampshire, Department of State, Corporate Division as ‘Trail Side at Franconia Notch Association’, and has been assigned the Federal Employer Identification Number 45-4481846.

 WHEREAS, the HOA intends to oversee the development of single family dwellings in **Trail Side**, coupled with maintenance of easements surrounding the dwellings for the benefit of purchasers of such sites; and

WHEREAS, the successful conduct of such a plan requires the HOA to subject the land to a set of uniform rules and regulations, restrictions on use, mutual easements and servitudes, mutual privileges and obligations and to provide for the administration, amendment and repeal of the same, all of which must mutually benefit and burden all sites in order to accomplish said plan, to preserve and enhance the appearance, desirability and value of such sites and the improvements to be made thereon, and to provide for the efficient management and government of the Trail Side Subdivision,

 NOW, THEREFORE, the HOA hereby declares that all the property described in Schedule A hereof, including all improvements now existing or to be made or created thereon in the future, are hereby made subject to and shall be held, conveyed, encumbered, used and improved subject to the following reservations, restrictions, easements, covenants and limitations, all of which are hereby declared to be part of an integrated scheme for development

 of the property, to create reciprocal easements on each unit, in favor of all other Sites, to create reciprocal rights and privity of contract and estate between all persons owning or who may acquire an interest in said Sites, to run with the land and be binding upon all present and future owners thereof for the benefit of all present and future owners thereof and their heirs, representatives, successors and assigns.

SECTION 1. Definitions.

 (a) Association and/or HOA means the “Trail Side at Franconia Notch Association”, a voluntary, nonprofit corporation organized under the laws of the State of New Hampshire.

 (b) The Trail Side Subdivision means all the land described in Schedule A, and is subject to the provisions of the within Declaration.

 (c) Site means the land upon which one dwelling will be constructed. There shall be fifteen (15) sites in the Trail Side Subdivision, which are depicted on the site plan and are numbered 1 through 15, inclusively.

 (d) Declaration means this instrument in its entirety.

 (e) Person includes a corporation, any other legal entity and, when the context requires, the plural.

 (f) Member means any person who owns a site. It refers to membership in the Association. When used in relation to the Board of Directors of the Association, it means a member of that Board.

 (g) Owner means any person who owns a site, when the context requires, the plural.

 (h) By‑Laws means the By‑Laws of Trail Side at Franconia Notch Association as set out in Schedule B hereof as the same may be amended from time to time as provided therein.

SECTION 2. Architectural and Siting Review.

 No structure shall be commenced, erected, placed or permitted to remain on any portion of the Subdivision, nor shall any existing structure be altered, in any fashion which changes the exterior appearance thereof unless permission in writing to do so has first been obtained from the Board. The right to prohibit the construction or alteration of any structure which in the opinion of the Board is not well sited, or is not compatible with the style, appearance and value of existing structures of the architectural scheme and concept for the Trail Side Subdivision is specifically reserved by the Board. Not withstanding the discretion of the Board reserved herein, all homes shall contain at least **2000** square feet of finished living space and shall have at least a **two (2)** car garage, which may either be attached or detached. No manufactured housing or double‑wides will be permitted in this subdivision, however, at the discretion of the Board, modular homes will be permitted.

 Owners will submit plans to the Board for any construction or alteration in a form satisfactory to it, the right to enter and inspect any site to determine if such construction or alteration is in accordance with the approved plan, the right to require an Owner to remove or re‑alter any construction or alterations which are in violation of this section, and, if after ten (10) days written notice of a violation, the Owner has not commenced reasonable action to remove or terminate such violation, to enter said premises and to do such acts as are necessary to terminate or extinguish such violation, the cost of which shall be assessed in full to the Owner of the site and be a lien thereon, subject to foreclosure as provided in Schedule B hereof.

SECTION 3. Maintenance and Repairs.

 Each site and structure in Trail Side Subdivision shall be maintained by their respective Owners and shall be kept in good repair at all times. The site and any improvements thereon shall be kept in neat, orderly and in good repair at all times and no waste, refuse, or junk shall be allowed to exist. Unregistered and un-roadworthy automobiles must be screened out of view from roadways and adjoining lots. Boats, snow machines, boat trailers, and the like shall be stored so as to be out of view of any roadway and adjoining lot. All garbage or refuse placed outdoors shall be maintained in covered, bear-proof, sanitary containers and removed at frequent intervals and all such containers shall be screened from public view or enclosed in an appropriate shed. No tanks for storage of fuel shall be placed so as to be within view from any roadway unless such tanks are screened with appropriate plantings.

 Within twelve (12) months from the start of excavation for construction all landscaping of disturbed areas must be completed including finish grading, planting, seeding, application of mulch, gravel or pavement.

SECTION 4. Subdivision Roads.

As of Month, Date 2019, the maintenance of the portion of Franconia Mountains Road, also known as Trail Side Road, within the boundaries of Trail Side at Franconia Notch Association, has transferred to the Town of Franconia. The HOA no longer holds any responsibility for the maintenance of the road or any actions occurring on said road.

SECTION 5. Water.

 All sites shall be serviced by its their on-site water supply. Each site owner shall be solely responsible for installing, maintaining and repairing the on-site well and appurtenances.

SECTION 6. Sewer.

 Each site is designed to sustain its own septic system suitable for a single family dwelling. Each site Owner shall be solely responsible for installing, maintaining, repairing and replacing the septic system servicing his dwelling site.

SECTION 7. Subdivision.

 No site in the Trail Side Subdivision shall be further subdivided. Furthermore, no lot shall be used as a point of access to any adjoining property without the express written approval of the land owner(s).

SECTION 8. Easement.

 The HOA shall be responsible for maintaining the road and HOA-owned easement consisting of land emanating 25 feet from either side of center-line of the road. Other than culverts that may be placed within the HOA easement underneath individual driveways, maintenance of member access to their home (driveway) within the easement is the responsibility of the individual member.

 Every Owner shall have an easement of use and enjoyment, in common with others entitled thereto, over the two (2) “fifty (50) foot recreational right of way” as shown on the Plan, which easement shall be subject to the rights of other Owners of other Sites to similar easements and the rights reserved to the Association in the within Declaration, and the Deeds of record.

SECTION 9. Right to Alter Roads, Location of Amenities.

 The Board reserves to itself, its successors and assigns the right to change or alter the location of roads, the location or size of any paths, trails, parks or other amenities now existing or hereafter created, should it find that physical conditions require or make convenient such changes or alterations, provided, however, such change or alteration does not have a substantial adverse effect upon the value of any site not owned by any Member. Such changes may be reflected by an instrument executed solely by the Board notwithstanding any other provision to the contrary, which changes shall become effective upon recording of the instrument in the Grafton County Registry of Deeds. Any such alteration shall be subject to Franconia Planning Board approval.

SECTION 10. Association Membership Required.

1. Every Owner is and shall be a member of "Trail Side at Franconia Notch Association" and is subject to its By‑Laws and bound by its lawful acts. All property in Trail Side Subdivision is subject to the By‑Laws and other lawful acts of the Association.

 (b) Every Owner, by acceptance of his deed, consents and agrees to all the provisions of the By‑Laws of the Association, and specifically to those which impose a lien for unpaid assessments and authorizes foreclosure for nonpayment thereof in the same manner as a power of sale mortgage, and for said purpose each Owner by acceptance of his deed, thereby appoints the Association his true and lawful attorney for purpose of such foreclosure, which appointment may not be revoked, and which is binding upon his heirs, successors and assigns.

SECTION 11. Use of Recreation Easement.

 (a) All Owners of Sites in the Trail Side Subdivision have the right to use the “fifty (50) foot recreational right of way”, subject, however, to the following restrictions:

 (i) No waste shall be committed and specifically no trees, shrubbery or brush shall be cut, without the consent of the Association.

 (ii) No structures of any type or nature, however temporary, shall be erected, placed, or permitted on the **easement**, without the written consent of the Association.

 (iii) No snow machines, A.T.V. or other motorized vehicles of any type, size or description are permitted on the easement for recreational use, however, motorized equipment may be used for trail maintenance and grooming.

SECTION 12. Drainage

 As future siting and construction of dwellings on sites may result in a part or portion of the dwellings utilizing the area space over the common land surrounding the dwellings for the purposes of drainage, the owners of such dwellings shall enjoy easements for such encroachments and easements for encroachments upon the common land.

 The HOA reserves to itself, and assigns the right to install, maintain, repair and service drainage trenches, ditches, swales, culverts, catch basins and other surface or subsurface drainage installations upon, across or under any portion of the easement and/or the common road, known as Franconia Mountains Road. The HOA is responsible for maintaining drainage within the easement but not on personal property. If drainage of, or damage to, the road is being caused my unmaintained drainage on a Member’s site the Member will be notified and given the opportunity to correct the drainage problem. If the Member refuses or elects the HOA to take action on their behalf, correction of the problem will be sought at the Member’s expense.

SECTION 13. Nonresidential Use Prohibited.

 No structures other than a residence shall be constructed, placed or permitted upon any land in the **Trail Side** Subdivision. No Owner shall use his site for any purpose other than residential. This section shall not be construed to prevent any Owner from renting or leasing his site for residential purposes. Notwithstanding the foregoing sentence, home occupations shall be permitted to the extent of local ordinances.

SECTION 14. Nuisances Prohibited.

 No person shall make any use of any portion of the Trail Side Subdivision, which constitutes a nuisance or annoyance to the other Owners, which constitutes a fire hazard, which may result in the cancellation of any insurance on any part of the subdivision, or any site, or which is in violation of any law, ordinance or governmental regulation. No person shall engage in any activity which disturbs the peace and tranquility of any other lot. Such activities include but are not limited to late night noise, and loud music that can be heard outside of the structure. No use shall be made of any part of the subdivision which may increase the premiums on insurance covering any portion of the subdivision without the approval of the Association in writing.

SECTION 15. Signs.

 No signs shall be erected by a homeowner, except that each Owner may maintain a name and address sign not exceeding one square foot in size and a sign advertising that a site or improved site is being offered for sale subject to the restriction that any such "For Sale" sign shall be subject to such rules and regulations with respect thereto as may have been adopted by the Association.

Signage intended to support the ‘Purpose’ of the HOA, as defined in Section 2 of the By-laws and introduction to Covenants, will be permitted as long as it is approved by a quorum, is placed on HOA easement and is in compliance with Town of Franconia sign regulations.

SECTION 16: Outside Storage.

Each home may erect a detached woodshed and/or storage shed. Any such outside storage structure must be placed where it cannot be seen or observed by the general public or another Owner.

No clotheslines, television or radio antennas, garbage, trash, air‑conditioning equipment, clothing, snow machines or other personal property of similar nature shall be maintained, kept, stored, placed or left where it may be seen or observed by the general public or another Owner.

SECTION 17. Pets and Livestock.

 No livestock shall be kept or permitted in the subdivision. Birds, fish and animals of the type usually considered household pets may be kept in the dwelling units. All pets shall be appropriately restrained by a fence or leash, and the Petitioner owner will be responsible for cleaning-up after any pets staying at their home, and ensuring that pet’s behavior does not disturb other lot owners.

SECTION 18. Waiver.

 No provision of this Declaration, of the By‑Laws and/or of any rule or regulation of the Association shall be deemed to have been waived unless it is in writing and signed by the President of the Association. No such waiver in a particular instance shall be deemed a waiver in any other instance.

 Failure of the Association to perform any duty, exercise any right or do any act required, permitted or authorized by this Declaration in any instance, shall not be deemed a waiver thereof in any other instance.

 Acceptance of any fee or assessment shall not be deemed a waiver of any violation by the Owner making such payment, even if the existence of said violation is known to the Association.

SECTION 19. Amendment.

 Except as otherwise provided herein, this Declaration may be amended by two‑thirds of the total cast votes of members of the Association.

 IN WITNESS WHEREOF, Janet A. Levenson, duly authorized President, has caused this Declaration to be executed this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2012.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Janet A. Levenson, President

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness

STATE OF NEW HAMPSHIRE

COUNTY OF GRAFTON , 2012

BEFORE ME, personally appeared , duly authorized President of the Trail Side at Franconia Notch Association, who acknowledged the foregoing instrument to be a voluntary act and deed.

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Notary Public

SCHEDULE A

Lots 1 through 15 depicted on a plan entitled “Subdivision of Trail Side At Franconia Notch, Franconia, NH”, prepared by Kellogg Surveying & Mapping, Inc., approved by the Franconia Planning Board on and recorded in the Grafton County Registry of Deeds as Plan No. .