

DRAFT

DECLARATION OF COVENANTS AND RESTRICTIONS, EASEMENTS, AND MAINTENANCE AGREEMENTS

This Declaration is made this _____ day of _____, 2009, by Tofino Associates, Inc. ("Tofino") and Northern Avenue Homes, Inc. ("Northern"), the owners of two parcels of land with frontage on Northern Avenue, as shown on a plan of land entitled "North Street Condos, Special Permit Application....., Northampton, Massachusetts," dated _____, 2009, and recorded with the Hampshire County Registry of Deeds at Plan Book _____, Pages _____ (the "Special Permit Plan").

For Tofino's and Northern's ownership of the premises, see the following deeds:

WHEREAS Tofino intends to install a pressure sewer line and an 8" water line in the locations shown on Sheets _____ of the Special Permit Plans approved by the City of Northampton Planning Board for North Street Condos (the "Sewer and Water Lines") for the benefit of the dwelling units which are recorded in the Hampshire County Registry of Deeds in Book of Plans _____, Page _____;

WHEREAS Tofino intends to form a Condominium pursuant to MGL Ch. 183A covering the land shown on said Plans, Book _____, Page _____ the common areas of which Condominium will be managed and controlled by the Board of Trustees of the Condominium Association (or Homeowners Association) (the "Board of the Condominium Association"); and

WHEREAS the parcels are subject to a Decision of the Northampton Planning Board, dated _____, 2009, and recorded with said Registry of Deeds at Book _____, Page _____ (the "Planning Board Decision") and an Order of Conditions from the Northampton Conservation Commission, dated _____, 2009, and recorded with said Registry of Deeds at Book _____, Page _____ (the "Order of Conditions"); and

WHEREAS Tofino and Northern wish to provide for the on-going maintenance and repair of the roadway, sidewalks, the Sewer and Water Lines, and the Stormwater Management System, to establish a monitoring, inspection and maintenance system for the 35' No Disturb Zone to the wetlands, to maintain the Common Open Space, to establish utility and other easements to meet the requirements of the Planning Board Decision and the Conservation Commission Order of Conditions, and to establish other restrictions, covenants, rights, and obligations affecting the parcels;

NOW, THEREFORE, Tofino and Northern do hereby declare that the following provisions shall encumber and/or benefit the parcels, roadways, the Sewer and Water Lines, the Stormwater Management System, the 35' Wetlands No Disturb Zone, and the Common Open Space:

RESPONSIBLE PARTY

Prior to the formation of the Condominium Association, Tofino and Northern shall be responsible for the obligations set forth in this Declaration. Upon the formation of the Condominium Association, the Board of the Condominium Association, hereinafter singularly or collectively called the "Obliged Party," shall be solely responsible for the obligations set forth in this Declaration.

EXCLUSIVE USE ZONES

Each Unit shall have an exclusive easement for gardening and planting within _____ feet of the exterior of their Unit; however all planting must be approved by the Condominium Association and the Condominium Association reserves an easement through said Exclusive Use zones to run utility lines and water and sewer lines to serve the Units in the Condominium. Each Unit Owner shall own in connection with their Unit all sewer lines and piping from the interior of the building running through the foundation to the sewer ejector pump which shall also be owned by the Unit Owner for each Unit and Unit Owners will have an easement across the common areas and through the foundation for their respective sewer piping and sewer ejector pump.

ROADWAYS

The Obliged Party shall be solely responsible for: (a) the maintenance, repair, and reconstruction of all Roadways within the condominium development at all times so as to maintain it in a good and passable condition, including without limitation, deicing, snow removal, and paving; (b) the maintenance, repair, and reconstruction of any sidewalks located within the development at all times so as to maintain them in a good and passable condition, including without limitation, snow removal and paving; and (c) establishing Rules and Regulations governing the speed and use of said Roadways and said sidewalks, to be recorded hereafter at the Hampshire County Registry of Deeds.

The Roadways shall be maintained, repaired, constructed, and reconstructed at all times by the Obliged Party so as to be in a good and passable condition, including without limitation, paving and snow removal; and any grade of the said Roadways shall be reconstructed and maintained with a surface of bituminous concrete.

The Obliged Party shall meet a minimum of once each year to review the condition of the Roadways. The Obliged Party shall determine when, to what extent, and in what manner, maintenance, repairs, reconstruction, and other work on the Roadways shall be conducted. All decisions shall be determined by a majority vote of Tofino and Northern or the Condominium Association as the case may be.

If any of the Condominium Owners has work done which necessitates digging up the said Roadway and/or sidewalk for the sole benefit of said Condominium Owner, then said Condominium Association shall be responsible for returning the Roadway and/or sidewalk to its original condition and the Unit Owners who benefits from such work shall be responsible for paying for the cost thereof, and in the event Condominium

Unit Owner does not pay such work, the Condominium Association will have a lien on the Unit as a special common charge.

The Roadways and any related sidewalks and all easements granted herein shall remain private and the Obligated Party or Condominium Owners covered by this Declaration shall not petition that the City of Northampton take over the maintenance of the Roadways, other easements, or any related sidewalks as a public way. The Obligated Party shall not install a gate to prevent public access to the Roadways.

The City of Northampton is granted an easement to inspect View Avenue and to maintain, repair and reconstruct the portion of View Avenue that serves the existing houses on View Avenue.

SEWER AND WATER LINES

The Obligated Party shall be responsible for managing the Sewer and Water Lines, including providing for periodic inspections, coordinating any required maintenance, repair, and reconstruction over the lifetime of the Sewer and Water Lines, and establishing any reserve accounts it reasonably determines are necessary. Tofino and Northern shall have the right to install all water and sewer service in the first instance and all connections to said service for individual units.

If a unit is connected to the Sewer and Water Lines, the Owner of said unit shall contribute a proportional share of the costs of inspecting, maintaining, repairing, and reconstructing the Sewer and Water Lines, including making contributions to any reserve accounts established by the Board of the Condominium Association.

The Obligated Party shall be responsible for the inspection, maintenance, repair, and/or reconstruction of the Sewer and Water Lines as a private responsibility in accordance with the provisions of this Declaration; the City of Northampton shall have no obligation whatsoever with respect to the inspection, maintenance, repair, and/or reconstruction of the Sewer and Water Lines; and the Obligated Party shall indemnify and hold the City of Northampton harmless from any and all liability, expense, or cost of any kind with respect to the inspection, maintenance, repair, and/or reconstruction of the Sewer and Water Lines.

The City of Northampton is granted an easement to (a) inspect the Sewer and Water lines in View Avenue and (b) to perform maintenance and repair of the said Sewer and Water lines in View Avenue that serve the existing houses on View Avenue.

STORM WATER MANAGEMENT

The Obligated Party shall be responsible for the ongoing costs of all storm water management associated with the development in accordance with the Storm Water Management Plan on file with the City of Northampton Department of Public Works. The

Obligated Party shall be responsible for full and timely compliance with the Storm Water Management System Operation & Maintenance Plan, as follows:

1) Street Sweeping

Street and parking area sweeping shall take place twice annually.

2) Rain Garden

Two rain garden/bioretenion areas have been incorporated into the stormwater system to remove pollutants within the stormwater runoff. Both the pre-treatment stone diaphragm systems and bioretention areas should be inspected monthly for sediment build-up, litter and debris, structural damage and standing water. Inspect soil and repair eroded areas within the bioretention systems monthly and re-mulch void areas as needed. Treat diseased vegetation as needed. Remove and replace dead vegetation twice per year (spring and fall). Remove invasive species as needed to prevent them from spreading into the bioretention areas. Replace mulch every two years in the early spring. In the winter, it is important to ensure that snow is not plowed into the rain garden as this will cause the runoff to bypass the system without proper treatment.

3) Detention Basin (The following recommendations follow the MADEP Stormwater Policy guidelines.)

Inspections

(a) Initial six months of use: Examine for stabilization and function, including determination of the duration of water standing in the basin, any sediment erosion, excessive compaction of soils, or low spots.

(b) Twice per year: Examine basin for the following: differential settlement, cracking, erosion, leakage, or tree growth on embankments, condition of riprap, sediment accumulation, and health of turf where applicable. Any adverse conditions noted during any inspections shall be addressed by repair or reconsideration of design components.

Mowing and General Maintenance

Occasional mowing (1-2 times per year min.) shall be performed on the side slopes and basin bottom where turf is present. Accumulated grass clippings and/or organic matter and trash and debris shall be removed. Any clogged surface areas can be loosened by deep tilling; tilled areas must be immediately revegetated. Tilling may be used in this manner for no more than two consecutive maintenance periods. Thereafter, sediment in the clogged areas shall be removed, liner material replaced, and vegetation reestablished.

Dredging/Sediment Removal

Accumulated sediment shall be removed from the basin at five (5) year intervals, or as required to maintain the function of the stormwater management system as designed. During this process and until the disturbed sediment has settled, the outlet pipe shall be sealed so as to minimize the risk of conveying sediment beyond the basin.

4) Grassed Swales

Swales shall be mowed at least once per growing season to prevent establishment of woody growth and other undesirable plants that inhibit proper performance. Grass vegetation should not be cut shorter than 4". It is important not to engage in excessive mowing operations, as this keeps the grass too short and decreases the efficiency of the vegetation to reduce runoff borne sediments and velocities. Sediment and debris shall be removed manually at least once per year before the vegetation is adversely impacted.

5) Hooded Catch Basin and/or Drain Manhole with Sump

Oil and water separators should be inspected at least four times per year and cleaned annually or more often if required. Oil and sediments should be removed and disposed of in accordance with local, state and federal guidelines and regulations. In the case of an oil or bulk pollutant release, the system must be cleaned immediately following the spill and the proper authorities notified.

6) Stormwater Treatment Chambers

The Stormwater Treatment System requires minimal routine maintenance; however, it is important that the system be properly inspected and cleaned when necessary in order to function at its best. The rate at which the system collects pollutants will depend more heavily on site activities than the size of the unit, e.g. heavy winter sanding will cause the grit chamber to fill more quickly, but regular sweeping will slow accumulation. The water quality treatment system shall consist of **Stormceptor** or equal treatment chambers. For more detail of how the **Stormceptor** should be maintained see the **Stormceptor** Owner Manual.

7) Dry Wells

Dry wells basins have been incorporated into the stormwater system for the site to specifically receive roof runoff. Proper maintenance of roof gutters that drain to the system will help to protect the integrity of the infiltration basins. Sediments and debris should be removed and disposed of in accordance with local, state and federal guidelines and regulations.

The Obligated Party shall inspect the Drywells annually and repair or replace them as necessary.

The Obligated Party shall inspect the screens in the gutters at the top of the downspouts at least twice annually, and clean and/or replace the screens as necessary.

The Obligated Party shall inspect the downspout filter baskets at least twice annually, and remove any leaves and debris from the downspout filters.

8) Snow Removal

The stormwater management system is designed to accommodate volumes from snow melt. Since plowed snow from paved surface may contain sediment, oils and various pollutants, all snow melt from vehicular areas on the site shall be routed through the drainage system or removed from the site. Snow removed from the site shall be disposed of such that it or its melt will have no adverse effect on other resource areas.

Additionally, the Obligated Party shall submit to the Office of Planning and Development annually, no later than November 15th of each year: (1) maintenance reports with documentation on the conditions revealed by all inspections and (2) receipts for all cleaning and work for all items specified in the Inspection and Maintenance Schedule of the Storm Water Management Plan. Each such report shall indicate the status of each element of the Storm Water System covered by the Storm Water Management Plan.

The City of Northampton is granted an easement to (a) inspect the Storm Water System and (b) to perform specified maintenance obligations of the Obligated Party, if the City has notified the Obligated Party in writing that specified maintenance obligations must be performed by a date certain and the Obligated Party has failed to perform such maintenance obligations by such date.

SNOW REMOVAL AND MANAGEMENT PLAN

Snow shall be stockpiled only in the "Snow Melt Trenches" located adjacent to unit 1 and unit 13, as shown on the snow stockpiling plan (see Attachment ##), in a total of up to six parking spaces, or pushed off the parking area between units 2 and 3, units 6 and 7 and units 14 and 15. No snow shall be dumped or stockpiled directly into any Wetlands Resource Area or within 50 feet thereof.

The Obligated Party shall contract with a qualified vendor to maintain the pavers over the snow melt trenches, including vacuuming the pores in the pavers as needed.

The Obligated Party shall use Ice Ban, Magic Minus Zero, or an equivalent liquid deicing agent (not containing sodium chloride,) for routine deicing on the roadways. The Obligated Party reserves the right to use a commercially available sand mixture on the roadways if in a particularly severe or icy weather condition the aforementioned product is not sufficient to permit safe vehicular travel.

The regular use of sand is restricted to the paved sidewalks that are used as access from parking to dwelling units. Currently no vendors are available that can apply the above-mentioned, sodium chloride free, liquid deicing agent to sidewalks. The Obligated Party shall make an ongoing good faith effort to find a vendor that can apply the product to sidewalks and utilize said product if possible.

The Conservation Commission and DPW shall be notified by the Obligated Party where a violation of these requirements occurs.

35-FOOT WETLAND BUFFER NO DISTURB ZONE

The 35-foot buffer zone to the bordering vegetated wetlands shall be a No Disturb Zone unless otherwise authorized by the Northampton Conservation Commission. Permanent concrete markers set 2 feet above ground level and spaced no more than 25 feet apart, marking the 35-Foot Wetland Buffer No Disturb Zone must remain in place in perpetuity along the entire length of the 35-foot wetland buffer, except around the detention basin and where landscape retaining walls and a footpath along the 35-foot buffer zone are constructed. No activity, other than walking, birding, or other comparable passive recreational activities shall take place within the No Disturb Zone or the wetland resource area.

The Obligated Party shall contract with a qualified person, approved by the Conservation Commission, to annually inspect the 35-foot No Disturb Zone. This person shall provide to the Obligated Party and to the Conservation Commission an annual inspection report of (1) the integrity of the permanent markers, (2) the condition of the No Disturb Zone, including, but not limited to, any encroachment, erosion, destruction of vegetation, dumping of waste of any kind, including lawn clippings and other yard waste, and (3) whether any restoration is required. This report shall be submitted to the Conservation Commission by September 1 of each year.

The Obligated Party is solely responsible for the cost of the annual inspection and report, as well as any restoration deemed required by the Northampton Conservation Commission.

The City of Northampton is granted an easement to (a) inspect the 35-Foot No Disturb Zone and (b) to perform any necessary maintenance and/or restoration obligations of the Obligated Party, if the City has notified the responsible party in writing that specified maintenance and/or restoration obligations must be performed by a date certain and the Obligated Party has failed to perform such maintenance and/or restoration obligations by such date.

COMMON OPEN SPACE

The Obligated Party is forbidden by Condition ## of the Order of Conditions to use any lawn chemicals on the site. An annual acknowledgement of this requirement by the Obligated Party shall be provided to the Conservation Commission by September 1 of each year.

The Common areas and any lawn in the Exclusive Use Areas, will be maintained by the Condominium Association. All landscaping debris will either be mulched or disposed of off site. There shall be no work or dumping allowed in the 35-Foot Wetland Buffer No Disturb Zone. There shall be no structures erected in the said zone, and there shall be no structures built in the common areas without the written approval of the Condominium Association.

ESCROW ACCOUNT

The Obligated Party shall deposit \$12,000 in an interest-bearing Escrow Account to assure that the Obligated Party complies fully with its obligations under the Planning Board Decision, the Conservation Commission Order of Conditions, the Stormwater Management Plan, and the 35-Foot Wetland Buffer No Disturb Zone. The City of Northampton (the "City") shall be a co-signer on the account. The funds in the Escrow Account shall be owned by the Condominium Association and interest thereon shall be payable to the Condominium Association once the Condominium is formed; prior to such time the funds will be owned and interest paid to Tofino and Northern.

If the City has notified the Obligated Party in writing that specified maintenance, repair, and/or restoration obligations of the Obligated Party under this Declaration and the Planning Board Decision, the Conservation Commission Order of Conditions, the Stormwater Management Plan, and the 35-Foot Wetland Buffer No Disturb Zone must be performed by a date certain and the Obligated Party has failed to perform such maintenance, repair, and/or restoration obligations by such date, the City may expend funds from the said Escrow Account to perform the specified obligations. The City may thereafter assess or bill the Obligated Party for such expenditure in order to replenish and maintain the account at \$12,000. The Obligated Party shall have ninety (90) days to pay such an assessment and may assess the Unit Owners for their proportionate share of such expenditure. If the Obligated Party fails to pay or reimburse the City for the expenditure within ninety (90) days, the City shall have standing and the right to file an action against the Obligated Party to enforce the assessment, including the right to seek a prejudgment lien or other security for the enforcement of the assessment.

ASSESSMENT COLLECTION PROCEDURES

The failure of any party to abide by the provisions of this Declaration which affect the Roadway and Sidewalks, the Sewer and Water Lines, the Stormwater Management System, the 35-Foot No Disturb Zone, and the Common Open Space shall not act to forfeit that party's rights under the easements and rights granted above. However, if a Unit Owner fails to pay that Unit Owner's said proportionate share of the assessments on the date when due as stated in an assessment issued by the Board of the Condominium Association, as applicable, then such assessment shall become delinquent and shall, together with such interest thereon and the cost of collection thereof, become a continuing lien on the property which shall bind such property in the hands of the then owner(s) and his/her/its successors in record title. The personal obligation of the then owner(s) to pay such assessment, however, shall remain as his/her/its personal obligation and shall not pass to his/her/its successors in record title unless expressly assumed by them.

If the delinquent assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum, and the Board of the Condominium Association may bring an action at law against the delinquent Unit Owner or other person personally obligated to pay the same or to foreclose the lien against the property, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the Court together with the costs of the action.

The lien of the assessments provided for herein shall be subordinated to the lien of any mortgage or mortgages now or hereafter placed upon the properties subject to the assessment.

The lien provided for herein for payment of assessments may be enforced by sale at public auction of the Unit Owner's premises in accordance with the provisions of M.G.L. Chapter 183A and Chapter 254, Section 5A. The lien sought to be foreclosed shall include the aforesaid interest and legal costs and attorney's fees incurred as a result of the foreclosure proceedings.

The Condominium Association Board of Directors shall establish and elect one of their members to the position of Treasurer with respect to the maintenance and repair provisions of this Declaration. Upon request, and within seven (7) days after such request, the said Treasurer shall issue, in a form recordable with the said Registry of Deeds, a Certificate indicating that a Unit Owner is current in the Unit Owner's payment of assessments or, if not, the amount which is currently owed.

MISCELLANEOUS PROVISIONS

The obligations of a Unit Owner under this Agreement shall continue regardless of whether he or she resides in the Owner's Unit.

In order to ensure the continued maintenance, repair, and reconstruction of (Name of Street), the sidewalks, the Sewer and Sewer Lines, the Storm Water System, the 35-Foot No Disturb Zone and the Common Open Space, the rights and obligations established by this Declaration shall run with the fee simple ownership of the Units and the Units shall be conveyed together with and subject to this Declaration, as amended from time to time.

The Owners of the Units may modify any portion of this Declaration by the agreement of seventy-five (75%) percent of the then current Unit Owners (with such modifications to be in writing and recorded with said Registry of Deeds) so long as such modifications do not:

(a) materially interfere with: (i) the on-going maintenance of the roadways and the sidewalks in a good and passable condition, (ii) the on-going maintenance of the Sewer and Water Lines in a good and fully-functioning state, or (iii)

the on-going maintenance of the Storm Water System in a good and fully-functioning state, or (iv) the ongoing adherence to the 35-Foot No Disturb Zone, or (v) the ongoing maintenance of the Common Open Space; or

(b) modify any provision of this Declaration which is required by the Planning Board Decision and Special Permit granted by the City of Northampton.

(c). modify any provision of this Declaration which is required by the Conservation Commission Order of Conditions granted by the City of Northampton.

IN WITNESS WHEREOF TOFINO ASSOCIATES, INC. and NORTHERN AVENUE HOMES, INC., has caused to be affixed hereto and this instrument to be signed and sealed by DOUGLAS A. KOHL, their President and Treasurer, this ____ day of _____, 2009.

TOFINO ASSOCIATES, INC.

Witness

By _____
Douglas A Kohl
Its President and Treasurer

NORTHERN AVENUE HOMES, INC.

Witness

By _____
Douglas A Kohl
Its President and Treasurer

COMMONWEALTH OF MASSACHUSETTS

HAMPSHIRE COUNTY, SS.

On this ____ day of _____, 2009, before me, the undersigned notary public, personally appeared DOUGLAS A. KOHL, as President and Treasurer of Tofino Associates, Inc. and Northern Avenue Homes, Inc., proved to me through satisfactory evidence of identification (which was my personal knowledge as to his identity) to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Gloria McPherson, Notary Public
My commission expires: 9/4/2009.