



Declaration of The Enclave at South Portland Condominium

South Portland, Maine

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DECLARATION OF THE ENCLAVE AT SOUTH PORTLAND CONDOMINIUM

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DECLARATION OF THE ENCLAVE AT SOUTH PORTLAND CONDOMINIUM**ARTICLE 1
DECLARATION OF CONDOMINIUM PROPERTY**

THIS DECLARATION OF THE ENCLAVE AT SOUTH PORTLAND CONDOMINIUM ("Declaration") is executed by **ESPME, LLC**, a Maine limited liability company ("Declarant"), pursuant to the Maine Condominium Act, chapter 31 of Title 33 of the Maine Revised Statutes of 1964, as amended ("Condominium Act").

§1.1 Declaration of Property. The Declarant as the owner in fee simple of the land located on U.S. Route One in the City of South Portland and State of Maine described in **Exhibit A**, the buildings and improvements located thereon and subject to and together with all easements, rights, privileges and appurtenances thereto (collectively the "Property"), HEREBY SUBMITS the Property to the Condominium Act in accordance with this Declaration, and establishes a condominium as defined in Section 1601-103(7) of the Condominium Act ("Condominium") known as The Enclave at South Portland Condominium. The name of the Unit Owners' association is The Enclave at South Portland Condominium Association, a Maine nonprofit corporation (the "Association"). Initially, the Condominium consists of the Property and Buildings consisting of four (4) units known as Units 5, 6, 7, and 8.

As set forth in this Declaration, the Declarant reserves various Development Rights, Special Declarant Rights and easements, including without limitation the right to physically construct and legally create up to thirty-four (34) Condominium Units with associated Limited Common Elements.

§1.2 Applicability. This Declaration shall govern the Property. All present and future owners, occupants and tenants, their guests, licensees, invitees, employees, agents, and any other person entering on the Property shall be subject to this Declaration, the Bylaws of the Association and to such Rules and Regulations of the Association, all of which shall be deemed to be covenants running with the land, and shall bind any person having at any time any interest in or entering upon the Property.

§1.3 Defined Terms. Capitalized terms not otherwise defined in this Declaration or on the Plat and Plans shall have the meanings specified in the Condominium Act.

§1.4 Interpretation. In the event of any conflict or discrepancy between this Declaration, the Bylaws, the Rules and Regulations, and the Plat and Plans, the provisions of this Declaration shall govern.

ARTICLE 2 DESCRIPTION OF PROPERTY

§2.1 Description of the Property. A legal description of the Property included in the Condominium is set forth in Exhibit A. The location and dimensions of the Property included in the Condominium are depicted on the Condominium Plat entitled "Condominium Plat of The Enclave at South Portland Condominium" dated April 6, 2022 and amended through July 17, 2023 by Sebago Technics recorded in said Cumberland County Registry of Deeds in Plan Book 223 Page 383 (the "Plat"), a reduced copy of which is attached hereto as Exhibit B.

§2.2 Location and Dimensions of Buildings and Units. The term "Building" means any building erected or to be erected on the Property containing one or more Units, as well as other improvements comprising a part of a building or intended to be used for purposes incidental to the use of a building. The proposed location and dimensions of the Buildings and other improvements which may be erected on the Property, including Common Elements, are shown on the Plat as depicted on Exhibit B. Floor Plans for each Unit shall be recorded prior to the conveyance of any Unit.

The proposed location and dimensions of each Building and Unit are subject to change by the Declarant until such time as each Unit is legally created, and such improvements need not be built or may be built with configurations and locations different than those shown on the Plat and Plans, as further appears in Article 5 below.

§2.3 Recorded Plat and Plans. The original Plat and Plans and any amendments thereto shall be recorded with this Declaration in the Cumberland County Registry of Deeds.

§2.4 Condominium Documents. "Condominium Documents" means this Declaration, the Plat, the Plans, the Bylaws of the Association, and the Rules and Regulations adopted by the Board of Directors, and any amendments to any of the foregoing adopted from time to time.

ARTICLE 3 CONDOMINIUM UNITS

§3.1 Creation of Subsequent Units. Initially Units #5, #6, #7, and #8 are created under this Declaration. The Declarant has the right to create thirty (30) additional Units for a total of up to thirty-four (34) Units. For each Unit subsequently created pursuant to this Declaration, its Allocated Interests shall be set forth in an amendment to Exhibit C, and a description of such Unit including each Unit's identifying number, the locations and dimensions of the vertical boundaries and horizontal boundaries of each Unit, the Common Elements to which the Unit has direct access, and any other information necessary to identify the Unit shall be shown on the Plat and Plans.

§3.2 Description of the Units. "Unit" means a part of the Property designated for separate ownership or occupancy which has a direct exit to Limited Common Elements and Common Elements. For each Unit created from time to time pursuant to this Declaration, the identification number and approximate area are shown on the Plat and Plans of the Property as amended from time to time. Any internal room configuration shown on the Plans is illustrative only, and is not binding on an owner except that the structural support of the Building must be preserved.

Each Unit includes the following items:

- (a) All interior partitions (excepting those portions thereof which are load-bearing), interior doors and interior stairways wholly within the Unit;
- (b) Finish flooring, floor coverings, carpeting and the like, and finish wall and ceiling coverings (including paint, wallpaper, furring, gypsum board, moldings, and any other materials constituting any part of the finished surfaces thereof);
- (c) Windows, doors, and garage doors providing access to the Common Elements including their locks, hardware and glass, garage door tracks but excluding their frames, thresholds and sills;
- (d) Plumbing, kitchen and bathroom fixtures, the heating and ventilating equipment, water heaters, air conditioning systems and components thereof serving only a single Unit, if any, even if located outside of a Unit's boundaries, water heaters, kitchen appliances, and any fireplace(s) or hearth(s) provided that only propane, and no wood or other solid fuels, may be burned therein;
- (e) Electrical wiring, equipment outlets and lighting devices from the point where the feed wire enters the Unit's circuit breaker distribution box inwards, and portions of water and sewer utility lines, pipes and equipment serving only that Unit and located within its general boundary lines as herein described; and,
- (f) The interior of the attics, garage, attic above the garage, and, if a part of the unit, the basement.

A Unit generally does not include: the exterior walls, the roof, rafters and foundation, land; the pipes, wires, conduits, flues, ducts, pipes, or other heating and utility lines running through a Unit which serve more than one Unit or which serve the Common Elements or which serve another Unit.

Each Unit and the Common Elements shall have any easement for lateral and subjacent support from every other Unit and the Common Elements, and shall have the easement for encroachments established under Section 1602-114 of the Condominium Act. In addition, each Unit Owner has an unrestricted, perpetual right of ingress and egress to his or her Unit, which automatically transfers with a transfer of title to the Unit. Any conveyance, encumbrance, judicial sale, or other transfer (whether voluntary or involuntary) of an interest in the Common Elements shall be void unless the Unit to which that Common Element interest is allocated is also transferred.

§3.3 Unit Boundaries. The boundaries of each Unit subsequently created under this Declaration shall be shown on the Plat and Plans, and shall consist of:

(a) *Horizontal Boundary:* The upper and lower boundaries of each Unit are generally the following boundaries extended to an intersection with the vertical (perimeter) boundaries:

1. *Upper Boundary:* The planes at the lower surfaces of the roof or dormer rafter lines which directly support the roof sheathing, including the upper (outside) side of the gypsum board of the ceiling and any other materials constituting any part of the finished surfaces thereof, if any, extending to the intersection with the vertical boundaries.

2. *Lower Boundary:* The horizontal plane at the upper surface of the undecorated surface of the basement concrete floor slab extending to the intersection with the vertical boundaries.

(b) *Vertical Boundaries:* The vertical boundaries of each Unit shall be the vertical planes at the stud line at the exterior or outer-most surface of the gypsum-board, sheetrock, or other wall materials forming its exterior or common walls, extended to the intersections with each other and with the horizontal boundaries.

(c) *Interior Finishes.* The Unit shall include all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, wallpaper, finished flooring and any other materials constituting any part of the finished surfaces thereon located within the boundaries of the Unit.

(d) *Interior Space.* All other spaces, interior partitions and other fixtures and improvements within the boundaries of a Unit are a part of the Unit.

(e) *Relocation.* Relocation of boundaries between Units is permitted by amendment to the Declaration in compliance with the provisions of the Condominium Act. The subdivision of Units is not permitted.

§3.4 Allocated Interests. The term "Allocated Interests" means the Common Element Interest, the Common Expense Liability and the voting rights in the Association allocated to each Unit pursuant to this Declaration. The term "Common Element Interest" means the percentage of undivided interest in the Common Elements appurtenant to each Unit. The term "Common Expense Liability" means the allocation to each Unit of the respective liability for Common Expenses. Generally, the Common Expense Liability allocated to a Unit is a percentage equal to the Common Element Interest appurtenant to such Unit. The Allocated Interests of each Unit shall be set forth in Exhibit C.

The percentage of each Unit's Common Element Interest and Common Expense Liability is allocated by a formula represented by a fraction wherein the numerator is one (1) and the denominator is the total number of Units which have been created in the Condominium subject to rounding in order to permit ease of administration, provided however that the percentage stated in Exhibit C (as it may be amended) shall prevail in any

event. Each Unit shall each have one vote in the Association on a formula of one vote per Unit to permit equality among Units.

§3.5. Alterations by Unit Owner. Subject to this Declaration, the Bylaws and the Rules and Regulations of the Association as amended from time to time, a Unit Owner may make nonstructural improvements and alterations within the interior of the Unit. However, no Unit Owner may make any improvements or alterations or do any work whatsoever which would impair the structural integrity or mechanical systems or the walls separating units or life safety systems of a Building, lessen the support of any portion of the Condominium, or jeopardize the soundness or safety of the Property.

No Unit Owner shall alter any of the Common Elements or paint or otherwise change the appearance of the Common Elements (including without limitation the Limited Common Elements) or paint or otherwise change the exterior appearance of the Unit (including, but not limited to, the exterior surfaces of doors or windows leading to a Common Element or a Limited Common Element) or any other portion of the Condominium, without the prior written approval of the Board of Directors of the Association.

ARTICLE 4 COMMON ELEMENTS, LIMITED COMMON ELEMENTS

§4.1 Common Elements. The term "Common Elements" means the entire Property other than the Units, and includes:

- i. The land, together with the benefit of and subject to all the accompanying rights and easements described in Exhibit A, and all landscaping, vegetation, trees and drives;
- ii. The lawns, driveways, walkways, fences, if any, trails, sidewalks, and the improvements thereon and thereto including, without limiting the generality of the foregoing, landscaping, lighting fixtures, freestanding sign and mailboxes, not included within any Unit.
- iii. All utility lines, pipes, wires, electrical and transmission wires and conduits, any life safety systems, distribution pipes, pumping station, and water and sewer utility lines which serve more than one Unit or which serve one Unit only but are located outside its boundary line (excepting lines and equipment owned by public and municipal utilities and tanks and lines owned by the propane supplier);
- iv. All of the stormwater maintenance and management improvements, structures and fixtures (the "Stormwater Improvements") shown on the certain "Grading and Drainage Plans 1-3 of The Enclave at South Portland" prepared for Declarant by Sebago Technics dated April 6, 2022, last revised May 19, 2023,

as approved by the City of South Portland Planning Board (the "Stormwater Plan"), are Common Elements; and

- v. All other parts of the property necessary or convenient to its existence, maintenance and safety or normally in common use, except as otherwise expressly provided in this Declaration.

§4.2 Limited Common Elements. The term "Limited Common Elements" means those portions of the Common Elements where the exclusive use is reserved to one or more, but fewer than all, of the Units in accordance with this Declaration. Limited Common Elements, consist of the following:

The foundations, roof, exterior walls, chimneys, flues and all structural and load bearing portions of the buildings designed to serve a single Unit or Building but which are not a defined part of the Unit are Limited Common Elements allocated exclusively to that Unit or Building;

- i. For each Unit, an exterior parking space as shown and assigned as Limited Common Elements on the Plat and/or Plans;
- ii. Water, sewer or other utility lines, water heaters, electrical circuit breaker boxes and other fixtures designed to serve a single Unit or Building but which are not a defined part of the Unit are Limited Common Elements allocated exclusively to that Unit or Building;
- iii. The exterior deck or patio areas, walks, and the porch areas, if any, shown and assigned as Limited Common Elements on the Plans;
- iv. Any door steps, stoops, thresholds, doors and windows and their frames and sills and any other fixture designed to serve a single Unit but located outside its boundary, and the chimney, and flue, servicing a Unit;
- v. The air space above a Unit and the land and concrete slab and foundation below a Unit; and
- vi. the portions of the Property shown on the Plat and Plans or as described as Limited Common Elements pursuant to Section 1602-102(2) and (4) of the Condominium Act.

The allocation of Limited Common Elements cannot be altered except in compliance with the Condominium Act, and with the written consent of the Owners and Mortgagees of record of the Units affected by the reallocation of Limited Common Elements.

§4.3 Common Elements to Remain Undivided. The Common Element Interest of a Unit shall be inseparable from each Unit, and any conveyance, lease, devise or other disposition and any mortgage or other encumbrance of any Unit shall include the Common Element Interest, whether or not expressly referred to in the instrument making such transfer.

The Common Elements shall remain undivided and no action for partition or division of any party shall be permitted, unless otherwise provided by law and permitted by this Declaration.

§4.4 Alteration of Common Elements by the Declarant. Until all Units have been sold and the Declarant's obligations under purchase and sale agreements for all Units have been satisfied, the Declarant reserves the right to modify, alter, repair or improve portions of the Common Elements, including without limitation, any equipment, fixtures and appurtenances, and further reserves an easement over the Common Elements in order to discharge its obligations and to exercise any Declarant Rights, whether arising hereunder or under the Condominium Act; provided, however, that any alteration of the Common Elements relating to the maintenance, repair, replacement, administration and/or operation of the Stormwater Improvements must also be first approved in writing by the City of South Portland, acting by and through its Planning Board.

ARTICLE 5 DECLARANT'S RIGHTS AND PHASING

§5.1 Development Rights. The Declarant reserves the rights:

(a) Until the construction, marketing and sale of all Units is completed, including any future Units which may be created hereunder, to locate in the Common Elements and Units of the Property, even though not depicted on the Plat and Plans, and grant and reserve easements and rights-of-way for the installation, maintenance, repair, replacement and inspection of public utility lines, wires, pipes, conduits and facilities servicing or burdening the Property including, but not limited to, water, electric, telephone, cable television, fuel, sewer, and surface and subsurface drainage, provided however that no such easement shall be effective until of record, that no such easements may be granted through Units sold by Declarant to third party who is not a successor Declarant and that the Common Elements shall be promptly restored upon installation and repair;

(b) Until the construction, marketing and sale of all Units is completed, including any future Units which may be created hereunder, to connect with and make use of utility lines, wires, pipes and conduits located on the Property for construction and sales purposes, provided that the Declarant shall be responsible for the cost of services so used;

(c) Until the construction, marketing and sale of all Units is completed, including any future Units which may be created hereunder, to use the Common Elements for ingress and egress, for the construction, reconstruction, maintenance, repair, renovation, replacement or correction of the Units or Common Elements including without limitation the movement and temporary storage of construction materials and equipment, the right of vehicular and pedestrian access, the right to park motor vehicles, and for the installation of signs and lighting for sales and promotional purposes;

(d) Until the construction, marketing and sale of all Units is completed, including any future Units which may be created hereunder, to operate and relocate construction, sales, leasing and management offices; permit prospective tenants, purchasers, lenders, appraisers,

and others to visit the offices and use the Common Elements and use unsold Units for construction, sales, leasing and display purposes;

(e) Appoint and remove members of the Board of Directors and Officers of the Association in accordance with Section 6.2 of this Declaration;

(f) Until the construction, marketing and sale of all Units is completed (including any future Units which may be created hereunder), to approve of the creation of easements between adjoining Units or between a Unit and an adjoining limited common element in accordance with Section 4.4 of the Declaration in accordance with the standards set forth therein;

(g) Until the expiration of any applicable warranty established by law or agreement, the Declarant, its contractors, agents and employees shall have the right of entry into a Unit to perform warranty-related work, whether for the benefit of than Unit or any other Unit;

(h) Until the construction, marketing and sale of all Units is completed, including any future Units which may be created hereunder, to grant easements for a

(i) Those rights established under Sections 3.6 and 4.5 of the Declaration;

(j) Those rights established under the Condominium Act.

The exercise of Development Rights shall be subject to the following restrictions:

- i) No changes shall be made to the site plan and subdivision approval by the City of South Portland Planning Board on June 28, 2023 and the recorded site plan of The Enclave by Sebago Technics duly recorded in said Cumberland County Registry of Deeds in Plan Book 223, Page 207 unless any applicable approval is received pursuant to the City of South Portland's Land Use Ordinances to the extent applicable.
- ii) Site Location of Development, Natural Resources Protection and Water Quality Certification Findings of Fact and Order #L-25307-87-C-N and L-25307-TC-D-N dated December 9, 2022 and recorded in said Cumberland County Registry of Deeds in Book 39893, Page 317 unless any applicable approval is received.
- iii) Master Easement and Declaration of Covenants by between and among Kings Wood Park Condominium Association and JDR Trust II, dated January 18, 2011 and recorded in the Cumberland County Registry of Deeds in Book 28458, Page 277, as amended by that First Amendment dated April 11, 2023 and recorded in the Cumberland County Registry of Deeds in Book 40071, Page 334.

§ 5.2 PHASING. Declarant reserves the rights but not the obligation until seven (7) years from the date of the recording of this Declaration:

A. To create on the Property a total of up to thirty-four (34) Units, Common Elements and Limited Common Elements appurtenant to such Units on the land as described in the attached Exhibit A, all pursuant to Section 1602-110 of the Condominium Act. Said creation shall declare additional Units and Limited Common Elements may be composed of up to three(3) phases (each, a "Phase") known and identified on the Plat as "Phase 1" consisting of five (5) Buildings and ten (10) Units, "Phase 2" consisting of six (6) Buildings and twelve (12) Units, and "Phase 3" consisting of six (6) Buildings and twelve Units. The projected location and approximate dimensions of the Units, Buildings, and Limited Common Elements for said Phases are shown on the Plat and Plans. Said additional Buildings, Units and Limited Common Elements may not be built with the configurations or in the locations as shown on the Plat, and the DECLARANT EXPRESSLY RESERVES THE RIGHT TO VARY SUCH BUILDINGS, UNITS, LIMITED COMMON ELEMENTS AND THEIR LOCATIONS in its discretion, subject to the restrictions set forth in Section 5.1 above. Upon the addition of such Building Phases, which may occur in such stages and in such order as the Declarant determines, they shall be fully integrated into the Condominium as if this Declaration had been originally executed and recorded containing the additional Phase(s) and the Allocated Interests of the Units shall be reallocated in accordance with the formulas set forth in this Declaration and as more particularly set forth in the amendment adding said Building Phase(s).

All such future Units, Common Elements and Limited Common Elements *shall be* consistent with the initial Units in terms of the quality of construction, general architectural style and principal materials, provided that the Declarant may substitute construction materials and technique of equal or better quality and, upon the addition thereof to the Condominium need not be substantially completed but at the time of the sale to a third party must be substantially completed. All restrictions in or created by authority of this Declaration affecting the use, quality or alienation of Units *shall apply* to such Building Phases including, without limitation, the restriction to residential use. Declarant need not add said Building Phases or said Limited Common Elements to the Condominium and hence said Buildings, Units, Common Elements and Limited Common Elements NEED NOT BE BUILT.

B. Upon the addition of such Units to the Condominium, the Allocated Interests of all Units shall be reallocated in accordance with Section 3.4 of this Declaration and Exhibit C shall be amended accordingly.

C. To exercise any rights under this Section, the Declarant shall prepare, execute and record an amendment to the Declaration pursuant to the Condominium Act, which amendment may include a Plat and Plans as required by the Condominium Act to the extent not previously recorded. Said amendment shall become effective upon recording without the consent of any other person.

§5.3 Assignment. All or any part of the rights, powers or reservations of Declarant contained in this Declaration may be assigned by Declarant to any person or entity which will assume the duties and obligations of Declarant related to the rights, powers or reservations assigned. Upon the recording of an assignment of such rights, powers or reservations pursuant to which the assignee assumes the duties and obligations of Declarant related thereto, the

assignee shall become a successor Declarant as to such rights, powers or reservations assigned and shall have the same rights and powers and be subject to the same duties and obligations as are given to and assumed by Declarant herein, and Declarant shall be relieved from all liability with respect to the rights, powers, reservations, duties and obligations hereunder which are assumed by the assignee.

§5.4 Amendment, Waiver, Etc.

This ARTICLE 5 and Section 4.4 shall not be amended or waived without the consent of the Declarant duly recorded in said Cumberland County Registry of Deeds.

The rights and benefits of ARTICLE 5 and all other rights of Declarant set forth in this Declaration, the Bylaws or otherwise, as amended from time to time, may be transferred in whole or part by recorded instrument specifically referring to this Section and executed by Declarant and its successor or assignee.

The Declarant shall have the right to waive the Development and Special Declarant Rights reserved hereunder in whole or part by a written instrument provided that such waiver shall only be effective upon recording in said Cumberland County Registry of Deeds and such waiver shall be subject to the limitations of Section 1603-103(d) of the Act regarding Declarant Control of the Association.

ARTICLE 6 CONDOMINIUM ASSOCIATION

§6.1 The Association. The term "Association" means the association of the Unit Owners organized pursuant to Section 1603-101 of the Condominium Act as a nonprofit corporation under the Maine Non-Profit Corporation Act. The membership of the Association at all times shall consist exclusively of all Unit Owners, or in the event of a termination of the Condominium as provided in the Condominium Act, of all former Unit Owners entitled to distributions of proceeds, or their heirs, successors or assigns. Persons having an interest in a Unit solely as security for an obligation shall not be considered members.

Each Unit Owner shall automatically become a member of the Association, which membership shall continue as long as she or he continues as a Unit Owner, and upon the termination of the interest in the Condominium, his or her membership and any interest in the assets of the Association shall be automatically transferred and inure to the next Unit Owner or Owners succeeding him in interest.

The Association shall have all the powers granted pursuant to its Bylaws, the Condominium Act and the Maine Non-Profit Corporation Act.

§6.2 Board of Directors Powers; Declarant Control Period. Except as otherwise provided in Section 1603-103(b) of the Condominium Act, the Board of Directors may act on

behalf of the Association and shall have all of the powers necessary or appropriate for the administration of Association.

During the Declarant Control Period, the Board of Directors shall be composed of three

(3) natural persons. The term "Declarant Control Period" means the period which extends from the date of the recording of this Declaration until the earlier of (a) seven (7) years following the conveyance of the first Unit to a Purchaser or (b) sixty (60) days after the conveyance of seventy-five percent (75%) of the Units, other than a conveyance to a successor Declarant. The Declarant shall have the right during the Declarant Control Period to appoint, remove and replace from time to time any and all members of the Board of Directors, and officers of the Association, without the necessity of obtaining resignations. The directors appointed by the Declarant need not be Unit Owners.

Following the expiration of Declarant Control Period, the affairs of the Association shall be governed by a Board of Directors composed of no less than three (3) and no more than seven

(7) natural persons, the exact number of which shall be established by the Bylaws of the Association. A majority of the members at the Board of Directors shall be Unit Owners or spouses of Unit Owners or in the case of a Unit Owner which is a corporation, limited liability company, partnership, trust or estate or other legal entity, a designated agent thereof.

The transition from Declarant-appointed members of the Board of Directors to the Unit Owners generally shall occur no later than the earlier of (a) sixty (60) days after the conveyance of seventy-five percent (75%) of the Units to purchasers other than a successor Declarant, or (b) seven (7) years following conveyance of the first Unit to a Purchaser, or (c) at such earlier date as the Declarant in its sole discretion shall specify. Prior to the expiration of the Declarant Control Period, a transition meeting of the Association and a transition election shall be held at which all of the members of the Board of Directors and officers of the Association appointed by the Declarant shall resign, and the Unit Owners, including the Declarant if the Declarant owns any Units, shall thereupon elect a Board of Directors to act in the place and stead of those resigning.

By written notice duly recorded in said Cumberland County Registry of Deeds specifically referring to this Section, the Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board of Directors prior to the termination of the Declarant Control Period, but in that event the Declarant may require, for the duration of the Declarant Control Period that specified actions of the Association or Board of Directors, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before such action can become effective.

§6.3 Bylaws. The initial bylaws of the Association are attached hereto as **Exhibit D**.

§6.4 Rules and Regulations. The Board of Directors shall have the power from time to time to adopt, amend and enforce Rules and Regulations relative to the operation, use and occupancy of the Units and the Common Elements, consistent with the provisions of this

Declaration, Bylaws and the Condominium Act including, but not limited to, the appointment of such committees and the enactment and enforcement of such enforcement procedures and penalties for violations as the Board of Directors shall deem appropriate. Any such Rules and Regulations shall be adopted or amended, by means of appropriate resolutions duly approved by the Board of Directors. Notice of such Rules and Regulations and any amendment thereto shall be sent to each Owner or occupant of a Unit promptly after the adoption thereof, and shall bind all Owners, their heirs and assigns, any all tenants, invitees, guests and other persons entering upon the Property.

§6.5 Managing Agent. The Association shall have the right to employ a professional experienced property management firm to act as Managing Agent to oversee the daily operation of the Condominium in accordance with the provisions of the Act and the Condominium Documents; provided, however, that no agreement for such professional management of the Condominium may exceed a term of three years but may be renewed upon consent of the Association. Such agreement shall be cancelable by either party without cause and without a termination fee upon not less than 60 days nor more than 90 days written notice and shall be cancelable by the Executive Board with cause upon not less than 30 days written notice. Any agreement for professional management negotiated by the Declarant shall meet the requirements of this Article 6 for such agreements negotiated by the Association and shall not exceed one year, but may be renewed upon consent of the Association.

ARTICLE 7 COMMON CHARGES AND ASSESSMENTS

§7.1 Common Expenses and Service Charges. The term “Common Expenses” include, but are not limited to, such costs and expenses established by the Condominium Act, by this Declaration, by the Bylaws, or by the Board of Directors in connection with the administration, operation, maintenance and repair of the Condominium and the Property and the rendering to Unit Owners of all related services. Maintenance, repair and replacement of the Stormwater Improvements pursuant to the Stormwater Plan and compliance with the Stormwater Management System Maintenance Agreement executed by Declarant dated November 16, 2023, and recorded in the Cumberland County Registry of Deeds in Book 40486, Page 5 are Common Expenses.

The term "Limited Common Expenses" mean the Common Expenses associated with the maintenance, repair or replacement of a Limited Common Element, which shall be assessed against the Units to which the appurtenant Limited Common Element is assigned in proportion to the relative Common Expense Liabilities of such Units, as the Board of Directors may periodically establish and determine. If all Units have similar Limited Common Elements, then all Units shall pay such expenses in accordance with their Common Expense Liabilities.

The term “Service Charges” shall mean charges for services benefiting fewer than all the Units, which area assessed exclusively against the Unit or Units benefited in accordance with the use of such services as permitted by Section 1603-115(c) of the Condominium Act and the Bylaws.

All expenses for the administration, operation, maintenance and repair of the condominium and the Property shall be borne by the Unit Owners, by means of assessments as set forth herein. In accordance with the requirements of City of South Portland Planning Board, the City of South Portland shall have no responsibility whatsoever to provide services in connection with such administration, operation, maintenance and repair, including, but not limited to, services involving snow plowing, trash collection and the lighting of the roadways as shown on the Plan.

§7.2 Allocation and Payment of Assessments of Common Expenses. The total amount of common expenses shall be assessed to the Units as follows.

(a) The Common Expenses that are not otherwise assessed as Limited Common Expenses or Service Charges shall be assessed against all the Units in proportion to the relative Common Expense Liabilities as set forth herein.

(b) If the Board of Directors determine that a Limited Common Expense benefits more than a single Unit in a manner which is not uniform among all Units, then such Limited Common Expense shall be assessed solely against the benefited Units benefited in proportion to the relative Common Expense liabilities of such Units as between themselves, all as the Board of Directors may periodically determine. If a Limited Common Expense only benefits a single Unit, that Limited Common Expense shall be assessed solely against the Unit benefited, as the Board of Directors shall determine.

(c) For electricity, telephone and cable television services, and, if separately metered, water and sewer, each Unit Owner shall promptly pay the bills for such services consumed or used in his or her Unit. Any electricity serving the Common Elements, and water and sewer if not separately metered shall be assessed to each Unit as a Common Expense, subject of the right of the Association to submeter and then separately charge for water and sewer services supplied to the Units as Service Charges.

Fuel may be supplied through a central propane tank and distribution system. The propane tank and system may be owned by the propane supplier and separately billed to each Unit pursuant to a supply contract with the Association, and in accordance with such rules and regulations as may be established from time to time by the Association.

(d) Each Unit is subject to a lien in favor of the Association for the unpaid Common Expenses, Limited Common Expenses, Service Charges and penalties, fines, interest and costs of collection including reasonable attorneys' fees, all as provided in the Condominium Act, the Declaration and the Bylaws.

(e) In any event no later than 60 days after the first Unit is conveyed, all Units owners including the Declarant shall commence paying monthly common charges to the Association for all Units which have been legally created and submitted to the Condominium.

§7.3 Service Charges. The Association shall have the express power to separately assess a Unit and the owner thereof as a "Service Charge" for services rendered to that Unit. Such Service Charge assessments shall constitute a lien on the Unit with the same status as a lien for Common Expense liability assessments under the Condominium Act, this Declaration and Bylaws, which lien for service charges may be foreclosed in like manner as a mortgage on real estate. The recordation of this Declaration constitutes record notice of the lien. Service Charges shall include without limitation:

(i) If a Unit Owner, members of his family, guests or tenants requests the Association or its agent to perform repair and maintenance work on his Unit, or damages the Common Elements or safety systems or fails to perform maintenance and repair work required, the expense thereof as determined by the Board of Directors or its designee may be assessed as a Service Charge.

(ii) Fees, if any, which may be established by the Board of Directors for the use and maintenance of water, sewer and/or other utility services and equipment, and propane if provided by a central tank and not billed directly to the Unit by the supplier. Likewise, water and sewage services and propane if supplied to each Unit may be measured separately by such methods and systems established by the Board of Directors in their discretion. The expense of public utility charges for water and sewer services, for propane if provided by an on site central tank, and of associated equipment maintenance and repair and reasonable reserve allowances may also be calculated by the Board of Directors in their discretion and assessed monthly as a service charge to each Unit. For budgeting and working capital purposes, the Board of Directors may charge Unit Owners monthly in advance for such expenses based on its reasonable estimate thereof, subject, however, to such periodic reconciliation as the Board in its discretion may deem appropriate based on the measuring system adopted by the Board. At the election of the Board of Directors, the expense of capital improvements, major repairs or renovations to the water and sewer supply systems may be assessed either as a common expense or as a service charge. The expense of water and sewer services for the Common Elements may be assessed as a common expense or as a service charge at the election of the Board of Directors.

(iii) Insurance premiums for permanent improvements to Units installed by Unit Owners and insured by the request of the Unit Owner with the Association's hazard insurance carrier.

§7.4 Payment of and Lien for Assessments, Service Charges, Fines, Etc.

(a) Each Unit Owner shall pay to the Association or its designee the following amounts:

(i) on the first day of each month or on such other date that the Board of Directors may determine, one-twelfth (1/12th) of the common charges for Common Expenses including Limited Common Expenses, and Service Charges and revised Common Expenses including revised Limited Common Expenses, assessed against his Unit;

(ii) all special assessments and any other sums duly levied against the Unit pursuant to this Declaration, the Bylaws, the Rules and Regulations or the Condominium Act which are assessed against Unit Owners; and (iii) fines, penalties and fees as provided by this Declaration, the Bylaws or the Condominium Act, all interest and late charges and legal fees and other costs of collection thereof.

If for any reason the Association shall revise its annual budget and as a result the Common Expenses or Limited Common Expenses are increased, then commencing on the next day assessments are due each Unit Owner shall pay to the Association or its authorized representative such revised annual Common Expenses, including Limited Common Expenses, assessed against his Unit.

(b) The total annual assessment levied against each Unit for Common Expenses, Limited Common Expenses, Service Charges, any special assessment, other sums duly levied against the Unit pursuant to this Declaration, the Bylaws, the Rules and Regulations, or the Act, all interest and late charges, all legal fees and other costs of collection thereof, and all fines, penalties and fees as provided in this Declaration or the Bylaws: (i) shall constitute the personal liability of the Owner of the Unit so assessed; and (ii) shall, until fully paid, constitute a lien against the Unit in favor of the Association as provided in Section 1603-116 of the Condominium Act.

Such lien is prior to all other liens and encumbrances on a Unit except (a) liens and encumbrances recorded before the recordation of this Declaration, (b) a first priority mortgage recorded before or after the date on which the assessment sought to be enforced becomes delinquent, and (c) statutory liens for real estate taxes and other governmental assessments or charges against the Units; provided, however, that such lien is not subject to the provisions of 14 M.R.S.A. Section 4651 and 18-A M.R.S.A. Section 2-201, et seq., as they or their equivalents may be amended or modified from time to time.

If any assessment is payable in installments, upon a default by such Unit Owner in the timely payment of any two (2) installments in any fiscal year, the maturity of the remaining total of the unpaid installments may be accelerated at the option of the Board of Directors, and the entire balance of the assessment may be declared due and payable in full.

(c) The lien for assessments described in subparagraph (b) may be enforced and foreclosed by the Association in like manner as a mortgage on real estate as provided in the Condominium Act, or by any other means presently or hereafter provided by law or in equity. A suit to recover a money judgment for unpaid assessments, interest, fines, penalties, and costs of collection may be maintained against the Unit Owner personally without foreclosing or waiving the lien securing such assessments, and a foreclosure may be maintained notwithstanding the pendency of any suit to recover a money judgment.

(d) Upon a default in the payment of any amount due the Association or a violation of any provision of the Condominium Act, this Declaration, the Bylaws, or the Rules and Regulations of the Association, which violation continues after reasonable notice from the

Association to the Unit Owner, then that Unit and its occupants may be excluded from the use and enjoyment of any and all of the Common Elements not essential to access to the Unit, in addition to all other remedies available to the Board of Directors.

§7.5 Liability. Multiple owners of a Unit shall each be jointly and severally liable for all Common Expenses, Limited Common Expenses, special assessments, Service Charges, interest, fees, penalties and costs of collection. A grantee shall not be prevented from exercising any right to recover from the grantor such amounts paid for those assessments, common charges, etc. arising prior to the conveyance. A grantee or proposed purchaser for a Unit under a purchase and sale contract may obtain a statement from the Association setting forth the amount of unpaid common charges, assessments and service charges, late fees, interest and costs of collection against the Unit and such other items required by the Condominium Act, upon payment of such fee as may be established from time to time by the Board of Directors. The grantee shall not be liable for, and the Unit conveyed shall not be subject to a lien for any unpaid amounts due from the grantor before the statement date in excess of the amount set forth in the statement except interest, late fees and costs of collection accruing thereafter.

§7.6 Budget. The proposed budget adopted by the Association's Board of Directors shall be adopted unless rejected by a two-thirds (2/3) vote of all Unit Owners.

§7.7 Working Capital Fund. The Declarant shall establish a working capital fund for the Association equal to four months of assessments for Common Expenses, to be paid by each Unit purchaser at the initial transfer of title by the Declarant to the purchaser and shall be paid to the Association. Such fund shall be held in an account owned by and in the name of the Association, established at a Maine financial institution insured by the Federal Deposit Insurance Corporation or other equivalent federally sponsored insurance. No purchaser shall be entitled to a refund of such monies from the Association upon any subsequent transfer of a Unit.

ARTICLE 8 MAINTENANCE AND USE

§8.1 General Maintenance Responsibilities. The Units and Common Elements shall be maintained and repaired by each Unit Owner and the Association in accordance with the provisions of Section 1602-107(a) of the Condominium Act.

§8.2 Maintenance of Common Elements. Generally, the Association shall be responsible for the maintenance, repair and replacement of the Common Elements, including but not limited to, the Stormwater Improvements pursuant to the Stormwater Plan, snowplowing, yard maintenance, street lighting and trash pickup (unless provided by the municipality), all as determined by the Board of Directors. If such repair or replacement of the Common Elements shall be necessitated by the negligence, neglect or misconduct of fewer than all of the Unit Owners, in which case such cost shall be assessed to the Unit Owners responsible as a Service Charge.

§8.3 Maintenance of Limited Common Elements. Generally, the Association shall maintain, repair and replace the Limited Common Elements, all as determined by the Board of Directors. The Association may elect to wash exterior windows and assess the Units therefore as a Service Charge or as a part of the general Common Charges.

The Association may assess Limited Common Expenses applicable to particular Unit(s) to such Unit(s) if the item giving rise to the expense shall be uniquely for the benefit of such Unit(s) only. If such repair or replacement of the Limited Common Elements shall be necessitated by the negligence, neglect or misconduct of fewer than all of the Unit Owners, in which case such cost shall be assessed to the Unit Owners responsible as a Service Charge.

Provided however that each Unit Owner shall maintain the interior and exterior surfaces of door and window glass and remove snow and ice from rear deck Limited Common Elements appurtenant to the Unit, but the Association may elect to wash exterior windows and remove such ice and snow from walkways and steps and assess the Unit therefore as a Service Charge or as a part of the Common Charges.

§8.4 Maintenance of Unit/Repair Responsibility. Each Unit Owner shall keep and maintain her or his Unit and its equipment, appliances and appurtenances in good order, condition and repair and in a clean and sanitary condition, whether such maintenance and repair shall be structural or non-structural. Each Unit Owner shall do all redecorating, painting and varnishing which at any time may be necessary to maintain the good appearance and condition of such Unit. The Unit Owner shall maintain the interior surface of windows in the Unit, including periodic washing. No Unit Owner shall deposit any trash, dirt, debris or other substance from the Unit onto the Common Elements or Limited Common Elements, except in designated trash disposal areas.

The Board of Directors may adopt Rules and Regulations requiring the Unit Owners periodically to replace water heaters and washing machine hoses.

Each Unit Owner shall be responsible for all damage to any other Units or to the Common Elements resulting from his failure or negligence to make any of the repairs required by this Article. Each Unit Owner shall perform his responsibility in such manner as shall not unreasonably disturb or interfere with the other Unit Owners. Each Unit Owner shall promptly report to the Board of Directors or the managing agent any defect or need for repairs for which the Association is responsible.

To the extent that any damage to a Unit is covered by the Association's insurance, the Unit Owner shall be responsible for (i) payment of the first \$250 of the insurance deductible, if any (or such other amount established by the Rules and Regulations) and for (ii) uninsured damage to any Common Element for which the Unit Owner is otherwise responsible due to the fault or negligence of the Owner.

§8.5 Liability of Owner. Each Unit Owner shall be liable, and the Association shall have a lien against his Unit for, all costs of maintaining, repairing or replacing any portion of

another Unit or of the Common Elements including Limited Common Elements to the extent that such costs are caused by or attributable to such Unit Owner's act, neglect or carelessness or by that of such Unit Owner's guests, employees, agents, lessees, invitees, or their pets. The Association shall have the right to repair any damage so caused, to cure or correct the cause of the damage and to maintain or replace such damaged Unit or Common Element to the extent the Association deems necessary and appropriate. Such liability shall include any increase in insurance rates occasioned by uses, misuse, occupancy, or abandonment of any Unit or its appurtenances. Nothing herein contained, however, shall be construed to modify any waiver by insurance companies of rights or subrogation against such Unit Owner.

§8.6 Use and Occupancy Restrictions on Units. Each Unit shall be occupied and used subject to the following restrictions:

(a) *Age Restriction.* It is intended that the Condominium qualify for the adult community exemption under the Fair Housing Act. Accordingly:

(1) The deed for each Unit shall contain a certification by the grantee(s) under the penalties of perjury, that as of the date of execution of the deed, at least one of the occupants or Unit Owners has attained the age of fifty-five (55) and that the Unit will not be occupied by any persons under the age of eighteen (18).

(2) In the absence of fraud, the statement included on any deed for a Unit shall be conclusive on all questions as to the age of the prospective purchaser, tenant, or lessee in question; and in the absence of fraud, no conveyance, rental, or lease for which such statement has been made shall thereafter be deemed to be void or voidable.

(3) In the event of the death of the Unit Owner who has attained the age of fifty-five (55), and at least one heir or devisee has not attained the age of fifty-five (55), the Unit, the Unit must be sole or transferred as soon as is reasonably possible to a transferee or purchaser who has attained the age of fifty-five (55). Such transferee or purchaser shall also certify that at least one of the occupants or Unit Owners has attained the age of fifty-five (55) and that the Unit will not be occupied by any persons under the age of eighteen (18). No person under eighteen (18) years of age may reside permanently in any Unit.

(4) No person under the age of eighteen (18) shall occupy a Unit beyond (30) thirty consecutive or (60) sixty cumulative overnight stays in any calendar year. Upon prior written request by a Unit Owner, the Board may grant a short-term extension for extenuating circumstances.

(b) *Single Family Residential Use.* No Unit shall be used or occupied for any purpose other than for single family residential purposes, provided, however, that an occupant of a Unit may conduct business activities within the confines of such Unit so long as no signs are displayed, the Unit is not used for meeting with customers or third parties, and there is no noticeable increase in deliveries. Provided however that nothing in this Declaration or the Bylaws shall be construed to prohibit the Declarant from exercising any easements and

Special Declarant Rights reserved by the Declarant, including without limitation promotional, marketing or display purposes, sales of Units and for customer service purposes, or from leasing Units owned by Declarant as provided in this Declaration.

(c) *Insurance.* No activities shall be carried on or materials used or kept in any Unit or any in the Common Elements that will increase the rate of insurance for the Property, or any part thereof, without the prior written consent of the Board of Directors. No Unit Owner shall permit anything to be done or kept in his Unit or in the Common Elements which will result in the cancellation of insurance on the property, or any part thereof, or which would be in violation of any law, regulation or administrative ruling. No waste may be committed on or to the Common Elements.

(d) *Nuisance/Hazard.* No Unit shall be used so as to create a nuisance or an unreasonable interference with the peaceful possession or proper use of any other Unit or the Common Elements. No owner or occupant of any Unit shall carry on, or permit to be carried on, any practice which unreasonably interferes with the quiet enjoyment and proper use of another Unit or the Common Elements by the Owner or occupant of any other Unit, or which creates or results in a hazard on the Property.

(e) *Pets and Animals.* Except for household pets permitted below, the maintenance, keeping, boarding and/or raising of animals, including without limitation laboratory animals, livestock, poultry or reptiles of any kind, regardless of number, is prohibited within any Unit or upon the Common Elements. A Unit Owner may keep within such Unit up to a reasonable number of ordinary household pets in a Unit subject to the Rules and Regulations as established from time to time by the Board of Directors. In any event all pets and animals shall be restrained so as not to become noisome, bothersome or offensive to other persons, as determined by the Board of Directors. No dogs, cats or other pets shall be permitted outside of a Unit except on a leash attended by a responsible person. Pet owners shall promptly clean up the droppings left by their pets. The Association shall have the power to further regulate the keeping of pets and animals under the Bylaws or Rules and Regulations of the Association as promulgated or amended from time to time. Upon notice and opportunity to be heard, the Board of Directors may expel any offending pets and animals from the Property.

(f) *Fire Safety and Noise Control.* No person shall impair nor remove the any acoustical, sound-deadening, or fire-resistant material from the walls, floors or ceilings of a Unit without replacing the same with materials of equal or greater such qualities. Only propane may be used in a fireplace or heating stove, and no wood, coal or other solid fuel may be burned therein.

(g) *Trash.* Trash, garbage and other waste shall be kept only in sanitary containers and shall be disposed of in such manner as may be prescribed in Rules and Regulations established by the Board of Directors. No articles of personal property belonging to any Unit Owner shall be stored in any portion of the Common Elements.

(h) *Electrical.* No Unit Owner shall overload the electrical wiring in the Condominium. No Unit Owner shall operate any machinery, appliances, accessories or

equipment in such a manner as to cause, in the judgment of the Board of Directors, as appropriate, an unreasonable disturbance or make any alterations, repairs or modifications to or connection with the electrical or plumbing systems without the prior written consent of the Board of Directors, as appropriate. Additional major appliances may not be installed in a Unit without the prior written consent of the Board of Directors.

(i) *Governmental Requirements.* All Unit Owners, their families, guests and invitees shall comply with and conform to all applicable laws and regulations of the State of Maine, and all ordinances, rules and regulations of the City of South Portland. The violating Unit Owner shall hold the Association and other Unit Owners harmless from all fines, penalties, costs and prosecutions for the violation thereof or noncompliance therewith.

(j) *Leasing.* Any lease of any Unit shall be in writing and for a term of not less than one (1) year and at least one Lessee must have attained the age of fifty-five (55) and no one under the age of eighteen (18) will reside in such Unit. Any Unit Owner leasing any Unit shall provide a copy of the Lease to the Association together with evidence satisfactory to the Trustees that at least one Lessee has attained the age of fifty-five (55) and no one under the age of eighteen (18) will reside in such Unit.

§8.7 Use of Common Elements. Subject to this Declaration, the Bylaws or by the Rules and Regulations adopted from time to time by the Board of Directors pursuant to its powers, each Unit Owner, occupant, tenant, guest, visitor and invitee may use the Common Elements in common with all other Unit Owners and their occupants, tenants, guests, visitors and invitees, in accordance with the single family residential purposes for which they are intended, without hindering or encroaching upon the lawful rights of the other Unit Owners, upon the following terms:

(a) *Motor Vehicles and Parking.* Only passenger vehicles and trucks with a gross vehicle weight of less than 8,000 pounds may be kept or stored on the Property, and such vehicles must be in operable condition and fully licensed for operation on public highways. No motorized vehicles shall be used on the Property, except within the parking areas and on the streets as shown on the Condominium Plat.

No inoperable vehicles, nor any boats, recreational vehicles, snowmobiles, terrain vehicles or other vehicles or recreational equipment, trailers, or similar items may be kept or parked on the Property except within a fully enclosed garage forming a part of the Unit. No snowmobiles, all terrain vehicles or similar items may be operated on the Property.

Motor vehicles may be parked only in the driveway adjacent to each Unit designated as a Limited Common Elements and in those portions of the Common Elements designated from time to time by the Board of Directors for parking. No parking shall be permitted areas posted against parking by the Board of Directors, and no overnight parking shall be permitted in the streets. No parking is permitted in the turn around areas. Other than the driveway Limited Common Element appurtenant to each Unit or as the Board of Directors may permit from time to time, any Common Elements designated as spaces for parking shall be used by the Unit Owners on "first come, first served" basis. No unattended vehicle shall be left in such a manner as to impede the passage of traffic or to impair access to driveway or parking areas.

The Board of Directors may adopt such Rules and Regulations as it deems necessary or appropriate to further regulate parking.

(b) *Exterior Alterations.* Except with the written consent of the Board of Directors or as otherwise expressly provided in this Declaration, no person shall (i) alter the exterior appearance of a Unit (ii) construct or maintain any antennas, dishes, wires, cables, fences, decks, steps, signs, canopies, clotheslines or other structures, nor (iii) plant, trim, cut or remove vegetation, trees or shrubs, nor (iv) materially alter the grading or landscaping, nor (v) do any other thing which affects the appearance from the exterior of the Common Elements or Limited Common Elements.

The Board of Directors may in its discretion designate areas in which Unit Owners may plant flowers and annuals based on plans specifically approved by the Board and subject to the obligation of the Unit Owner to maintain such items in good condition and repair, failing which they may be removed by the Association at the Unit Owner's expense.

(c) *Signs.* No signs of any character shall be erected, posted or displayed from any Unit, Common Element or Limited Common Element without the prior written approval of the Board of Directors, except for such signs as may be posted by the Declarant for the promotional or marketing purposes as permitted herein or as permitted by the Condominium Documents. The Board of Directors shall have sole authority to erect the exterior sign or signs authorized by the City of South Portland. The Board of Directors may also erect or authorize directional and identifying sign(s) listing the name and location of each occupant of the Units.

(d) *Obstruction/Storage.* No Unit Owner shall obstruct any of the Common Elements nor shall any Unit Owner place or store anything on any of the Common Elements except those areas designated for parking by the Condominium Documents or as permitted by the Board of Directors.

(e) *Responsibility.* Neither the Board of Directors, the Association, any Unit Owner, nor the Declarant shall be considered a bailee of any personal property stored on the Common Elements (including vehicles parked on the Common Elements), whether or not exclusive possession of the particular area is given to a Unit Owner for storage or parking purposes. None of them shall be responsible for the security of such personal property or for any loss or damage thereto, whether or not due to negligence, except to the extent covered by insurance in excess of any applicable deductible.

(f) *Buffer Wetland Areas.* The use of the wetlands depicted on the Plat is governed by the Declaration of Covenants and in the Natural Resource Protection Act Permit ("Permit") issued by the Maine Department of Environmental Protection referenced in Exhibit A, and reference should be made to the Permit for the restrictions set forth therein, and to the restrictions which may be established by the municipality. There are penalties for violation of restrictions.

§8.8 Leasing. The Declarant shall have the right to operate any Units (even if not then created as Units) owned by the Declarant as a rental property, and may establish and maintain

offices, signs and other accouterments normally used in the operation of rental properties in the Declarant's discretion. Such rental operations shall be for the benefit of the Declarant; neither the Association nor any Unit Owner shall have any interest or right in the profits and losses from such operations.

ARTICLE 9 EASEMENTS

§9.1 Utilities, Pipes and Conduits. Each Owner shall have an easement, in common with all other Unit Owners, to use all pipes, wires, ducts, cables, conduits, public utility lines and other Common Easements serving his Unit and located in any of the other Units. Each Unit shall be subject to an easement in favor of other Unit Owners to use the pipes, ducts, cables, wires, conduits, public utility lines and other Common Elements serving such other Units and located in such Unit. The Association shall have the right to grant to third parties additional permits, licenses and easements over and through the Common Elements for utilities, ways, and other purposes reasonably necessary or useful for the proper maintenance and operation of the Condominium.

§9.2 Access. Subject to the terms of this Declaration, the Bylaws and the Rules and Regulations, each Unit Owner shall have an easement in common with all other Unit Owners to use the Common Elements as a means of access to and from his Unit.

§9.3 Association and Board of Directors Access. The Association and its officers and directors and such persons as may be authorized by the Board of Directors shall have the right of access to each Unit, as provided in Section 1603-107(a) of the Condominium Act for the inspection, maintenance, repair or replacement of the Common Elements and Limited Common Elements located in the Unit or accessible from the Unit or for making any addition or improvements thereto; or to make repairs to any Unit, the Common Elements or the Limited Common Elements if such repairs are reasonably necessary for public safety or to prevent damage to any other Unit, the Common Elements or the Limited Common Elements; or to abate any violation of law, orders, rules or regulations of the Association or of any governmental authorities having jurisdiction thereof. In case of an emergency, such right of entry shall be immediate whether or not the Unit Owner is present at the time. Upon request of the Association, each Unit Owner shall provide the Association with a copy of each key to the Unit.

§9.4 Encroachments. Each Unit and the Common Elements are subject to an easement for structural and lateral support in favor of every other Unit. If any portion of the Common Elements or Limited Common Elements hereafter encroach upon any Unit, or if any Unit hereafter encroaches upon any other Unit or upon any portion of the Common Elements or Limited Common Elements, as a result of settling or shifting of any building in which they are located, other than as a result of the willful or negligent act or omission of the owner of the encroaching Unit or of the Association in the case of encroachments by the Common Elements or Limited Common Elements, then a valid easement for the encroachment and for the maintenance of the same shall exist. In the event that a building is partially destroyed as a result of fire or other casualty or as a result of a taking by eminent domain or by deed in lieu of

condemnation and is subsequently rebuilt, encroachments due to such rebuilding shall be permitted, and valid easements appurtenant thereto shall exist.

§9.5 Ancillary Easements through Common Elements. The Common Elements (including, but not limited to, the Limited Common Elements) adjacent to a Unit are subject to the following easements in favor of the adjacent Unit:

(i) For the installation, repair, maintenance, use, removal and/or replacement of pipes, ducts, heating and air conditioning systems, electrical, cable television, telephone and other communication wiring and cables and all other utility lines and conduits which are a part of or serve any Unit and which pass across or through a portion of the Common Elements.

(ii) For the installation, repair, maintenance, use, removal and/or replacement of lighting fixtures, electrical receptacles, panel boards and other electrical installations which are a part of or serve any Unit but which encroach into a part of a Common Elements adjacent to such Unit; provided that the installation, repair maintenance, use, removal or replacement of any part of the Common Elements, adversely affect either the thermal, fire safety or acoustical character of the building or impair or structurally weaken the building.

(iii) For driving and removing nails, screws, bolts and other attachment devices into the Unit side surface of the studs which support the sheet rock or plaster perimeter walls bounding the Unit, the bottom surface of joists above the Unit and the top surface of the floor joists below the floor of a Unit to the extent such nails, screws, bolts and other attachment devices may encroach into a part of a Common Element adjacent to such Unit; provided that any such action will not unreasonably interfere with the common use of any part of the Common Elements, adversely affect either the thermal, safety, or acoustical character of the buildings or impair or structurally weaken the buildings.

ARTICLE 10 RIGHTS OF MORTGAGE LENDERS ON UNITS

§10.1 Right to Mortgage. Each Unit Owner shall have the right to mortgage or encumber his own respective Unit together with its appurtenant Allocated Interests. Except as provided by Section 1603-112 of the Condominium Act, a Unit Owner may not mortgage or encumber the Common Elements in any manner except as a component of the Allocated Interests appurtenant to his Unit.

§10.2 Identification of Mortgagee. A Unit Owner who mortgages his Unit shall notify the Board of Directors in writing of the name and address of his Mortgagee(s).

§10.3 Mortgage Foreclosure and Dispositions. Any holder of a first mortgage covering a Unit which obtains title to the Unit pursuant to a foreclosure or other exercise of the

remedies provided in the Mortgage or through deed in lieu of foreclosure after written notice of default which deed identifies the circumstances classifying it as such a deed shall take title to the Unit with its appurtenant Allocated Interests, free of any claims for unpaid assessments for Common Expenses, Service Charges, late fees, interest and costs levied against such Unit which accrued prior to the acquisition of title to such Unit by the Mortgagee, other than the proportionate share of the Common Expenses which become due and payable from and after the date on which the Mortgagee shall acquire title to the Unit through a completed foreclosure or deed in lieu of foreclosure.

In the event the Association adopts any right of first refusal or purchase option arising in the event of the sale or transfer of a Unit, it shall not impair the right of an institutional mortgage lender to foreclose its mortgage, to accept a deed in lieu of foreclosure after written notice of default which deed identifies the circumstances classifying it as such a deed, or to dispose or lease a Unit so acquired.

§10.4 Eligible Mortgage Holder. "Eligible Mortgage Holder" means the holder of record of a recorded first Mortgage encumbering a Unit (a "Mortgage") which has delivered written notice to the Association, by prepaid United States Mail, return receipt requested, or by delivery in hand securing a receipt therefore, stating: (a) the name and address of the holder of the Mortgage, (2) the name and address of the owner of the Unit encumbered by such Mortgage, (3) the identifying number of such Unit, and (4) containing a statement that such Mortgage is a recorded first mortgage. The Secretary or manager of the Association shall maintain such information.

Eligible Mortgage Holders shall have all rights specified in the Condominium Act. Furthermore after the filing of the request by an Eligible Mortgage Holder, the Board shall cause notice to be sent to the Eligible Mortgage Holders (and any insurers or guarantors of such mortgages identified in the request) of any one or more of the following events affecting the mortgaged Unit(s), if so requested.

- i. Default in the payment of Common Charges, Assessments, Service Charges, or other amounts due the Association which continues for Sixty (60) days or as required by the Condominium Act;
- ii. Default or violation of the Condominium Documents, or any proceedings by the Association relating thereto;
- iii. The expiration, cancellation or material modification of insurance required to be maintained under the Declaration or Bylaws of the Association;
- iv. A material amendment to the Declaration requiring the consent of Eligible Mortgage Holders;
- v. Termination of the Condominium pursuant to Section 1602-118 of the Condominium Act;

- vi. Change in the Allocated Interests of a Unit, voting rights, a change in Unit boundaries or the subdivision of a Unit;
- vii. The merger or consolidation of the Condominium with another condominium;
- viii. The conveyance or subjection to a security interest of any portion of the Common Elements; and
- ix. The lapse, cancellation or material modification of any insurance policy maintained by the Association or any use of any hazard insurance proceeds other than for repair or restoration of the Property.
- x. Such other events specified in the Condominium Act.

If in said request to the Association forwarded by an Eligible Mortgage Holder the mortgage is identified as being subject to the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Veterans' Administration, the Federal Housing Administration or other recognized institutional mortgage programs, then the Association shall maintain such hazard and other insurance policies and coverage required under said mortgage programs and identified in said notice from the institutional mortgage holder, to the extent such insurance is available to the Association.

§10.5 Mortgagee Approval Rights. For a material amendment to the Declaration or any of the actions specified below but subject in any event to the provisions of the Condominium Act, approval must be obtained from Eligible Mortgage Holders representing in the aggregate at least Fifty-One percent (51%) of the votes of Units subject to mortgages held by Eligible Mortgage Holders. An amendment affecting any of the following is considered material:

- i. Voting rights in the Association;
- ii. Change in percentage liability for common expenses, assessment liens for common expenses, priority of assessment liens, or the subordination of assessment liens, or increases in the assessments of more than 25% over the prior year;
- iii. Reduction in reserves for maintenance, repair and replacement of Common Elements;
- iv. Responsibility for maintenance and repairs;
- v. Reallocation of pro rata interests in the Common Elements, the Limited Common Element or rights to their use;
- vi. Alteration of the definitions of the boundaries of any Unit, including the partition or subdivision of a Unit;

- vii. Convertibility of Units into Common Elements or vice versa;
- viii. Expansion or contraction of the Condominium, or the addition, annexation or withdrawal of property to or from the Condominium;
- ix. Hazard insurance or fidelity bond requirements;
- x. Imposition of any restrictions on the leasing of Units;
- xi. Imposition of any restrictions on a Unit Owner's right to sell or transfer his or her Unit;
- xii. A decision by the Association to establish self-management after more than 50 Units have been created when professional management had been required previously by an Eligible Mortgage Holder or by the Condominium Declaration or the Bylaws;
- xiii. Restoration or repair of the Property (after damage or destruction, or partial taking by eminent domain or condemnation) in a manner other than that specified in the Declaration;
- xiv. Any action to terminate the Condominium after substantial damage destruction or condemnation occurs;
- xv. Any provisions of this Article and any other provision of this Declaration expressly benefits mortgage holders, insurers or guarantors; or
- xvi. Any provisions of this Article.

When Unit Owners are considering termination of the Condominium for reasons other than substantial damage, destruction or taking by eminent domain of the Condominium, the Eligible Mortgage Holders representing at least Sixty-Seven percent (67%) of the votes of Units subject to mortgages held by Eligible Holders must agree.

Approval shall be presumed when an Eligible Mortgage Holder is sent a written request for approval of a proposed amendment by registered or certified mail, return receipt requested, and then fails to submit a response within 30 calendar days after the notice is received.

§10.6 Mortgagee Priority. No provision of the Condominium Documents shall be deemed or construed to give a Unit Owner, or any other person, priority over the rights of any Eligible Mortgage Holder under its mortgage in the case of a distribution of insurance proceeds or condemnation awards for losses to or taking of Units, Common Elements, or both.

§10.7 Records. An Eligible Mortgage Holder may examine the books, records and accounts of the Association at reasonable times. The Association shall maintain current copies of this Declaration, the Association's articles of incorporation, Bylaws, and other

Rules and Regulations concerning the Condominium as well as its own books, records, and financial statements available for inspection by Unit Owners or by any Eligible Mortgage Holder, insurers, and guarantors of first mortgages that are secured by Units available during normal business hours. Upon written request, any Eligible Mortgage Holder may obtain an audited statement of the Association's fiscal affairs prepared by an independent certified public accountant once the Condominium has been established for a full fiscal year, which preparation shall be prepared at the Eligible Mortgage Holder's expense.

ARTICLE 11 INSURANCE

§11.1 General. No later than the date of the first conveyance of a Unit to a person other than the Declarant, the Association, shall obtain and maintain as a Common Expense, the policies of insurance described below to the extent such policies shall be reasonably available. If such insurance is not maintained, then the Association shall give written notice thereof to the Unit Owners and the Eligible Mortgage Holders. To the extent that such insurance subsequently becomes unavailable, the Association shall obtain as a substitution the most comparable insurance available. The Board of Directors is hereby irrevocably appointed as attorney-in-fact for each Unit Owner and for each Mortgagee and Eligible Mortgage Holder and for each owner of any other interest in the Property, for purchasing and maintaining the insurance, for the collection and disposition of any insurance, including distribution pursuant to Section 1603- 113(c) of the Condominium Act, for the negotiation of losses and execution of releases of liability, and for the execution of all documents, and performance of all other acts necessary to accomplish these purposes.

§11.2 Property and Casualty Insurance for Common Elements. The Association shall obtain and maintain in effect an "all-risk" fire and casualty insurance policy covering the Property with extended coverage, vandalism, malicious mischief, windstorm, debris removal, cost of demolition and water damage endorsements, issued by an insurance company authorized to do business in the State of Maine (which company shall also meet the ratings requirements of the Federal National Mortgage Association), insuring as a single entity the entire Property including all Common Elements, and the fixtures, supplies and common personal property belonging to the Association , *excepting* the land, foundations, excavations, and other similar items customarily excluded from property insurance policies and also *excepting* furniture, furnishings or other personal property supplied or installed by Unit Owners. The policy shall cover the interests of and name as insureds the Association, the Board of Directors, and all Unit Owners and their Mortgagees as their insurable interests may appear.

Such blanket or master insurance policy shall be in an amount equal to one hundred percent (100%) of the then current full replacement cost of the insured Property (exclusive of the land, excavations, foundations and other similar items customarily excluded from such coverage), without deduction for depreciation, together with coverage for the payment of common expenses with respect to damaged Units during the period of reconstruction. Such insurance policy may, at the option of the Board of Directors, contain such deductible as the

Board of Directors shall reasonably deem appropriate but not to exceed the lesser of \$10,000 or one (1) percent of the policy's face amount. Unless otherwise established by the Board of Directors from time to time, a Unit Owner shall pay the expense of repair of damage to his Unit in the initial deductible amount of \$250 (as such greater amount as may be revised by the Rules and Regulations adopted by the Board of Directors from time to time) not covered by the insurance; the Association shall not be responsible for the costs of repair of damage to the Unit in the amount of the Unit Owner's insurance deductible. Such casualty insurance policy shall also include the following provisions:

(i) The following endorsements or their equivalent: (a) "no control," meaning that coverage shall not be prejudiced by any act or neglect of any occupant or Unit Owner or their agents, when such act or neglect is not within the control of the insured, or the Unit Owners collectively, nor by any failure of the insured, or the Unit Owners collectively, to comply with any warranty or condition with regard to any portion of the Condominium over which the insured, or the Unit Owners collectively, have no control; (b) "Construction Code Endorsement" or "increased cost of construction," (c) "agreed amount" or elimination of co-insurance clause; and (d) "inflation guard," when it can be obtained.

(ii) That any "no other insurance" clause shall expressly exclude individual Unit Owners' policies from its operation, so that the physical damage policy purchased by the Board of Directors shall be deemed primary coverage and any individual Unit Owners' policies shall be deemed excess coverage, and in no event shall the insurance coverage obtained and maintained by the Board of Directors hereunder provide for or be brought into contribution with insurance purchased by individual Unit Owners or their Mortgagees;

(iii) The recognition of any Insurance Trust Agreement whereby the Board of Directors may designate in writing an Insurance Trustee to hold any insurance proceeds in trust for disbursement, as provided in Section 11.3 below; and

(iv) A standard "mortgagee clause" which shall: (a) provide that any reference to a mortgagee in such policy shall mean and include all holders of mortgages of any Unit, in their respective order and preference, whether or not named therein; (b) provide that such insurance as to the interest of any mortgagee shall not be invalidated by any act or neglect of the Association or owners or any persons under any of them; and (c) waive any provision invalidating such mortgagee clauses by reason of the failure of any mortgagee to notify the insurer of any hazardous use or vacancy, and requirement that the mortgagee pay any premium thereon, and any contribution clause.

§11.3 Casualty Losses, Adjustment and Payment; Insurance Trustee. Any loss covered by the insurance policy described in Section 11.2 above shall be adjusted with the Association acting through its Board of Directors, but the insurance proceeds shall be payable to the Insurance Trustee designated for that purpose, if any, as provided in the Condominium Act and otherwise to the Association, and not to any Mortgagee.

The Insurance Trustee or the Association as applicable shall hold any insurance proceeds in trust for Unit Owners, Mortgagees and other lien holders as their interests may appear. The Board of Directors shall cause the Insurance Trustee or the Association to obtain a surety bond in 100% of the amount of the insurance proceeds for the faithful performance of the duties as insurance trustee before it shall be entitled to receive such proceeds. Subject to the provisions of this Article, the Bylaws and Section 1603-113(e) of the Condominium Act, the proceeds shall be disbursed first for the repair or restoration of the damage to the Property. Unit Owners, Mortgagees and other lien holders are not entitled to receive payment of any portion of the proceeds, unless either (i) there is a surplus of proceeds after the damaged Common Elements and Units have been repaired or restored, or (ii) the decision has been made not to repair or restore the damage as provided in Section 1603-113(h) of the Condominium Act, or (iii) the Condominium is terminated in whole or part.

§11.4 Liability Insurance. The Board of Directors shall obtain and maintain, as a Common Expense, comprehensive general public liability insurance (including medical payments insurance) and property damage insurance in such limits as the Board may from time to time determine, insuring each Board of Directors member, the managing agent, each Unit Owner and the Declarant against any liability to the public or to the Unit Owners (and their invitees, agents and employees) covering all occurrences commonly insured against for death, bodily injury or property damage, arising out of the maintenance, ownership or use of the Common Elements, and for any legal liability resulting from suits or actions related to employment contracts to which the Association is a party. Such insurance shall be issued on a comprehensive liability basis and shall contain: (a) a cross liability endorsement, under which the rights of a named insured under the policy shall not be prejudiced with respect to his action against another named insured; (b) hired and non-owned vehicle coverage; (c) a "severability of interest" endorsement, which shall preclude the insurer from denying liability to a Unit Owner because of negligent acts of the Association or of another Unit Owner; and (d) a broad form liability extension endorsement including "personal injury," contractual liability, and other coverage commonly included in such broad form endorsement. The Board of Directors shall review such limits once each year, but in no event shall such insurance be less than one million dollars (\$1,000,000.00) covering all claims for bodily injury or property damage arising out of one occurrence.

§11.5 Additional Required Provisions. All insurance policies required to be carried by the Association under this Article shall in addition contain the following provisions or features:

- i. The insurer waives any right to claim by way of subrogation against the Declarant, the Association, the Board of Directors, the managing agent or the Unit Owners, and their respective agents, employees, guests and, in the case of the Unit Owners, the members of their households;
- ii. The Declarant, so long as the Declarant shall own any Unit, shall be protected by all such policies as a Unit Owner.

- iii. Each Unit Owner is an insured person under the policy with respect to liability arising out of the ownership of an undivided interest in the Common Elements or membership in the Association;
- iv. The insurer waives its right to subrogation under the policy against any Unit Owner or members of his household;
- v. No act or omission by any Unit Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and
- vi. If at the time of a loss under the Association's policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

§11.6 Other Insurance. The Board of Directors shall obtain and maintain as a Common Expense:

- (i) To the extent reasonably available, "directors and officers" liability insurance, to satisfy the indemnification obligations of the Association;
- (ii) Workers' compensation insurance, if and to the extent necessary to meet the requirements of law;
- (iii) Flood insurance if any or all of the Property is located in a special flood hazard area equal to the greater of 100% of the insurable value of the Property or the maximum coverage available under the appropriate national Flood Insurance Administration program. A blanket or master policy shall be obtained which includes a maximum deductible of the lesser of \$5,000 or one percent (1.00%) of the policy face amount; and
- (iv) Such other insurance as the Board of Directors may determine, as may be requested by a majority of the Unit Owners, or as may be required by Federal National Mortgage Association Guidelines (including, without limitation, fidelity bond coverage).

§11.7 Memoranda and Cancellation. All insurers that shall issue an insurance policy or policies under this Article shall issue certificates or memoranda of insurance to the Association, and, upon request, to any Unit Owner or Mortgagee.

All such insurers issuing the policy may not cancel (including cancellation for non-payment of premium), substantially modify, or refuse to renew such policy or policies until twenty (20) days after notice of the proposed cancellation of non-renewal has been mailed to the Association, the managing agent, each Unit Owner and each Mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

§11.8 Owner Insurance. Each Unit Owner should investigate and obtain at his or her own expense, a personal condominium insurance policy (for example, form type HO-6 as established by Insurance Services Office, Inc.) for damage to his or her Unit and personal property in the Unit for his or her own benefit including without limitation coverage for such portion of the deductible of the Association's deductible as the Owner may desire, for any special loss assessments made by the Association and for his or her personal liability; Each Unit Owner should also consider obtaining at his or her expense coverage for loss of use and/or lost rental income. Provided, however, that no Unit Owner shall be entitled to exercise his or her right to acquire or maintain such insurance coverage which would decrease the amount which the Association on behalf of all Unit Owners may realize under any insurance policy maintained by the Association, or cause any insurance coverage maintained by the Association to be brought into contribution with insurance coverage obtained by a Unit Owner. All such Unit Owner's policies shall contain waivers of subrogation in favor of the Association.

§11.9 Separate Insurance. Each Unit Owner shall have the right, at his own expense, to obtain insurance for his Unit and for his own benefit and to obtain insurance coverage upon his personal property and for his personal liability as well as upon any improvements made by him to his Unit under coverage normally called "improvements and betterments coverage;" provided, however, that no Unit Owner shall be entitled to exercise his right to acquire or maintain such insurance coverage which would decrease the amount which the Association on behalf of all Unit Owners may realize under any insurance policy maintained by the Association, or to cause any insurance coverage maintained by the Association to be brought into contribution with insurance coverage obtained by a Unit Owner. All such Unit Owner's policies shall contain waivers of subrogation.

At the request of the Association any Unit Owner who obtains an individual insurance policy covering any portion of the Condominium, other than improvements and betterments made by such Owner at his expense, and personal property belonging to such Owner, shall file a copy of such individual policy or policies with the Board of Directors within thirty (30) days after the purchase of such insurance. Such Unit Owner shall also promptly notify the Board of Directors in writing in the event such policy is canceled. Each Unit Owner shall notify the Board of Directors in writing of all structural improvements made by the Unit Owner to his Unit; provided, however, that this sentence shall not be construed as an authorization to Unit Owners to make structural improvements to Units otherwise than in accordance with this Declaration, the Bylaws and Rules and Regulations promulgated by the Board of Directors. Any premium increase caused by such improvements may be assessed to the Owner of the improved Unit. No Unit Owner shall be entitled to receive insurance proceeds for the repair, restoration or rebuilding of any such improvements not so reported to the Board of Directors, unless otherwise consented to by vote of the Board of Directors.

Notwithstanding any other provision of this Declaration, during the period a building or other associated improvements are under construction prior to the creation of Units therein, the Declarant shall be responsible for procuring casualty insurance on the building and the proceeds of such insurance shall be the exclusive property of the Declarant and its mortgagee.

**ARTICLE 12
DAMAGE OR DESTRUCTION.**

§12.1 Repair. Any portion of the Property damaged or destroyed shall be repaired or replaced promptly by the Association unless:

- i. The Condominium is terminated;
- ii. Repair or replacement would be illegal under any state or local health or safety statute or ordinance; or
- iii. One Hundred percent (100%) in interest of the Unit Owners vote not to rebuild, including every owner of a Unit or limited common area which would not be rebuilt, and including the consent of the Eligible Mortgage Holders as required herein.

The cost of repair or replacement in excess of insurance proceeds and reserves or not covered by any deductible shall be a common expense, provided that Unit Owners shall be responsible for \$250 of the insurance deductible for damage to their Units or such greater portion of the deductible established by the Rules and Regulations adopted from time to time by the Board of Directors.

§12.2 Application of Insurance Proceeds. If the entire Property is not completely repaired or replaced:

- i. the insurance proceeds attributable to the damaged Units and Common Elements shall be used to restore the damaged areas to a condition compatible with the remainder of the Condominium;
- ii. the insurance proceeds attributable to Units which are not rebuilt, including without limitation the interest in the Common Elements and in Limited Common Element, shall be distributed to such Unit Owners and their mortgagees; and
- iii. the remainder of the proceeds shall be held in trust to be distributed to the Unit Owners and their mortgagees in accordance with the Condominium Act.

Any loss covered by such insurance shall be adjusted with the Association, which shall exclusively represent all Unit Owners in any proceedings, negotiations, settlements or agreements. The insurance proceeds shall be paid to the Association as trustee for the Unit Owners and lien holders as their interests may appear. Mortgagees' liens shall transfer in order of priority to the insurance proceeds. Notwithstanding the provisions of this Section, Article 13 of the Declaration governs the distribution of insurance proceeds if the Condominium is terminated. If the members vote not to rebuild any Unit, that Unit's percentage interest in the Common Elements shall be automatically reallocated to the then remaining Units in proportion to their percentage interests prior to the reallocation, and the Association shall promptly prepare, execute and record an amendment to the Declaration reflecting the reallocation. Unless a Unit Owner has requested and received written confirmation from both the Association and the Association's hazard insurance carrier of

optional insurance coverage for the owner's permanent improvements and betterments within the Unit, the Unit Owner shall be responsible for the expense of repair or replacement.

Notwithstanding any other provision of this Declaration, during the period a building is under construction prior to its creation as a Unit and the time the Unit commences paying common charges, the Declarant shall be responsible for procuring casualty insurance on the building and the proceeds of such insurance shall be the exclusive property of the Declarant and its mortgagee.

ARTICLE 13 TERMINATION OF CONDOMINIUM

§13.1 Termination. In accordance with Condominium Act, the Condominium may be terminated in whole or part with the agreement of the Owners of Units to which at least eighty (80) percent of the Votes in the Association are allocated, and that percentage of Eligible Mortgage Holders required herein and the Condominium Act. Termination shall not bar the subsequent resubmission of the Property to the Condominium Act.

§13.2 Effect of Termination. Upon removal of the Property from the Condominium Act, the Unit Owners shall hold the Property and any proceeds thereof as tenants in common in accordance with the Condominium Act and subject to the Condominium Act with any mortgages or liens affecting a Unit to attach in order of priority against the resulting interest.

ARTICLE 14. EMINENT DOMAIN.

§14.1 Acquisition of Unit(s). If a Unit is acquired by eminent domain, to the extent the award is paid to the Association or is controlled by this Declaration or the Association, the award shall be applied to compensate the Unit Owner and his mortgagee(s), if any, for the Unit and its percentage interest in the Common Elements, whether or not any Common Elements are acquired. Upon acquisition of the Unit, its Allocated Interests shall be automatically reallocated to the remaining Units in proportion to their respective Allocated Interests before the taking, and the Association shall promptly prepare, execute, and record an instrument reflecting the reallocations.

If part of a Unit is acquired by eminent domain, to the extent the award is paid to the Association or is controlled by this Declaration or the Association, the award shall be applied to compensate the Unit Owner and his mortgagee(s), if any, for the reduction in value of the Unit and its interest in the Common Elements, whether or not any Common Elements are acquired. Upon such acquisition, (i) that Unit's Allocated Interests shall be reduced in proportion to the reduction in the size of the Unit, and (ii) the portion of the allocated interest divested from the partially acquired Unit shall automatically be reallocated to that Unit and the remaining Units in proportion to their respective Allocated Interests, with the partially acquired Unit participating in the reallocation on the basis of its reduced Allocated Interests

provided however, that each Unit shall continue to have one vote to permit equality among Units.

§14.2 Acquisition of Common Elements. If part of the Common Elements are acquired by eminent domain, the Association shall be entitled to payment of the award, subject, however, to the Condominium Act; generally the portion of the award attributable to the Common Elements taken shall be distributed to the Unit Owners and their mortgagee(s) in accordance with the Condominium Act, unless the Association rebuilds or acquires comparable elements. Any portion of an award attributable to the acquisition of a Limited Common Elements or as may otherwise benefit the Condominium as determined by a Court of competent jurisdiction must be equally divided among the owners of the Units to which that Limited Common Element was allocated at the time of acquisition in proportion to their interests in the Common Elements.

§14.3 Rights of the Association and Mortgage Holders. In the event of a proposed acquisition by eminent domain, the Association shall have the right but not the obligation to act and to intervene on behalf of Unit Owners. Nothing contained in this Declaration, the Bylaws or any rule or regulation adopted by the Association, however, shall entitle any Unit Owner or other person to priority over a first mortgagee of a Unit pursuant to its mortgage instrument in the right to receive eminent domain awards for the taking of Units and/or Common Elements.

ARTICLE 15 AMENDMENTS

§15.1 General. Certain amendments to this Declaration may be made unilaterally by the Declarant in accordance with this Declaration and the Condominium Act. In addition, certain amendments may be unilaterally executed and recorded by the Association as described in Condominium Act Sections 1601-107, Eminent Domain, 1602-108(c), Allocation of Limited Common Elements, 1602-112(a), Subdivision of Units and 1602-117(a), Amendment of Declaration, and certain amendments to this Declaration may be made by certain Units in Sections 1602-108(b), Reallocation of Limited Common Elements, 1602-112(a), Relocation of Boundaries Between Adjoining Units, 1602-113(b), Subdivision of Units, or 1602-118(b) of the Condominium Act. Notwithstanding any other provision of this Declaration to the contrary, any amendment of this Declaration relating to the maintenance, repair, replacement, administration and/or operation of the Stormwater Improvements must also be first approved in writing by the City of South Portland, acting by and through its Planning Board.

Otherwise subject to the other provisions of this Declaration and of the Condominium Act, the Declaration and the accompanying Plats and the Plans may be amended as follows:

- (a) *Before Any Conveyance.* Prior to the conveyance of any Unit by the Declarant to a third party purchaser (other than as security for an obligation), the Declarant shall have the

right to unilaterally amend and re-amend this Declaration in any manner that the Declarant may deem appropriate.

- (b) *After First Conveyance.* After the first conveyance of Unit by a Declarant to a third party purchaser, the terms of the following procedures shall apply to an amendment of this Declaration:
- (i) *Development and Special Declarant Rights.* Notwithstanding any other provision of this Declaration, the Declarant acting unilaterally may record amendments to this Declaration which result from the exercise of Development and Special Declarant Rights pursuant to this Declaration and/or the Act.
 - (ii) *Proposal and Notice.* An amendment to the Declaration may be proposed by either the Board of Directors or by Unit Owners holding at least twenty (20) percent of the votes in the Association. Notice of the subject matter of a proposed amendment, including the proposed text thereof, shall be included in the notice of any meeting in which a proposed amendment is to be considered, and such notice shall be given to all Unit Owners and all eligible Mortgage Holders.
 - (ii) *Approval.* The amendment shall be adopted if it receives the affirmative vote or written consent of Sixty-Seven percent (67%) or more of the total percentage in interest of all votes in the Association in all cases and such Eligible Mortgage Holders as may be required herein. Unit Owners and mortgagees may express their approval in writing or by proxy. Provided however that no amendment may change the uses to which a Unit may be put without the unanimous consent of the owners of Units affected. Except as specifically provided to the contrary in this Declaration or the Act, no amendment may alter the boundaries of a Unit or the Allocated Interests allocated to a Unit without the unanimous consent of all affected owners.
 - (iii) *By Written Agreement.* In the alternative, an amendment may be made by an agreement signed by the record Owners of Units to which are allocated one hundred percent (100%) of the Units in the manner required for the execution of a deed and acknowledged by at least one of them, together with any required approval by Eligible Mortgage Holders, and such amendment shall be effective when certified and recorded as provided below.

§15.2 Proviso; Consent of Declarant. No amendment of this Declaration shall make any change which would in any way affect any of the rights, privileges, powers and options of the Declarant, its successors or assigns, unless the Declarant shall approve such amendment.

§15.3 Notice, Execution and Recording. After each amendment to this Declaration adopted by the Association pursuant to this Article has been recorded, notice thereof shall be sent to all Unit Owners and to all Eligible Mortgage Holders, but failure to send such notices shall not affect the validity of such amendment. A certificate of each such amendment shall be executed and acknowledged by such officer(s) or director(s) of the Association designated for

that purpose by the Bylaws. The amendment shall be effective when such certificate and copy of the Amendment are recorded.

§15.4 Notice and Challenge. No action to challenge the validity of an amendment to this Declaration adopted by the Association may be brought more than one (1) year after such amendment is recorded.

ARTICLE 16 GENERAL PROVISIONS

§16.1 Enforcement. The failure to comply with the terms of this Declaration, the Bylaws and the Rules and Regulations adopted pursuant thereto shall entitle the Association to

(a) take court action, including without limitation suit for injunctive relief, and/or (b) take such further action as permitted under the Bylaws, and/or (c) enter the Unit or Common Elements in which such violation or breach exists and summarily to abate and cure the violation at the expense of the defaulting Unit Owner, and the Board of Directors shall not be deemed guilty in any manner of trespass when enforcing these terms. The exercise of any one remedy shall not preclude the exercise of other remedies provided by law, the Condominium Act, this Declaration or in the Bylaws. In any such enforcement action or proceeding the Association shall be entitled to recover the costs of the proceeding, including reasonable attorney's fees and costs, with interest.

The failure of the Board of Directors to enforce any covenant, restriction or other provision of the Condominium Act, the Bylaws or the Rules and Regulations adopted pursuant thereto, shall not constitute a waiver of the right to do so thereafter.

§16.2 Units Not Yet Separately Assessed. In the event that for any year real estate taxes are not separately taxed and assessed to each separate Unit Owner but are taxed on the Property as a whole, then each Unit Owner shall pay his proportionate share thereof in accordance with his respective Common Expense Liabilities.

§16.3 Conflict. If any provision of this Declaration, the Bylaws or the Rules and Regulations conflicts with any applicable laws, including, but not limited to, the Condominium Act, then the laws shall be deemed controlling; but the validity of the remainder of this Declaration, the Bylaws and Rules and Regulations, and the application of any such provision, section, clause, phrase, or word in other circumstances shall not be affected thereby.

§16.4 Severability. The invalidity of any provision of this Declaration shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this Declaration, and in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

§16.5 Waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same irrespective of the number of violations or breaches which may occur.

§16.6 Captions. The headings in this Declaration are for purposes of reference only, and shall not limit or otherwise affect the meaning hereof. The table of contents is attached to this Declaration for purposes of reference and convenience only, and shall neither limit nor otherwise affect the meaning of this Declaration. References in this Declaration to Articles, and Schedules without references to the document in which they are contained are references to this Declaration. Schedules are attached to and incorporated by reference into this Declaration.

§16.7 Gender, Number, Etc. The use of the singular number in this Declaration shall be deemed to include the plural, the plural the singular, and the use of any one gender shall be deemed applicable to all genders.

§16.8 Power to Interpret. Any dispute or disagreement with any person other than the Declarant with respect to interpretation or application of this Declaration or the Bylaws or the Rules and Regulations shall be determined by the Board of Directors, which determination shall be final and binding on all parties.

§16.9 Disputes with Declarant and Arbitration. In any dispute between one or more Unit Owners and the Declarant regarding the Common Elements, the Board of Directors shall act for the Unit Owners, and any agreement with respect thereto by the Board of Directors shall be conclusive and binding upon the Unit Owners.

All claims, disputes and other matters in question between the Declarant, on the one hand, and the Association or any Unit Owner(s), on the other hand, arising out of or relating to a Unit, the Common Elements, the Limited Common Elements, this Declaration, the Bylaws, the Rules and Regulations, or the deed to any Unit or the breach thereof, or the course of dealing between any Unit Owner, the Association and the Declarant, except for claims which have been waived by the acceptance of a deed, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining unless the parties mutually agree otherwise in writing. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance applicable law in any court having jurisdiction thereof.

ARTICLE 17 NOTICES

§17.1 Notices.

(a) *To Unit Owners.* All notices, demands, bills and statements or other communications affecting the Condominium shall be given to Unit Owners by the Association in writing and shall be delivered in hand, delivered to the Unit, or sent by United States mail,

postage prepaid. If such notification is of a default or lien, then it shall be sent by registered or certified United States mail, return receipt requested, postage prepaid, addressed to the Unit Owner at the address which the Unit Owner shall designate in writing and file with the Secretary of the Association, or if no such address is so designated, the address of the Unit of such Unit Owner who is the record owner thereof.

(b) *Notice to the Association.* All notices, demands, statements or other communications affecting the condominium given by the Unit Owners to the Association shall be in writing, and shall be deemed to be delivered personally, securing a written receipt therefore, or sent by United States mail, postage prepaid, return receipt requested, addressed to the Association at the principal office of the managing agent, if any, and to the secretary of the Association at the Secretary's address.

(c) *Notice to Eligible Mortgage Holder.* All notices, demands, statements or other communications affecting the Condominium given by the Association to any Eligible Mortgage Holder shall be in writing and shall be delivered personally, securing a written receipt, or sent by United States mail, postage prepaid, addressed to the Eligible Mortgage Holder at the address identified pursuant to the notice given to the Association when it became an Eligible Mortgage Holder.

[Space Intentionally Left Blank – Signature Page Follows]

WITNESS its hand and seal as of Nov. 16, 2023.

WITNESS:

[Signature]

ESPME, LLC

By: [Signature]

Name: Lawrence Smith

Title: Manager

STATE/Commonwealth of MA
COUNTY OF Middlesex, ss.

Nov 16, 2023

Personally appeared the above named Lawrence Smith in his capacity as the manager of ESPME, LLC and acknowledged the foregoing access easement to be his free act and deed in such capacity and the free act and deed of said ESPME, LLC.

Before me

[Signature]
Attorney-at-Law/Notary Public

Brendan York
Print Name

My commission expires: 3/8/24

- Exhibit A Legal Description of Land
- Exhibit B Condominium Plat
- Exhibit C Condominium Floor Plans
- Exhibit D Allocated Interests
- Exhibit E Condominium Association Bylaws



BRENDAN R. YORK
Notary Public
Commonwealth of Massachusetts
My Commission Expires March 8, 2024

Exhibit ALegal Description of Land

A certain lot or parcel of land, with the buildings thereon, situated on the northwesterly side of Main Street in the City of South Portland, County of Cumberland and State of Maine, being the same premises described in a deed from Gavin A. Ruotolo to Gavin A. Ruotolo, Trustee of Kingswood Realty Trust, dated August 17, 1972, and recorded in Cumberland County Registry of Deeds in Book 3284, Page 288.

Excepting from this conveyance, the following described premises:

A certain lot or parcel of land, with any buildings thereon, situated on the northwesterly side of Main Street in the City of South Portland, County of Cumberland and State of Maine, bounded and described as follows:

Beginning at an iron rod on said northwesterly side of said Main Street at the most easterly corner of land conveyed by Louis H. Bubar, et al., to James E. Taylor by deed dated July 29, 1955, and recorded in said Registry of Deeds in Book 2241, Page 184, now Connley; thence running North 63° 32' 26" West, by said Connley land, 150 feet to a point; thence turning and running South 29° 43' 17" West, by said Connley land, 63.58 feet to a point located at the northeasterly sideline of land conveyed by Maud J. Phelan to Falmouth Securities Co., Inc., by deed dated May 9, 1927, and recorded in said Registry of Deeds in Book 1265, Page 150; thence turning and running North 63° 32' 27" West, along the northeasterly sideline of said property conveyed to said Falmouth Securities Co., Inc., 150 feet to a point at the southerly line of a parcel of land conveyed by Maurice L. Goulet et al., to the City of South Portland by deed dated March 29, 1972, and recorded in said Registry of Deeds in Book 3223, Page 24; thence turning and running North 29° 43' 17" East, by said land conveyed to the City of South Portland, 75 feet to a point; thence turning and running North 63° 32' 27" West, by said land conveyed to the City of South Portland, 585 feet, more or less, to a point; thence turning and running North 23° 27' 33" East, along land now or formerly of Gavin A. Ruotolo, Trustee of Kingswood Realty Trust, 650 feet, more or less, to a point in the southwesterly sideline of land of Maine Turnpike Authority; thence turning and running South 74° 15' 39" East, by land of Maine Turnpike Authority, 685 feet, more or less, to a point; thence turning and running South 40° 20' 18" East, 329.17 feet to a point located on the northerly side of Main Street, also known as U.S. Route #1; thence turning and running South 31° 32' 12" West, 15 feet to land conveyed by Walter J. Tupper to Arnold F. Worthing, et al., by deed dated May 28, 1947, and recorded in said Registry of Deeds in Book 1871, Page 73; thence turning and running North 40° 20' 18" West, 329.17 feet to a point; thence turning and running South 48° 34' 46" West, 97 feet to a point; thence turning and running South 49° 20' 18" East, 43 feet to a point; thence turning and running South 38° 44' 42" West, 103 feet to a point; thence turning and running South 57° 00' 19" East, 113 feet to a point; thence turning and running South 33° 39' 41" West, 25 feet to a point marked by an iron pin located in the ground; thence turning and running South 58° 26' 09" East, 84 feet to a point; thence turning and running South 26° 15' 08" East, 24.06 feet to a point; thence turning and running South 31° 32' 12" West, 75 feet to a point marked by an iron pin located in the ground; thence turning and running South 56° 50' 04" East, 100 feet to a point located on the northerly side of Main Street, also known

as U.S. Route #1; thence turning and running South 31° 32' 12" West, 80 feet to a point; thence turning and running North 61° 00' 26" West, 200 feet to a point; thence turning and running South 30° 54' 42" West, 145 feet to a point; thence turning and running North 58° 04' 42" West, 50 feet to a point; thence turning and running South 31° 48' 50" West, through an iron pin located in the ground, 165 feet to an iron pin located in the ground; thence turning and running South 64° 05' 22" East, 250 feet to a point located on the northerly side of Main Street, also known as U.S. Route #1; thence turning and running South 47° 21' 44" West, 49.94 feet to the point of beginning.

Also excepting here from the conditional right to a reconveyance of that portion of the seventy-five (75) foot strip of land conveyed by Maurice L. Goulet, et al., to the City of South Portland by deed dated March 29, 1972, and recorded in said Registry of Deeds, which is immediately adjacent to the above premises excepted from this conveyance.

The premises are conveyed subject to all other restrictions, easements, leases and mortgages of record.

Meaning and intending to convey the same premises conveyed from JDR Trust II u/d/t dated August 24, 1983 to ESPME, LLC dated April 13, 2023 and recorded in the Cumberland County Registry of Deeds in Book 40071, Page 340.

Exhibit C
Allocated Interests

<u>Unit #</u>	<u># Votes</u>	<u>% Interest in Common Elements</u>	<u>% Common Expense Liability</u>
5	1	25%	25%
6	1	25%	25%
7	1	25%	25%
8	1	25%	25%
	4	100%	100%

Exhibit D

Bylaws

(see attached)



Bylaws of The Enclave at South Portland Condominium

South Portland, Maine

November 16, 2023

Declarant:

ESPME, LLC
PO Box 1044
Sudbury, MA

Prepared by

David C. Johnson, Esq.
Perkins Thompson, PA
One Canal Plaza, Floor Nine
Portland, ME 04101

ARTICLE I

Introductory Provisions

1.1. Name. The name of this Association is The Enclave at South Portland Condominium Association. The address is 757R Main Street, South Portland, Maine. These By-Laws have been adopted as required by Section 1603-106 of the Act to govern this Unit Owner's Association of the Condominium (hereinafter called the "Association").

1.2. Applicability of By-Laws. The provisions of these By-Laws are applicable to the Property of the Condominium and to the use and occupancy thereof.

1.3. Office. The principal office of the Association and the Executive Board shall be located at c/o Perkins Thompson, PA, One Canal Plaza, Floor 9, Portland, Maine or at such other location as the Executive Board may designate from time to time.

1.4. Corporation Law. Except as otherwise expressly provided herein, in the Declaration, or in the Act, the Association shall be governed by the provisions of the Maine Nonprofit Corporation Act, Title 13-B of the Maine Revised Statutes of 1964, as amended (the "Nonprofit Corporation Act") and the "Board of Directors" described therein shall be referred to herein and in the Declaration as the "Executive Board."

1.5. Definitions. Capitalized terms used herein without definition shall have the meanings specified for such terms in said Declaration to which these By-Laws pertain or, if not defined therein, the meanings specified or used for such terms in the Act.

ARTICLE II

The Association

2.1. Composition, Powers and Duties. The composition, powers and duties of the Association are as set forth in the Declaration.

2.2. Nontransferability of Interests. Except as provided herein or in the Declaration, membership shall not be transferable. The membership of each Unit Owner shall terminate upon a sale, transfer or other disposition, other than by mortgage, of the ownership interest of such Unit Owner in the Property, accomplished in accordance with the provisions of the Declaration, and thereupon the membership and any interest in the Reserve Fund and other common funds shall automatically transfer to and be vested in the next Owner or Owners succeeding to such ownership interest.

2.3. Meetings of Members. Meetings of the membership shall be held at the principal office of the Association or at such other place as may be specified in the notice of the meeting.

2.4. Annual Meetings. The annual meeting of the members shall be held each year on or about the last Tuesday of the month of October. In the event that the day for which an annual meeting is scheduled is a legal holiday, then the meeting shall be held on the first day thereafter which is not a legal holiday. At such meetings there shall be elected by ballot of the members an

Executive Board in accordance with the provisions of Article III. The members shall also transact such other business as may properly come before them.

2.5. Special Meetings. The President shall call a Special Meeting of the Association if so directed by resolution of the Executive Board or upon the written request of one (1) Unit owner presented to the Clerk. The notice of any Special Meeting shall state the time, the place and purpose thereof. Such meetings shall be held within thirty (30) days after receipt by the President of said resolution or written request; provided, however, if the purpose included the consideration of the rejection of a capital expenditure pursuant to Section 5.9 herein, such meeting shall be held within fifteen (15) days after receipt by the President of said resolution or written request.

2.6. Notice of Meeting. It shall be the duty of the Secretary, or upon his failure or neglect then of any other officer, to give notice of each annual or special meeting, the time and place of the meeting, and the items on the agenda for that meeting, including the general nature of any proposed amendment to the Declaration or these By-Laws, any budget changes and any proposal to remove a member of the Executive Board or officer, to each member of record and to each Eligible Mortgage Holder. With respect to any annual or special meeting such notice shall be so mailed at least ten (10) days but no more than forty-five (45) days prior to the date so set for the meeting.

2.7. Quorum. The presence, either in person or by proxy, of the Owners of the Units to which are allocated at least one half of the Votes in the Association shall be requisite for and shall constitute a quorum for the transaction of business at all meetings of members.

2.8. Adjournment of Meetings. If at any meeting of members a quorum shall not be in attendance, those members who are present may adjourn the meeting to a time not less than forty-eight (48) hours from the time at which the original meeting was called.

2.9. Votes in Association. The Vote in the Association allocated to each Unit is listed on Schedule B of the Declaration.

2.10. Voting. Voting shall be in accordance with Section 1603-110 of the Act and the Declaration, including, but not limited to, Section 1603-110(b).

2.11. Majority Vote Required. Unless by express provisions of the Act, these By-Laws or the Declaration a different vote is required, each question presented at a meeting shall be determined by a vote of a majority of Unit Owners. As used in these By-Laws, the term "majority of Unit Owners" shall mean the Unit Owners of those Units to which are allocated more than fifty percent (50%) of the total authorized Votes allocated to all of the Units that are present in person or by proxy and voting in any meeting of the Association at which a quorum is present as determined in accordance with Paragraph 2.7.

2.12. Informal Action. Any action required or permitted to be taken at any meeting of the members may be taken without a meeting if a written consent thereto is signed by all the members. The Secretary shall file such written consent with the records of the meetings of the members and such consent shall be treated as a unanimous vote of members for all purposes.

2.13. Order of Business. The order of business at all meetings of the members shall be as follows:

- (a) Roll call;
- (b) Proof of notice of meeting;
- (c) Reading of minutes of preceding meeting for approval of same;
- (d) Reports of Executive Board or of officers or of the manager;
- (e) Reports of committees, if any;
- (f) Election of inspectors of elections (when so required);
- (g) Election of members of the Board of Directors (when so required);
- (h) Unfinished business;
- (i) New Business.

At all meetings of the Association or of the Executive Board, Robert's Rules of Order, as then amended, shall be followed, except in the event of conflict in which these By-Laws or the Declaration, as the case may be, shall prevail.

2.14. Deadlock; Mediation and Arbitration.

2.14.1 Deadlock. In the event of a deadlock with respect to any proposed action of the Association, the taking or failing to take of which might have a material effect on the Association, or in the event of any dispute between the members of the Unit Owners and/or the Executive Board that such members are unable to resolve by themselves, such deadlocked matters or disputes (referred to collectively herein as "Disputes") shall be dealt with as provided in this Section.

2.14.2 Mediation. The Unit Owners and/or Executive Board members shall first attempt to resolve Disputes through mediation. Within ten (10) days of the date on which the Dispute first becomes apparent, the Executive Board members shall select a mutually acceptable mediator. The mediator shall select the procedure to be employed, provided that the Executive Board members are treated equally. In the event the Executive Board members are unable to resolve the Dispute after good faith attempts through mediation, or in the event the Executive Board members are unable to agree on a mediator, arbitration shall be employed as provided in subsection 2.14.3 below.

2.14.3 Arbitration. Within ten days of the date of the last unsuccessful mediation session pursuant to subsection 2.14.2 above, the Executive Board members shall select an arbitrator to resolve the Dispute. If the Executive Board members are unable to agree on a choice for the arbitrator, each Executive Board member appointed by a Unit Owner shall select an arbitrator, and the four arbitrators so selected shall appoint a fifth arbitrator, and the five arbitrators so selected shall proceed to hear and decide the Dispute. The decision of a majority of the three arbitrators shall be final and non-appealable.

2.14.4 Expenses. All expenses associated with mediation and arbitration under this Article shall be paid from the Association's assets; provided, however, that if the nature

of the Dispute prevents the Association from paying such expenses, then the Unit Owners shall each pay for one half of the total of such expenses from their own resources, subject to reimbursement by the Association upon final resolution of the Dispute.

ARTICLE III

Executive Board

3.1. Number and Qualification. The affairs of the Association shall be governed by an Executive Board composed of no less than three (3) and no more than seven (7) natural persons. During the period of Declarant control, as provided in Paragraph 15 of the Declaration, the Executive Board shall be composed of (3) natural persons who shall be appointed, removed and replaced from time to time by the Declarant without the necessity of obtaining resignations. The appointees of the Declarant need not be Unit Owners. After the end of the period of Declarant control, the Executive Board shall be composed of individuals as the Board may determine from time to time. Following the period of Declarant Control, each member of the Executive Board shall be a Unit Owner, or in the case of a Unit Owner which is a corporation, partnership, trust or estate, a designated agent who is a shareholder, partner or beneficiary thereof, as the case may be. A Unit Owner must be current in the payment of all condominium and parking fees to be elected (or have its agent elected) to the Executive Board.

3.2 Election and Term of Office. The members of the Executive Board shall be elected as follows:

3.2.1. At the annual meetings of the Association the election of members of the Executive Board shall be held. The term of office of each Executive Board member shall be fixed at three (3) years, so that after the Declarant Control Period ends, one-third (1/3) of the Executive Board (or as close to that number as reasonably possible) may be replaced at each annual meeting. Each member of the Executive Board shall hold office until earlier to occur of the election of his or her respective successor, or his or her death, adjudication of incompetency, removal or resignation. An Executive Board member may be elected to succeed himself or herself for an unlimited number of terms.

3.2.2. Persons qualified to be members of the Executive Board may be nominated for election only as follows:

3.2.2.a. Any Unit Owner may submit to the Secretary at least thirty (30) days before the meeting at which the election is to be held a nomination petition signed by Unit Owners owning at least two (2) Units and a statement that the person nominated is willing to serve on the Executive Board. The Secretary shall mail or hand deliver the submitted items to every Unit Owner along with the notice of such meeting;

3.2.2.b. Nominations may be submitted from the floor at the meeting at which the election is held for each vacancy on the Executive Board for which no more than one (1) person has been nominated by petition.

3.3. Powers and Duties. The Executive Board shall have the powers and duties necessary for the administration of the affairs of the Association and shall have all powers and duties referred to in the Declaration and the Act.

3.4. Delegation of Powers; Managing Agent. The Executive Board may employ for the Condominium a "Managing Agent" or "Manager" at a compensation established by the Executive Board. The managing agent shall perform such duties and services as the Executive Board shall authorize, including but not limited to, all of the duties listed in the Act, the Declaration and these By-Laws; provided, however, where a Managing Agent does not have the power to act under the Act, the Declaration or these By-Laws, such duties shall be performed as advisory to the Executive Board. The Executive Board may delegate to the Managing Agent all of the powers granted to the Executive Board by the Act, the Declaration and these By-Laws other than the following powers:

- 3.4.1. To adopt the annual budget and any amendment thereto or to assess any Common Expenses;
- 3.4.2. To adopt, repeal or amend rules and regulations of the Association;
- 3.4.3. To designate signatories on Association bank accounts;
- 3.4.4. To borrow money on behalf of the Association;
- 3.4.5. To acquire and mortgage Units;
- 3.4.6. To allocate Limited Common Elements.

Any employment contract between the Managing Agent and the Association must provide that it may be terminated with cause on no more than thirty (30) days' written notice and without cause on no more than ninety (90) days' written notice.

3.5. Vacancies. Vacancies in the Executive Board caused by reason other than the removal of a member by a vote of the Unit Owners shall be filled by appointment by the Owner of the Unit which created the vacancy. Each person so appointed shall be a member of the Executive Board for the remainder of the term of the member being replaced and until a successor shall be elected at the next annual meeting of the Association at which such seat is to be filled upon expiration of the term of his predecessor. In the case of multiple vacancies, the member receiving the greatest number of votes shall be elected for the longest term. In the event that a Unit Owner shall fail to appoint an individual to serve on the Executive Board for a period of sixty (60) days after a vacancy has been created, the remaining Unit Owners may nominate a different individual to serve on the Executive Board.

3.7. Organizational Meeting. The first meeting of the Executive Board following each annual meeting of the Association shall be held within ten (10) days thereafter at such time and place as shall be fixed by the President (even if he is the outgoing President) at the meeting at which such Executive Board shall have been elected, and no notice shall be necessary to the newly elected members of the Executive Board in order legally to constitute such meeting, if a majority

of the Executive Board members shall be present at such meeting. The Secretary shall give notice of such meeting to each Eligible Mortgage Holder in the manner provided in the Declaration for service of notice upon Eligible Mortgage Holders at least five (5) days before such meeting.

3.8. Regular Meetings. Regular meetings of the Executive Board may be held at such time and place as shall be determined from time to time by a majority of the members, but such meetings shall be held at least once every four (4) months during each fiscal year. Notice of regular meetings of the Executive Board shall be given to each member and Eligible Mortgage Holder by the Secretary in the manner provided in the Declaration for service of notice upon Unit Owners and Eligible Mortgage Holders, at least ten (10) business days prior to the day named for such meeting.

3.9. Special Meetings. Special meetings of the Executive Board may be called by the President on at least three (3) business days' notice by the Secretary to each member and Eligible Mortgage Holder, given by mail, telegraph or hand delivery, securing a receipt therefor, which notice shall state the time, place and purpose of the meeting. Special meetings of the Executive Board shall be called by the President or Secretary in like manner and on like notice on the written request of a member of the Executive Board.

3.10. Waiver of Notice. Any member may at any time, in writing, waive notice of any meeting of the Executive Board, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member at any meeting of the Executive Board shall constitute a waiver of notice by him of the time, place and purpose of such meeting unless the sole purpose of the member's attendance is to protest the holding of the meeting. If all members are present at any meeting of the Executive Board, no notice shall be required and any business may be transacted at such meeting.

3.11. Quorum of the Executive Board. At all meetings of the Executive Board one-half of the members shall constitute a quorum for the transaction of business, and the votes of a majority of the members present at a meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice. One or more members of the Executive Board may participate in and be counted for quorum purposes at any meeting by means of conference telephone or similar communication equipment by means of which all persons participating in the meeting can hear each other.

3.12. Compensation. No member of the Executive Board shall receive any compensation from the Association for acting as such, but may be reimbursed for any expenses incurred in the performance of his duties.

3.13. Conduct of Meetings. The President shall preside at all meetings of the Executive Board and the Secretary shall keep a minute book of the Executive Board meetings, recording therein all resolutions adopted by the Executive Board and recording of all transactions and proceedings occurring at such meetings. The then current edition of Robert's Rules of Order shall govern the conduct of the meetings of the Executive Board if and to the extent not in conflict with the Declaration, these By-Laws or the Act.

3.14. Action Without Meeting. Any action by the Executive Board required or permitted to be taken at any meeting may be taken without a meeting if all of the members of the Executive Board shall individually or collectively consent in writing to such action. Any such person's written consent shall be filed with the minutes of the proceedings of the Executive Board.

3.15. Validity of Contracts with Interested Executive Board Members. No contract or other transaction between the Association and one or more of its Executive Board members or between the Association and any corporation, firm or association in which one or more of the Executive Board members are directors or officers, or are financially interested, shall be void or voidable because such Executive Board member or members are present at any meeting of the Executive Board which authorized or approved the contract or transaction or because his or their votes are counted, if the circumstances specified in either of the following subparagraphs exists:

3.15.1 The fact that an Executive Board member is also such a director or officer or has such financial interest is disclosed or known to the Executive Board and is noted in the minutes thereof, and the Executive Board authorized, approves or ratifies the contract or transaction in good faith by a vote sufficient for the purpose without counting the vote or votes of such Executive Board member or members, or

3.15.2 The contract or transaction is made in good faith and not unconscionable to the Association at the time it is authorized, approved or ratified.

3.16. Inclusion of Interested Executive Board Members in a Quorum. Any Executive Board member holding such director or officer position or having such financial interest in another corporation, firm or association may be counted in determining the presence of a quorum at a meeting of the Executive Board or a committee thereof which authorizes, approves or ratifies a contract or transaction of the type described in Section 3.15 herein.

ARTICLE IV

Officers

4.1. Designation and Election. The principal officers of the Association shall be the President, the Secretary and the Treasurer, all of whom shall be elected by the Executive Board at the annual meeting of such Board. The Executive Board may appoint an assistant treasurer, an assistant secretary and such other officers as in its judgment may be necessary. The President shall be a Unit Owner and a member of the Executive Board. Any other officers may, but need not, be Unit Owners or members of the Executive Board. An officer other than the President may hold more than one office.

4.2. Removal of Officers. Upon the affirmative vote of a majority of all members of the Executive Board, any officer may be removed, either with or without cause, and a successor may be elected at any meeting of the Executive Board called for such purpose.

4.3. President. The President shall be the chief executive officer of the Association, preside at all meetings of the Association and of the Executive Board, shall represent and cast votes on behalf of the Association at meetings of the Association, and have all of the general

powers and duties which are incident to the office of President of a nonprofit corporation organized under the laws of the State of Maine including without limitation the power to appoint committees from among the Unit Owners from time to time as the President may in his discretion decide is appropriate to assist in the conduct of the affairs of the Association. The President shall cease holding such office at such time as he ceases to be a member of the Executive Board.

4.4. Secretary. The Secretary shall keep the minutes of all meetings of the Association and of the Executive Board, have charge of such books and papers as the Executive Board may direct, maintain a register setting forth the place to which all notices to Unit Owners and Eligible Mortgage Holders, hereunder and pursuant to the Declaration, shall be delivered and, in general, perform all the duties incident to the office of secretary of a nonprofit corporation organized under the laws of the State of Maine. The Secretary shall, within ten (10) days after receipt of request, provide any person, or cause to be provided to any person, entitled thereto at the expense of the person requesting it a written statement or certification of the information required to be provided by the Association pursuant to Sections 1603-116(h) and 1604-108(b) of the Act and Paragraph 5.2.2.

4.5. Treasurer. The Treasurer shall have the responsibility for the safekeeping of Association funds and securities; keeping full and accurate financial records and books of account showing all receipts and disbursements; the preparation of all required financial data; providing to the Secretary the financial and budgetary information necessary for the Secretary to provide the certifications required by Paragraph 4.4; the deposit of all monies in the name of the Executive Board, the Association or the managing agent, in such depositories as may from time to time be designated by the Executive Board; and, in general, all the duties incident to the office of Treasurer of a nonprofit corporation organized under the laws of the State of Maine.

4.6. Execution of Documents. All agreements, contracts, deeds, leases, checks and other instruments of the Association for expenditures or obligations in excess of Five Hundred Dollars (\$500.00) shall be executed by the President or the Secretary and the Treasurer of the Association. All such instruments for expenditures or obligations of Five Hundred Dollars (\$500.00) or less may be executed by any one officer of the Association or such other person or employee as the Executive Board may designate in writing.

4.7. Compensation of Officers. No officer who is also a member of the Executive Board shall receive any compensation from the Association for acting as such officer, but may be reimbursed for any out-of-pocket expenses incurred in performing his duties; provided, however, the Secretary and Treasurer may be compensated for their services if the Executive Board determines such compensation to be appropriate.

ARTICLE V

Operation of the Property

5.1. Fiscal Year. The fiscal year of the Association shall begin on such date as shall be established by the Executive Board, except for the first fiscal year of the Association which shall begin at the date of incorporation of the Association. The commencement date of the fiscal year so established shall be subject to change by the Executive Board.

5.2. Preparation and Approval of Budget.

5.2.1. On or before ninety (90) days before the beginning of the fiscal year for which a Common Expense assessment is made, the Executive Board shall adopt an annual budget for the Association containing an estimate for the total amount considered necessary to pay the cost of maintenance, management, operation, repair and replacement of the Common Elements and those parts of the Units as to which it is the responsibility of the Association to maintain, repair and replace, and the cost of wages, materials, insurance premiums, services, supplies and other expenses that may be declared to be Common Expenses by the Act, the Condominium Documents or a resolution of the Association and which will be required during the ensuing fiscal year for the administration, operation, maintenance and repair of the Property and the rendering to the Unit Owners of all related services. The budget shall include such amounts as the Executive Board shall consider necessary to provide working capital, a general operating reserve fund for replacements, capital improvements, and other items which cannot be expected to occur on a regular basis. The budget shall also reflect the separate assessment of Limited Common Expenses.

5.2.2. On or before sixty (60) days before the beginning of the fiscal year for which a Common Expense assessment is made, the Executive Board shall make such budget available for inspection during business hours by any Unit Owner or Mortgagee at the Property and the Secretary shall provide to the Unit Owners and Eligible Mortgage Holders a summary of that budget in reasonably itemized form setting forth the separate amount of the Common Expenses and Limited Common Expenses and shall set a date for a special meeting of the Unit Owners and Eligible Mortgage Holders to consider ratification of such budget not less than fourteen (14) days nor more than thirty (30) days after mailing of such summary of budget accompanied by notice of the special meeting to each Unit Owner and Eligible Mortgage Holder. Unless at the meeting a majority in voting interest of all the Unit Owners reject the proposed budget or revised budget, that budget is ratified irrespective of whether a quorum is present at said meeting. In the event such budget shall be rejected at the meeting, the budget last ratified with respect to the period covered by the proposed budget shall be continued as the budget for the Condominium until such time as the Unit Owners ratify a subsequent budget proposed by the Executive Board upon the same conditions as are provided in the subparagraph with respect to the original budget.

5.2.3. Subject to subparagraph 5.2.2., the budget adopted pursuant to this Paragraph shall constitute the basis for determining each Unit Owner's assessments for Common Expenses and Limited Common Expenses and shall automatically take effect at the beginning of the fiscal year for which it is adopted.

5.3. Assessment of Common Expenses. Assessments shall be made no later than thirty (30) days after the budget is adopted except that the first assessment shall be made no later than sixty (60) days after the first conveyance of a Unit to a Purchaser.

5.4. End of Fiscal Year. Within ninety (90) days after the end of each fiscal year for which a Common Expense assessment was made, the Executive Board shall prepare and deliver to all Unit Owners and Eligible Mortgage Holders, and to each Mortgagee requesting in writing the same, an itemized accounting of the Common Expenses for such fiscal year actually incurred

and paid, together with a tabulation of the amount collected pursuant to the budget adopted by the Executive Board for such fiscal year.

5.5. Reserves. The Executive Board shall build up and maintain a reasonable reserves for working capital including a general operating reserve fund for current Common Expenses (the "Working Capital Fund") and a reserve fund for contingencies, replacements, capital improvements and other items which cannot be expected to occur on a regular basis (the "Reserve Fund"). However, nothing contained herein shall limit, preclude or impair the establishment of additional funds by the Association so long as the amount credited to, and debited from, any such additional funds are designated for specified purposes authorized by the Condominium Documents. The Working Capital Fund, Reserve Fund and such other funds shall be conclusively deemed to be common funds of the Association and shall be deposited in a special account with a lending institution, the accounts of which are insured by an agency of the United States of America. Neither the Executive Board nor the Treasurer shall commingle in the books and records of the Association any amounts deposited into the Reserve Fund, the Working Capital Fund or such other funds. Extraordinary expenditures not originally included in the annual budget which may become necessary during the year shall be charged first against such reserves. If the reserves are deemed by the Executive Board to be inadequate for any reason, including nonpayment of any Unit Owner's assessment, the Executive Board may at any time levy a further assessment which, depending on whether the reserve is for the benefit of all the Units or fewer than all the Units, shall be assessed against all the Unit Owners according to their respective Common Expense Liabilities or only against the Unit Owners benefitted according to their respective Common Expense Liabilities as between themselves, and which may be payable in a lump sum or in installments as the Board may determine.

5.6. Further Assessments. Subject to Paragraph 5.10., the Executive Board shall give notice to all Unit Owners and Eligible Mortgage Holders of any further assessments on Unit Owners for Common Expenses or Limited Common Expenses accompanied by a statement in writing giving the amount and reasons therefor, and such further assessment shall, unless otherwise specified in the notice, and subject to Paragraph 5.9., become effective with the next monthly payment which is due after the delivery of such notice of further assessment. All Unit Owners so notified shall be obligated to pay the adjusted monthly amount or, if such further assessment is not payable in installment, the amount of such assessment.

In addition, the Association shall have the right to levy reasonable fines for violations of the Declaration, these By-Laws and the Rules and Regulations of the Association, and may charge a Unit Owner legal fees and costs related to the enforcement of the provisions of the Declaration, By-Laws and Rules and Regulations.

5.7. Initial Capital Payment. The Declarant, as the agent of the Executive Board, will collect from each initial Purchaser at the time of settlement an "initial capital payment" (and not as a credit against the Purchaser's liability for Common Expenses) equivalent to twice the estimated monthly assessment for Common Expenses and Limited Common Expenses, if any, for such Purchaser's Unit. The Declarant will deliver the funds so collected to the Executive Board to provide the necessary working capital for the Association unless the Declarant has previously made the "initial capital payment" with respect to said Unit, in which case the Purchaser must

reimburse the Declarant for such "initial capital payment" to the Association, which the Association shall credit to the account of the Unit Owner who is such Purchaser of a Unit from Declarant. Such funds may be used for certain prepaid items, initial equipment, supplies, organizational costs and other start-up costs, and for such other purposes as the Executive Board may determine. The Declarant must pay the "initial capital payment" to the Association for unsold Units in each portion or phase of the Condominium created by the Declaration no later than sixty (60) days after the first Unit in that portion or phase of the Condominium shall be conveyed to a Purchaser so that the "initial capital payment" shall be made for every Unit in that phase or portion within sixty (60) days after the first Unit in that phase or portion is conveyed to a Purchaser.

5.8. Effect of Failure to Prepare or Adopt Budget. The failure or delay of the Executive Board to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of a Unit Owner's obligation to pay his allocable share of the Common Expenses as herein provided whenever it shall be determined and, in the absence of any annual budget or adjusted budget, each Unit Owner shall continue to pay each monthly installment at the monthly rate established for the previous fiscal year until the new annual or adjusted budget shall have been adopted.

5.9. Rejection of Budget; Limitation of Expenditures. In the event of a rejection of a proposed budget, the Executive Board shall prepare a revised budget, which such revised budget shall be subject to the same procedures as set forth above for the original proposed budget.

5.10. Limitations on Expenditures. The power of the Executive Board to expend funds, incur expenses or borrow money on behalf of the Association is subject to the requirement that the consent of the Owners of Units to which are allocated at least three-fourths (3/4) of the Votes in the Association shall be required to borrow any sum in excess of One Thousand Dollars (\$1,000.00) and to expend funds or incur expenses that it is reasonably anticipated will cause the aggregate amount of all expenses in the budget (including reserves) to be exceeded by more than ten percent (10%) of such aggregate amount after taking into account any projected increases in income.

5.11. Accounts; Audits. All sums collected by the Executive Board with respect to assessments against the Unit Owners or from any other source may be commingled in a single fund or held for each Unit Owner in accordance with his respective Common Expense Liability notwithstanding Paragraph 5.5. All books and records of the Association shall be kept under the direction of the Treasurer or the Manager and in accordance with customary accounting principles and practices.

5.12. Payment Obligations. Each Unit Owner shall pay to the Association or its authorized representative on the first day of each month, or on such other date that the Association may determine in writing, (1) one-twelfth (1/12) of the Common Expenses including Limited Common Expenses, assessed on an annual basis against his Unit in the proportions required in Paragraph 6 of the Declaration and (2) all special assessments, any other sums duly levied against the Unit pursuant to the Declaration, these By-Laws or the Act. If for any reason the Association shall revise the annual budget of the Association in accordance with these By-Laws, and subject to Paragraph 5.10., whereby the Common Expenses or any component thereof may be increased, then

commencing on the first day of the first month subsequent to the adoption of such revised budget each Unit Owner shall pay to the Association or its authorized representative one twelfth (1/12) of any such revised annual Common Expenses including Limited Common Expenses assessed against his Unit in the proportions required in Paragraph 6 of the Declaration.

5.13. Interest; Acceleration. Monthly condominium assessments shall be due on the first day of each month. If any such assessments are not paid by the 10th day of the month, a late fee of the greater of \$10 or four percent (4%) of the amount due will be charged. Interest shall be imposed after the 10th day of the month on the principal amount unpaid from the date when due until paid at a rate of 18% per annum. If any Unit Owner is more than fifteen (15) days delinquent, a letter shall be sent to that Unit Owner giving said Unit Owner ten (10) days' notice prior to the institution of any collection proceedings or other legal proceedings.

5.14. Liens for Assessments. The total annual assessment levied against each Unit for Commons Expenses including Limited Common Expenses, special assessments, and any other sums duly levied against the Unit pursuant to the Declaration, these By-Laws or the Maine Condominium act, including all interest thereon and charges for late payment thereof and legal fees and other costs of collection thereof, and fines, penalties and fees as provided in the Declaration or these By-Laws shall, until fully paid, constitute a lien against the Unit in favor of the Association as provided in Section 1603-116 of the Maine Condominium Act. Such lien shall, with respect to annual assessments and revised annual assessments, be effective on the first day of each fiscal year of the Association with respect to the full amount of the annual assessments or revised annual assessments. With respect to special assessments and other sums duly levied including interest, charges for late payments, legal fees, costs of collection, fines, penalties and fees, such lien shall be effective on the first day of the next month which begins more than ten (10) days after delivery to the Unit Owner of notice of such special assessment or levy. Such lien is prior to all other liens and encumbrances on a Unit except (1) liens and encumbrances recorded before the recordation of the Declaration, (b) a first Mortgage recorded before or after the date which the assessment sought to be enforced becomes delinquent, and (c) liens for real estate taxes and other governmental assessments or charges against the Units, provided, however, that such lien is not subject to the provisions of 14 M.R.S.A. Section 4651 and 18-A M.R.S.A. Section 2-201 et seq., as they or their equivalents may be amended or modified from time to time.

ARTICLE VI

Insurance

6.1. Policies. Commencing no later than the time of the first conveyance of a Unit other than as security for an obligation to a person, the Executive Board on behalf of the Association shall obtain, or cause to be obtained, and shall maintain as a Common Expense, the policies of insurance described in this Article to the extent such policies shall be reasonably available from reputable insurance companies. To the extent that said insurance described in this Article is not reasonably available as described in the preceding sentence, the Executive Board on behalf of the Association shall give written notice of that fact to the Unit Owners and the Eligible Mortgage Holders of Mortgages of their Units by hand delivery securing a receipt therefor, or by prepaid United States mail, return receipt requested. To the extent that any of the insurance described in this Article shall become in the future no longer available, the Association shall obtain in

substitution therefor such comparable insurance as shall then be available. The Executive Board of the Association is hereby irrevocably appointed as attorney-in-fact for each Unit Owner and for each Mortgagee and Eligible Mortgage Holder and for each owner of any other interest in the Property for the purpose of purchasing and maintaining the insurance described in this Article, the collection and appropriate disposition of the proceeds thereof with any Insurance Trustee pursuant to the Insurance Trust Agreement as trustee for all Unit Owners and their Mortgagees as their respective interests may appear to hold any insurance proceeds in trust for disbursement as provided in this Declaration, the Bylaws and Section 1603-113(e) of the Act, the negotiation of losses and execution of releases of liability, the execution of all documents, and the performance of all other acts necessary to accomplish such purposes.

6.2. Property Insurance. Property insurance on the Common Elements, insuring against all risks of direct physical loss commonly insured against. The total amount of insurance after application of any deductibles shall be not less than 80% of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies. Such insurance shall cover the interest of and naming as insured, the Association, the Executive Board and all Unit Owners and their Mortgagees and their Mortgagees' successors and assigns, as their insurable interests may appear, and shall contain a standard Maine Mortgage Clause in favor of each Mortgagee of a Unit whether or not named therein with provisions that the proceeds of loss, if any, shall first be payable to each Mortgagee, its successors and assigns, as its insurable interest may appear, subject, however, to the loss payment and adjustment provisions in favor of the Insurance Trustee or Association contained in this Section, the Bylaws and Section 1603-113(e) of the Act. This blanket or master hazard insurance policy may, at the option of the Executive Board, contain a "deductible" provision in an amount to be annually determined by the Executive Board but not to exceed the lesser of One Thousand Dollars (\$1,000.00) or one percent (1 %) of the face amount of the policy. Such policy shall also contain the following provisions:

- (a) A waiver of any right of the insurer to repair, rebuild or replace any damage or destruction, if it shall be determined pursuant to Section 1603-1 13(h) of the Act not to do so;
- (b) The following endorsements (or their equivalent): (1) "no control" to the effect that coverage shall not be prejudiced by any act or neglect of any occupant or Unit Owner or their agents when such act or neglect is not within the control of the insured, or the Unit Owners collectively; nor by any failure of the insured, or the Unit Owners collectively, to comply with any warranty or condition with regard to any portion of the Condominium over which the insured, or the Unit Owners collectively, have no control); and (2) "agreed amount" or elimination of co-insurance clause;
- (c) That any "no other insurance" clause expressly exclude individual Unit Owners' policies from its operation so that the physical damage policy purchased by the Executive Board shall be deemed primary coverage and any individual Unit Owners' policies shall be deemed excess coverage, and in no event shall the insurance coverage obtained and

maintained by the Executive Board hereunder provide for or be brought into contribution with insurance purchased by Unit Owners or their Mortgagees; and

- (d) The recognition of any Insurance Trust Agreement whereby the Executive Board may designate in writing an Insurance Trustee to hold any insurance proceeds in trust for disbursement as provided in Section 6.3, the Declaration and Section 1603-113(e) of the Act..

6.3. Adjustment and Payment of Insurance Loss; Trustee. Any loss covered by the insurance policy described in Section 6.2 shall be adjusted with the Association by its Executive Board, but the insurance proceeds for said loss shall be payable to the Insurance Trustee designated for that purpose as provided in subsection 6.2(d), or otherwise to the Association, and not to any Mortgagee. The Insurance Trustee or the Association shall hold any insurance proceeds in trust for Unit Owners, Mortgagees and other lien holders as their interest may appear. Subject to the provisions of this Section, the Bylaws and Section 1603-113(e) of the Act, the proceeds shall be disbursed first for the repair or restoration of the damage to the Property. Unit Owners, Mortgagees and other lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus after the damaged Common Elements and Units have been repaired or restored, the decision has been made not to repair or restore the damage as provided in Section 1603-113(h) of the Act, or the Condominium is terminated.

6.4. Liability Insurance. The Executive Board shall obtain and maintain as a Common Expense comprehensive general public liability insurance (including medical payments insurance) and property damage insurance in such limits as the Board may from time to time determine, insuring each Executive Board member, the managing agent, each Unit Owner against any liability to the public or other Unit Owners, their tenants, invitees, agents and employees, covering all occurrences commonly insured against for death, bodily injury or property damage, relating in any way to the use and/or ownership of the Common Elements, public ways and any other areas under the supervision of the Association or any part thereof. Such insurance shall be issued on a comprehensive liability basis and shall contain (a) cross-liability endorsement under which the rights of a named insured under the policy shall not be prejudiced with respect to his action against another named insured; (b) hired and non-owned vehicle coverage; and (c) a "severability of interest" endorsement which shall preclude the insurer from denying liability to a Unit Owner because of negligent acts of the Association or of another Unit Owner. The Executive Board shall review such limits once each year, but in no event shall such insurance be less than one million dollars (\$1,000,000.00) covering all claims for bodily injury or property damage arising out of one occurrence.

6.5. Other Insurance. The Association may obtain such other insurance as it deems reasonable or necessary as a Common Expense.

6.6 Owner Insurance. Each Unit Owner should investigate and obtain at his or her own expense, a personal condominium insurance policy (for example, form type HO-6 as established by Insurance Services Office, Inc.) for damage to his or her Unit and personal property in the Unit for his or her own benefit including without limitation coverage for such portion of the deductible of the Association's deductible as the Owner may desire, for any special loss assessments made

by the Association and for his or her personal liability; Each Unit Owner should also consider obtaining at his or her expense coverage for loss of use and/or lost rental income. Provided, however, that no Unit Owner shall be entitled to exercise his or her right to acquire or maintain such insurance coverage which would decrease the amount which the Association on behalf of all Unit Owners may realize under any insurance policy maintained by the Association, or cause any insurance coverage maintained by the Association to be brought into contribution with insurance coverage obtained by a Unit Owner. All such Unit Owner's policies shall contain waivers of subrogation in favor of the Association.

6.7. Proof of Insurance and Notice of Cancellation. All insurers that shall issue an insurance policy or policies under this Article shall issue certificates or memoranda of insurance to the Association, and, upon request, to any Unit Owner or Mortgagee. All such insurers issuing the policy may not cancel (including cancellation for non-payment of premium), substantially modify or refuse to renew such policy or policies until twenty (20) days after notice of the proposed cancellation or non-renewal has been mailed to the Association, the managing agent, each Unit Owner and each Mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last known addresses. All policies under Sections 15.2 and 15.4 shall, in addition, contain the following provisions:

- (a) The insurer waives any right to claim by way of subrogation against the Association, the Executive Board, the managing agent or the Unit Owners, and their respective agents, employees, guests and, in the case of the Unit Owners, the members of their households.
- (b) Each Unit Owner is an insured person under the policy with respect to liability arising out of his ownership of an undivided interest in the Common Elements or membership in the Association.
- (c) The insurer waives its right to subrogation under the policy against any Unit Owner of the Condominium or members of his household.
- (d) No act or omission by any Unit Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery under the policy.
- (e) If, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.
- (g) The insurer must hold (1) a rating of Class VI or better by Best's Insurance Reports, or (2) an equivalent or comparable rating by an equivalent rating bureau should Best's Insurance Reports cease to be issued or (3) an equivalent or comparable rating from Lloyd's of London.

6.8. Separate Insurance. Each Unit owner shall, at his own expense, obtain insurance for his own Unit and for his own benefit and to obtain insurance coverage upon his personal property

and for his personal liability as well as upon any improvements made by him to his Unit, in such amounts and with such coverage deemed necessary by the Executive Board to protect the interests of the Association and other Unit Owners. All such policies shall contain waivers of subrogation. Upon request, Unit Owners shall file a copy of such individual policy or policies with the Executive Board. Such Unit Owner shall also promptly notify the Executive Board in writing in the event such policy is cancelled. Notwithstanding the individual ownership of such policy of property insurance, any loss involving a Unit shall be subject to adjustment and payment as provided in Section 15.3.

ARTICLE VII

Repair and Reconstruction after Fire or Other Casualty

7.1. When Repair and Reconstruction are Required. In the event of damage to or destruction of all or any part of the Property as a result of fire, other casualty or the exercise of the power of eminent domain, the Executive Board on behalf of the Association and each Unit Owner, as applicable, shall promptly arrange for and supervise the prompt repair, replacement and restoration thereof. Such repair or restoration shall be substantially in accordance with this Declaration, the Plats and Plans and the original plans and specifications therefore unless (a) the Condominium is terminated, or (b) repair, replacement or restoration would be illegal under any state or local health, safety, land-use or environmental statute, code or ordinance, or (c) seventy-five percent (75%) of the Unit Owners and the Eligible Mortgage Holders holding Mortgages on Units to which are allocated at least fifty-one percent (51%) of the Votes in the Association vote not to repair, restore or replace the damaged or destroyed Property, and such decision is approved by every Owner of a Unit or assigned or allocated Limited Common Element, which will not be repaired, replaced or restored, and by all Eligible Mortgage Holders of all Mortgages thereon.

7.2. Procedure for Reconstruction and Repair. If repair, replacement or restoration shall be required pursuant to Paragraph 7.1.:

7.2.1. Cost Estimates. The Executive Board and each Unit Owner, as applicable, shall promptly obtain reliable and detailed estimates of the cost of repairing and restoring such portion substantially in accordance with this Declaration, the Plats and Plans and original building plans and specifications therefore unless other action is approved by at least sixty-seven percent (67%) in voting interest of the Unit Owners and the Eligible Mortgage Holders holding Mortgages on Units which are allocated at least fifty-one percent (51%) of voting interest in the Association. Such costs may also include professional fees and premiums for such bonds as the Insurance Trustee may determine to be necessary.

7.2.2. Assessments. If the net proceeds of insurance, if any, are not sufficient to defray such estimated costs of reconstruction, repair, replacement and reconstruction, or if upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, the amount necessary to complete such reconstruction and repair may be obtained from the appropriate reserve for replacement funds, and any such excess costs shall be deemed a Common Expense or Limited Common Expense, as applicable, and a special assessment therefor shall be levied by the Association.

7.2.3. Construction Fund and Disbursement. The proceeds of insurance collected on account of the casualty, and the sums received by the Association from collections of assessments against Unit Owners pursuant to subparagraph 7.2.2. on account of such casualty or taking, shall constitute a construction fund which shall be held in trust by the Insurance Trustee or Association as provided in Paragraph 6.2. and disbursed in payment of the costs of reconstruction and repair in a manner which would normally be used by any prudent financial institution advancing construction funds. Any holder of a first mortgage shall have the right to inspect building plans, construction schedules and contractors.

7.3. Mortgagee Priority. No provision of the Condominium Documents shall be deemed or construed to give a Unit Owner, or any other person, priority over the rights of any Eligible Mortgage Holder pursuant to its Mortgage in the case of a distribution to Unit Owners of insurance proceeds or condemnation awards for losses to or a taking of Units, Common Elements, or both.

ARTICLE VIII

Records of Information

8.1. Title. Every Unit Owner shall promptly cause to be duly recorded the deed, lease, assignment, or other conveyance to him of his Unit or other evidence of his title thereto and file such evidence of his title with the Executive Board through the Secretary or Manager. The Secretary shall maintain such information in the record of ownership of the Association.

8.2. Availability of Information. The Association shall make available at the Condominium to Unit Owners, lenders and the holders, insurers and guarantors of the first Mortgage on any Unit, for inspection at the Property, current copies of the Declaration, these By-laws and the rules and regulations governing the Property and other books, records and financial statements of the Association. The Association shall also make available to Eligible Mortgage Holders, Eligible Insurers, Unit Owners and prospective purchasers at the cost of the person requesting the same current copies of the Declaration, these By-Laws and the rules and regulations governing the Property.

ARTICLE IX

Amendments

9.1 General Requirements; Consent of Holders of Mortgages; Curative Amendments to Bylaws. Except as otherwise provided in any one or more of these Bylaws, the Declaration or the Act, these Bylaws may be amended by the approval of a majority of the aggregate votes in the Association, cast by Unit owners in person or by proxy at a duly convened meeting at which a quorum is present; provided, however that no amendment seeking (i) to abandon, partition, subdivide, encumber, sell or transfer any portion of the Common Elements, or (ii) to abandon or terminate the condominium form of ownership of the Property, except as otherwise provided in the Declaration, shall be effective without the prior written approval of all eligible mortgage holders. Notwithstanding the foregoing, amendments of a material nature must be approved by Unit owners entitled to cast at least seventy-five percent (75%) of the aggregate votes in the Association and by eligible mortgage holders representing at least seventy-five percent (75%) of the votes of Units subject to mortgages held by eligible mortgage holders. A change to any of the

following would be considered material:

- (a) voting rights;
- (b) assessments, assessment liens, or subordination of assessment liens;
- (c) reserves for maintenance, repair and replacement of Common Elements;
- (d) responsibility for maintenance and repairs;
- (e) reallocation of interests in the Common or Limited Common Elements, or rights to their use;
- (f) boundaries of any Unit;
- (g) convertibility of Units into Common Elements or vice versa;
- (h) expansion or contraction of the Condominium; or the addition, annexation or withdrawal of property to or from the Condominium;
- (i) insurance or fidelity bonds;
- (j) leasing of Units;
- (k) restriction of a Unit owner's right to sell or transfer the owner's Unit;
- (l) restoration or repair of the Condominium (after a hazard damage or partial condemnation) in a manner other than that specified in the condominium documents;
- (m) any action to terminate the legal status of the Condominium after substantial destruction or condemnation occurs; or
- (n) any provisions that expressly benefit mortgage holders, insurers, or guarantors.

9.1.2 Additionally, if any amendment is of a non-material nature, or in the judgment of the Executive Board, is necessary to cure any ambiguity or to correct or supplement any provision of these Bylaws that is defective, missing or inconsistent with any other provision herein, or with the Act or the Declaration, the approval of an eligible mortgage holder may be assumed when such a mortgage holder fails to submit a written response to any written proposal for an amendment within thirty (30) days after the proposal is made, and the Executive Board, acting through the President, may effect an appropriate amendment without the approval of the Unit owners.

9.2. Amendments to the Declaration. The Declaration may be amended pursuant to the provisions of the Act and the Declaration. The President is empowered to prepare and execute any amendments to the Declaration on behalf of the Association and the Clerk is empowered to attest, seal with the Association's corporate seal and record any such amendments on behalf of the Association.

ARTICLE X

Corporate Seal

10.1. Seal. The Association may have a seal in circular form having within its circumference the words:

The Enclave at South Portland Condominium Association
MAINE

ARTICLE XI

Notices

11.1. To Unit Owners. All notices, demands, bills, statements or other communications affecting the Condominium shall be given to Unit Owners by the Association in writing and shall be deemed to have been duly given if delivered personally securing a receipt therefor, or sent by United States mail, postage prepaid, or if such notifications are of a default or lien, sent by registered or certified United States mail, return receipt requested, postage prepaid, addressed to the Unit Owner at the address which the Unit Owner shall designate in writing and file with the Secretary of the Association, or if no such address is so designated, the address of the Unit of which such Unit Owner is the record owner thereof.

11.2. To the Association. All notices, demands, statements or other communications affecting the Condominium given by the Unit Owner to the Association shall be in writing and shall be deemed to have been duly given to the Association if delivered personally securing a receipt therefor, or sent by United States mail, postage prepaid, return receipt requested, addressed to the Association at the principal office of the managing agent, or if there shall be no managing agent, then to the Secretary of the Association at the address of the Unit of which the Secretary is the record Unit Owner thereof.

11.3. To Eligible Mortgage Holder, etc. All notices demands, statements or other communications affecting the Condominium given by the Association to any Eligible Mortgage Holder and Eligible Insurer shall be in writing and shall be deemed to have been duly given by the Association if delivered personally securing a receipt therefor, or sent by United States mail, postage prepaid, addressed to the Eligible Mortgage Holder at the address identified pursuant to Paragraph 18(a) of the Declaration and to the Eligible Insurer at the address provided.

ARTICLE XII

Miscellaneous

12.1. Remedies Cumulative. All rights, remedies and privileges granted to the Executive Board or a Unit Owner pursuant to any terms, provisions, covenants or conditions of the Condominium Documents shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies, or privileges as may be granted to such party hereunder or by any instruments or documents incorporated herein by reference or at law or in equity.

12.2. Captions. The headings in these By-Laws are for purposes of reference only and shall not limit or otherwise affect the meaning hereof. Any tables of contents or indices attached to these By-Laws are for purposes of reference and convenience only and shall neither limit nor otherwise affect the meaning hereof nor be deemed as part of these By-Laws. References in these By-Laws to Articles, Paragraphs, Subparagraphs and Schedules without references to the document in which they are contained are references to these By-Laws. Schedules are attached to and are an integral part of these By-Laws. Any Exhibits are attached to these By-Laws for purposes of identification only and shall not be deemed as part of these By-Laws.

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12.3. Gender, Number, Etc. The use of the singular number in these By-Laws shall be deemed to include the plural, the plural the singular, and the use of any one gender shall be deemed applicable to all genders.

12. 4. Severability. The invalidity of any provisions of these By-Laws shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder o these By-Laws, and in such event, all of the other provisions of these By-Laws shall continue in full force and effect as if such invalid provisions had never been included herein.