

## DECLARATION OF CONDOMINIUM MUNJOY HEIGHTS CONDOMINIUM

This Declaration of Condominium (the “Declaration”) is made by **REDFERN MUNJOY, LLC** (“Declarant”), a Maine limited liability company having a principal place of business in Portland, Maine, as the owner in fee simple of the real estate described herein.

1. Property. Declarant hereby submits the real estate situated at and near Sheridan Street (a “paper street”), North of Walnut Street, in the City of Portland, County of Cumberland and State of Maine, being more particularly described in Exhibit A attached hereto and made a part hereof, together with the buildings and improvements thereon (the “Condominium”) to the provisions of the Maine Condominium Act, Chapter 31 of Title 33 of the Maine Revised Statutes Annotated, as it may be amended (the “Act”). The Condominium is subject to and shall have the benefit of all easements, rights of way and matters affecting title described or referred to in Exhibit A or in the survey to which reference is made below. The name of the Condominium is Munjoy Heights Condominium.

The plat of the land submitted to the provisions of the Act (the “Plat”) is entitled “Subdivision Plat, at \_\_\_\_\_, Portland, Maine.” The Plat was prepared by Nadeau Survey, dated \_\_\_\_\_, 20\_\_\_\_, as revised, and is recorded in the Cumberland County Registry of Deeds in Plan Book \_\_\_\_\_, Page \_\_\_\_\_. The plan of improvements for the Condominium (the “Plan”) is entitled “\_\_\_\_\_, Portland, Maine.” The Plan was prepared by Kaplan Thompson Architects, dated \_\_\_\_\_ and is recorded in the Cumberland County Registry of Deeds in Plan Book \_\_\_\_\_, Pages \_\_\_\_\_ to \_\_\_\_\_.

2. Defined Terms.

(a) As provided in section 1601-103 of the Act, capitalized terms not otherwise defined in this Declaration or on the Plat and Plan shall have the same meanings as specified in the Act.

(b) “Common Expenses” means all common expenses for the Condominium. Common Expenses include, but are not limited to (i) the cost of maintenance, management, operation, repair, renovation, restoration and replacement of the Common Elements; (ii) the cost of all insurance premiums on all policies of insurance required to be or that have been obtained by the Board of Directors pursuant to the provisions of this Declaration and the fees and disbursements of the Insurance Trustee (as defined in the Bylaws), if any; (iii) such amounts as the Board of Directors may deem necessary to provide for general operating reserve funds, reserve funds for replacements and contingencies, and such other reserve funds as may be required by the Bylaws or as the Board of Directors may deem necessary to compensate for any deficits in receipts over expenses for the previous fiscal year; and (iv) such other costs and expenses that may be declared by the Act, this

Declaration, the Bylaws or resolution or agreement by the Board of Directors or Unit owners to be Common Elements of the administration, operation, maintenance and repair of the Condominium and the rendering to Unit owners of all related services.

The Condominium is heavily landscaped with approximately 67 trees, 700 shrubs and many groundcovers and vines. The landscaping is important to the Condominium for erosion control, ecological balance and to maintain the market value of the Units. The Declarant will have posted a performance bond with the City of Portland to replace any defective vegetation for the first year but the Association is responsible for normal landscape maintenance. Professional landscape maintenance must be maintained at all times, as if it is not, the integrity of the Condominium will be compromised. Immediate replacement of dead and diseased landscaping is mandatory.

The Condominium shall maintain the central ~~access area~~~~courtyard~~, also known as the “woonerf” both for its Unit Owners but also for public access for trail connections to Jack’s Path and East Cove Street as further set forth in easement to Portland Trails and the City of Portland, as more specifically referenced in Exhibit A attached hereto.

(c) “Common Expense Liability” means the allocation to each Unit of the respective liability for Common Expenses as set forth in paragraph 7 below.

(d) “Limited Common Expenses” means the Common Expenses associated with the maintenance, repair or replacement of a Limited Common Element, which shall be assessed against the Unit to which that Limited Common Element is assigned.

(e) “Condominium Documents” mean this Declaration, the Plat and Plan, the Bylaws and the Rules and Regulations adopted by the Board of Directors and all amendments thereto.

3. Creation of Units. Declarant hereby creates seven (29) units, being Units 1 - 29 (individually, a “Unit” and collectively, the “Units”). The location, boundaries and identifying number of the Units are shown on the Plat and Plan.

4. Unit Boundaries.

(a) Upper and Lower Boundaries: The upper and lower boundaries of a Unit shall be the following boundaries extended to an intersection with the vertical boundaries:

(i) Upper Boundary: The upper boundary of each Unit is the plane of the underside of the ceiling joists or bottom members of trusses or, if there are no ceiling joists or trusses, such plane as would exist if joists or trusses were installed directly above the studs in the perimeter walls, the Unit to include the finish ceiling material attached to the underside of the ceiling joists.

(ii) Lower Boundary: The lower boundary of each Unit is the horizontal plane of the top surface of the subfloor or, if there is no subfloor, then the plane of the upper side of the floor

joists, the Unit to include the finish floor material attached to the upper side of the subfloor or the floor joists.

(b) **Vertical Boundaries:** The vertical boundaries of each Unit shall be the planes formed by the interior surfaces of the studs located in the perimeter walls bounding the Unit extended to intersections with each other and with the upper and lower boundaries, the Unit to include the drywall and finish wall material. Boundary lines shall also be the ~~interier~~<sup>exterior</sup> surface of doors, garage doors, windows and storm windows, and glass walls, and their frames, sills and thresholds.

(c) If walls and floors or ceilings are designated as boundaries of a Unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces thereof are a part of the Unit, with all other portions of the walls, floors or ceilings being a part of the Common Elements.

(d) If any chute, flue, duct, wire, conduit, bearing wall, bearing column or any other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit is a Limited Common Element (as herein defined) allocated solely to that Unit, and any portion thereof serving more than one Unit or any portion of the Common Elements is a part of the Common Elements (as herein defined).

(e) Subject to the provisions of paragraph (d) of this paragraph 4, all spaces, interior partitions and other fixtures and improvements within the boundaries of a Unit are a part of the Unit.

(f) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios and all exterior doors and windows or other fixtures designated to serve a single Unit, but located outside the Unit's boundaries, are Limited Common Elements allocated exclusively to that Unit.

5. **Common Elements.** Each Unit will be conveyed together with its respective undivided interest in the Common Elements as hereinafter set forth and will have the benefit of the right to use the Common Elements in common with others entitled thereto as provided by the Bylaws (the "Bylaws") adopted by the Munjoy Heights Condominium Association (the "Association") and any rules and regulations adopted by the Association (the "Rules and Regulations"). A copy of the Bylaws initially adopted by the Association is attached hereto as Exhibit C.

The "Common Elements" consist of all portions of the Condominium other than the Units. Common Elements shall also include those parts of the Condominium described in the Act or the Plat and Plan as being Common Elements. Common Elements shall include, but not be limited to, Limited Common Elements.

6. **Limited Common Elements.** "Limited Common Elements" mean those portions of the Common Elements where the exclusive use is reserved to one of the Units as allocated by this Declaration and/or as shown on the Plat or Plan. The Association shall be solely responsible for all

maintenance, repair and upkeep thereof in good condition, as provided in paragraph 13 below, but the associated expenses shall be specially assessed to the owner of the Unit to which the Limited Common Element is appurtenant. The initial Limited Common Elements include the ~~gas furnace and related facilities serving each Unit and the~~ internal plumbing, ~~electric conduits or other utilities that serve more than one~~ for the Unit. Limited Common Elements shall also include those parts of the Condominium described in the Act or the Plat and Plan as being Limited Common Elements. A Unit owner shall have no maintenance responsibility with respect to the Limited Common Elements reserved to another Unit. The Association shall not be liable for the maintenance, repair or upkeep of a Unit.

The rooftop decks are Limited Common Elements.

Each Unit Owner may install a wheelchair ramp to their exterior front door, as a Limited Common Element, subject to such reasonable rules as to materials and location as determined by the Board.

7. Fraction of Common Element Interests, Voting Rights and Common Expense Liabilities. The percentage of undivided interests in the Common Elements, the percentage of voting rights and the Common Expense Liability allocated to each Unit is set forth on Exhibit B. No percentage of undivided interest allocated to any Unit shall be altered except upon the unanimous vote of all Unit owners and their first mortgagees.

8. Encroachments. If any portion of the Common Elements, or if any other Unit encroaches at any time upon any Unit or upon any portion of the Common Elements, as a result of minor variations or relocation during construction, settling of the building, alteration or repair to the Common Elements made by or with the consent of the Board of Directors of the Association (the "Board of Directors"), repair or restoration of a Unit or the building after damages by fire or other casualty, or as a result of condemnation or other eminent domain proceedings, an easement shall exist for the encroachment and for its maintenance so long as the building stands.

9. Easements.

(a) The Units and Common Elements (including the Limited Common Elements) shall be, and hereby are, made subject to perpetual easements in favor of the utility and service companies, cable television companies and governmental agencies or authorities for such utility and service lines and equipment as may be necessary or desirable to serve any portion of the Condominium including the Units. The easements created by this paragraph 9(a) shall include, without limitation, rights to install, lay, maintain, repair, relocate and replace gas lines, pipes and conduits, water mains and pipes, sewer and drain lines, drainage ditches and pump stations, telephone poles, wires and equipment, television equipment and facilities (cable or otherwise), poles, wires, conduits and equipment in ducts and vents over, under, through, along and on the Units, Limited Common Elements and Common Elements. With respect to any utility lines or equipment serving only the Condominium and located upon the Common Elements (including any Limited Common Elements), the Board of Directors shall have the right and power to dedicate and convey an easement to any

private or public utility company. The Board of Directors shall also have the right and power to convey permits, licenses and easements over the Common Elements for the installation, maintenance, repair and replacement of utility poles, lines, wires and other equipment to any private or public utility company. In addition, the Board of Directors shall have the right to grant permits, licenses and easements over the Common Elements (including any Limited Common Element) for purposes necessary for the proper operation of the Condominium.

(b) The Common Elements (including any Limited Common Element) are subject to an easement in favor of the Association and the agents and employees of the Association for access, egress and ingress over, through and across each portion thereof for the operation of the Condominium, pursuant to such requirements and subject to such charges as the Board of Directors may from time to time prescribe. Every Unit owner shall have an unrestricted right of access to such owner's Unit.

(c) The Common Elements (including any Limited Common Element allocated to any one Unit) shall be, and hereby are made, subject to an easement in favor of the Association and the agents, employees and independent contractors thereof for the purpose of the inspection, upkeep, maintenance, repair and replacement of the Common Elements. The Association may in its sole discretion grant easements to a Unit owner for the erection of improvements in Limited Common Elements appurtenant to the Unit owned by that owner.

(d) Each Unit and its Limited Common Elements are subject to the following easements in favor of all other Units: (i) for installation, inspection, repair, maintenance, use, removal or replacement of pipes, ducts, heating and air conditioning systems, electrical, telephone, telegraph or other communication systems, wiring and cables and all of the utility lines and conduits that are a part of or exclusively serve any Unit and that pass across or through a portion of such Unit and/or its Limited Common Element or the Common Elements; and (ii) for the maintenance or the encroachment of any lighting devices, outlets, medicine cabinets, exhaust fans, ventilation ducts, registers, grilles and similar fixtures that serve only one Unit but encroach into any part of such Unit, and/or its Limited Common Element or the Common Elements on the date that this Declaration is recorded or any amendment thereof is recorded.

(e) To the extent necessary, each Unit shall have an easement for structural support of the Unit in the building and the Limited Common Elements appurtenant to the Units in the building, and the Common Elements shall be subject to an easement for structural support in favor of the Units and the Limited Common Elements.

(f) The Units and the Limited Common Elements are hereby made subject to an easement in favor of the Association and its agents, employees and independent contractors for: (i) inspection of the Units and Limited Common Elements in order to verify the performance by Unit owners of all items of maintenance and repair for which they are responsible; (ii) installation, inspection, maintenance, repair, and replacement of the Common Elements situated in or accessible

from such Units or Limited Common Elements or both; (iii) correction of emergency conditions in one or more Units or Limited Common Elements, or both, or casualties to the Common Elements, the Limited Common Elements and/or the Units; and (iv) any purposes set forth in paragraph 9(g) below.

(g) If construction, reconstruction, repair, shifting, settlement or other movement of any portion of the Condominium results in either the Common Elements encroaching on a Unit, or in a Unit encroaching on the Common Elements or on another Unit, a valid easement shall exist during the period of the encroachment for the encroachment and for the maintenance thereof.

(h) All easements, rights and restrictions described and mentioned in this Declaration are easements appurtenant, running with the land and the Condominium, and (except as expressly may be otherwise provided herein or in the instrument creating the same) shall continue in full force and effect until the termination of this Declaration.

(i) Declarant reserves a Special Declarant Right and easement to enter upon the Condominium for the purposes of construction, reconstruction, maintenance, repair, renovation, replacement or correction of the Units, Common Elements or Limited Common Elements or other improvements of the Condominium. This easement shall include, without limitation, the right of vehicular and pedestrian access, the right to park motor vehicles and to engage in construction activities, including the movement and storage of building materials and equipment. This easement also expressly includes the right to cut and remove any trees, bushes or shrubbery, to grade and remove the soil, to install and remove any temporary siltation fence or to take any other action reasonably necessary to achieve this purpose. Declarant further reserves an easement in the Units, Common Elements and Limited Common Elements pursuant to section 1602-116 of the Act for the purpose of discharging Declarant's obligations and exercising the Special Declarant Rights reserved pursuant to this Declaration or on the Plat and Plan.

(j) Declarant reserves an easement on, over and under those portions of the Common Elements and Limited Common Elements not located within the building for the purpose of maintaining and correcting drainage of surface water in order to maintain reasonable standards of health, safety and appearance. The reservation of this right does not and shall not create any obligation on the part of Declarant to perform any such work.

(k) Declarant further reserves an easement to connect with and to make use of utility lines, wires, pipes and conduits located on the Condominium for construction purposes (Declarant shall be responsible for the cost of any services), and to use the Common Elements for access and construction activities, and for the storage of construction materials and equipment used in the completion of the Units, Limited Common Elements and Common Elements.

(l) Declarant shall have the right, until Declarant has conveyed all of the Units in the Condominium, to grant and reserve easements and rights-of-way through, under, over and across the Condominium for construction purposes, and for the installation, maintenance and inspection of the

lines and appurtenances for public water, sewer, drainage, gas, electricity, telephone and other utilities.

(m) Declarant reserves the right, for the marketing of its Units, to use the Common Elements and Limited Common Elements for access for itself, its agents and prospective purchasers of Units. Declarant also reserves the right to use any Units owned by the Declarant as models, management offices, sales offices for this project or customer service offices, and the right to relocate the same from time to time within the Condominium. The Declarant further reserves the right to maintain on the Condominium such advertising signs as may comply with applicable governmental regulations, which may be placed in any location on at the Condominium and may be relocated or removed, all at the sole discretion of the Declarant.

(n) The easements reserved by Declarant in paragraphs 9(i), (j), (k), (l) and (m) shall continue until Declarant has conveyed all of the Units in the Condominium. These provisions shall not be amended without the written consent of Declarant.

10. Eminent Domain.

(a) If a Unit is acquired by eminent domain, or if a part of a Unit is acquired by eminent domain leaving the Unit owner with a remnant that may not practically or lawfully be used for any purpose permitted by this Declaration, any award therefor shall be paid to the Unit owner as compensation for such Unit and its percentage interest, whether or not any percentage of undivided interest is acquired. Upon acquisition, unless the decree otherwise provides, that Unit's entire percentage of undivided interest, votes in the Association and Common Expense Liability shall be reallocated to the remaining Units in proportion to the relative interests, votes and liabilities of those Units before the taking, and the Association shall promptly prepare, execute and record an amendment to this Declaration reflecting the allocations. Any remnant of a Unit remaining after part of a Unit is taken, as determined under this paragraph 10(a), shall be thereafter a Limited Common Element, subject to the provisions of paragraph 5 above.

(b) Except as provided in paragraph 10(a) above, if part of a Unit is acquired by eminent domain, any award therefore shall be paid to the Unit owner as compensation for the reduction in value of the Unit. That Unit's allocation of Common Element interests and Common Expense Liability and voting rights shall remain unchanged.

(c) If a part of the Common Elements is acquired by eminent domain, the Association shall represent the Unit owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority, and the award shall be paid to the Association for the use and benefit of the Unit owners and their mortgagees as their interests may appear. The Association shall divide any portion of the award not used for any restoration or repair of the remaining Common Elements among the Unit owners in proportions to their relative percentages of undivided interests before the taking, but the portion of the award attributable to the acquisition of a Limited Common

Element must be paid to the owner of the Unit to which that Limited Common Element was allocated at the time of acquisition.

(d) A court decree regarding any such taking shall be recorded in the Cumberland Country Registry of Deeds.

(e) Nothing in this Declaration, the Bylaws or the Rules or Regulations adopted by the Board of Directors shall be deemed to give the Unit owner or any other party priority over any rights of a first mortgagee of a Unit pursuant to its mortgage documents in the case of a distribution to such Unit owner of condemnation awards for the taking of Units and/or Common Elements.

11. Restrictions on Use and Occupancy. (a) The Units are restricted to private residential use, including residential activities engaged in by Unit owners, members of the Unit owners, immediate family and the guests and other authorized occupants, licensees and visitors of the Unit owners. These Units may not be used for professional, business, commercial, industrial or manufacturing purposes, or primarily for storage.

(b) No Unit owner may carry on any practice, or permit any practice to be carried on, that unreasonably interferes with the quiet enjoyment of the occupants of any other Unit. Each Unit owner shall maintain its Unit and the appurtenant Limited Common Elements in a clean and sanitary condition.

(c) No Unit shall be used, occupied or kept in a manner that in any way would be deemed hazardous and/or result in an increase in the fire insurance premiums for a Unit beyond the standard rates for a dwelling in a multi-family structure, without the prior written permission of the Board of Directors.

(d) No owner of a Unit may erect any sign on or in a Unit or any Limited Common Element that is visible from outside such Unit, without in each instance having obtained the prior written permission of the Board of Directors. This limitation shall not apply to standard signs used to advertise a Unit for sale or for lease.

(e) A Unit owner shall be absolutely liable to the other Unit owners and family, guests, licensees and invitees of the other Unit owners for any damage to personal property caused by any pets or animals kept at the Condominium by such Unit owner; provided, however, nothing in this subparagraph (e) shall be construed or deemed to limit the right of the Association to regulate, restrict or prohibit pets in the Condominium pursuant to rules and regulations duly adopted from time to time.

(f) A Unit owner may lease or sublease its Unit at any time and from time to time. No Unit may be leased or subleased without a written lease or sublease. No Unit may be leased for a term of less than ~~six (6)~~ months. A copy of each such lease or sublease shall be furnished to the Board of Directors within ten (10) days after execution thereof. Each lease must provide



expressly that the lessee or sublessee shall be bound by the covenants, conditions and restrictions set forth in this Declaration, the Bylaws and the Rules and Regulations, and that a default thereunder shall constitute a default under the lease or sublease. The Unit owner shall provide any lessee or sublessees of a Unit with a copy of the Rules and Regulations of the Condominium. The foregoing shall not impose any direct liability on any lessee or sublessees of a Unit to pay any common expense assessments on behalf of the owner of that Unit unless so provided for in said lease or sublease.

(g) A Unit owner shall be responsible for the cleanliness of any Limited Common Element serving such Unit, at the expense of such Unit owner.

(h) Each Unit owner shall comply strictly with the Bylaws and with the Rules and Regulations adopted and amended from time to time by the Board of Directors and with the covenants, conditions and restrictions set forth in this Declaration or in the deed to a Unit. Failure to so comply shall be grounds for an action to recover damages or for injunctive relief or both maintainable by the Association or any aggrieved Unit owner.

12. Common Expenses. (a) Each Unit owner shall pay to the Association or its authorized representative, on a monthly basis, its proportionate share of the Common Expenses. Each Unit's proportionate share of Common Expenses is set forth in paragraph 7 above. Limited Common Expenses shall be assessed against the Unit(s) to which the associated Limited Common Elements are appurtenant. Any Limited Common Expenses applicable to fewer than all of the Units shall be allocated pro-rata to the affected Units and shall be assessed to the affected Units as such expenses are incurred. With that exception, payment of Common Expenses shall be in equal monthly amounts and subject to annual review and adjustment. In the event a Unit owner fails to pay such proportionate share of its Common Expenses (or any assessed Limited Common Expenses) when due, the amount thereof together with interest at the rate of eighteen percent (18%) per annum or such other rate as may be established by the Association shall be added to, and accrue upon, such unpaid assessments. All unpaid assessments, interest, such late fees as may be established by the Association, costs and reasonable attorneys' fees shall constitute a lien on the interest of such Unit owner, as provided by the Act; provided, however, that such lien shall be subordinate to the lien of any recorded first mortgage on the interest of such Unit owner, and the foreclosure of such mortgage, sale or transfer pursuant to foreclosure or transfer to the first mortgagee in lieu of foreclosure shall extinguish a subordinate lien for common charges. The entire unpaid share of the Common Expenses, including any applicable Limited Common Expenses or other assessments by the Association chargeable to such Unit, that become due prior to the foreclosure shall become Common Expenses and shall be assessed to all Unit owners. Such foreclosure shall not release the delinquent Unit owners from personal liability to the Association for unpaid Common Expenses, including Limited Common Expenses.

(b) Neither trash nor snow will be removed by the City of Portland and the Association will be solely responsible for snow and trash removal for the Condominium. The Association will provide snow and ordinary household trash removal for the Phillip J. Rando, Jr., premises at 196

Sheridan Street, at no charge to Mr. Rando and his successors. Trash removal obligations shall commence upon the issuance of the first Certificate of Occupancy by the City of Portland. The Condominium is subject to and benefited by reciprocal easements and obligations to and from Phillip J. Rando, Jr. and Thomas J. McAdam, as more specifically referenced in Exhibit A attached hereto.

(c) Pursuant to section 1603-102(14) of the Act, the Association may borrow funds for capital improvements and pledge future assessments to secure such loan facilities, provided that such loan is approved by 67% of the ownership interest by resolution. Common expenses of the Association shall include the payment of principal and interest for these purposes.

13. Maintenance Each Unit owner shall furnish and be responsible for, at such owner's expense, all the maintenance, repairs and replacements within and upon such owner's Unit. The Association shall be responsible for maintenance, repairs and replacements of the Common Elements, including the Limited Common Elements. Notwithstanding the foregoing, in case of any such work that is required with respect to a Limited Common Element appurtenant to a Unit, the Association may delegate any such work, and associated expenses, to the owner of that Unit. The Board of Directors shall ensure that the exterior portions of each Unit are maintained in a compatible and harmonious manner, so that the building as a whole is attractive and well maintained, including, without limitation, the right to regulate colors, siding and roof materials, window, exterior door and garage door alteration and the like.

14. Expansion of a Unit. No unit may be expanded beyond the boundaries as set forth in the Plat.

15. Parking, Bike Rack and ~~Central Access~~ Maintenance. (a) Parking is allocated in the Plat. Units 19-24 shall be the only Units with parking outside of the garage, and may park one car in front of the area in front of their garage door. Those parking spaces are limited to vehicles that do not exceed eighteen feet in length. There are also ~~5~~<sup>2</sup> guest parking spaces which shall be equitably shared by the Unit Owners. The Board may adopt regulations as needed to regulate the use of the guest parking spaces. The Declarant reserves the right to temporarily reassign the parking spaces, including entirely off the lot but nearby, as reasonably required during construction. Maintenance shall include cleaning and repairing the central access area ~~parking lot~~ and bike rack, maintenance of ~~parking lot~~ landscaping, lighting and electricity used for lighting associated with central access area ~~parking lot~~, and snow plowing, sanding, and snow removal. The Declarant shall bear all costs for initial paving and installation of pavers.

(b) The Association shall be solely responsible for the storm water drainage treatment infrastructure for the central access area from, and including, the catch basin to the ultimate discharge into the City system. The Stormwater Drainage System Maintenance Agreement is attached hereto as Exhibit D-1 and the Stormwater Inspection and Maintenance Plan is attached hereto as Exhibit D-2.

(c) The Association shall remove snow from the central access area in accordance with

[the Snow Removal Plan attached hereto as Exhibit E.](#)

[\(d\) The Condominium has utilized large retaining walls as part of its construction. It is important for the Association to periodically inspect and maintain these structures, which will help prevent more expensive repairs. Attached as Exhibit F, is the recommended inspection and maintenance schedule prepared by a geotechnical engineer.](#)

16. Association of Unit Owners. The Association shall be the governing body for the Unit owners with respect to the administration of the Condominium as provided by the Act, this Declaration and the Bylaws. The Association shall elect officers as provided in the Bylaws.

Each Unit owner and/or owners shall be a member of the Association. Membership shall be appurtenant to the Units, and the transfer of title to a Unit shall automatically transfer the regular membership appurtenant to that Unit to the transferee or transferees. A transfer pursuant to a mortgage, however, shall not transfer membership until foreclosure or a transfer to a mortgagee in lieu of foreclosure.

The provisions of this Declaration and the Bylaws and the rights and obligations established thereby shall be deemed to be covenants running with the land, so long as the Condominium remains subject to the provisions of the Act and shall inure to the benefit of and be binding upon each and all of the Unit owners and their respective heirs, representatives, successors, assigns, purchasers, lessees, grantees and mortgagees. By the recording or the acceptance of a deed conveying a Unit or any interest therein, or any ownership interest in the Condominium whatsoever, the person to whom such Unit or interest is conveyed shall be deemed to accept and agree to be bound by and subject to all of the provisions of the Act, this Declaration and the Bylaws.

In any voluntary conveyance of a Unit, it shall be the duty of the seller to furnish the buyer with a copy of this Declaration, the Association Bylaws and the Rules and Regulations as they may from time to time be amended. The Declarant or the Association shall make available to Unit owners, prospective purchasers, lenders and the holders, insurers and guarantors of the first mortgage on any Unit, current copies of the Declaration, Bylaws and the Rules and Regulations governing the Condominium, and other books, records and financial statements of the Association. This requirement may be satisfied by making the documents available for inspection upon request during normal business hours or under other reasonable circumstances. If copies are requested, the Declarant or Association may, but shall not be obligated to, make them available at a reasonable charge.

17. Board of Directors. Except as otherwise provided in section 1603-103(b) of the Act, the Board of Directors may act on behalf of the Association and shall have all of the powers necessary to administer the affairs of the Association. ~~A Board of Directors composed of at least three (3) and no more than seven (7) natural persons shall govern the affairs of the Association.~~ Prior to the transition election provided for by paragraph (a) below, the Board of Directors shall be

composed of three (3) natural persons appointed by the Declarant. This “Declarant Control Period” means the entire time period that extends from the date of the recording of this Declaration until the earlier of (i) five (5) years following the conveyance of the first Unit to a purchaser or (ii) sixty (60) days after the conveyance to purchasers of seventy-five percent (75%) of the Units. 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 appointees of the Declarant need not be Unit owners. After the transition election, at least a majority of the members of the Board of Directors shall be Unit owners or spouses of Unit owners, or in the case of a Unit owner that is a corporation, partnership, limited liability company, trust or estate, a designated agent thereof. The transition from Declarant-appointed members of the Board of Directors to Unit owners other than the Declarant shall occur as follows:

(a) No later than the earlier of (i) sixty (60) days after the conveyance of seventy-five percent (75%) of the Units to purchasers, or (ii) five (5) years following conveyance of the first Unit to a purchaser, or at such earlier date as the Declarant in its sole discretion shall specify, a transition meeting of the Association and 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 one or more Units, shall thereupon elect no fewer than five (5)~~three (3)~~ and no more than nine (9)~~seven (7)~~ successor members of the Board of Directors to act in the place and stead of those resigning.

(b) The Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board of Directors before termination of the Declarant Control Period, but in that event, it 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 actions can become effective.

The Board of Directors and its members, in their capacity as members, officers and employees, shall have limited liability. Specifically, a member of the Board of Directors: (i) shall not be personally liable for the failure of any service to be obtained by the Board of Directors and paid for by the Association, or for any injury or damage to persons or property caused by the elements or by another Unit owner or person on the Condominium; (ii) shall not be personally liable to the Unit owners, as a result of the performance of the Board of Directors member’s duties, for any mistake of judgment, negligence or otherwise, except for the Board of Directors member’s own willful misconduct, bad faith, or gross negligence; (iii) shall have no personal liability in contract to a Unit owner or any other person or entity, under any agreement, check, contract, deed, lease, mortgage, instrument or transaction entered into by him or her on behalf of the Board of Directors or the Association, in the performance of the Board of Directors member’s duties; (iv) shall not be liable to a Unit owner, or such Unit owner’s tenants, employees, agents, customers or guests, for loss or damage caused by theft of or damage to personal property left by such Unit owner or his or her tenants, employees, agents, customers or guests in a Unit, or in or on the Common Elements or Limited Common Elements, except for the Board of Directors member’s own willful misconduct,

bad faith or gross negligence; (v) shall have no personal liability in tort, to a Unit owner or any other person or entity, direct or imputed, by virtue of acts performed by or for him or her, except for the Board of Directors member's, own willful misconduct, bad faith or gross negligence in the performance of his or her duties.

The Association shall indemnify each member of the Board of Directors, in his or her capacity as a member of the Board of Directors, an officer or both (each, an "Indemnitee") against all expenses and liabilities, including attorney's fees, that the Indemnitee reasonably incurs in connection with any proceeding in which he or she may become involved by reason of his or her being or having been a member and/or officer of the Board of Directors, or any settlement of any such proceeding, whether or not he or she is an Board of Directors member, officer or both at the time such expenses are incurred, except in such cases wherein such Board of Directors member and/or officer is adjudged guilty of willful misconduct, bad faith or gross negligence in the performance of his or her duties; provided that the indemnification with respect to any criminal action or proceeding is permitted only if the Indemnitee had no reasonable cause to believe his or her conduct was unlawful. The indemnification by the Unit owners set forth in this paragraph shall be paid by the Association on behalf of the Unit owners and shall constitute a Common Expense and shall be assessed and collectible as such. Such right of indemnification shall not be deemed exclusive of any other rights to which such Board of Directors member and/or officer may be entitled as a matter of law or agreement or by vote of the Unit owners or otherwise.

Complaints brought against the Association, the Board of Directors or the officers, employees or agents of them or the Condominium as a whole, shall be directed to the Board of Directors, which shall promptly give written notice thereof to the Unit owners and the Eligible Mortgage Holders and the mortgagees of Units, and such complaints shall be defended by the Association. The Unit owners shall have no right to participate in such defense other than through the Association.

18. Notice. The Secretary or Clerk of the Association shall cause notice of all meetings of members and of all proposed actions requiring vote or approval of a specified percentage of Unit owners and/or mortgagees to be sent in writing by U.S. Mail, postage prepaid, or to be personally delivered to all Unit owners and all eligible mortgage holders (as defined in section 1602-119(b) of the Act) at the address filed with the Secretary or Clerk by said owners and eligible mortgage holders not less than five (5) days and not more than twenty-five (25) days prior to the proposed meeting or action. Such notice shall be deemed to be given when so delivered in person or on the second business day following such mailing. Such notice may, however, set a later deadline for any proposed action, if such longer period of time is deemed necessary to obtain the required number of written approvals. Notice of meetings shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Declaration and the Bylaws, any budget changes and any proposal to remove a director or officer.

19. Separate Taxation and Utilities. It is understood that real estate taxes are to be

separately taxed to each Unit owner for such owner's Unit and the corresponding percentage of ownership in the Common Elements, as provided in the Act. If for any year such taxes are not separately taxed to each Unit owner but are taxed on the Condominium as a whole, then each Unit owner shall pay a proportionate share thereof in accordance with such owner's relative percentage of ownership interest in the Common Elements.

Each Unit owner shall pay for such owner's telephone, electricity and other utilities that are separately metered or billed to each user by the respective utility company. Except as may otherwise be provided in paragraph 6 herein, utilities that are not separately metered or billed shall be treated as part of the Common Expense and Unit owners shall take reasonable steps to conserve such utilities.

20. Insurance and Related Matters. The Board of Directors shall maintain all property and liability insurance required by section 1603-113 of the Act. The Board of Directors may also obtain and maintain as a Common Expense: (i) to the extent available on reasonable terms, "directors' and officers' liability insurance" to satisfy indemnification obligations of the Association; (ii) workers' compensation insurance, if and to the extent necessary to meet the requirements of law; and (iii) other insurance that the Board of Directors may determine is necessary or as may be requested by a majority of the Unit owners.

With respect to each Unit and the Limited Common Elements appurtenant thereto, during any time when the Association's master policy does not cover such risks, each Unit owner shall maintain insurance against loss or damage by fire and such other hazards as are covered under Standard Extended Coverage Provisions and all other perils customarily covered for similar types of properties, including those covered by the standard "all risk" endorsement, for an amount sufficient to avoid the application of any co-insurance provision. The proceeds of such insurance shall be used for the reconstruction of the Units and Limited Common Elements or shall be otherwise disposed of in accordance with the provisions of this Declaration and the Act; and the policies shall contain the standard mortgagee clause, provided, however, that the rights of the mortgagee of a Unit under any standard mortgagee clause endorsement to such policies shall be subject to the provisions in the Act with respect to the application of insurance proceeds to the reconstruction of the Units. Each Unit owner shall indemnify and save harmless the Association from any liability, claim, loss, damage, expense, action or cause of action relating to or arising out of such owner's respective Unit and its appurtenant Limited Common Elements.

21. Mortgage Provisions.

(a) The Board of Directors, whenever so requested in writing by a mortgagee of a Unit, shall promptly report to it any then unpaid common charges due from, or any other default by, the owner of the mortgaged Unit.

(b) The Board of Directors, when giving notice to a Unit owner of a default in paying common charges or other violation of the provisions of this Declaration, the Bylaws or the Rules and Regulations, shall, upon the written request of the holder of a mortgage, send a copy of such notice

within thirty (30) days after the occurrence of such default to each holder of a mortgage covering such Unit whose name and address has previously been furnished to the Board of Directors.

(c) Each mortgagee of a Unit shall be permitted to examine the books, accounts and records of the Association at reasonable times on business days and to require annual reports and other financial data of the Association. If no audited financial statement is available, any holder of a mortgage on any Unit shall be allowed to have an audited statement prepared at its own expense.

(d) Notwithstanding anything to the contrary elsewhere contained in this Declaration or the Bylaws, the following provisions shall govern:

(i) Any first mortgagee of a Unit in the Condominium will, upon request, be entitled to inspect the books and records of the Association during normal business hours.

(ii) No provision of this Declaration or of the Bylaws shall be deemed or construed to give a Unit owner, or any other party, priority over any rights of first mortgagees of Units pursuant to their mortgages in the case of a distribution to Unit owners of insurance proceeds or condemnation awards for losses to or a taking of Units and/or Common Elements.

(iii) A first mortgagee of a Unit shall, upon written request of such first mortgagee, be entitled to prompt written notification from the Board of Directors of (A) any default by the mortgagor of such Unit in the performance of such mortgagor's obligations under this Declaration and/or the Bylaws that is not cured within thirty (30) days; (B) any event of substantial destruction to, or condemnation or governmental taking of, such Unit or any portion of the Common Elements appurtenant thereto; (C) any lapse or modification of insurance or fidelity bond coverages; (D) any proposed amendment under paragraph 20 of this Declaration; and (E) any proposed action that entitles an eligible mortgage holder to notice under section 1602-119(b) of the Act.

(e) Any first mortgagee of a Unit who obtains title to the Unit pursuant to the remedies provided in the mortgage, or through foreclosure of the mortgage, or through deed (or assignment) in lieu of foreclosure, shall take the property free of any claims for unpaid assessments or charges against such Unit that accrue prior to the acquisition of title to such Unit by the mortgagees, other than the proportionate share of Common Expenses that become due and payable from and after the date on which said mortgagee acquires the Unit through a completed foreclosure or through deed (or assignment) in lieu of foreclosure.

22. Method of Amending Declaration. Except to the extent expressly permitted or required by the Act, this Declaration may be amended by a vote or by written approval of the owners of Units to which at least seventy-five percent (75%) of the votes in the Association are allocated and written approval from eligible mortgage holders, as defined in the Act, representing at least seventy-five percent (75%) of the votes allocated to Units that are subject to eligible first mortgages.

23. Name and Address. The name of the Condominium is Munjoy Heights Condominium, and the Condominium is located at Sheridan Street, north of Walnut Street in the City of Portland, County of Cumberland and State of Maine.

24. Applicable law; interpretation; severability. This Declaration shall be governed by and construed in accordance with the laws of the State of Maine. In the event of any conflict or discrepancy between this Declaration, the Bylaws and the Plat and Plan, this Declaration shall govern. If any provision of this Declaration, the Bylaws and the Plat and Plan, this Declaration shall govern. If any provision of this Declaration, the Bylaws or the Rules and Regulations are in conflict with any applicable laws, including the Act, then such laws shall govern and such invalid provision shall be of no force and effect, but the validity of the remainder of this Declaration, the Bylaws and the Rules and Regulations shall not be affected thereby and shall remain in full force and effect as if such invalid provision had not been included.

The captions herein are inserted for convenience and reference and do not limit, alter or define the terms of this Declaration. All exhibits attached to this Declaration are hereby made a part hereof.

25. Remedies: Waiver. All rights, remedies and privileges granted to the Declarant, the Association or a Unit owner pursuant to the terms of this Declaration, the Bylaws and the Rules and Regulations shall be deemed to be cumulative to any other right or remedy under said documents or afforded by law or equity. and may be exercised concurrently, independently or successively. Any forbearance in exercising any right or remedy hereunder or otherwise available by applicable law shall not be a waiver of or preclude the exercise of any such right or remedy.

26. Effective Date. This Declaration shall become effective when it and the Plat and Plan have been recorded in the Cumberland County Registry of Deeds.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

WITNESS:

Redfern Munjoy, LLC

\_\_\_\_\_

By: \_\_\_\_\_  
Jonathan Culley  
Its: Manager

STATE OF MAINE  
COUNTY OF CUMBERLAND, SS.

\_\_\_\_\_, 20\_\_\_\_



PERSONALLY APPEARED the above-named Jonathan Culley, duly authorized Manager of Redfern Munjoy, LLC, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of said company.

\_\_\_\_\_  
Notary Public/Attorney at Law

Print Name: \_\_\_\_\_

**EXHIBIT C**

**BYLAWS**

**MUNJOY HEIGHTS CONDOMINIUM ASSOCIATION**

ARTICLE I

INTRODUCTORY PROVISIONS

1.1. Name. The name of the Association is Munjoy Heights Condominium Association (the “Association”). The address of the Association is Sheridan Street, Portland, Maine. These Bylaws (the “Bylaws”) have been adopted as required by section 1603-106 of the Maine Condominium Act to govern the Association. The Association is the association of Unit owners of the Munjoy Heights ~~Townhomes~~ Condominiums (the “Condominium”).

1.2. Applicability of Bylaws. The provisions of these Bylaws are applicable to the Condominium and to the use and occupancy thereof.

1.3. Office. The principal office of the Association and the Board of Directors (as herein defined) shall be located at Sheridan Street, Portland, Maine, or at such other location as the Board of Directors 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.

1.5. Definitions. Capitalized terms used in these Bylaws without definition shall have the meanings specified for such terms in the Declaration of Condominium for the Condominium or, if not defined there, the meanings specified or used for such terms in the Act. The following terms shall have the following specific meanings in these Bylaws:

1.5.1. “Common Element Interest” means the percentage of undivided interest in the Common Elements appurtenant to each Unit as set forth in paragraph ~~57~~ of the Declaration.

1.5.2. “Common Expense Liability” means the allocation to each Unit of the respective liability for Common Expenses other than Limited Common Expenses. The Common Expense Liability allocated to the Unit is a percentage equal to the Common Element Interest appurtenant to the respective Unit as set forth in Exhibit B to the Declaration.

1.5.3. “Condominium Documents” mean the Declaration, the Plat and Plans, the Bylaws and the Rules and Regulations adopted pursuant thereto by the Board of Directors or a committee designated by the Board of Directors, and all amendments to each of the same.

1.5.4. “Eligible Mortgage Holder” means the holder of record of a recorded first Mortgage encumbering a Unit in the Condominium that has delivered written notice to the Association by prepaid United States Mail, return receipt requested, or by delivery in hand securing a receipt therefor, stating its name and address, the name and address of the owner of the Unit encumbered by such Mortgage, the identifying number of such Unit, and containing a statement that such Mortgage is a recorded first Mortgage.

1.5.5. “Limited Common Expenses” means the Common Expenses associated with the maintenance, repair or replacement of a Limited Common Element. Pursuant to paragraph 6 of the Declaration, Limited Common Expenses shall be assessed against the Unit to which the relevant Limited Common Element is assigned.

1.5.6. “Mortgage” means a recorded mortgage or deed of trust encumbering a Unit in the Condominium held by a Mortgagee or an Eligible Mortgage Holder. “Mortgagee” means the holder of a Mortgage.

## ARTICLE II

### THE ASSOCIATION

2.1. Composition, Powers and Duties. The composition, powers and duties of the Association are as set forth in paragraphs 16 and 17 of the Declaration.

2.2. Nontransferability of Interests. Except as provided in these Bylaws or in the Declaration, membership shall not be transferable. The membership of each Unit owner shall terminate upon a sale, transfer other disposition, other than by mortgage, of the ownership interest of such Unit owner, accomplished in accordance with the provisions of the Declaration, and thereupon the membership and any interest in the Reserve Fund (as defined in paragraph 5.5 below) and other common funds shall automatically transfer to and be vested in the next Unit owner or owners succeeding to such ownership interest.

2.3. Meetings of Members. Meetings of the members 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 that is not a

legal holiday. At such meetings, there shall be elected by ballot of the members a Board of Directors in accordance with the provisions of Article III of these Bylaws. 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 Board of Directors or upon the written request of at least three (3)~~one (1)~~ Unit owners presented to the Secretary. 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.

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 Bylaws, any budget changes and any proposal to remove a member of the Board of Directors or officer, to each member of record, including the Declarant as long as it is the owner of record of a Unit, 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 a majority of Unit owners ~~seven (7) owners of the Units~~ to which are allocated the votes in the Association, shall be a 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. Each Unit shall be entitled to one (1) vote in the Association.

2.10. Voting. Voting shall be in accordance with section 1603-110 of the Act (including, but not limited to, section 1603-110(b) of the Act) and paragraph 7 of the Declaration. If the Declarant owns or holds title to one or more Units, the Declarant shall have the right at any meeting of the members to cast the votes allocated to such Unit or Units.

2.11. Majority Vote Required. Unless a different vote is required by express provisions of the Act, these Bylaws or the Declaration, each question presented at a meeting shall be determined by a vote of a majority of Unit owners. As used in these Bylaws, 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 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 Board of Directors 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 Board of Directors, Robert's Rules of Order, as then amended, shall be followed, except in the event of conflict, in which case these Bylaws or the Declaration, as the case may be, shall prevail.

### ARTICLE III

#### BOARD OF DIRECTORS

3.1. Number and Qualification. The affairs of the Association shall be governed by a Board of Directors. During the Declarant Control Period, as defined in paragraph 17 of the Declaration, the Board of Directors shall be composed of three (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 Declarant Control Period, the Board of Directors shall be composed of no fewer than five (5)~~three (3)~~ and no more than nine (9)~~seven (7)~~ persons, as the Board of Directors may determine from time to time. Each member of the Board of Directors shall be a Unit owner (or spouse of a Unit owner), or in the case of a Unit owner that is a corporation, partnership, limited liability company, trust or estate, a designated agent who is a shareholder, partner, member, manager or beneficiary thereof, as the case may be. A Unit owner must be current in the payment of all condominium fees to be elected (or have its agent elected) to the Board of Directors.

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

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

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

(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 Board of Directors. The Secretary shall mail or hand deliver the submitted items to every Unit owner along with the notice of such meeting.

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

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

- (a) To adopt the annual budget and any amendment thereto or to assess any Common Expenses.
- (b) To adopt, repeal or amend rules and regulations of the Association.
- (c) To designate signatories on Association bank accounts.
- (d) To borrow money on behalf of the Association.
- (e) To acquire and mortgage Units.
- (f) 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. Removal and Resignation of Members of the Board of Directors. Except with respect to members designated by the Declarant during the Declarant Control Period, at any regular or special meeting of the Association duly called, any one or more of the members of the Board of Directors may be removed with or without cause by Unit owners entitled to cast at least two-thirds (2/3) of all the votes in the Association, and a successor may then and there be elected to fill the vacancy thus created. A Director may be removed by vote of a majority of the other Directors if said Director is not current in the payment of condominium fees. Any Unit owner proposing removal of a Director shall give notice thereof to the Secretary. Any member whose removal has been proposed by a Unit owner shall be given at least ten (10) days' notice by the Secretary of the time, place and purpose of the meeting and shall be given an opportunity to be heard at the meeting. A Director may resign by submitting his or her resignation in writing to the President or the Secretary of the Board of Directors.

3.6. Vacancies. Except as set forth in paragraph 3.1 hereof with respect to members appointed by the Declarant, vacancies in the Board of Directors caused by reason other than the removal of a member by a vote of the Unit owners shall be filled by a vote of a majority of the remaining members at a special meeting of the Board of Directors held for such purpose promptly after the occurrence of any such vacancy, even though the members present at such meeting may constitute less than a quorum. Each person so elected shall be a member of the Board of Directors 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.

3.7. Organizational Meeting. The first meeting of the Board of Directors 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 Board of Directors shall have been elected, and no notice shall be necessary to the newly elected members of the Board of Directors in order legally to constitute such meeting, if a majority of the Board of Directors 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 Board of Directors 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 Board of Directors 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 Board of Directors 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 therefore, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or the Secretary in like manner and on like notice on the written request of at least two (2) members of the Board of Directors.

3.10. Waiver of Notice. Any member may at any time, in writing, waive notice of any meeting of the Board of Directors, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member at any meeting of the Board of Directors 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 Board of Directors, no notice shall be required and any business may be transacted at such meeting.

3.11. Quorum of the Board of Directors. At all meetings of the Board of Directors, one-half (50%) of the members of the Board shall constitute a quorum for the transaction of business, and upon the affirmative vote of a majority of the members of the Board present at a meeting at which a quorum is present, any business that might have been transacted at the meeting originally called may be transacted without further notice. One or more members of the Board of Directors may participate in and be counted for quorum purposes at any meeting by means of conference telephone call or similar communication equipment by means of which all persons participating in the meeting can hear and speak to each other.

3.12. Compensation. No member of the Board of Directors 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 Board of Directors, and the Secretary shall keep a minute book of the Board of Directors meetings, recording therein all resolutions adopted by the Board of Directors and recording 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 Board of Directors if and to the extent not in conflict with the Declaration, these Bylaws or the Act.

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



3.15. Validity of Contracts with Interested Board of Directors Members, No contract or other transaction between the Association and one or more of its Directors or between the Association and any corporation, firm or association in which one or more of the Directors are directors or officers, or are financially interested, shall be void or voidable because such Director(s) are present at any meeting of the Board of Directors that 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 a Director is also such a director, officer or has a financial interest is disclosed or known to the Board of Directors and is noted in the minutes thereof, and the Board of Directors authorizes, 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 Director(s), OR

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

3.16. Inclusion of Interested Directors in a Quorum. Any Director 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 Board of Directors or a committee thereof that authorizes, approves or ratifies a contract or transaction of the type described in paragraph 3.15 above.

## 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 Board of Directors at the annual meeting of such Board. The Board of Directors 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 Board of Directors. Any other officers may, but need not, be Unit owners or members of the Board of Directors. 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 Board of Directors, any officer may be removed, either with or without cause, and a successor may be elected at any meeting of the Board of Directors 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 Board of Directors and have all of the general powers and duties that 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 Board of Directors.

4.4. Secretary. The Secretary shall keep the minutes of all meetings of the Association and of the Board of Directors, have charge of such books and papers as the Board of Directors 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 that the Association is required to provide pursuant to sections 1603-116(h) and 1604-108(b) of the Act and subparagraph 5.2.2 of these Bylaws.

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 hereof; the deposit of all monies in the name of the Board of Directors, the Association or the Managing Agent, in such depositories as may from time to time be designated by the Board of Directors; 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 one thousand dollars (\$1,000.00) shall be executed by the President or the Secretary and the Treasurer of the Association. All such instruments for expenditures or obligations of one thousand dollars (\$1,000.00) or less may be executed by any one officer of the Association or such other person or employee as the Board of Directors may designate in writing.

4.7. Compensation of Officers. No officer who is also a member of the Board of Directors 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 the Treasurer may be compensated for their services if the Board of Directors determines such compensation to be appropriate.

## ARTICLE V

### OPERATION OF THE CONDOMINIUM

5.1. Fiscal Year. The fiscal year of the Association shall begin on such date as shall be established by the Board of Directors, 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 Board of Directors.

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 Board of Directors 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 that will be required during the ensuing fiscal year for the administration, operation, maintenance and repair of the Condominium and the rendering to the Unit owners of all related services. The budget shall include such amounts as the Board of Directors shall consider necessary to provide working capital, a general operating reserve fund for replacements, capital improvements and other items that 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 Board of Directors shall make such budget available for inspection during business hours by any Unit owner or Mortgagee at the Condominium 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 the 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 rejects 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 Board of Directors upon the same conditions as are provided in this paragraph 5.2 with respect to the original budget.

5.2.3. Subject to subparagraph 5.2.2, the budget adopted pursuant to this paragraph 5.2 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 Board of Directors 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 Board of Directors for such fiscal year.

5.5. Reserves. The Board of Directors shall build up and maintain 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 that 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 Board of Directors 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 that may become necessary during the year shall be charged first against such reserves. If the reserves are deemed by the Board of Directors to be inadequate for any reason, including nonpayment of any Unit owner's assessment, the Board of Directors 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 of Directors may determine.

5.6. Further Assessments. Subject to paragraph 5.10 hereof, the Board of Directors 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 that 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 installments, the amount of such assessment.

In addition, the Association shall have the right to levy reasonable fines for violations of the Declaration, these Bylaws 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, Bylaws and the Rules and Regulations.

5.7. Initial Capital Payment. Declarant, as the agent of the Board of Directors, will collect from each initial purchaser of a Unit 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 Board of Directors for deposit into the Working Capital Fund unless the Declarant has previously made the “initial capital payment” with respect to said Unit, in which case, the initial capital payment shall be used to reimburse the Declarant for its initial capital payment to the Association. The Declarant must pay the “initial capital payment” to the Association for unsold Units of the Condominium no later than sixty (60) days after the first Unit of the Condominium shall be conveyed to a purchaser so that the “initial capital payment” shall be made for every Unit within sixty (60) days after the first Unit is conveyed to a purchaser.

5.8. Effect of Failure to Prepare or Adopt Budget. The failure or delay of the Board of Directors 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. If the members reject a proposed budget, the Board of Directors shall prepare a revised budget, which shall be subject to the same procedures as set forth above for the originally proposed budget.

5.10. Limitations on Expenditures. The power of the Board of Directors 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 two-thirds (2/3) of the votes in the Association shall be required to borrow any sum in excess of ~~Five One~~ Thousand Dollars (\$~~51~~,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 Board of Directors 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 subject to the provisions of 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, (a) one-twelfth (1/12) of the Common Expenses, assessed on an annual basis against his or her Unit in the proportions required in paragraph 7 of the Declaration, plus all Limited Common Expenses assessed against his or her Unit, and (b) all special assessments, any other sums duly levied against the Unit pursuant to the Declaration, these Bylaws or the Act. If for any reason the Association shall revise the annual budget of the Association in accordance with these Bylaws, and subject to paragraph 5.10 above, 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 assessed against his or her Unit in the proportions required in paragraph 7 of the Declaration, plus Limited Common Expenses assessed against his or her Unit.

5.13. Interest; Acceleration. If any assessment is not paid within ten (10) days after payment is due, the Unit owner shall pay a late fee of the greater of ten dollars (\$10.00) or four percent (4%) of the amount due. 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 eighteen percent (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 Common Expenses, including Limited Common Expenses, special assessments and any other sums duly levied against the Unit pursuant to the Declaration, these Bylaws or the 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 Bylaws shall, until fully paid, constitute a lien against the Unit in favor of the Association as provided in section 1603-116 of the 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 that 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 (a) 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. Sec. 4651-A and 18-A M.R.S.A. Sec. 2-201, et seq., as they or their equivalents may be amended or modified from time to time.

## ARTICLE VI

### INSURANCE

6.1. Policies. The Association shall maintain insurance in accordance with section 1603-113 of the Act. The Board of Directors may also obtain and maintain as a Common Expense: (i) to the extent available at reasonable cost, “directors and officers” liability insurance to satisfy indemnification obligations of the Association provided in paragraph 17 of the Declaration; (ii) workmen’s compensation insurance, if and to the extent necessary to meet the requirements of law; and (iii) other insurance that the Board of Directors may determine is necessary or as may be requested by a majority of the Unit owners. In addition to the foregoing, policies purchased by the Association shall provide the following:

6.1.1. Hazard Insurance. The blanket policy purchased by the Association shall cover all of the Condominium, including Common and Limited Common Elements and including fixtures, building service equipment and common personal property and supplies belonging to the Association. Such policy shall also cover fixtures, equipment and other personal property inside individual Units, whether or not part of the Common Elements. Such policy shall cover one hundred percent (100%) of the then current replacement cost of all Association property located within individual Units. Such policy shall include the following endorsements, to the extent they are reasonably available: (a) agreed amount and inflation guard; and (b) construction code endorsements; ~~and (c) steam boiler coverage endorsement providing at least one hundred thousand dollars (\$100,000.00) coverage for each accident, if applicable.~~ Such policy shall provide for the recognition of any insurance trust agreement. Such policy shall show Munjoy Heights Condominium Association as the named insured, for the use and benefit of the individual Unit owners, and must also name as a named insured any holder of a first mortgage and its successors and assigns.

6.1.2. Flood Insurance. If any part of the Condominium is in a flood hazard area as defined by the Federal Emergency Management Agency, the Association shall maintain a master or blanket flood insurance policy. Such policy shall cover all buildings and other property, real or personal, located within the flood area. The amount of such insurance shall be equal to at least the lesser of (a)

one hundred percent (100%) of the then current replacement cost of all property in the flood area, or (b) the maximum coverage available for the Condominium under the National Flood Insurance Program.

6.1.3. Liability Insurance. Liability insurance required under the Act shall also include all areas under supervision of the Association, ~~including commercial spaces owned by the Association even if leased to others~~. Such policies shall be in an amount of at least one million dollars (\$1,000,000.00), or in such amount as the Federal National Mortgage Association may require. Such policy shall also include coverage for any legal liability related to employment contracts to which the Association is a party.

6.2. Insurance Trustee. The Board of Directors 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 Condominium for the purpose of purchasing and maintaining the insurance described herein, the collection and appropriate disposition of the proceeds thereof with any bank or trust company authorized to do business in the State of Maine as trustee for all Unit owners and their Mortgagees as their respective interests may appear (the “Insurance Trustee”), to hold any insurance proceeds in trust for disbursement as provided in paragraph 6.3 hereof, the negotiation of losses and execution of releases of liability, and the execution of all documents and the performance of all other acts necessary to accomplish such purposes.

6.3. Losses; Adjustment and Payment; Insurance Trustee. Any loss covered by the insurance policies described in paragraph 6.1 hereof shall be adjusted with the Association by its Board of Directors, but the insurance proceeds for said loss shall be payable to the Insurance Trustee designated for that purpose as provided in paragraph 6.2, or otherwise to the Association, and not to any Mortgagee. The Insurance Trustee or the Association shall hold any insurance proceeds in trust for the Unit owners, Mortgagees and other lien holders as their interests may appear. Subject to the provisions of paragraph 6.2 and subparagraph 7.2.3, the proceeds shall be disbursed first for the repair or restoration of the damage to the Condominium, and Unit owners, Mortgagees and other lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds 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 paragraph 7.1 below or the Condominium is terminated.

6.4. Memoranda; Cancellation; Additional Required Provisions. 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. No such insurer issuing a policy may 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.

## 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 Condominium as a result of fire, other casualty or the exercise of the power of eminent domain, the Board of Directors on behalf of the Association shall promptly arrange for and supervise the prompt repair, replacement and restoration thereof. Such repair or restoration shall be substantially in accordance with the Declaration, the Plat and Plan 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) eighty percent (80%) 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 Condominium, and such decision is approved by every owner of a Unit or assigned or allocated Limited Common Element that will not be repaired, replaced or restored and by all Eligible Mortgage Holders of Mortgages thereon.

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

7.2.1. Cost Estimates. The Board of Directors shall promptly obtain reliable and detailed estimates of the cost of repairing and restoring such portion substantially in accordance with the Declaration, the Plat and Plan and the original building plans and specifications therefor 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 to 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, 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 the Association as provided in paragraph 6.2 hereof and disbursed in payment of the costs of reconstruction and repair in a manner that 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. Damage or Destruction; No Repair or Replacement. If the entire Condominium is not repaired or replaced:

7.3.1. The insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Condominium as determined by the Board of Directors or its architect.

7.3.2. The insurance proceeds attributable to Units and Limited Common Elements that are not rebuilt shall be distributed to the owners and Mortgagees of those Units, as their insurable interests may appear, and the owners and Mortgagees of the Units to which those Limited Common Elements were assigned or allocated, as their insurable interests may appear.

7.3.3. The remainder of the proceeds shall be distributed to all the Unit owners and Mortgagees as their insurable interests may appear, in proportion to their respective Common Element Interests or the Common Expense Liability and subject to their respective mortgages.

7.3.4. If the Unit owners and their Mortgagees vote not to rebuild any Unit, that Unit's entire Allocated Interest shall be automatically reallocated upon said vote as if the Unit had been condemned, and the Association shall prepare, execute and record an amendment to the Declaration reflecting the reallocations. Notwithstanding any provision of this Article VII to the contrary, section 1602-118 of the Act governs the distribution of insurance proceeds if the Condominium is terminated.

7.4. 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 or her of his or her Unit or other evidence of his title thereto and file such evidence of his title with the Board of Directors 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 its principal offices, for inspection by Unit owners, lenders and the holders, insurers and guarantors of the first mortgage on any Unit, current copies of the Declaration, these Bylaws and the Rules and Regulations governing the Condominium 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 Bylaws and the Rules and Regulations governing the Condominium.

## ARTICLE IX

### AMENDMENTS

9.1. General Requirements; Consent of Declarant or 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 Condominium, 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 of 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 owners' 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.
- (n) Any provisions that expressly benefit mortgage holders, insurers, or guarantors.

9.1.1. Additionally, if any amendment is of a non-material nature, or in the judgment of the Board of Directors 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 Board of Directors, acting through the President, may affect 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:

MUNJOY HEIGHTS CONDOMINIUM ASSOCIATION  
2014  
MAINE

## ARTICLE XI

### NOTICES

11.1. To Unit Owners. The Association shall give any notices, demands, bills, statements or other communications affecting the Condominium that it is required to give to a Unit owner in writing.

The Association shall be deemed to have duly given any such notice if the notice is delivered personally securing a receipt therefor, or sent by United States Mail, postage prepaid, or if such notice is of a default or lien, sent by registered or certified mail, return receipt requested, postage prepaid, addressed to the Unit owner at the address that 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.

11.2. To the Association. All notices, demands, statements or other communications affecting the Condominium given by a 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. The Association shall give any notices, demands, statements or other communications affecting the Condominium that it is required to give to an Eligible Mortgage Holder or eligible insurer in writing. The Association shall be deemed to have duly given any such notice if the notice is 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 21 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 Board of Directors 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 Bylaws 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 Bylaws 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 Bylaws. References in these Bylaws to articles, paragraphs, subparagraphs and schedules without references to the document in which they are contained are references to these Bylaws. Schedules are attached to and are an integral part of

these Bylaws. Any Exhibits are attached to these Bylaws for purposes of identification only and shall not be deemed as part of these Bylaws.

12.3 Gender, Number, Etc. The use of the singular number in these Bylaws 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 Bylaws shall not be deemed to impair or affect in any manner the validity, enforceability or affect of the remainder these Bylaws, and in such event, all of the other provisions of these Bylaws shall continue in full force and effect as if such invalid provisions had never been included herein.

THE END