

**OPERATING AGREEMENT
OF
MUNJOY HILL RESTORATIONS, LLC
(Member-Run)**

AGREEMENT made as of this ___ of May, 2004 by **WALTER H. JUVE** and **ROBERT CLARKE** (each hereinafter referred to as a "Member," and collectively as the "Members").

WITNESSETH:

WHEREAS, the Members desire to form a limited liability company (the "Company") pursuant to the provisions of the Maine Limited Liability Company Act, 31 M.R.S.A. §601 et. Seq. (the "Act");

NOW, THEREFORE, the Members agree as follows:

ARTICLE 1

Formation, Name, Purpose, Location, Registered Office

1.1 Formation. The Members hereby form a limited liability company pursuant to the Act on the terms and conditions stated herein to take effect retroactively to the date of the filing of the Company's articles of organization with the Secretary of State of the State of Maine ("Secretary of State") on December 16, 2003.

1.2 Name. The name of the Company shall be "**MUNJOY HILL RESTORATIONS, LLC**"

1.3 Purpose. The principal purpose of the Company is to acquire, own, restore and manage real estate and to engage in all other business allowable under applicable law.

1.4 Place of Business. The principal office of the company shall be located at 40 Portland Pier, Suite 11, Portland, Maine 04101, or at such other or additional locations as may be determined by the Members.

1.5 Registered Office and Registered Agent. The address of the Company's initial registered office shall be 40 Portland Pier, Suite 11, Portland, Maine 04101. The name and address of the Company's initial registered agent shall be Walter H. Juve. The registered office and registered agent may be changed from time to time as the Members

deem advisable by filing notice of such changes with the Secretary of State in accordance with the Act.

ARTICLE 2

Term; Dissolution

2.1 Term. The term of the Company shall be perpetual, unless the Company is earlier dissolved in accordance with either the provisions of this Operating Agreement or the Act.

2.2 Dissolution. The Company shall be dissolved upon the occurrence of any of the following events:

(a) the written agreement of the holders of 51% of the Membership Interests in the Company;

(b) the sale or other disposition of all or substantially all of the assets of the Company or the permanent cessation of the Company's business operations; or

(c) the death, retirement, resignation, expulsion, bankruptcy or dissolution of a Member or occurrence of any other event which terminates the continued membership of a Member in the Company (a "Withdrawal Event") or any other event which causes a dissolution under the Act, unless the business of the Company is continued by the consent of those remaining Members who collectively own at least a majority of the capital interests (as measured by the positive balances of their capital accounts) of the remaining Members within ninety (90) days after the Withdrawal Event, or such other event.

Upon the occurrence of any dissolution hereunder, the affairs of the Company shall be wound up in accordance with Article 8 and immediately thereafter the Company shall terminate.

3.1 Members' Capital Contributions. Each Member shall contribute such amount as is set forth in Schedule A hereto as his initial capital contribution.

3.2 Membership Interests. The Members shall have the membership interests in the Company specified on Schedule A ("Membership Interests"). Schedule A shall be amended from time to time to reflect the withdrawal or admission of Members, any changes in the Membership Interest held by a Member arising from the transfer of a Membership Interest to or by such Member.

3.3 Capital Accounts. A capital account shall be maintained for each Member, in accordance with tax accounting principles, which shall reflect his initial capital contribution as set forth in Schedule A, and shall be adjusted and maintained as follows:

(a) As of the end of each fiscal year of the Company, each Member's opening capital account for such year shall be increased by an amount equal to (i) the cash and the agreed fair market value of property (net of any liabilities assumed by the Company or to which such property is subject) contributed to the capital of the Company by such Member for such year; and (ii) such Member's share of Company taxable income for such year, including income and gain exempt from tax; and

(b) As of the end of the fiscal year of the Company, each Member's opening capital account for such year shall be decreased by an amount equal to (i) the aggregate amount of cash distributions and the agreed fair market value of any property (net of any liabilities assumed by such Member or to which such property is subject) distributed to such Member during such year, (ii) his share of expenditures of the Company not deductible and not properly chargeable as a capital expenditure; and (iii) his share of Company losses for such year, provided, however, that if it is necessary to determine the capital account of any Member during the fiscal year, the capital account of the Member shall be determined after giving effect to all allocations of taxable income, gain and loss attributable to transactions affected prior to the time such determination is made and all distributions of cash theretofore made for such year.

3.4 Change in Tax Law. Notwithstanding anything to the contrary herein, it is the intention of the Company that it be classified as a partnership for federal income tax purposes and that it conform to the requirements of the Internal Revenue Code with respect to the validity of the allocations of items, income, gain, loss, and tax credits. In the event of a change in the Internal Revenue Code or Treasury Regulations, the Members hereby agree to consult with tax counsel to determine whether an amendment to this Agreement is required and, if it is, to adopt such amendment.

3.5 Interest on Capital; Loans by or to Members. No interest or other compensation shall be allowed to any Member with respect to his capital account, except his share of the profits, losses and distributions of the Company as hereinafter provided. The Company shall not make loans to, or borrow from, any Member without the consent of all the Members.

3.6 Withdrawal of Capital. Except as may be specifically provided in this Agreement, no Member shall have the right to withdraw from the Company all or any part of his capital contribution nor shall he have any right to demand and receive property or cash of the Company in return for his capital contribution.

3.7 Liability of Members for Repayment of Capital. No Member shall have any personal liability for the repayment of any capital contribution of any other Member.

ARTICLE 4

Profits, Losses and Cash Distributions

4.1 Company Profits, Losses and Cash Distributions. -All profits, losses and distributions of cash or other property from the Company to the Members shall be allocated or distributed in accordance with each Member's Membership Interest, as set forth on Schedule A, provided that upon the dissolution of the Company all distributions of cash shall be made in accordance with Article 8.

4.2 Priority and Timing. No Member shall have priority over any other Member with regard to allocations of profits or losses or distributions from the Company. All distributions of Company funds to the Members shall be made at such times as the Members may determine.

ARTICLE 5

Management and Administrative Policies

5.1 Voting. Unless otherwise expressly provided herein, all actions and decisions of the Company shall be by the vote of a majority of the Membership Interests of the Company. No Member shall be disqualified from voting or otherwise participating in any decision because of a conflict in interest.

5.2 Authority; Reliance by Third Parties; Management Committee.

(a) The Members shall have the authority to manage the business of the Company. Such authority shall include, without limitation, the authority to purchase, sell, mortgage, lease, and otherwise dispose of property, both real and personal, to hire employees, to contract with third parties for services and to borrow money and otherwise pledge the credit of the Company. The signature of any one Member alone shall be sufficient to bind the Company and every document executed by a Member shall be conclusive evidence in favor of every person relying in good faith thereon or claiming thereunder that at the time of the delivery thereof (i) this Company was in existence, (ii) this Agreement had not been amended in any manner so as to restrict such authority and (iii) the execution and delivery of such documents were duly authorized under this Article.

(b) The Members may appoint a management committee consisting of two or more Members or their representatives to which the Members may delegate such rights, duties, and responsibilities as they shall determine from time to time. Such delegation shall not relieve the Members of their responsibility for managing the business of the Company or affect their ability to bind the Company in dealings with third parties.

5.3 Fiduciary Duty; Devotion of Time; Compensation. Each Member shall exercise his powers and discharge his duties in good faith with a view to the interests of the Company and its Members with that degree of diligence, care and skill that ordinarily prudent persons would exercise under similar circumstances in like positions. Each Member shall devote so much of his time to the business of the Company as the requirements of such business may dictate from time to time. No Member shall be compensated for his services to the Company, except as is expressly provided in the Agreement, but each Member shall be entitled to charge the Company, or to be reimbursed by the Company, for all reasonable out of pocket expenses actually incurred by him and paid to third parties in connection with the Company business.

5.4 Exculpation and Indemnification.

(a) Exculpation. The doing of any act or the failure to do any act by a Member, the effect of which may cause or result in loss or damage to the Company or its property, shall not subject such Member to any personal liability to the Company, or to the other Members, unless the Member's acts or omissions constituted bad faith, gross negligence, willful misconduct, or fraud, or violated Section 5.3.

(b) Indemnification. The Company shall indemnify the Members and make advances for expenses to the maximum extent permitted under the Act. The Company shall indemnify its employees and other agents to the fullest extent permitted by law, provided that such indemnification in any given situation is first approved by the Members. The right to indemnification under this Section shall be fully vested with respect to any matter occurring while this Section was in effect. No amendment of this Section shall have any retroactive effect except as to enhance such right for the benefit of the indemnitee. Any indemnity under this Section 5.4 shall be provided out of and to the extent of Company assets only and no Member shall have any personal liability on account thereof. The Members' rights of contribution under local law shall not be abrogated by this Section.

5.5 Other Business Ventures. Each of the Members may engage independently or with others in other business ventures of every nature or description including

competing ventures, and neither the Company nor any Member shall have any rights in or to such independent ventures or the income or profits derived therefrom.

5.6 Bank Accounts; Records; Reports.

(a) All funds of the Company shall be deposited in its name in such checking account or other bank accounts as shall be designated by the Members. Withdrawals shall be on such signatures as may be determined by the Members from time to time.

(b) The Members shall keep or cause to be kept true and full books of account, in which shall be recorded the transactions of the Company, all of which shall at all times be maintained at the principal office of the Company, or at such other office as shall be designated for such purpose by the Members, and shall be open for inspection and examination of the Members or their representatives at any reasonable time.

(c) The Members shall cause to be prepared and sent to each Member each year: (a) annual reports of the Company, including an annual balance sheet and profit and loss statement, within 90 days after the close of each fiscal year; (b) annual statements indicating the share of each Member of the net income, net loss, depreciation, gain, loss and other relevant items of the Company for each calendar year for federal income tax purposes; and (c) a copy of the Company's federal information tax return (Form 1065) and related Scheduled K and K-1.

5.7 Fiscal Year. The fiscal year of the Company shall be the calendar year.

5.8 Accounting Method. For tax and financial accounting purposes, the Company shall adopt the cash method of accounting.

ARTICLE 6

Withdrawal; Liquidation of Membership Interest

6.1 Withdrawal. A person shall cease to be a Member of the Company upon the occurrence of death, adjudication of incompetency, bankruptcy or insolvency, dissolution or voluntary or involuntary withdrawal from the Company of a Member ("Withdrawal"). No Member shall have the power to withdraw by voluntary act from the Company without the consent of all Members.

6.2 Liquidation of Deceased Member. If, following the Withdrawal of a Member due to death, the remaining Members elect to continue the company in accordance with Section 2.2(d), the remaining Members shall purchase and thereby liquidate the Membership Interest of such deceased Member in accordance with this Article 6. Notice of such election shall be made by written notice delivered to the deceased Member's personal representative within (3) days of the appointment of such personal representative.

6.3 Valuation of Company Interest. If the remaining Members elect to liquidate the Membership Interest of a deceased Member, negotiations shall be undertaken between (a) the remaining Members and (b) the personal representative of the deceased Member to establish the value of the deceased Member's Membership Interest. If the parties are not able to reach agreement as to the value of the deceased Member's Membership Interest within ninety (90) days after the remaining Members give notice of their election to liquidate the Membership Interest of the deceased Member, then the value of such Membership Interest shall be determined as hereinafter provided. The remaining Members, as a group, and the deceased Member's personal representative, shall forthwith each appoint an appraiser who, in turn, shall jointly appoint an arbitrator. Appraisers shall submit to the arbitrator their separate appraised values of the deceased Member's Membership Interest based upon whatever methods of valuation each appraiser considers most appropriate to reflect the fair market value. The arbitrator, in his sole discretion, shall choose one of the appraised values as the value of the deceased Member's Membership Interest. Such determination shall be binding upon all parties.

6.4 Payments; Hold Harmless. If the remaining Members elect to liquidate the Membership Interest of a deceased Member, then within sixty (60) days after the value of the deceased Member's Membership Interest is determined, the Company shall pay to the deceased Member's estate the value of the deceased Member's Membership Interest by delivering to such deceased Member's estate a promissory note of the Company in that amount. Such promissory note shall provide for equal monthly payments over a period of Five (5) years from the date of delivery and shall bear interest at an adjustable rate of interest at all times equal to the Prime Rate as published in the *Wall Street Journal* or its successor. Additionally, the Company and the remaining Members shall indemnify and hold the deceased Member's estate harmless from any and all liabilities of the Company guaranteed by the deceased Member.

In the event of the Withdrawal of a Member for reasons other than death, the Membership Interest of the former Member shall be deemed to have been assigned to the former Member's successor in interest who shall have such rights as provided in the Act. Except as provided in this Article 6, the Company shall not be required to liquidate the Membership Interest of a former Member.

ARTICLE 7

Restrictions on Transition of Membership Interest

7.1 No Assignment, Pledge or Encumbrance of Interests. No Member may assign, sell, pledge or encumber all or any part of his Membership Interest, in any manner, whether voluntarily or involuntarily, by operation of law or otherwise, without the consent of the holders of 51% of the Membership Interests in the Company.

7.2 Sale or Other Transfer of Interests. No Member shall have the right to dispose of all or any portion of his Membership Interest except: (i) to another Member, (ii) to an affiliate of such Member, or (iii) with the consent of the holders of 51% of the Membership Interests in the Company which may be refused for any reason.

ARTICLE 8

Dissolution and Winding Up

8.1 Effect of Filing of Dissolving Statement. In the event of dissolution, a statement of intent to dissolve shall be filed with the Secretary of State in accordance with the Act. Upon such filing, the Company shall cease to carry on its business, except insofar as may be necessary for the winding up of its business, but its separate existence shall continue until a certificate of cancellation has been filed with the Secretary of State or until a decree dissolving the Company has been entered by a court of competent jurisdiction.

8.2 Winding Up, Liquidation and Distribution of Assets.

(a) Upon dissolution, the Members shall immediately proceed to wind up the affairs of the Company in accordance with the requirements of the Act and other applicable law. In furtherance of the winding up of the Company, the Members shall:

(i) sell or otherwise liquidate all of the Company's assets as promptly as practicable (except to the extent the Members may determine to distribute any assets to themselves in kind);

(ii) discharge or make reasonable provision for all liabilities of the Company, including liabilities to Members who are also creditors, other than liabilities to Members for distributions and the return of capital, and establish such reserves as may be reasonably necessary to provide for contingent liabilities of the Company (for purposes of determining the

capital accounts of the Members, the amounts of such reserves shall be deemed to be an expense of the Company);

(iii) distribute the remaining assets of the Company in the following order of priority:

- (1) To each Member, with respect to the cumulative amount of all accrued by unpaid pre-dissolution distributions for which the Company is liable to the Member, the amount of such liability;
- (2) To each Member, with respect to his unreturned capital contribution, an amount equal to the positive balance (if any) in his capital account (as determined after taking into account all capital account adjustments for the Company's taxable year during which the liquidation occurs), of, if the assets available to be distributed hereunder are insufficient to cover the aggregate of all Members' positive balances, a proportionate amount based upon the relative positive balances of the Members; and
- (3) To each Member, with respect to his Membership Interest, a proportionate share of the remaining assets equal to his Membership Interest.

(b) The Members shall cause an accounting to be made by the Company's independent accountants of the accounts of the Company and of the Company's assets, liabilities and operations, from the date of the last previous accounting until the date of dissolution.

(c) If any assets of the Company are distributed in kind, the net fair market value of such assets as of the date of dissolution shall be determined by independent appraisal or by agreement of the Members. Such assets shall be deemed to have been sold to the Members in proportion to their Membership Interest as of the date of dissolution for their fair market value, and the capital accounts of the Members shall be adjusted to reflect such deemed sale.

(d) Notwithstanding anything to the contrary in this Agreement, upon a liquidation, if any Member has a deficit capital account (after giving effect to all contributions, distributions, allocations and other Capital Account adjustments for all taxable years, including the year during which such liquidation occurs), such Member shall have no obligation to make any capital contribution, and the negative balance of such Member's capital account shall not be considered a debt owed by such Member to the Company or to any other person for any purpose whatsoever.

8.3 Certificate of Cancellation. Upon completion of the winding up, liquidation and distribution of the assets, the Company shall be deemed terminated and the Members shall forthwith file with the Secretary of State a certificate of cancellation. Thereafter, the Members, as liquidating trustees, shall have authority to distribute any Company property discovered after termination, convey real estate and take such other action as may be necessary on behalf of and in the name of the Company.

8.4 Return of Capital Contribution - Nonrecourse. Except as provided by law or as expressly provided in this Agreement, upon dissolution, each Member shall look solely to the assets of the Company for the return of his capital contribution. If the Company property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the capital contribution of a Member, such Member shall have no recourse against any other Member.

ARTICLE 9

Amendment

This Agreement may be amended at any time by written agreement of all the holders of 75% of the Membership Interests in the Company.

ARTICLE 10

Miscellaneous

10.1 Notices. All notices, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given on the date delivered in person to the party to whom notice is to be given, or on the first business day after mailing if mailed to the last known address of the party to whom notice is to be given by registered or certified mail, postage paid, return receipt requested.

10.2 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the Company and there are no agreements, understandings, warranties or representations between the parties with respect to the Company except as set forth herein.

10.3 Binding Effect. This Agreement will inure to the benefit of and bind the respective successors and assigns of the parties.

10.4 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all of which together shall constitute one and the same instrument.

10.5 Construction. As used in this Agreement, the singular number shall include the plural, the plural the singular, and the use of one gender shall be deemed applicable to all genders. Captions are inserted only as a matter of convenience and in no way limit, define or extend the scope of this Agreement.

10.6 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of Maine.


10.7 Severability. If any provision of this Agreement is determined to be invalid or unenforceable, it shall not affect the validity or enforceability of the remaining provisions hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

Witness


Walter H. Juve

Witness


Robert Clarke

SCHEDULE A

<u>Member</u>	<u>Initial Contribution</u>	<u>Percentage Ownership</u>
Walter H. Juve	\$ <u>200,000</u>	50%
Robert Clarke	\$ <u>200,000</u>	50%

MUNJOY HILL RESTORATIONS, LLC

ACTION TAKEN BY UNANIMOUS WRITTEN
CONSENT OF MEMBERS WITHOUT MEETING

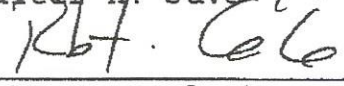
Pursuant to 31 M.R.S.A. § 651, the undersigned being all the Members of the above named company, hereby consent to the taking of, and hereby take, the following action in the form of the following votes the effective date of which shall be September 17, 2004:

VOTED: That the Company be and hereby is authorized to refinance real estate it owns and located at 73 Congress Street in Portland, Maine, with a loan through Northeast Bank, ~~F.S.B.~~^{PC} in the amount of \$200,000 and a mortgage ~~on~~^{UNO} said real estate securing the loan.

VOTED: That the Company, by and through its Member, Walter H. Juve, on behalf of the Company is hereby authorized and empowered to take all action necessary and to execute and deliver any and all documents reasonably deemed necessary to consummate the above transaction and that upon his due execution and delivery, such documents shall be binding in accordance with their respective terms.

Dated:


Walter H. Juve


Robert L. Clarke

9/17/04

SCHEDULE A

<u>Member</u>	<u>Initial Contribution</u>	<u>Percentage Ownership</u>
Walter H. Juve	\$ <u>200,000</u>	50%
Robert Clarke	\$ <u>200,000</u>	50%

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477 Congress Street
Portland, Maine 04101

Thomas F. Jewell
Daniel W. Boutin

Telephone: 207-774-6665
Fax: 207-774-1626

September 17, 2004

Northeast Bank
c/o Alexandria Caulfield, Esq.
One Monument Way
Portland, Maine

Re: Land Use Opinion for Munjoy Hill Restorations, LLC; ⁷³₉₅ 7.9.
Congress Street, Portland

Gentlemen:

This opinion is furnished to you in conjunction with a certain loan transaction between Munjoy Hill Restorations, LLC (the "Borrower"), and Northeast Bank in connection with the refinancing of the premises described above.

For purposes of rendering this opinion, we have reviewed such documents and laws as we consider appropriate, including, but not limited to, records at the Cumberland County Registry of Deeds and Probate Court, and the zoning ordinances, maps and records of the City of Portland, Maine. We have assumed the validity of all zoning ordinances, maps and amendments thereto, the legality of all proceedings leading to the adoption of such ordinances, maps and amendments, and the genuineness of the signatures on all documents examined. We have also assumed the accuracy of information supplied to us by Borrower and by officials of the City of Portland as concern facts to which we have no personal knowledge.

Based upon the foregoing, we render the following opinions:

This property is identified by the City of Portland Assessor as Map 14-F-21 with lot size of 3567 square feet. The property is located in the R-6 Residential Zone. Multi-family dwellings are permitted pursuant to the City of Portland Land Use Ordinance Sec. 14-136(1)(b). The current density requirements require 1,000 square feet of land for each of the first three residential units and 1,200 square feet of land for each additional unit. As such, the current ordinance would allow three units at the premises. We


are advised that there are currently 5 residential units and one commercial unit the premises.

The City of Portland Directory from 1957 shows that the property contained 5 residential and one commercial unit. An opinion has been issued by Zoning Administrator Marge Schmuckal, (copy enclosed) confirming that this information is adequate to confirm the grandfathered status of the property pursuant to the Portland Land Use Ordinance §14-381 which allows uses existing as of June 5, 1957 to continue.

This opinion is solely for your benefit and may not be used or relied upon by any other person or entity whatsoever.

Respectfully submitted,

JEWELL & BOUTIN, P.A.

By: 
Thomas F. Jewell, President

Zoning Division
Marge Schmuckal
Zoning Administrator



Department of Urban Development
Joseph E. Gray, Jr.
Director

CITY OF PORTLAND

condo

TO: FILE
FROM: Marge Schmuckal, Zoning Administrator
SUBJECT: Verification of Legal Number of Units

DATE: 2/8/01

C-B-L Number: 014-F-021

ADDRESS: called 71-73 Congress St. cor. 2-8 Howard St.

The legal number of unit(s) allowed under Zoning Requirements is/are: 1 Commercial Store and 5 Dwelling units

Verified by: Marge Schmuckal Title: Zoning Admin.

CC TO: FILE

per 1957 Directory listings

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