

**CITY OF PORTLAND, MAINE  
DEVELOPMENT REVIEW APPLICATION  
PLANNING DEPARTMENT PROCESSING FORM  
Planning Copy**

**2005-0089**  
Application I. D. Number  
**4/22/2005**  
Application Date  
**Jordans Mixed Use Development**  
Project Name/Description

**Thomas Niles, PME I Limited Partnership**  
Applicant  
**1140 Reservoir Avenue, Cranston, RI 02920**  
Applicant's Mailing Address

Consultant/Agent  
**Applicant Ph: (401) 946-4600 Applicant Fax: (401) 943-6320**  
Applicant or Agent Daytime Telephone, Fax

**38 - 38 India Street, Portland, Maine**  
Address of Proposed Site  
**029 L001001**  
Assessor's Reference: Chart-Block-Lot

Proposed Development (check all that apply):  New Building  Building Addition  Change Of Use  Residential  Office  Retail  
 Manufacturing  Warehouse/Distribution  Parking Lot  Other (specify) \_\_\_\_\_

**38,000 s.f.** Proposed Building square Feet or # of Units **B3** Zoning  
Acreage of Site \_\_\_\_\_

**Check Review Required:**

- |                                                             |                                                                     |                                                |                                                  |
|-------------------------------------------------------------|---------------------------------------------------------------------|------------------------------------------------|--------------------------------------------------|
| <input checked="" type="checkbox"/> Site Plan (major/minor) | <input checked="" type="checkbox"/> Subdivision # of lots <b>84</b> | <input type="checkbox"/> PAD Review            | <input type="checkbox"/> 14-403 Streets Review   |
| <input type="checkbox"/> Flood Hazard                       | <input type="checkbox"/> Shoreland                                  | <input type="checkbox"/> Historic Preservation | <input type="checkbox"/> DEP Local Certification |
| <input type="checkbox"/> Zoning Conditional Use (ZBA/PB)    | <input type="checkbox"/> Zoning Variance                            | <input type="checkbox"/> Other _____           |                                                  |

Fees Paid: Site Pla **\$3,000.00** Subdivision \_\_\_\_\_ Engineer Review \_\_\_\_\_ Date **4/22/2005**

**Planning Approval Status:**

Reviewer \_\_\_\_\_

- Approved  Approved w/Conditions See Attached  Denied

Approval Date \_\_\_\_\_ Approval Expiration \_\_\_\_\_ Extension to \_\_\_\_\_  Additional Sheets Attached

OK to Issue Building Permit \_\_\_\_\_ signature \_\_\_\_\_ date \_\_\_\_\_

**Performance Guarantee**  Required\*  Not Required

\* No building permit may be issued until a performance guarantee has been submitted as indicated below

- |                                                             |                            |                                                    |                             |
|-------------------------------------------------------------|----------------------------|----------------------------------------------------|-----------------------------|
| <input type="checkbox"/> Performance Guarantee Accepted     | _____ date _____           | _____ amount _____                                 | _____ expiration date _____ |
| <input type="checkbox"/> Inspection Fee Paid                | _____ date _____           | _____ amount _____                                 |                             |
| <input type="checkbox"/> Building Permit Issue              | _____ date _____           |                                                    |                             |
| <input type="checkbox"/> Performance Guarantee Reduced      | _____ date _____           | _____ remaining balance _____                      | _____ signature _____       |
| <input type="checkbox"/> Temporary Certificate of Occupancy | _____ date _____           | <input type="checkbox"/> Conditions (See Attached) | _____ expiration date _____ |
| <input type="checkbox"/> Final Inspection                   | _____ date _____           | _____ signature _____                              |                             |
| <input type="checkbox"/> Certificate Of Occupancy           | _____ date _____           |                                                    |                             |
| <input type="checkbox"/> Performance Guarantee Released     | _____ date _____           | _____ signature _____                              |                             |
| <input type="checkbox"/> Defect Guarantee Submitted         | _____ submitted date _____ | _____ amount _____                                 | _____ expiration date _____ |
| <input type="checkbox"/> Defect Guarantee Released          | _____ date _____           | _____ signature _____                              |                             |

**DOMESTIC  
NONPROFIT CORPORATION**

**STATE OF MAINE**

**ARTICLES OF INCORPORATION**

**Filing Fee \$40.00**

\_\_\_\_\_  
Deputy Secretary of State

**A True Copy When Attested By Signature**

\_\_\_\_\_  
Deputy Secretary of State

Pursuant to 13-B MRSA §403, the undersigned incorporator(s) execute(s) and deliver(s) the following Articles of Incorporation:

**FIRST:** The name of the corporation is Hotel and Residences at The Old Port Condominium Owners Association.

**SECOND:** ("X" one box only. Attach additional page(s) if necessary.)

The corporation is organized as a public benefit corporation for the following purpose or purposes:

The corporation is organized as a mutual benefit corporation for all purposes permitted under Title 13-B or, if not for all such purposes, then for the following purpose or purposes:

**See Exhibit A attached hereto and by this reference made a part hereof.**

**THIRD:** The name and registered office of the Registered Agent who must be a Maine resident, whose office is identical with the registered office; or a corporation, domestic or foreign, profit or nonprofit, having an office identical with such registered office:

Bonnie L. Martinolich, Esq.

(name)

Preti, Flaherty, Beliveau, Pachios & Haley, LLP, One City Center, Portland, ME 04101

(physical location - street (not P.O. Box), city, state and zip code)

Preti, Flaherty, Beliveau, Pachios & Haley, LLP, P.O. Box 9546, Portland, ME 04101

(mailing address if different from above)

**FOURTH:** The number of directors (not less than 3) constituting the initial board of directors of the corporation, if the number has been designated or if the initial directors have been chosen, is 3 - Exhibit B attached.

The minimum number of directors (not less than 3) shall be 3 and the maximum number of directors shall be 3.

**FIFTH:** Members: ("X" one box only.)

There shall be no members.

There shall be one or more classes of members and the information required by 13-B MRSA §402 is attached. **as Exhibit C.**

SIXTH: (Optional)  (Check if this article is to apply.)

No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in or intervene in (including the publication or distribution of statements) any political campaign on behalf of any candidate for public office.

SEVENTH: (Optional)  (Check if this article is to apply.)

Other provisions of these articles including provisions for the regulation of the internal affairs of the corporation, distribution of assets on dissolution or final liquidation and the requirements of the Internal Revenue Code section 501(c) are set out in Exhibit D attached hereto and made a part hereof.

**Incorporators**

DATED November, 2005

\_\_\_\_\_  
(signature)

Street One City Center, P.O. Box 9546  
(residence address)

Bonnie L. Martinolich  
(type or print name)

Portland, ME 04112-9546  
(city, state and zip code)

\_\_\_\_\_  
(signature)

Street \_\_\_\_\_  
(residence address)

\_\_\_\_\_  
(type or print name)

\_\_\_\_\_  
(city, state and zip code)

\_\_\_\_\_  
(signature)

Street \_\_\_\_\_  
(residence address)

\_\_\_\_\_  
(type or print name)

\_\_\_\_\_  
(city, state and zip code)

**For Corporate Incorporators\***

Name of Corporate Incorporator \_\_\_\_\_

By \_\_\_\_\_  
(signature of officer)

Street \_\_\_\_\_  
(principal business location)

\_\_\_\_\_  
(type or print name and capacity)

\_\_\_\_\_  
(city, state and zip code)

**Acceptance of Appointment of Registered Agent**

The undersigned hereby accepts the appointment as registered agent for the above-named domestic nonprofit corporation.

DATED November, 2005

\_\_\_\_\_  
(signature of registered agent)

Bonnie L. Martinolich  
(type or print name)

Note: If the registered agent **does not sign** this form, Form MNPCA-18 (13-B MRSA §304.3) must accompany this document.

**\*Articles are to be executed as follows:**

If a corporation is an incorporator (13-B MRSA §401), the name of the corporation should be typed or printed and signed on its behalf by an officer of the corporation. The articles of incorporation must be accompanied by a certificate of an appropriate officer of the corporation, not the person signing the articles, certifying that the person executing the articles on behalf of the corporation was duly authorized to do so.

Please remit your payment made payable to the Maine Secretary of State.

**SUBMIT COMPLETED FORMS TO: CORPORATE EXAMINING SECTION, SECRETARY OF STATE,  
101 STATE HOUSE STATION, AUGUSTA, ME 04333-0101**

EXHIBIT A  
TO  
ARTICLES OF INCORPORATION  
OF  
HOTEL AND RESIDENCES AT THE OLD PORT  
CONDOMINIUM OWNERS ASSOCIATION  
(A Maine Nonprofit Mutual Benefit Corporation)

This mutual benefit corporation (the "Corporation") is organized exclusively for the promotion of the common good and general welfare of the general public who have access to the public areas, common elements and limited common elements of the condominium known as the Hotel and Residences at The Old Port, a Condominium within the meaning of Section 501(c)(4) of the Internal Revenue Code of 1986, as amended. The net earnings of this corporation shall be devoted exclusively for the benefit of, to perform the functions of, and to carry out the foregoing purposes.

The Corporation's primary purpose shall be for the maintenance of the public areas, common elements and limited common elements, and certain limited public access to the property in the Hotel and Residences at The Old Port, a Condominium, provided that the aforesaid maintenance may include, but shall not be limited to, snow and ice removal, maintenance and repair of, parking areas, pedestrian walkways, lighting, and open space areas, access to which is available to members of the general public, as well as other activities of direct government concern in the exercise of the powers and duties entrusted to governments to regulate community health, safety and welfare, and for the operation and maintenance of the Hotel and Residences at The Old Port, a Condominium and the exercise of all of those powers set forth in the Maine Condominium Act (Title 33, Section 1603-102(a), M.R.S.A.) as amended from time to time, all as may be incidental to the aforementioned public purposes.

In promoting social welfare, the Corporation shall not (1) directly or indirectly participate or intervene in political campaigns on behalf of or in opposition to any candidate for public office, (2) conduct its activities primarily for the purpose of operating a social club within the meaning of Section 501(c)(7) of the Internal Revenue Code of 1986, as amended, and (3) carry on a business with the general public in a manner similar to organizations which are operated for profit.

EXHIBIT B  
TO  
ARTICLES OF INCORPORATION  
OF  
HOTEL AND RESIDENCES AT THE OLD PORT  
CONDOMINIUM OWNERS ASSOCIATION  
(A Maine Nonprofit Mutual Benefit Corporation)

The names of the initial Directors of the Corporation shall be as follows:

**[Condo Declaration calls for 2 directors to be elected by Hotel/Retail Unit and 1 Director elected by the Residential Unit]**

**[List Names and addresses]**

EXHIBIT C  
TO  
ARTICLES OF INCORPORATION  
OF  
HOTEL AND RESIDENCES AT THE OLD PORT  
CONDOMINIUM OWNERS ASSOCIATION  
(A Maine Nonprofit Mutual Benefit Corporation)

There shall be one class of members of the Corporation consisting of all of the owners of units in the Hotel and Residences at The Old Port, a Condominium or, following termination of the condominium, of all former unit owners entitled to distribution of proceeds under Section 1602-118 of Title 33 of the Maine Revised Statutes Annotated, or their heirs, legal representatives, successors or assigns. The total number of votes for all members shall be a total of three (3), one (1) allocated to the owner of the Residential Unit and two (2) allocated to the owner of the Hotel/Retail Unit in the condominium, as established in the Declaration of Condominium, recorded or to be recorded in the Cumberland County Registry of Deeds and as the same may from time to time be amended. The members shall have such rights as are set forth in the Maine Condominium Act, 33 M.R.S.A. Sections 1601-101 et seq., as unit owners in the Hotel and Residences at The Old Port, a Condominium, including the voting rights set forth in the Maine Condominium Act, the Declaration of Condominium, these Articles of Incorporation and the Bylaws of the Corporation. The voting rights shall include the following:

- A. The election of Directors;
- B. The removal of Directors;
- C. The change of the number of Directors constituting the Executive Board of Directors within the limitations prescribed herein;
- D. The amendment, restatement, or modification of the Articles of Incorporation or Bylaws of the Corporation; and
- E. The approval of the dissolution of the Corporation, or its merger with or consolidation into, another corporation.

EXHIBIT D  
TO  
ARTICLES OF INCORPORATION  
OF  
HOTEL AND RESIDENCES AT THE OLD PORT  
CONDOMINIUM OWNERS ASSOCIATION  
(A Maine Nonprofit Mutual Benefit Corporation)

Upon the dissolution or final liquidation of the Corporation or the termination of its activities, the distribution of assets shall be governed by the Maine Condominium Act, 33 M.R.S.A. Section 1601-101 et seq., and the Declaration of the Hotel and Residences at The Old Port, a Condominium recorded or to be recorded in the Cumberland County Registry of Deeds, as the same may from time to time be amended.

The Corporation shall neither have nor exercise any power nor engage directly or indirectly in any activity that would invalidate its status (1) as a corporation authorized under the provisions of Title 13-B of the Maine Revised Statutes Annotated, as amended, and (2) as a corporation that is exempt from federal income taxation as an organization described in Section 501(c)(4) of the Internal Revenue Code of 1986, as amended.

Filing Fee \$40.00

**DOMESTIC  
NONPROFIT CORPORATION**

**STATE OF MAINE**

**ARTICLES OF INCORPORATION**

<p>_____</p> <p>Deputy Secretary of State</p> <hr/> <p><b>A True Copy When Attested By Signature</b></p> <hr/> <p>_____</p> <p>Deputy Secretary of State</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------

Pursuant to 13-B MRSA §403, the undersigned incorporator(s) execute(s) and deliver(s) the following Articles of Incorporation:

**FIRST:** The name of the corporation is The Residences at The Old Port Condominium Owners Association.

**SECOND:** ("X" one box only. Attach additional page(s) if necessary.)

The corporation is organized as a public benefit corporation for the following purpose or purposes:

The corporation is organized as a mutual benefit corporation for all purposes permitted under Title 13-B or, if not for all such purposes, then for the following purpose or purposes:  
**Please see attached Exhibit A attached hereto and by this reference made a part hereof.**

**THIRD:** The name and registered office of the Registered Agent who must be a Maine resident, whose office is identical with the registered office; or a corporation, domestic or foreign, profit or nonprofit, having an office identical with such registered office:

**Bonnie L. Martinolich, Esq.**

(name)

**Preti, Flaherty, Beliveau, Pachios & Haley, LLP, One City Center, Portland, ME 04101**

(physical location - street (not P.O. Box), city, state and zip code)

**Preti, Flaherty, Beliveau, Pachios & Haley, LLP, P.O. Box 9546, Portland, ME 04112-9546**

(mailing address if different from above)

**FOURTH:** The number of directors (not less than 3) constituting the initial board of directors of the corporation, if the number has been designated or if the initial directors have been chosen, is 5 - Exhibit B attached.

The minimum number of directors (not less than 3) shall be 5 and the maximum number of directors shall be 9.

**FIFTH:** Members: ("X" one box only.)

There shall be no members.

There shall be one or more classes of members and the information required by 13-B MRSA §402 is attached. **as Exhibit C.**



SIXTH: (Optional)  (Check if this article is to apply.)

No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in or intervene in (including the publication or distribution of statements) any political campaign on behalf of any candidate for public office.

SEVENTH: (Optional)  (Check if this article is to apply.)

Other provisions of these articles including provisions for the regulation of the internal affairs of the corporation, distribution of assets on dissolution or final liquidation and the requirements of the Internal Revenue Code section 501(c) are set out in Exhibit D attached hereto and made a part hereof.

**Incorporators**

DATED November, 2005

\_\_\_\_\_  
(signature)

Street One City Center, P.O. Box 9546  
(residence address)

Bonnie L. Martinolich  
(type or print name)

Portland, ME 04112-9546  
(city, state and zip code)

\_\_\_\_\_  
(signature)

Street \_\_\_\_\_  
(residence address)

\_\_\_\_\_  
(type or print name)

\_\_\_\_\_  
(city, state and zip code)

\_\_\_\_\_  
(signature)

Street \_\_\_\_\_  
(residence address)

\_\_\_\_\_  
(type or print name)

\_\_\_\_\_  
(city, state and zip code)

**For Corporate Incorporators\***

Name of Corporate Incorporator \_\_\_\_\_

By \_\_\_\_\_  
(signature of officer)

Street \_\_\_\_\_  
(principal business location)

\_\_\_\_\_  
(type or print name and capacity)

\_\_\_\_\_  
(city, state and zip code)

**Acceptance of Appointment of Registered Agent**

The undersigned hereby accepts the appointment as registered agent for the above-named domestic nonprofit corporation.

DATED November, 2005

\_\_\_\_\_  
(signature of registered agent)

Bonnie L. Martinolich  
(type or print name)

Note: If the registered agent **does not sign** this form, Form MNPCA-18 (13-B MRSA §304.3) must accompany this document.

**\*Articles are to be executed as follows:**

If a corporation is an incorporator (13-B MRSA §401), the name of the corporation should be typed or printed and signed on its behalf by an officer of the corporation. The articles of incorporation must be accompanied by a certificate of an appropriate officer of the corporation, not the person signing the articles, certifying that the person executing the articles on behalf of the corporation was duly authorized to do so.

Please remit your payment made payable to the Maine Secretary of State.

**SUBMIT COMPLETED FORMS TO: CORPORATE EXAMINING SECTION, SECRETARY OF STATE,  
101 STATE HOUSE STATION, AUGUSTA, ME 04333-0101**

EXHIBIT A TO  
ARTICLES OF INCORPORATION

THE RESIDENCES AT THE OLD PORT CONDOMINIUM OWNERS ASSOCIATION

This mutual benefit corporation (the "Corporation") is organized and shall be operated as a nonprofit homeowners association within the meaning of Section 528(c) of the Internal Revenue Code of 1986 as amended (the "Code") and shall conduct any activities permitted to condominium management associations within the meaning of Section 528(c)(2) of the Code. The Corporation shall have all of the powers permitted to nonprofit corporations by the Maine Nonprofit Corporation Act, 13-B M.R.S.A. Section 101 et Seq., as amended from time to time, not inconsistent herewith as well as all of those powers set forth in the Maine Condominium Act, 33 M.R.S.A. Section 1603-102(a), as amended from time to time, all as may be incidental to the aforementioned purposes.

The Corporation shall neither have nor exercise any power nor engage directly or indirectly in any activity that would invalidate its status (1) as a corporation authorized under the provisions of Title 13-B of the Maine Revised Statutes Annotated, as amended, and (2) as a corporation which is exempt from federal income taxation as an organization described in Section 528 of the Internal Revenue Code of 1986, as amended.

EXHIBIT B TO  
ARTICLES OF INCORPORATION

THE RESIDENCES AT THE OLD PORT CONDOMINIUM OWNERS ASSOCIATION

The names of the initial Directors of the Corporation shall be as follows:

**[TO COME – 5 to 9 Directors]**

EXHIBIT C TO  
ARTICLES OF INCORPORATION

THE RESIDENCES AT THE OLD PORT CONDOMINIUM OWNERS ASSOCIATION

There shall be one class of members of the Corporation consisting of all of the owners of units in The Residences At The Old Port Condominium or, following termination of the condominium, of all former unit owners entitled to distribution of proceeds under Section 1602-118 of Title 33 of the Maine Revised Statutes Annotated, or their heirs, legal representatives, successors or assigns. The total number of votes for all members shall be a total of \_\_\_\_ ( ), one allocated to each unit in the condominium, to provide equality among unit owners as established in the Declaration of Condominium, recorded or to be recorded in the Cumberland County Registry of Deeds and as the same may from time to time be amended. The members shall have such rights as are set forth (1) in the Maine Condominium Act, 33 M.R.S.A. Sections 1601-101 et seq., as unit owners in The Residences at The Old Port Condominium, including the voting rights set forth in the Maine Condominium Act, the Declaration of Condominium, these Articles of Incorporation and the Bylaws of the Corporation. The voting rights shall include the following:

- A. The election of Directors;
- B. The removal of Directors;
- C. The change of the number of Directors constituting the Board of Directors within the limitations prescribed herein;
- D. The amendment, restatement, or modification of the Articles of Incorporation or Bylaws of the Corporation; and
- E. The approval of the dissolution of the Corporation, or its merger with or consolidation into, another corporation.

EXHIBIT D  
TO  
ARTICLES OF INCORPORATION

THE RESIDENCES AT THE OLD PORT CONDOMINIUM OWNERS ASSOCIATION

No part of the net earnings of the Corporation shall inure (other than by acquiring, constructing, or providing management, maintenance, and care of association property and other than by a rebate of excess membership dues, fees, or assessments) to the benefit of any private shareholder or individual.

Upon the dissolution of the Corporation or the termination of its activities, the assets of the Corporation remaining after the payment of all its liabilities shall be distributed exclusively to all of the owners of units in The Residences At The Old Port Condominium or, following termination of the condominium, of all former unit owners entitled to distribution of proceeds under Section 1602-118 of Title 33 of the Maine Revised Statutes Annotated, or their heirs, legal representatives, successors or assigns.

Draft – November 22, 2005

BYLAWS  
OF  
HOTEL AND RESIDENCES AT THE OLD PORT  
CONDOMINIUM OWNERS ASSOCIATION

ARTICLE I

Introduction

These Bylaws have been adopted this \_\_\_\_ day of \_\_\_\_\_ 2005, by the persons constituting all of the members of the first Executive Board of Hotel and Residences at the Old Port Condominium Owners Association. Initial capitalized terms not otherwise defined herein shall have the meaning assigned in the Declaration of Condominium, dated \_\_\_\_\_, 2005, and recorded on \_\_\_\_\_, 2005 in the Cumberland County Registry of Deeds, in Book \_\_\_\_\_ at Page \_\_\_\_\_ (as amended from time to time, the "Declaration").

Section 1.1. Applicability. These Bylaws ("Bylaws") shall relate solely to the property called Hotel and Residences at the Old Port Condominiums located in Portland, Maine (the "Property"), more fully described in the Declaration.

Section 1.2. Definitions. The capitalized terms used herein without definition shall have the same definitions as such terms have in the Declaration and the Maine Condominium Act, Title 33, Maine Revised Statutes, Section 1601-101 *et seq.* (the "Act"). Unless otherwise provided in the Act, in the event of inconsistencies in definitions between the Act and the Declaration, the Declaration shall control.

Section 1.3. Compliance. Pursuant to the provisions of the Act, every Unit owner and all persons entitled to occupy a Unit shall comply with these Bylaws.

Section 1.4. Office. The office of the Condominium and the Association and the Executive Board shall be located at 38 India Street, Portland, Maine or at such other place as may be designated from time to time by the Executive Board.

Section 1.5. Incorporation of Statutory Law. Except as expressly provided herein, in the Declaration, or in the Act, the Association shall be governed by the provisions of any applicable statute of the State of Maine.

## ARTICLE II

### Executive Board

Section 2.1. Composition. The affairs of the Association shall be governed by the Executive Board. The Executive Board shall consist of three (3) members.

Section 2.2. Election and Term of Office.

(a) At the Annual Meeting of the Association, subject to Section \_\_\_\_\_ of the Declaration, the election of members of the Executive Board shall be held. The term of office of any Executive Board member to be elected (except as set forth in Section 3. 2(b)(2) and Section 2.5 hereof) shall be fixed at three (3) years. The members of the Executive Board shall hold office until the earlier to occur of the election of their respective successors or their death, adjudication of incompetency, removal or resignation. An Executive Board member may serve an unlimited number of terms and may succeed him or herself. Members of the Executive Board shall serve for staggered terms.

(b) Nominations for election to the Executive Board shall not, unless otherwise approved by resolution of the Executive Board, be made from the floor. Nominations shall be made by a nominating committee appointed by the Executive Board, or in accordance with other nomination procedures adopted by the Executive Board. If a nominating committee has been appointed by the Executive Board, such committee shall be appointed not less than sixty (60) days prior to the annual meeting of Members. The nominating committee shall make as many nominations for election to the Executive Board as it shall determine, in its discretion, but in no event less than the number of positions to be filled by the Members.

Section 2.3. Meetings. Meetings of the Executive Board shall be conducted in accordance with the following:

(a) *Time and Location*. The Executive Board shall hold an annual meeting within ten (10) days following the Annual Meeting of the Association for the purpose of electing officers, as more fully set forth in Article III hereof, and for any other purpose that may be required or permitted by law, the Declaration, the Rules and Regulations, or these Bylaws to be done by a vote of the Executive Board. The Executive Board shall hold meetings at the call of the president or upon request to the president by at least a majority of the members of the Executive Board; provided however that:

(1) In any event, the Executive Board shall meet at least three (3) times each fiscal year (in addition to the annual meeting of the Executive Board), unless all members of the Executive Board shall waive such requirements as to a particular meeting or meetings;

(2) The first such Executive Board meeting shall be held promptly after the

incorporation of the Association;

(3) There shall be a meeting of the Executive Board on or before the first day of the eleventh month of each fiscal year for the purpose of adopting the budget of the Association for the next following fiscal year of the Association; and

(4) The president shall call any Executive Board meeting requested by a majority of the members of the Executive Board for a date occurring not less than five (5) nor more than twenty (20) days after receipt of such request.

The president shall designate the time and location of Executive Board meetings. No business shall be transacted at Executive Board meetings other than as specified in the notice thereof.

(b) *Notice.* Not less than forty-eight (48) hours prior to the time of any Executive Board meeting, a written notice stating the date, time and place of such meeting shall be delivered, either by hand or by mail or telegram, to each Executive Board member at the address given to the Executive Board by such Executive Board member for such purpose. Any Executive Board member may waive notice of a meeting or consent to any action of the Executive Board without a meeting. An Executive Board member's attendance at a meeting shall constitute his waiver of notice of such meeting.

(c) *Quorum of the Executive Board.* At all meetings of the Executive Board, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Executive Board. If, at any meeting, there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time. At any such adjourned 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. A director may attend a meeting of the Executive Board by means of a conference telephone or communications equipment the means of which all persons participating in the meeting can hear each other and participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.

(d) *Voting.* Each Executive Board member shall be entitled to cast one vote. A vote of the majority of the members of the Executive Board present at any meeting at which a quorum is present shall bind the Executive Board for all purposes unless otherwise provided in the Declaration or these Bylaws.

(e) *Organization.* Executive Board meetings may be held under such reasonable rules consistent with these Bylaws as the Executive Board may determine. The Executive Board is hereby entitled to promulgate such rules. Except for the meeting to approve the budget of the Association referred to in this Section 2.3(e), Unit



owners who are not Executive Board members shall have no right to attend Executive Board meetings but the Executive Board may, in its sole discretion, elect to allow such Unit owners to attend a particular meeting or meetings. If the Executive Board does elect to allow Unit owners who are not Executive Board members to attend a particular meeting or meetings, the secretary shall give prior notice in the manner provided in Section 3.2(c) hereof, to all Unit owners of each meeting at which Unit owners are entitled or invited to be present; provided, however, that the failure to give such notice shall neither invalidate any actions taken by the Executive Board at such meeting nor impose any liability on the Executive Board or its officers and/or members for the failure to give such notice. All Unit owners shall have the right to attend and be heard, but not the right to vote, at the Executive Board meeting at which the fiscal year budget of the Association shall be presented to the Executive Board for adoption. The secretary of the Association shall give Unit owners notice of such meeting, accompanied by a copy of the proposed budget, in the manner provided in Section 3.2(c) hereof.

(f) *Conduct of Meetings.* The president shall preside over all meetings of the Executive Board and the Secretary shall keep a minute book of the Executive Board meetings, recording therein all resolutions adopted by the Executive Board and a record of all transactions and proceedings occurring at such meetings. The then current edition of Robert's Rules of Order shall govern the conduct of the meeting of the Executive Board if and to the extent such rules are not in conflict with the Declaration or these Bylaws.

(g) *Consent to Corporate Action.* Any action of the Executive Board required or permitted to be taken at any meeting may be taken without a meeting if all of the members of the Executive Board consent in writing to such action. Such consents shall be filed with the minutes of the proceedings of the Executive Board.

**Section 2.4 Resignation and Removal of Directors.** Except with respect to members designated by the Declarant, at any Annual or special meeting of the Association duly called, any one or more of the members of the Executive Board may be removed with or without cause by Unit owners entitled to cast a majority of all votes in the Association and a successor may then and there be elected to fill the vacancy thus created. Any Unit owner proposing removal of a member of the Executive Board 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 member of the Executive Board may resign at any time and shall be deemed to have resigned upon transfer of title to his or her Unit. The Declarant shall have the right to remove and replace any and all members appointed by the Declarant at any time and from time to time until the required resignation date specified in Section 11.2 of the Declaration.

**Section 2.5 Vacancies.** Any vacancy or vacancies on the Executive Board,

whether caused by resignation, removal, death, adjudication of incompetency, or an increase in size of the Executive Board, shall be filled by the Executive Board with an interim appointee who shall serve until the next Annual Meeting of the Association at which time such vacancy may be filled by the vote of the owners of Units to which more than fifty percent (50%) of the votes in the Association are allocated, provided, however, that the Declarant shall have the right to fill any vacancy created by the resignation, death, or adjudication of incompetency of a member who had been appointed by the Declarant and had not been elected by the Unit owners. If the vacancy results from removal by the Association, the election of a new member or members may be held at the same meeting where such removal takes place and notice of a petition for removal shall be considered notice of an election to fill each vacancy so caused. The vote of more than fifty (50%) percent of the Unit owners present at such meeting in person or by proxy to postpone the election shall cause the postponement of the election to a later date, but if such vacancy is not filled within sixty (60) days after it occurs, the Executive Board shall promptly thereafter elect a replacement.

Section 2.6 Compensation. No member of the Executive Board shall receive compensation for performing his duties as a member of the Executive Board unless such compensation is expressly authorized or approved by a vote of owners of Units to which more than fifty percent (50%) of the votes in the Association are allocated, at any Annual or special meeting of the Association.

Section 2.7 Validity of Contracts with Interested Executive Board Members. No contract or other transaction between the Association and one or more of its Executive Board members or between the Association and any corporation, firm or association in which one or more of the Executive Board members are directors or officers, or are financially interested, shall be void or voidable because such Executive Board member or members are present at any meeting of the Executive Board which authorized or approved the contract or transaction or because his or their votes are counted, if the circumstances specified in either of the following subparagraphs exists:

- (1) The fact that an Executive Board member is also such a director or officer or has such financial interest is disclosed or known to the Executive Board and is noted in the minutes thereof, and the Executive Board 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 Executive Board Member or members; or
- (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.

Section 2.8 Inclusion of Interested Executive Board Members in a Quorum. Any Executive Board member holding such director or officer position or having such financial interest in another corporation, firm or association may be counted in

determining the presence of a quorum at a meeting of the Executive Board or a committee thereof which authorizes, approves or ratifies a contract or transaction of the type described in Section 2.7 hereof.

Section 2.9. Powers of the Executive Board.

(a) *Enumeration.* The Executive Board shall have all of the powers and duties granted by the Act and the laws governing nonprofit corporations or both.

(b) *Limitation.* Nothing in this Section 2.9 or elsewhere in these Bylaws shall be considered to grant to the Executive Board or to the officers of the Association any powers or duties which, by law, are possessed by Unit owners. Unless otherwise provided herein or in the Act or in the Declaration, the Executive Board shall comply with the instructions of owners of Units to which more than fifty percent (50%) of the votes in the Association are allocated present in person or by proxy, as expressed in the resolution duly adopted at any Annual or special meeting of the Unit owners.

(c) *Delegation of Powers; Managing Agent.* The Executive Board may employ for the Condominium a managing agent at a compensation established by the Executive Board. The managing agent shall perform such duties and services as the Executive Board shall authorize, including, but not limited to, all of the duties listed in the Declaration and these Bylaws; provided, however, where a managing agent does not have the power to act under the Declaration or these Bylaws, the managing agent may act as an advisor or in an advisory capacity to the Executive Board. The Executive Board may delegate to the managing agent all of the powers granted to the Executive Board by the Act, the Declaration and these Bylaws other than the following powers: (i) to adopt an annual budget and any amendment thereto or to assess Common Expenses; (ii) to adopt, repeal or amend rules and regulations; (iii) to designate signatories on Association bank accounts; (iv) to borrow money on behalf of the Association; (v) to acquire mortgages on Units; and (vi) to assign Common Elements as Limited Common Elements. Any contract with the managing agent must provide that it shall be cancelable by either party without cause and without a termination fee upon not less than sixty (60) days' nor more than ninety (90) days' written notice and shall be cancelable by the Executive Board with cause upon not less than thirty (30) days' written notice. Any such contract negotiated by the Declarant shall meet all requirements of this Section 2.9(c) for contracts negotiated by the Association and shall not exceed one year but may be renewed upon consent of the Association.

ARTICLE III

The Association

Section 3.1. Membership. The Association is a Maine corporation, all the members of which are the Unit owners of the Property. The Declarant, being the initial owner of all Units, initially shall constitute all of the members of the Association. A

person shall automatically become a member of the Association at the time he or she acquires legal title to his or her Unit, and shall continue to be a member so long as he or she continues to hold title to such Unit. A Unit owner shall not be permitted to resign from membership in the Association prior to the time when he or she transfers title to his or her Unit to another. No membership may be transferred in any way except as appurtenant to the transfer of title to the Unit to which that membership pertains. Transfer of membership shall be automatic upon transfer of title, but the Association may treat the prior Unit owner as the member for all purposes until satisfactory evidence of the recording of the instrument transferring title shall be presented to the secretary of the Association. The date of recordation of an instrument of conveyance in the Cumberland County Registry of Deeds shall be determinative of all disputes concerning the date of transfer of title to any Unit or Units. A mortgage conveyance of any Unit, however, shall not operate to transfer membership until the mortgage is foreclosed or the unit sold in lieu of foreclosure.

Section 3.2 Meetings. Meetings of the Association shall be conducted in accordance with the following:

(a) *Annual Meetings*.

(1) Unit owners shall hold annual meetings for the purposes stated in Section 3.2(b)(2) hereof (the "Annual Meeting"). The Annual Meeting of Unit owners shall be held in September of each year at a date and time to be designated by the Executive Board.

(2) The purpose of the Annual Meeting of the Association shall be to elect the members of the Executive Board unless such action is being taken pursuant to the provisions of Section 3.2(b) hereof or Section 2.5 hereof, and to conduct such other business as may be required or permitted by law, the Declaration or these Bylaws to be done by a vote of Unit owners. The treasurer of the Association shall present at each Annual Meeting a financial report (prepared and reviewed by an independent certified public accountant) of the receipts and Common Expenses for the Association's immediately preceding fiscal year, itemized receipts and expenditures, the allocation thereof to each Unit owner, and any changes expected for the present fiscal year. A copy of such financial report shall be sent to each Unit owner not less than five (5) days prior to the Annual Meeting.

(b) *Special Meetings*.

(1) The president shall call a special meeting of the Association if so directed by resolution of the Executive Board or upon petition signed and presented to the Secretary by Unit owners entitled to cast at least fifty-one percent (51%) of the votes in the Association. The notice of any special meeting shall state the time, the place and purpose thereof. Such meetings shall be held within forty-five (45) days after receipt by the president of said

resolution or petition; provided, however, if the purpose includes the consideration of the rejection of a capital expenditure pursuant to Section 5.8 hereof, such meeting shall be held within fifteen (15) days after receipt by the president of said resolution or petition. No business shall be transacted at a special meeting except as stated in the notice.

(2) Within sixty (60) days after the date by which all members of the Executive Board must resign pursuant to Section 11.2(b) of the Declaration, a special meeting of the Association shall be held at which all of the members of the Executive Board shall resign, and the Unit owners, including the Declarant if the Declarant owns one or more Units, shall thereupon elect successor members of the Executive Board to act in the place of those resigning. The one (1) successor member receiving the highest number of votes shall serve until the third Annual Meeting of the Association following the date of such election, the one (1) successor member receiving the second highest member of votes shall serve until the second annual meeting of the Association following the date of such election, and the remaining one (1) successor member shall serve until the first Annual Meeting of the Association following the date of such election, thereafter each member of the Executive Board shall be elected for a term of three (3) years.

(c) *Notice of Meetings.* Except for budget meetings which will be noticed not less than 14 nor more than 30 days after the mailing of the summary, not less than ten (10) nor more than sixty (60) days in advance of a meeting, the secretary or other officer specified in these Bylaws shall cause notice to be hand delivered or sent prepaid by United States mail to the mailing address of each Unit or to the mailing address designated in writing by the Unit owner. No action shall be adopted at a meeting except as stated in the notice. If a notice sent to Unit owners pursuant to the foregoing sentence includes an item on the proposed agenda that either (i) requires that notice be given to Eligible Mortgage Holders pursuant to Article 8 of the Declaration or (ii) would require the approval of Eligible Mortgage Holders pursuant to Section 16.2 of the Declaration, a copy of such notice will also be sent to the Eligible Mortgage Holders. All such notices shall be delivered to all Unit owners (and Eligible Mortgage Holders, if applicable) not less than ten (10) nor more than sixty (60) days in advance of the date of the meeting to which the notice relates and shall state the date, time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Declaration or Bylaws. The secretary of the Executive Board shall cause all such notices to be delivered as aforesaid. Notice sent by mail shall be deemed to have been delivered on the date of deposit in the United States mail, in the case of mailed notices or the date of deposit in the Unit owner's (or if applicable, in the Eligible Mortgage Holder's) mailbox in the case of hand delivery. No subject may be dealt with at any Annual or special meeting of the Association, unless the notice for such meeting stated that such subject would be discussed at such meeting. Any Unit owner may, at any time, waive notice of any meeting of the Unit owners in writing, and such waiver shall be deemed equivalent to the receipt of such notice.

(d) *Quorum.* Except as set forth below, the presence in person or by proxy of at least fifty-one percent (51%) of the Unit owners at the commencement of a meeting shall constitute a quorum at that meeting of the Association. If a quorum is not present, Unit owners entitled to cast a majority of the votes represented at such meeting may adjourn the meeting to a time not less than forty-eight (48) hours after the time for which the original meeting was called. If a meeting is adjourned, the quorum at such second meeting shall be deemed present throughout any meeting of the Association if at least fifty-one percent (51%) of the Unit owners are present in person or by proxy at the beginning of the meeting.

(e) *Voting.*

(1) If only one of several owners of a Unit is present at a meeting of the Association, the owner present is entitled to cast all the votes allocated to the Unit. If more than one of the owners are present, the votes allocated to the Unit may be cast only in accordance with the agreement of a majority in interest of the owners pursuant to Section 1603-110 of the Act. There is majority agreement if any one of the owners casts the votes allocated to the Unit without protest being made promptly to the person presiding over the meeting by another owner of the Unit. Votes allocated to a Unit owned by the Association may not be cast. In all elections for Executive Board members, each Unit owner shall be entitled to cast for each vacancy to be filled at such election the number of votes allocated to the Unit or Units owned by such Unit owner. Those candidates for election receiving the greatest number of votes cast in such elections shall be elected and, if the Executive Board members are being elected to unequal terms pursuant to Section 3.2(b)(2) hereof, the candidates receiving the highest number of votes shall be elected to the longest terms, as provided in that Section. Except as set forth in Section 3.2(b) above, if the Declarant owns or holds title to one or more Units, the Declarant shall have the right at any meeting of the Association to cast the votes to which such Unit or Units are entitled. No votes allocated to a Unit owned by the Association may be cast. There shall be no cumulative or class voting or splitting of votes.

(2) *Proxies.* Votes allocated to a Unit may be cast under a proxy duly executed by a Unit owner. If a Unit is owned by more than one person, each owner of the Unit may vote or register protest to the casting of votes by the other owners of the Unit through a duly executed proxy. A vote may be cast in person or by proxy. If a Unit is owned by more than one person, each owner of the Unit may vote through a duly executed proxy. Such proxy may be granted by any Unit owner only in favor of another Unit owner, the holder of a mortgage on a Unit or a Declarant. Proxies shall be duly executed in writing, shall be valid only for the particular meeting designated therein and must be filed with the secretary before the appointed time of the meeting. Such proxy shall be deemed revoked only by actual receipt by the person presiding over the meeting of written notice of revocation from the grantor of the proxy. No proxy

shall be valid for a period in excess of eleven (11) months after the execution thereof, unless otherwise provided in the proxy. A proxy is void if it is not dated or purports to be revocable without notice.

(3) *Actions of Association without a Meeting.* Any action required or permitted to be taken by a vote of the Association may be taken without a meeting if all Unit owners shall individually or collectively consent in writing to such action. Any such written consent shall be filed with the proceedings of the Association.

(4) *Conduct of Meetings.* The president (or in his absence, the vice president) shall preside over all meetings of the Association, and the secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting as well as keep a record of all transactions occurring at the meeting. The president may appoint a person to serve as a parliamentarian at any meeting of the Association. The then current edition of Robert's Rules of Order shall govern the conduct of all meetings of the Association when not in conflict with the Declaration or these Bylaws. All votes shall be tallied by tellers appointed by the president.

Section 3.13. Copies of Condominium Documents. The Association shall have current copies of the Declaration, these Bylaws, the Rules and Regulations and any other rules concerning the Property as well as its own books, records and financial statements available for inspection by Unit owners or by holders, insurers and guarantors of first Mortgages secured by Units. These documents shall be available during normal business hours.

## ARTICLE IV

### Officers

Section 4.1. Election. At the first meeting of the Executive Board, and at every Annual Meeting of the Executive Board thereafter, the Executive Board members, if a quorum is present, shall elect the officers of the Association for the following year, such officers to serve for a one (1) year term and until their respective successors are elected. The Executive Board shall elect the following officers: a President, Secretary and a Treasurer, and may elect such other officers as the Executive Board shall determine. Each officer may serve an unlimited number of terms so long as such member or officer continues to be reelected to the Executive Board. Any member may hold two (2) offices simultaneously, except that the president shall not hold any other office.

Section 4.3. President. The president shall be the chief executive officer of the Association and the chairperson of the Executive Board. The president shall be responsible for implementing the decisions of the Executive Board and in that capacity shall direct, supervise, coordinate and have general control over the affairs of the

Association and the Executive Board, subject to the limitations of the laws of the State of Maine, the Condominium Documents and the actions of the Executive Board. The president shall have the power to sign checks and other documents on behalf of the Association and the Executive Board, or both, with or without the signatures of any other officers as may be determined by the Executive Board. The president shall preside at all meetings of either body at which he is in attendance and shall be a member of all committees. If the president is absent from such meetings the senior officer of the Association present at such meeting shall preside, and in the absence of any officer, the body holding the meeting shall elect a person to preside. If the Executive Board so provides, the president also shall have any or all of the powers and duties ordinarily attributable to the chief executive officer of a corporation domiciled in Maine.

Section 4.4. Vice President. Unless otherwise determined by a resolution of the Executive Board, the vice president shall take the place of the president and perform his or her duties whenever the president is absent or unable to act. If neither the president nor the vice president is able to act, the Executive Board shall appoint some other Director to act in the place of the president, on an interim basis. The vice president shall also perform such other duties as may be imposed upon him or her by the Executive Board or by the president.

Section 4.5. Secretary. Unless otherwise determined by the Executive Board, the secretary shall keep or cause to be kept all records (or copies thereof if the original documents are not available to the Association) of the Association and the Executive Board and shall have the authority to affix the seal of the Association to any documents requiring such seal. The secretary shall give or cause to be given all notices as required by law, the Declaration or these Bylaws, shall take and keep or cause to be taken and kept minutes of all meetings of the Association, the Executive Board and all committees, and shall take and keep or cause to be taken and kept at the Association's office a record of the names and addresses of all Unit owners as well as copies of the Declaration, the Plats and Plans, these Bylaws and the Rules and Regulations, all of which shall be available at the office of the Association for inspection by Unit owners or prospective Unit owners during normal business hours and for distribution to them at such reasonable charges (if any) as may be set from time to time by the Executive Board. The secretary shall keep or cause to be kept the register of Eligible Mortgage Holders. The secretary shall also perform all duties and have such other powers as are ordinarily attributable to the secretary of a corporation domiciled in Maine.

Section 4.6. Treasurer. Unless otherwise determined by the Executive Board, the Treasurer shall have the charge and custody of, and be responsible for, all funds and securities of the Association, shall deposit or cause to be deposited all such funds in such depositories as the Executive Board may direct, shall keep or cause to be kept correct and complete accounts and records of all financial transactions of the Association and the Executive Board and shall submit or cause to be submitted to the Executive Board and the Association such reports thereof as the Act, the Declaration,



the Executive Board, or these Bylaws may from time to time require. Such records shall include, without limitation, chronological listings of all receipts and expenditures on account of the Common Elements, Limited Common Elements, and each Unit, the amount of each assessment for Common Expenses and expenses assessable to individual Units, if any, and the amount paid and the amounts due on such assessments. Such records shall specify and itemize the maintenance, repair and replacement expenses relating to the Common Elements and the Limited Common Elements and any other expenses incurred by the Association. The foregoing financial records shall be kept at the Association's office and shall be available there for inspection by Unit owners or prospective Unit owners during normal business hours. The treasurer shall, upon request, provide any person who shall have entered into a written agreement to purchase a Unit with a written statement of the information required to be provided by the Association pursuant to Sections 1603-116(h) and 1604-108(b) of the Act. The treasurer shall also perform such duties and have such powers as are ordinarily attributable to the Treasurer of a corporation domiciled in Maine.

Section 4.7. Compensation. The officers of the Executive Board shall serve without compensation for their services in such capacity unless such compensation is expressly authorized or approved by a vote of owners of Units to which more than fifty (50%) percent of the votes in the Association are allocated at any Annual or special meeting of the Association.

Section 4.8 Resignation and Removal. Any officer may resign at any time by written notice to the Executive Board, such resignation to become effective at the next Executive Board meeting. Any officer who ceases to be a member of the Executive Board for any reason also shall be deemed to have resigned or been removed, ipso facto, from any Executive Board office he may have held. Any officer may be removed from his office at any time by a majority vote of the Executive Board whenever in the judgment of the Executive Board members the interests of the Association will be best served thereby, or by the vote of the Association with or without cause, in the same manner as set forth for the removal of Executive Board members in Section 2.4 hereof.

Section 4.9 Vacancies. Vacancies caused by resignation or removal of officers or the creation of new offices may be filled by a majority vote of the Executive Board members, if the vacancy resulted from action of the Executive Board. If, however, the vacancy resulted from action by the Association, such vacancy shall be filled in the manner as set forth in Section 2.5. hereof for filling Executive Board vacancies.

## ARTICLE V

### Common Expenses; Budgets

Section 5.1. Fiscal Year. The fiscal year of the Association shall be the

calendar year unless otherwise determined by the Executive Board; provided, however, that the first fiscal year shall begin upon the recordation of the Declaration and end on December 31 of the same year.

Section 5.2. Preparation and Approval of Budget.

(a) *Adoption.* On or before the first day of November of each year (or sixty days before the beginning of the fiscal year if the fiscal year is other than the calendar year), the Executive Board shall adopt an annual budget for the Association containing an estimate of the total amount considered necessary to pay the cost of maintenance, management, operation, repair and replacement of the Common Elements and Limited Common Elements, in accordance with Section 13.1(a) of the Declaration, and those parts of the Units as to which it is the responsibility of the Executive Board 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 Declaration, these Bylaws or a resolution of the Association and which will be required during the ensuing fiscal year for management and administration expenses; the cost of such insurance and utilities as may be furnished by the Association; the amount of such reserves as shall be reasonably established by the Executive Board including operating contingency reserves for expenses both unanticipated and extraordinary and reserves for periodic maintenance, repair and replacement of the Common Elements and Limited Common Elements; and such other expenses of the Association as may be approved by the Executive Board, including operating deficiencies, if any, for prior periods.

(b) *Available for Inspection.* On or before the next succeeding fifth day of November (or fifty-five (55) days before the beginning of the fiscal year if the fiscal year is other than the calendar year), the Executive Board shall make the budget available for inspection at the Association office and shall mail to each Unit owner a summary of the budget in a reasonably itemized form that sets forth the amount of the Common Expenses. Such budget shall constitute the basis for determining each Unit owner's assessments for Common Expenses of the Association.

(c) *Ratification of Budget.* The Executive Board shall set a date for a meeting of the Unit Owners to consider ratification of such budget not less than fourteen (14) days nor more than thirty (30) days after mailing of such summary. Unless at that meeting a majority of all the Unit Owners reject such budget, such budget is ratified, whether or not a quorum is present. In the event such proposed budget is rejected, the budget last ratified by the Unit owners shall be continued until such time as the Unit owners ratify a subsequent budget proposed by Executive Board.

(d) *Reasonable Efforts.* The Executive Board shall make reasonable efforts to meet the deadlines set forth above, but compliance with such deadlines shall not be a condition precedent to the effectiveness of any budget.

### Section 5.3. Assessment and Payment of Common Expenses.

(a) *Common Expenses.* The Executive Board shall calculate the Monthly Assessments for Common Expenses against each Unit by multiplying (i) the total amount of the estimated funds required for the operation of the Property set forth in the budget adopted by the Executive Board for the fiscal year in question by (ii) the percentage of Common Expense liability of each Unit in the Condominium and dividing (iii) the result by the number of calendar months in such fiscal year. Such assessments, payable in monthly installments, shall be due and payable on the first day of each calendar month and shall be a lien against each Unit owner's Unit as provided in the Act and in the Declaration. Within ninety (90) days after the end of each fiscal year, the Executive Board shall prepare and deliver to each Unit owner and to each record holder of a first mortgage on a Unit who has registered an address with the secretary an itemized accounting of the Common Expenses and funds received during such fiscal year less expenditures actually incurred and sums paid into reserves. Any net shortage with regard to Common Expenses, after application of such reserves as the Executive Board may determine, shall be assessed promptly against the Unit owners in equal shares and shall be payable as a Special Assessment, in such manner as the Executive Board may determine.

(b) *Working Capital Fund.* A working capital fund shall be established equal to at least two (2) months estimated Common Expense assessments for each Unit. The share for each Unit shall be collected and transferred to the Association at the time of each sale of each Unit and shall be maintained in a segregated account for the use and benefit of the Association. The contribution to the working capital fund for each unsold Unit shall be paid to the Association by the Declarant within sixty (60) days after the date of the first conveyance of a Unit, such contribution to be reimbursed to the Declarant by the initial Unit purchaser at the subsequent sale of each such unsold Unit. Such amounts shall not be considered as advance payment of regular assessments. Each Unit owner (including the Declarant) shall be entitled to a refund from the Association of the amount of such funds deposited by the Unit owner at the time of such Unit owner's purchase of the Unit upon the subsequent conveyance of such Unit owner's (including the Declarant's) Unit. No interest shall be paid on such deposits.

(c) *Reserves.* Extraordinary expenditures not originally included in the annual budget which may become necessary during the year may be charged first against reserves for working capital, operations, contingencies, and replacements. If the reserves are deemed to be inadequate for any reason, including non-payment of any Unit owner's assessments, the Executive Board may at any time levy further assessments for Common Expenses which shall be assessed against the Unit owners or in accordance with their Percentage Interests and shall be payable as a Special Assessment, in such manner as the Executive Board may determine.

Section 5.4. Further Assessments. The Executive Board shall serve notice on all Unit owners of any further assessments pursuant to Sections 5.3(a), or 5.3(c) or otherwise as permitted or required by the Act, the Declaration and these Bylaws by a

statement in writing giving the amount and reasons therefor, and such further assessments, unless otherwise specified in the notice, shall become effective with the next Monthly Assessment which is due more than ten (10) days after the delivery of such notice of further assessments. All Unit owners so assessed shall be obligated to pay the amount of such Monthly Assessments and further assessments. Such assessments shall be a lien as of the effective date as set forth in the preceding Sections 5.3(a) and 5.3(c).

Section 5.5. Initial Budget. At or prior to the time assessment of Common Expenses commences, the Executive Board shall adopt the budget, as described in this Article 5, for the period commencing on the date that the Executive Board determines that assessments shall begin and ending on the last day of the fiscal year during which such commencement date occurs. Assessments shall be levied and become a lien against the Unit owners during such period as is provided in Section 5.3 above.

Section 5.6 Effect of Failure to Prepare or Adopt Budget. The failure or delay of the Executive Board to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of a Unit owner's obligation to pay his or her allocable share of the Common Expenses as herein provided whenever the same shall be determined and, in the absence of any annual budget or adjusted budget, each Unit owner shall continue to pay each Monthly Assessment at the rate established for the previous fiscal year until the new annual or adjusted budget shall have been adopted.

Section 5.7 Accounts, Audits. All sums collected by the Executive Board with respect to assessments against the Unit owners or from any other source may be commingled into a single fund. All books and records of the Association shall be kept in accordance with good and accepted accounting practices and the same shall be audited at least once each year by an independent accountant retained by the Executive Board. The Association shall make an audited statement for the preceding fiscal year available to any holder, insurer or guarantor of a first mortgage secured by a Unit who submits a written request therefor to the Association.

Section 5.8. Limitations on Expenditures and Borrowing. Anything herein to the contrary notwithstanding, the Association, by a vote of more than fifty (50%) percent of all votes in the Association present, may reject any capital expenditure or borrowing approved by the Executive Board, within thirty (30) days after approval by the Executive Board; provided, however, that this Section shall not apply to the Executive Board so long as a majority of its members are appointed by the Declarant pursuant to Section 11.2 of the Declaration.

Section 5.9 Statement of Common Expenses. The Executive Board shall promptly provide any Unit owner, contract purchaser or proposed Mortgagee so requesting the same in writing with a written statement of all unpaid assessments for Common Expenses and Limited Common Expenses, if any, due from such Unit owner. The Executive Board may impose a reasonable charge for the preparation of such statement to cover the cost of its preparation, to the extent permitted by the Act.

## ARTICLE VI

### Repair or Reconstruction

Section 6.1 Restoration of Property Out of Common Expense Fund. Damage to or destruction of the Buildings shall be promptly repaired and restored by the Association in accordance with the provisions of Article 9 of the Declaration and Sections 1603-113(e) and (h) of the Act. The Executive Board shall be responsible for accomplishing the full repair or reconstruction which shall be paid out of the Common Expense fund. The disbursement of funds for such repair or reconstruction shall, at the option of the Executive Board, be made only as the work progresses upon approval of a qualified architect who shall have furnished a description satisfactory to the Executive Board of the costs involved and the services and materials to be furnished by the contractors, subcontractors and materialmen. Unit owners may apply to the proceeds from their individual property insurance policies, if any, to the share of such Common Expense as may be assessed to them. The Executive Board shall be responsible for restoring the Property only to substantially the same condition as it was immediately prior to the damage and each Unit owner shall personally assume the additional expense of any improvements to his or her Unit which he restores, to restore it beyond such condition. If any physical changes are made to any restored Unit or the Common Elements, or any combination of them, which renders inaccurate the Plats and Plans which are then on record, the Executive Board shall record amended Plats and Plans showing such changes.

## ARTICLE VII

### Separate Real Estate Taxes

Section 7.1 Assessments Against Individual Units. In the event that, commencing with the taxable period during which occurs the first conveyance of a Unit to a person other than the Declarant, real estate taxes are not separately assessed against each Unit owner, but rather are assessed against the Property as a whole, then each Unit owner (including the Declarant, as to the Units then owned by it and as to any portion of the Property as to which the Declarant has reserved Development Rights) shall pay his proportionate share thereof in accordance with his respective Percentage Interest in the Common Elements.

## ARTICLE VIII

### Miscellaneous

Section 8.1. Severability. The provisions of these Bylaws shall be deemed independent and severable and the invalidity, partial invalidity or unenforceability of any provision or portion hereof shall not affect the validity or enforceability of any other

provision or portion thereof unless the deletion of such invalid or unenforceable provision shall destroy the uniform plan for development and operation of the Property which the Declaration and these Bylaws are intended to create.

Section 8.2. Conflicts. The Act and the Declaration shall control in the event of any conflicts between the provisions thereof and the provisions of these Bylaws. The Act, the Declaration and these Bylaws shall control in the case of any conflict between the provisions thereof and the provisions of the Rules and Regulations.

Section 8.3. Notices. All notices or other communications required or permitted under these Bylaws shall be in writing and shall be deemed to have been given when personally delivered or on the second business day after the day on which mailed or certified mail, return receipt requested, postage prepaid (or otherwise as the Act may permit), (a) if to a Unit owner at the single address which the Unit owner shall designate in writing and file with the secretary or, if no such address is designated, at the address of the Unit of such Unit owner, or (b) if to the Association, the Executive Board or to the managing agent, at the principal office of the Association and to the managing agent or at such other address as shall be designated by notice in writing to the Unit owners pursuant to this Section. If a Unit is owned by more than one person, each such person who so designates a single address in writing to the secretary shall be entitled to receive all notices hereunder.

Section 8.4. Headings. The headings preceding the various Sections of these Bylaws and the Table of Contents are intended solely for the convenience of readers of the Bylaws and in no way define, limit or describe the scope of these Bylaws or the intent of any provision thereof.

Section 8.5. Gender. The use of the masculine gender in these Bylaws shall be deemed to include the feminine and neuter genders, and the use of the singular shall be deemed to include the plural, and vice versa, whenever the context so requires.

## ARTICLE IX

### Amendments to Bylaws

Section 9.1. General Requirements; Consent of Declarant or Holders of Mortgages; Curative Amendments to Bylaws. Except as otherwise provided in any one (1) or more of these Bylaws, the Declaration or the Act, these Bylaws may be amended by the vote of the Unit owners entitled to cast a majority of the votes in the Association, cast in person or by proxy at a meeting duly held in accordance with the provisions of these Bylaws; provided, however that if such amendment shall make any change which would have a material effect upon any rights, privileges, powers and options of the Declarant, such amendment shall require the joinder of the Declarant; and further provided that no amendment seeking (i) to abandon, partition, subdivide, encumber, sell or transfer any portion of the Common Elements, or (ii) to abandon or

terminate the condominium form of ownership of the Property, except as otherwise provided in the Declaration, shall be effective without the prior written approval of all Mortgagees holding mortgages encumbering the Units. Notwithstanding the foregoing, amendments of a material nature must be approved by Unit owners entitled to cast at least sixty-seven percent (67%) of the total allocated votes in the Association and by Eligible Mortgage Holders representing at least fifty-one percent (51%) of the votes of Units subject to mortgages held by Eligible Mortgage Holders. A change to any of the following, except where such change may be effected by the Declarant, the Association or certain Unit owners under the Declaration or the Act, 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 Common Elements into Units;
- (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) imposition of any restrictions on a Unit owner's right to sell or transfer his or her Unit;
- (l) a decision by the Association to establish self-management when professional management had been required previously by an Eligible Mortgage Holder;
- (m) restoration or repair of the Condominium (after a hazard damage or partial condemnation) in a manner other than that specified in the Condominium Documents;
- (n) any action to terminate the legal status of the Condominium after

substantial destruction or condemnation occurs; or

(o) any provisions that expressly benefit holders, insurers or guarantors of mortgages on the Units.

If the amendment is not of such a material nature, such as the correction of a technical error or the clarification of a statement, the approval of an Eligible Mortgage Holder may be assumed when that Eligible Mortgage Holder has failed to submit a response to any written proposal for an amendment within thirty (30) days after the proposal is made.

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

## ARTICLE X

### Seal

Section 10.1. Seal. The form of the seal of the Association shall contain the name of the Association and the State of Maine.



BYLAWS  
OF  
THE RESIDENCES AT THE OLD PORT  
CONDOMINIUM OWNERS ASSOCIATION

ARTICLE I

Introduction

These Bylaws have been adopted this \_\_\_ day of \_\_\_\_\_ 2005, by the persons constituting all of the members of the first Executive Board of The Residences at the Old Port Condominium Owners Association. Initial capitalized terms not otherwise defined herein shall having the meaning assigned in the Declaration of Condominium, dated \_\_\_\_\_, 2005, and recorded on \_\_\_\_\_, 2005 in the Cumberland County Registry of Deeds, in Book \_\_\_\_\_ at Page \_\_\_\_\_ (as amended from time to time, the "Declaration").

Section 1.1. Applicability. These Bylaws ("Bylaws") shall relate solely to the property called The Residences at the Old Port Condominiums located in Portland, Maine (the "Property"), more fully described in the Declaration.

Section 1.2. Definitions. The capitalized terms used herein without definition shall have the same definitions as such terms have in the Declaration and the Maine Condominium Act, Title 33, Maine Revised Statutes, Section 1601-101 *et seq.* (the "Act"). Unless otherwise provided in the Act, in the event of inconsistencies in definitions between the Act and the Declaration, the Declaration shall control.

Section 1.3. Compliance. Pursuant to the provisions of the Act, every Unit owner and all persons entitled to occupy a Unit shall comply with these Bylaws.

Section 1.4. Office. The office of the Condominium and the Association and the Executive Board shall be located at 38 India Street, Portland, Maine or at such other place as may be designated from time to time by the Executive Board.

Section 1.5. Incorporation of Statutory Law. Except as expressly provided herein, in the Declaration, or in the Act, the Association shall be governed by the provisions of any applicable statute of the State of Maine.

## ARTICLE II

### Executive Board

Section 2.1. Composition. The affairs of the Association shall be governed by the Executive Board. The Executive Board shall initially consist of five (5) members.

#### Section 2.2. Election and Term of Office.

(a) At the Annual Meeting of the Association, subject to Section \_\_\_\_\_ of the Declaration, the election of members of the Executive Board shall be held. The term of office of any Executive Board member to be elected (except as set forth in Section 3. 2(b)(2) and Section 2.5 hereof) shall be fixed at three (3) years. The members of the Executive Board shall hold office until the earlier to occur of the election of their respective successors or their death, adjudication of incompetency, removal or resignation. An Executive Board member may serve an unlimited number of terms and may succeed him or herself. Members of the Executive Board shall serve for staggered terms.

(b) Nominations for election to the Executive Board shall not, unless otherwise approved by resolution of the Executive Board, be made from the floor. Nominations shall be made by a nominating committee appointed by the Executive Board, or in accordance with other nomination procedures adopted by the Executive Board. If a nominating committee has been appointed by the Executive Board, such committee shall be appointed not less than sixty (60) days prior to the annual meeting of Members. The nominating committee shall make as many nominations for election to the Executive Board as it shall determine, in its discretion, but in no event less than the number of positions to be filled by the Members.

Section 2.3. Meetings. Meetings of the Executive Board shall be conducted in accordance with the following:

(a) *Time and Location*. The Executive Board shall hold an annual meeting within ten (10) days following the Annual Meeting of the Association for the purpose of electing officers, as more fully set forth in Article III hereof, and for any other purpose that may be required or permitted by law, the Declaration, the Rules and Regulations, or these Bylaws to be done by a vote of the Executive Board. The Executive Board shall hold meetings at the call of the president or upon request to the president by at least a majority of the members of the Executive Board; provided however that:

(1) In any event, the Executive Board shall meet at least three (3) times each fiscal year (in addition to the annual meeting of the Executive Board), unless all members of the Executive Board shall waive such requirements as to a particular meeting or meetings;

(2) The first such Executive Board meeting shall be held promptly after the incorporation of the Association;

(3) There shall be a meeting of the Executive Board on or before the first day of the eleventh month of each fiscal year for the purpose of adopting the budget of the Association for the next following fiscal year of the Association; and

(4) The president shall call any Executive Board meeting requested by a majority of the members of the Executive Board for a date occurring not less than five (5) nor more than twenty (20) days after receipt of such request.

The president shall designate the time and location of Executive Board meetings. No business shall be transacted at Executive Board meetings other than as specified in the notice thereof.

(b) *Notice.* Not less than forty-eight (48) hours prior to the time of any Executive Board meeting, a written notice stating the date, time and place of such meeting shall be delivered, either by hand or by mail or telegram, to each Executive Board member at the address given to the Executive Board by such Executive Board member for such purpose. Any Executive Board member may waive notice of a meeting or consent to any action of the Executive Board without a meeting. An Executive Board member's attendance at a meeting shall constitute his waiver of notice of such meeting.

(c) *Quorum of the Executive Board.* At all meetings of the Executive Board, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Executive Board. If, at any meeting, there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time. At any such adjourned 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. A director may attend a meeting of the Executive Board by means of a conference telephone or communications equipment the means of which all persons participating in the meeting can hear each other and participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.

(d) *Voting.* Each Executive Board member shall be entitled to cast one vote. A vote of the majority of the members of the Executive Board present at any meeting at which a quorum is present shall bind the Executive Board for all purposes unless otherwise provided in the Declaration or these Bylaws.

(e) *Organization.* Executive Board meetings may be held under such reasonable rules consistent with these Bylaws as the Executive Board may determine. The Executive Board is hereby entitled to promulgate such rules. Except for the

meeting to approve the budget of the Association referred to in this Section 2.3(e), Unit owners who are not Executive Board members shall have no right to attend Executive Board meetings but the Executive Board may, in its sole discretion, elect to allow such Unit owners to attend a particular meeting or meetings. If the Executive Board does elect to allow Unit owners who are not Executive Board members to attend a particular meeting or meetings, the secretary shall give prior notice in the manner provided in Section 3.2(c) hereof, to all Unit owners of each meeting at which Unit owners are entitled or invited to be present; provided, however, that the failure to give such notice shall neither invalidate any actions taken by the Executive Board at such meeting nor impose any liability on the Executive Board or its officers and/or members for the failure to give such notice. All Unit owners shall have the right to attend and be heard, but not the right to vote, at the Executive Board meeting at which the fiscal year budget of the Association shall be presented to the Executive Board for adoption. The secretary of the Association shall give Unit owners notice of such meeting, accompanied by a copy of the proposed budget, in the manner provided in Section 3.2(c) hereof.

(f) *Conduct of Meetings.* The president shall preside over all meetings of the Executive Board and the Secretary shall keep a minute book of the Executive Board meetings, recording therein all resolutions adopted by the Executive Board and a record of all transactions and proceedings occurring at such meetings. The then current edition of Robert's Rules of Order shall govern the conduct of the meeting of the Executive Board if and to the extent such rules are not in conflict with the Declaration or these Bylaws.

(g) *Consent to Corporate Action.* Any action of the Executive Board required or permitted to be taken at any meeting may be taken without a meeting if all of the members of the Executive Board consent in writing to such action. Such consents shall be filed with the minutes of the proceedings of the Executive Board.

Section 2.4 Resignation and Removal of Directors. Except with respect to members designated by the Declarant, at any Annual or special meeting of the Association duly called, any one or more of the members of the Executive Board may be removed with or without cause by Unit owners entitled to cast a majority of all votes in the Association and a successor may then and there be elected to fill the vacancy thus created. Any Unit owner proposing removal of a member of the Executive Board 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 member of the Executive Board may resign at any time and shall be deemed to have resigned upon transfer of title to his or her Unit. The Declarant shall have the right to remove and replace any and all members appointed by the Declarant at any time and from time to time until the required resignation date specified in Section 11.2 of the Declaration.

Section 2.5 Vacancies. Any vacancy or vacancies on the Executive Board, whether caused by resignation, removal, death, adjudication of incompetency, or an increase in size of the Executive Board, shall be filled by the Executive Board with an interim appointee who shall serve until the next Annual Meeting of the Association at which time such vacancy may be filled by the vote of the owners of Units to which more than fifty percent (50%) of the votes in the Association are allocated, provided, however, that the Declarant shall have the right to fill any vacancy created by the resignation, death, or adjudication of incompetency of a member who had been appointed by the Declarant and had not been elected by the Unit owners. If the vacancy results from removal by the Association, the election of a new member or members may be held at the same meeting where such removal takes place and notice of a petition for removal shall be considered notice of an election to fill each vacancy so caused. The vote of more than fifty (50%) percent of the Unit owners present at such meeting in person or by proxy to postpone the election shall cause the postponement of the election to a later date, but if such vacancy is not filled within sixty (60) days after it occurs, the Executive Board shall promptly thereafter elect a replacement.

Section 2.6 Compensation. No member of the Executive Board shall receive compensation for performing his duties as a member of the Executive Board unless such compensation is expressly authorized or approved by a vote of owners of Units to which more than fifty percent (50%) of the votes in the Association are allocated, at any Annual or special meeting of the Association.

Section 2.7 Validity of Contracts with Interested Executive Board Members. No contract or other transaction between the Association and one or more of its Executive Board members or between the Association and any corporation, firm or association in which one or more of the Executive Board members are directors or officers, or are financially interested, shall be void or voidable because such Executive Board member or members are present at any meeting of the Executive Board which authorized or approved the contract or transaction or because his or their votes are counted, if the circumstances specified in either of the following subparagraphs exists:

- (1) The fact that an Executive Board member is also such a director or officer or has such financial interest is disclosed or known to the Executive Board and is noted in the minutes thereof, and the Executive Board 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 Executive Board Member or members; or
- (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.

Section 2.8 Inclusion of Interested Executive Board Members in a Quorum. Any Executive Board member holding such director or officer position or having such

financial interest in another corporation, firm or association may be counted in determining the presence of a quorum at a meeting of the Executive Board or a committee thereof which authorizes, approves or ratifies a contract or transaction of the type described in Section 2.7 hereof.

Section 2.9. Powers of the Executive Board.

(a) *Enumeration.* The Executive Board shall have all of the powers and duties granted by the Act and the laws governing nonprofit corporations or both.

(b) *Limitation.* Nothing in this Section 2.9 or elsewhere in these Bylaws shall be considered to grant to the Executive Board or to the officers of the Association any powers or duties which, by law, are possessed by Unit owners. Unless otherwise provided herein or in the Act or in the Declaration, the Executive Board shall comply with the instructions of owners of Units to which more than fifty percent (50%) of the votes in the Association are allocated present in person or by proxy, as expressed in the resolution duly adopted at any Annual or special meeting of the Unit owners.

(c) *Delegation of Powers; Managing Agent.* The Executive Board may employ for the Condominium a managing agent at a compensation established by the Executive Board. The managing agent shall perform such duties and services as the Executive Board shall authorize, including, but not limited to, all of the duties listed in the Declaration and these Bylaws; provided, however, where a managing agent does not have the power to act under the Declaration or these Bylaws, the managing agent may act as an advisor or in an advisory capacity to the Executive Board. The Executive Board may delegate to the managing agent all of the powers granted to the Executive Board by the Act, the Declaration and these Bylaws other than the following powers: (i) to adopt an annual budget and any amendment thereto or to assess Common Expenses; (ii) to adopt, repeal or amend rules and regulations; (iii) to designate signatories on Association bank accounts; (iv) to borrow money on behalf of the Association; (v) to acquire mortgages on Units; and (vi) to assign Common Elements as Limited Common Elements. Any contract with the managing agent must provide that it shall be cancelable by either party without cause and without a termination fee upon not less than sixty (60) days' nor more than ninety (90) days' written notice and shall be cancelable by the Executive Board with cause upon not less than thirty (30) days' written notice. Any such contract negotiated by the Declarant shall meet all requirements of this Section 2.9(c) for contracts negotiated by the Association and shall not exceed one year but may be renewed upon consent of the Association.

ARTICLE III

The Association

Section 3.1. Membership. The Association is a Maine corporation, all the members of which are the Unit owners of the Property. The Declarant, being the initial

owner of all Units, initially shall constitute all of the members of the Association. A person shall automatically become a member of the Association at the time he or she acquires legal title to his or her Unit, and shall continue to be a member so long as he or she continues to hold title to such Unit. A Unit owner shall not be permitted to resign from membership in the Association prior to the time when he or she transfers title to his or her Unit to another. No membership may be transferred in any way except as appurtenant to the transfer of title to the Unit to which that membership pertains. Transfer of membership shall be automatic upon transfer of title, but the Association may treat the prior Unit owner as the member for all purposes until satisfactory evidence of the recording of the instrument transferring title shall be presented to the secretary of the Association. The date of recordation of an instrument of conveyance in the Cumberland County Registry of Deeds shall be determinative of all disputes concerning the date of transfer of title to any Unit or Units. A mortgage conveyance of any Unit, however, shall not operate to transfer membership until the mortgage is foreclosed or the unit sold in lieu of foreclosure.

Section 3.2 Meetings. Meetings of the Association shall be conducted in accordance with the following:

(a) *Annual Meetings*.

(1) Unit owners shall hold annual meetings for the purposes stated in Section 3.2(b)(2) hereof (the "Annual Meeting"). The Annual Meeting of Unit owners shall be held in September of each year at a date and time to be designated by the Executive Board.

(2) The purpose of the Annual Meeting of the Association shall be to elect the members of the Executive Board unless such action is being taken pursuant to the provisions of Section 3.2(b) hereof or Section 2.5 hereof, and to conduct such other business as may be required or permitted by law, the Declaration or these Bylaws to be done by a vote of Unit owners. The treasurer of the Association shall present at each Annual Meeting a financial report (prepared and reviewed by an independent certified public accountant) of the receipts and Common Expenses for the Association's immediately preceding fiscal year, itemized receipts and expenditures, the allocation thereof to each Unit owner, and any changes expected for the present fiscal year. A copy of such financial report shall be sent to each Unit owner not less than five (5) days prior to the Annual Meeting.

(b) *Special Meetings*.

(1) The president shall call a special meeting of the Association if so directed by resolution of the Executive Board or upon petition signed and presented to the Secretary by Unit owners entitled to cast at least fifty-one percent (51%) of the votes in the Association. The notice of any special meeting shall state the time, the place and purpose thereof. Such meetings

shall be held within forty-five (45) days after receipt by the president of said resolution or petition; provided, however, if the purpose includes the consideration of the rejection of a capital expenditure pursuant to Section 5.8 hereof, such meeting shall be held within fifteen (15) days after receipt by the president of said resolution or petition. No business shall be transacted at a special meeting except as stated in the notice.

(2) Within sixty (60) days after the date by which all members of the Executive Board must resign pursuant to Section 11.2(b) of the Declaration, a special meeting of the Association shall be held at which all of the members of the Executive Board shall resign, and the Unit owners, including the Declarant if the Declarant owns one or more Units, shall thereupon elect successor members of the Executive Board to act in the place of those resigning. The one (1) successor member receiving the highest number of votes shall serve until the third Annual Meeting of the Association following the date of such election, the one (1) successor member receiving the second highest member of votes shall serve until the second annual meeting of the Association following the date of such election, and the remaining one (1) successor member shall serve until the first Annual Meeting of the Association following the date of such election, thereafter each member of the Executive Board shall be elected for a term of three (3) years.

(c) *Notice of Meetings.* Except for budget meetings which will be noticed not less than 14 nor more than 30 days after the mailing of the summary, not less than ten (10) nor more than sixty (60) days in advance of a meeting, the secretary or other officer specified in these Bylaws shall cause notice to be hand delivered or sent prepaid by United States mail to the mailing address of each Unit or to the mailing address designated in writing by the Unit owner. No action shall be adopted at a meeting except as stated in the notice. If a notice sent to Unit owners pursuant to the foregoing sentence includes an item on the proposed agenda that either (i) requires that notice be given to Eligible Mortgage Holders pursuant to Article 8 of the Declaration or (ii) would require the approval of Eligible Mortgage Holders pursuant to Section 16.2 of the Declaration, a copy of such notice will also be sent to the Eligible Mortgage Holders. All such notices shall be delivered to all Unit owners (and Eligible Mortgage Holders, if applicable) not less than ten (10) nor more than sixty (60) days in advance of the date of the meeting to which the notice relates and shall state the date, time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Declaration or Bylaws. The secretary of the Executive Board shall cause all such notices to be delivered as aforesaid. Notice sent by mail shall be deemed to have been delivered on the date of deposit in the United States mail, in the case of mailed notices or the date of deposit in the Unit owner's (or if applicable, in the Eligible Mortgage Holder's) mailbox in the case of hand delivery. No subject may be dealt with at any Annual or special meeting of the Association, unless the notice for such meeting stated that such subject would be discussed at such meeting. Any Unit owner may, at any time, waive notice of any meeting of the Unit owners in writing, and such waiver shall be deemed equivalent to the receipt of



such notice.

(d) *Quorum.* Except as set forth below, the presence in person or by proxy of at least fifty-one percent (51%) of the Unit owners at the commencement of a meeting shall constitute a quorum at that meeting of the Association. If a quorum is not present, Unit owners entitled to cast a majority of the votes represented at such meeting may adjourn the meeting to a time not less than forty-eight (48) hours after the time for which the original meeting was called. If a meeting is adjourned, the quorum at such second meeting shall be deemed present throughout any meeting of the Association if at least fifty-one percent (51%) of the Unit owners are present in person or by proxy at the beginning of the meeting.

(e) *Voting.*

(1) If only one of several owners of a Unit is present at a meeting of the Association, the owner present is entitled to cast all the votes allocated to the Unit. If more than one of the owners are present, the votes allocated to the Unit may be cast only in accordance with the agreement of a majority in interest of the owners pursuant to Section 1603-110 of the Act. There is majority agreement if any one of the owners casts the votes allocated to the Unit without protest being made promptly to the person presiding over the meeting by another owner of the Unit. Votes allocated to a Unit owned by the Association may not be cast. In all elections for Executive Board members, each Unit owner shall be entitled to cast for each vacancy to be filled at such election the number of votes allocated to the Unit or Units owned by such Unit owner. Those candidates for election receiving the greatest number of votes cast in such elections shall be elected and, if the Executive Board members are being elected to unequal terms pursuant to Section 3.2(b)(2) hereof, the candidates receiving the highest number of votes shall be elected to the longest terms, as provided in that Section. Except as set forth in Section 3.2(b) above, if the Declarant owns or holds title to one or more Units, the Declarant shall have the right at any meeting of the Association to cast the votes to which such Unit or Units are entitled. No votes allocated to a Unit owned by the Association may be cast. There shall be no cumulative or class voting or splitting of votes.

(2) *Proxies.* Votes allocated to a Unit may be cast under a proxy duly executed by a Unit owner. If a Unit is owned by more than one person, each owner of the Unit may vote or register protest to the casting of votes by the other owners of the Unit through a duly executed proxy. A vote may be cast in person or by proxy. If a Unit is owned by more than one person, each owner of the Unit may vote through a duly executed proxy. Such proxy may be granted by any Unit owner only in favor of another Unit owner, the holder of a mortgage on a Unit or a Declarant. Proxies shall be duly executed in writing, shall be valid only for the particular meeting designated therein and must be filed with the secretary before the appointed time of the meeting. Such proxy shall be deemed revoked only by actual receipt by the person presiding over the

meeting of written notice of revocation from the grantor of the proxy. No proxy shall be valid for a period in excess of eleven (11) months after the execution thereof, unless otherwise provided in the proxy. A proxy is void if it is not dated or purports to be revocable without notice.

(3) *Actions of Association without a Meeting.* Any action required or permitted to be taken by a vote of the Association may be taken without a meeting if all Unit owners shall individually or collectively consent in writing to such action. Any such written consent shall be filed with the proceedings of the Association.

(4) *Conduct of Meetings.* The president (or in his absence, the vice president) shall preside over all meetings of the Association, and the secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting as well as keep a record of all transactions occurring at the meeting. The president may appoint a person to serve as a parliamentarian at any meeting of the Association. The then current edition of Robert's Rules of Order shall govern the conduct of all meetings of the Association when not in conflict with the Declaration or these Bylaws. All votes shall be tallied by tellers appointed by the president.

Section 3.13. Copies of Condominium Documents. The Association shall have current copies of the Declaration, these Bylaws; the Rules and Regulations and any other rules concerning the Property as well as its own books, records and financial statements available for inspection by Unit owners or by holders, insurers and guarantors of first Mortgages secured by Units. These documents shall be available during normal business hours.

## ARTICLE IV

### Officers

Section 4.1. Election. At the first meeting of the Executive Board, and at every Annual Meeting of the Executive Board thereafter, the Executive Board members, if a quorum is present, shall elect the officers of the Association for the following year, such officers to serve for a one (1) year term and until their respective successors are elected. The Executive Board shall elect the following officers: a President, Secretary and a Treasurer, and may elect such other officers as the Executive Board shall determine. Each officer may serve an unlimited number of terms so long as such member or officer continues to be reelected to the Executive Board. Any member may hold two (2) offices simultaneously, except that the president shall not hold any other office.

Section 4.3. President. The president shall be the chief executive officer of the Association and the chairperson of the Executive Board. The president shall be responsible for implementing the decisions of the Executive Board and in that capacity

shall direct, supervise, coordinate and have general control over the affairs of the Association and the Executive Board, subject to the limitations of the laws of the State of Maine, the Condominium Documents and the actions of the Executive Board. The president shall have the power to sign checks and other documents on behalf of the Association and the Executive Board, or both, with or without the signatures of any other officers as may be determined by the Executive Board. The president shall preside at all meetings of either body at which he is in attendance and shall be a member of all committees. If the president is absent from such meetings the senior officer of the Association present at such meeting shall preside, and in the absence of any officer, the body holding the meeting shall elect a person to preside. If the Executive Board so provides, the president also shall have any or all of the powers and duties ordinarily attributable to the chief executive officer of a corporation domiciled in Maine.

Section 4.4. Vice President. Unless otherwise determined by a resolution of the Executive Board, the vice president shall take the place of the president and perform his or her duties whenever the president is absent or unable to act. If neither the president nor the vice president is able to act, the Executive Board shall appoint some other Director to act in the place of the president, on an interim basis. The vice president shall also perform such other duties as may be imposed upon him or her by the Executive Board or by the president.

Section 4.5. Secretary. Unless otherwise determined by the Executive Board, the secretary shall keep or cause to be kept all records (or copies thereof if the original documents are not available to the Association) of the Association and the Executive Board and shall have the authority to affix the seal of the Association to any documents requiring such seal. The secretary shall give or cause to be given all notices as required by law, the Declaration or these Bylaws, shall take and keep or cause to be taken and kept minutes of all meetings of the Association, the Executive Board and all committees, and shall take and keep or cause to be taken and kept at the Association's office a record of the names and addresses of all Unit owners as well as copies of the Declaration, the Plats and Plans, these Bylaws and the Rules and Regulations, all of which shall be available at the office of the Association for inspection by Unit owners or prospective Unit owners during normal business hours and for distribution to them at such reasonable charges (if any) as may be set from time to time by the Executive Board. The secretary shall keep or cause to be kept the register of Eligible Mortgage Holders. The secretary shall also perform all duties and have such other powers as are ordinarily attributable to the secretary of a corporation domiciled in Maine.

Section 4.6. Treasurer. Unless otherwise determined by the Executive Board, the Treasurer shall have the charge and custody of, and be responsible for, all funds and securities of the Association, shall deposit or cause to be deposited all such funds in such depositories as the Executive Board may direct, shall keep or cause to be kept correct and complete accounts and records of all financial transactions of the Association and the Executive Board and shall submit or cause to be submitted to the

Executive Board and the Association such reports thereof as the Act, the Declaration, the Executive Board, or these Bylaws may from time to time require. Such records shall include, without limitation, chronological listings of all receipts and expenditures on account of the Common Elements, Limited Common Elements, and each Unit, the amount of each assessment for Common Expenses and expenses assessable to individual Units, if any, and the amount paid and the amounts due on such assessments. Such records shall specify and itemize the maintenance, repair and replacement expenses relating to the Common Elements and the Limited Common Elements and any other expenses incurred by the Association. The foregoing financial records shall be kept at the Association's office and shall be available there for inspection by Unit owners or prospective Unit owners during normal business hours. The treasurer shall, upon request, provide any person who shall have entered into a written agreement to purchase a Unit with a written statement of the information required to be provided by the Association pursuant to Sections 1603-116(h) and 1604-108(b) of the Act. The treasurer shall also perform such duties and have such powers as are ordinarily attributable to the Treasurer of a corporation domiciled in Maine.

Section 4.7. Compensation. The officers of the Executive Board shall serve without compensation for their services in such capacity unless such compensation is expressly authorized or approved by a vote of owners of Units to which more than fifty (50%) percent of the votes in the Association are allocated at any Annual or special meeting of the Association.

Section 4.8 Resignation and Removal. Any officer may resign at any time by written notice to the Executive Board, such resignation to become effective at the next Executive Board meeting. Any officer who ceases to be a member of the Executive Board for any reason also shall be deemed to have resigned or been removed, ipso facto, from any Executive Board office he may have held. Any officer may be removed from his office at any time by a majority vote of the Executive Board whenever in the judgment of the Executive Board members the interests of the Association will be best served thereby, or by the vote of the Association with or without cause, in the same manner as set forth for the removal of Executive Board members in Section 2.4 hereof.

Section 4.9 Vacancies. Vacancies caused by resignation or removal of officers or the creation of new offices may be filled by a majority vote of the Executive Board members, if the vacancy resulted from action of the Executive Board. If, however, the vacancy resulted from action by the Association, such vacancy shall be filled in the manner as set forth in Section 2.5. hereof for filling Executive Board vacancies.

## ARTICLE V

### Common Expenses; Budgets

Section 5.1. Fiscal Year. The fiscal year of the Association shall be the calendar year unless otherwise determined by the Executive Board; provided, however, that the first fiscal year shall begin upon the recordation of the Declaration and end on December 31 of the same year.

Section 5.2. Preparation and Approval of Budget.

(a) *Adoption*. On or before the first day of November of each year (or sixty days before the beginning of the fiscal year if the fiscal year is other than the calendar year), the Executive Board shall adopt an annual budget for the Association containing an estimate of the total amount considered necessary to pay the cost of maintenance, management, operation, repair and replacement of the Common Elements and Limited Common Elements, in accordance with Section 13.1(a) of the Declaration, and those parts of the Units as to which it is the responsibility of the Executive Board 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 Declaration, these Bylaws or a resolution of the Association and which will be required during the ensuing fiscal year for management and administration expenses; the cost of such insurance and utilities as may be furnished by the Association; the amount of such reserves as shall be reasonably established by the Executive Board including operating contingency reserves for expenses both unanticipated and extraordinary and reserves for periodic maintenance, repair and replacement of the Common Elements and Limited Common Elements; and such other expenses of the Association as may be approved by the Executive Board, including operating deficiencies, if any, for prior periods.

(b) *Available for Inspection*. On or before the next succeeding fifth day of November (or fifty-five (55) days before the beginning of the fiscal year if the fiscal year is other than the calendar year), the Executive Board shall make the budget available for inspection at the Association office and shall mail to each Unit owner a summary of the budget in a reasonably itemized form that sets forth the amount of the Common Expenses. Such budget shall constitute the basis for determining each Unit owner's assessments for Common Expenses of the Association.

(c) *Ratification of Budget*. The Executive Board shall set a date for a meeting of the Unit Owners to consider ratification of such budget not less than fourteen (14) days nor more than thirty (30) days after mailing of such summary. Unless at that meeting a majority of all the Unit Owners reject such budget, such budget is ratified, whether or not a quorum is present. In the event such proposed budget is rejected, the budget last ratified by the Unit owners shall be continued until such time as the Unit owners ratify a subsequent budget proposed by Executive Board.

(d) *Reasonable Efforts*. The Executive Board shall make reasonable efforts to meet the deadlines set forth above, but compliance with such deadlines shall not be a condition precedent to the effectiveness of any budget.

Section 5.3. Assessment and Payment of Common Expenses.

(a) *Common Expenses.* The Executive Board shall calculate the Monthly Assessments for Common Expenses against each Unit by multiplying (i) the total amount of the estimated funds required for the operation of the Property set forth in the budget adopted by the Executive Board for the fiscal year in question by (ii) the percentage of Common Expense liability of each Unit in the Condominium and dividing (iii) the result by the number of calendar months in such fiscal year. Such assessments, payable in monthly installments, shall be due and payable on the first day of each calendar month and shall be a lien against each Unit owner's Unit as provided in the Act and in the Declaration. Within ninety (90) days after the end of each fiscal year, the Executive Board shall prepare and deliver to each Unit owner and to each record holder of a first mortgage on a Unit who has registered an address with the secretary an itemized accounting of the Common Expenses and funds received during such fiscal year less expenditures actually incurred and sums paid into reserves. Any net shortage with regard to Common Expenses, after application of such reserves as the Executive Board may determine, shall be assessed promptly against the Unit owners in equal shares and shall be payable as a Special Assessment, in such manner as the Executive Board may determine.

(b) *Working Capital Fund.* A working capital fund shall be established equal to at least two (2) months estimated Common Expense assessments for each Unit. The share for each Unit shall be collected and transferred to the Association at the time of each sale of each Unit and shall be maintained in a segregated account for the use and benefit of the Association. The contribution to the working capital fund for each unsold Unit shall be paid to the Association by the Declarant within sixty (60) days after the date of the first conveyance of a Unit, such contribution to be reimbursed to the Declarant by the initial Unit purchaser at the subsequent sale of each such unsold Unit. Such amounts shall not be considered as advance payment of regular assessments. Each Unit owner (including the Declarant) shall be entitled to a refund from the Association of the amount of such funds deposited by the Unit owner at the time of such Unit owner's purchase of the Unit upon the subsequent conveyance of such Unit owner's (including the Declarant's) Unit. No interest shall be paid on such deposits.

(c) *Reserves.* Extraordinary expenditures not originally included in the annual budget which may become necessary during the year may be charged first against reserves for working capital, operations, contingencies, and replacements. If the reserves are deemed to be inadequate for any reason, including non-payment of any Unit owner's assessments, the Executive Board may at any time levy further assessments for Common Expenses which shall be assessed against the Unit owners or in accordance with their Percentage Interests and shall be payable as a Special Assessment, in such manner as the Executive Board may determine.

Section 5.4. Further Assessments. The Executive Board shall serve notice on all Unit owners of any further assessments pursuant to Sections 5.3(a), or 5.3(c) or otherwise as permitted or required by the Act, the Declaration and these Bylaws by a

statement in writing giving the amount and reasons therefor, and such further assessments, unless otherwise specified in the notice, shall become effective with the next Monthly Assessment which is due more than ten (10) days after the delivery of such notice of further assessments. All Unit owners so assessed shall be obligated to pay the amount of such Monthly Assessments and further assessments. Such assessments shall be a lien as of the effective date as set forth in the preceding Sections 5.3(a) and 5.3(c).

Section 5.5. Initial Budget. At or prior to the time assessment of Common Expenses commences, the Executive Board shall adopt the budget, as described in this Article 5, for the period commencing on the date that the Executive Board determines that assessments shall begin and ending on the last day of the fiscal year during which such commencement date occurs. Assessments shall be levied and become a lien against the Unit owners during such period as is provided in Section 5.3 above.

Section 5.6 Effect of Failure to Prepare or Adopt Budget. The failure or delay of the Executive Board to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of a Unit owner's obligation to pay his or her allocable share of the Common Expenses as herein provided whenever the same shall be determined and, in the absence of any annual budget or adjusted budget, each Unit owner shall continue to pay each Monthly Assessment at the rate established for the previous fiscal year until the new annual or adjusted budget shall have been adopted.

Section 5.7 Accounts, Audits. All sums collected by the Executive Board with respect to assessments against the Unit owners or from any other source may be commingled into a single fund. All books and records of the Association shall be kept in accordance with good and accepted accounting practices and the same shall be audited at least once each year by an independent accountant retained by the Executive Board. The Association shall make an audited statement for the preceding fiscal year available to any holder, insurer or guarantor of a first mortgage secured by a Unit who submits a written request therefor to the Association.

Section 5.8. Limitations on Expenditures and Borrowing. Anything herein to the contrary notwithstanding, the Association, by a vote of more than fifty (50%) percent of all votes in the Association present, may reject any capital expenditure or borrowing approved by the Executive Board, within thirty (30) days after approval by the Executive Board; provided, however, that this Section shall not apply to the Executive Board so long as a majority of its members are appointed by the Declarant pursuant to Section 11.2 of the Declaration.

Section 5.9 Statement of Common Expenses. The Executive Board shall promptly provide any Unit owner, contract purchaser or proposed Mortgagee so requesting the same in writing with a written statement of all unpaid assessments for Common Expenses and Limited Common Expenses, if any, due from such Unit owner. The Executive Board may impose a reasonable charge for the preparation of such statement to cover the cost of its preparation, to the extent permitted by the Act.

## ARTICLE VI

### Repair or Reconstruction

Section 6.1 Restoration of Property Out of Common Expense Fund. Damage to or destruction of the Buildings shall be promptly repaired and restored by the Association in accordance with the provisions of Article 9 of the Declaration and Sections 1603-113(e) and (h) of the Act. The Executive Board shall be responsible for accomplishing the full repair or reconstruction which shall be paid out of the Common Expense fund. The disbursement of funds for such repair or reconstruction shall, at the option of the Executive Board, be made only as the work progresses upon approval of a qualified architect who shall have furnished a description satisfactory to the Executive Board of the costs involved and the services and materials to be furnished by the contractors, subcontractors and materialmen. Unit owners may apply to the proceeds from their individual property insurance policies, if any, to the share of such Common Expense as may be assessed to them. The Executive Board shall be responsible for restoring the Property only to substantially the same condition as it was immediately prior to the damage and each Unit owner shall personally assume the additional expense of any improvements to his or her Unit which he restores, to restore it beyond such condition. If any physical changes are made to any restored Unit or the Common Elements, or any combination of them, which renders inaccurate the Plats and Plans which are then on record, the Executive Board shall record amended Plats and Plans showing such changes.

## ARTICLE VII

### Separate Real Estate Taxes

Section 7.1 Assessments Against Individual Units. In the event that, commencing with the taxable period during which occurs the first conveyance of a Unit to a person other than the Declarant, real estate taxes are not separately assessed against each Unit owner, but rather are assessed against the Property as a whole, then each Unit owner (including the Declarant, as to the Units then owned by it and as to any portion of the Property as to which the Declarant has reserved Development Rights) shall pay his proportionate share thereof in accordance with his respective Percentage Interest in the Common Elements.

## ARTICLE VIII

### Miscellaneous

Section 8.1. Severability. The provisions of these Bylaws shall be deemed independent and severable and the invalidity, partial invalidity or unenforceability of any provision or portion hereof shall not affect the validity or enforceability of any other



provision or portion thereof unless the deletion of such invalid or unenforceable provision shall destroy the uniform plan for development and operation of the Property which the Declaration and these Bylaws are intended to create.

Section 8.2. Conflicts. The Act and the Declaration shall control in the event of any conflicts between the provisions thereof and the provisions of these Bylaws. The Act, the Declaration and these Bylaws shall control in the case of any conflict between the provisions thereof and the provisions of the Rules and Regulations.

Section 8.3. Notices. All notices or other communications required or permitted under these Bylaws shall be in writing and shall be deemed to have been given when personally delivered or on the second business day after the day on which mailed or certified mail, return receipt requested, postage prepaid (or otherwise as the Act may permit), (a) if to a Unit owner at the single address which the Unit owner shall designate in writing and file with the secretary or, if no such address is designated, at the address of the Unit of such Unit owner, or (b) if to the Association, the Executive Board or to the managing agent, at the principal office of the Association and to the managing agent or at such other address as shall be designated by notice in writing to the Unit owners pursuant to this Section. If a Unit is owned by more than one person, each such person who so designates a single address in writing to the secretary shall be entitled to receive all notices hereunder.

Section 8.4. Headings. The headings preceding the various Sections of these Bylaws and the Table of Contents are intended solely for the convenience of readers of the Bylaws and in no way define, limit or describe the scope of these Bylaws or the intent of any provision thereof.

Section 8.5. Gender. The use of the masculine gender in these Bylaws shall be deemed to include the feminine and neuter genders, and the use of the singular shall be deemed to include the plural, and vice versa, whenever the context so requires.

## ARTICLE IX

### Amendments to Bylaws

Section 9.1. General Requirements; Consent of Declarant or Holders of Mortgages; Curative Amendments to Bylaws. Except as otherwise provided in any one (1) or more of these Bylaws, the Declaration or the Act, these Bylaws may be amended by the vote of the Unit owners entitled to cast a majority of the votes in the Association, cast in person or by proxy at a meeting duly held in accordance with the provisions of these Bylaws; provided, however that if such amendment shall make any change which would have a material effect upon any rights, privileges, powers and options of the Declarant, such amendment shall require the joinder of the Declarant; and further provided that no amendment seeking (i) to abandon, partition, subdivide, encumber, sell or transfer any portion of the Common Elements, or (ii) to abandon or

terminate the condominium form of ownership of the Property, except as otherwise provided in the Declaration, shall be effective without the prior written approval of all Mortgagees holding mortgages encumbering the Units. Notwithstanding the foregoing, amendments of a material nature must be approved by Unit owners entitled to cast at least sixty-seven percent (67%) of the total allocated votes in the Association and by Eligible Mortgage Holders representing at least fifty-one percent (51%) of the votes of Units subject to mortgages held by Eligible Mortgage Holders. A change to any of the following, except where such change may be effected by the Declarant, the Association or certain Unit owners under the Declaration or the Act, 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 Common Elements into Units;
- (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) imposition of any restrictions on a Unit owner's right to sell or transfer his or her Unit;
- (l) a decision by the Association to establish self-management when professional management had been required previously by an Eligible Mortgage Holder;
- (m) restoration or repair of the Condominium (after a hazard damage or partial condemnation) in a manner other than that specified in the Condominium Documents;
- (n) any action to terminate the legal status of the Condominium after

substantial destruction or condemnation occurs; or

(o) any provisions that expressly benefit holders, insurers or guarantors of mortgages on the Units.

If the amendment is not of such a material nature, such as the correction of a technical error or the clarification of a statement, the approval of an Eligible Mortgage Holder may be assumed when that Eligible Mortgage Holder has failed to submit a response to any written proposal for an amendment within thirty (30) days after the proposal is made.

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

## ARTICLE X

### Seal

Section 10.1. Seal. The form of the seal of the Association shall contain the name of the Association and the State of Maine.

Draft – November 22, 2005

**THE RESIDENCES AT THE OLD PORT  
CONDOMINIUM OWNERS ASSOCIATION**

**RULES AND REGULATIONS/  
RESIDENTS' HANDBOOK**

Current as of \_\_\_\_\_, 2005

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# THE RESIDENCES AT THE OLD PORT CONDOMINIUM ASSOCIATION

## **RULES AND REGULATIONS AND HANDBOOK FOR UNIT OWNERS AND RESIDENTS**

### INTRODUCTION

This handbook contains rules and regulations ("Rules") of The Residences at The Old Port, A Condominium (the "Condominium"), that have been adopted by the Executive Board of The Residences at The Old Port Condominium Association ("Association") for the benefit of all owners and residents of the Condominium.

The Executive Board can change and supplement these Rules in the future. These Rules are in addition to any other rules or policies that may be posted in common areas and the fitness center from time to time.

The Executive Board may retain the services of manager of the Condominium. Any other manager retained by the Executive Board is referred to in this handbook as the "Manager". The Manager has been given authority to administer and enforce these Rules and to perform other administrative functions on behalf of the Executive Board.

These Rules supplement the Declaration of Condominium of The Residences at The Old Port (as amended from time to time, the "Declaration") but do not amend the Declaration. Residents should become familiar with provisions of the Declaration.

Violations of these Rules may subject Residents to fines or other enforcement.

The term "Resident" refers to the Owner of a Unit in the Condominium (a "Unit") or any tenant or other person residing in a Unit, other than the Declarant.

The Declarant, its agents, employees, contractors and subcontractors, are exempt from these Rules in their performance of all functions and activities in connection with the development, construction, marketing, sale and leasing of the Condominium and the Units.

## ARTICLE I

### GENERAL RULES AND REGULATIONS

1.1 Residents (and, where permitted, their guests) have the right to use various common areas, such as hallways, corridors and elevators. Residents may not interfere with the use of these facilities by others.

1.2 Residents shall make their guests aware of these Rules and are responsible for their guests' conduct.

1.3 Unless otherwise permitted by these Rules or otherwise designated by the Executive Board, common areas may not be used by Residents to store furniture or any other personal property.

1.4 The Executive Board may post rules or policies regarding the use of specific facilities. All posted rules or policies are binding on Residents and their guests.

1.5 Residents and their guests are expected to conduct themselves in a manner that will not disturb other Residents.

1.6 Only the Executive Board, the Declarant and their authorized contractors and agents have the authority to change, maintain or repair any of the common elements of the Condominium.

1.7 No Resident may interfere with or change any of the common heating, cooling, lighting, plumbing, electrical or similar facilities in the building and common areas.

1.8 Residents must comply with signs regulating the parking areas, drives, parking garage and entranceways of the Condominium.

1.9 Solicitors and solicitations are prohibited without the approval of the Executive Board.

1.10 Neither the Association, the Declarant, the Executive Board nor the Manager have any liability or responsibility for any personal property of a Resident placed or kept on any portion of the Condominium.

1.11 The placing of boots, mats, umbrellas, boxes or other objects on the floor or in the corridor outside of the Units is prohibited.

**1.12 NO SMOKING IS PERMITTED IN ANY OF THE CORRIDORS, ELEVATORS, STAIRWAYS, MEETING ROOMS, FITNESS CENTER, POOL AREA, LOBBY, PARKING GARAGE OR OTHER INTERIOR COMMON AREAS OF THE CONDOMINIUM.**

**ARTICLE II**  
**INSURANCE**

2.1 The Association will carry (to the extent reasonably available) fire and property damage insurance in an amount equal to one hundred percent (100%) of the current replacement cost of the Common Elements and Units (exclusive of improvements and betterments installed in the Units, and exclusive of personal property and other contents therein), the premiums for which will be paid by the Association with each Owner paying his or her share as part of the assessment for Common Expenses. Certificates of insurance for the benefit of a Unit Owner and/or the holder of a mortgage on a Unit may be obtained from the Association or its insurance agent.

2.2 It is the responsibility of each Unit Owner or tenant to carry condominium unit-owner's insurance to protect himself or herself against fire or other property damage and liability claims. Upon request of the Association or the Manager, evidence that such coverage is in place shall be furnished to the Executive Board or the Manager.

**ARTICLE III**  
**SALE OR LEASING OF UNITS**

3.1 Signs. Except for the rights of the Declarant, no for sale or for rent sign may be placed anywhere within the Condominium.

3.2 Sale.

(a) A certificate of insurance with respect to the Association's property and casualty insurance that covers the common elements and the Unit may be obtained by the buyer from the Association's current insurance company, or through the Manager.

(b) Upon written request, the Manager will provide the statement and information required to be supplied to a buyer by Section 1604-108 of the Maine Condominium Act upon payment of the fee established by the Manager.

3.3 Leasing. The owner of a Unit may lease his or her entire Unit, subject to the following:

(a) No Unit may be leased without a written lease. The Association must be furnished with a copy of the signed within ten (10) days after it is signed.

(b) Leases must be for an initial term of at least one (1) year, unless the Unit is being leased to someone who has signed an agreement to buy the Unit.

(c) It is the responsibility of the Owner to give a current copy of this Handbook to the occupants or tenants to ensure they are familiar with the amenities and regulations of the Condominium and all other rules and regulations affecting the Condominium.

(d) Tenants generally have the same right to use the common areas of the Condominium as Owners. However, tenants are not members of the Association and do not have the right to vote or to receive notice of meetings of the Association, unless the owner of the Unit gives them a written proxy to do so in compliance with the By-Laws of the Association. A lease, by itself, does not qualify as a proxy.

(e) Tenants are required to comply with restrictions contained in the Declaration and all rules and regulations adopted by the Executive Board, including the Rules in this handbook.

(f) Residents (including tenants) are responsible for any violations of the Declaration or the rules and regulations committed by the Resident, or his or her family members, guests and agents. The Owner of a Unit may also be responsible for violations committed by his or her tenants and their guests.

#### **ARTICLE IV**

##### **CONTACT INFORMATION FOR RESIDENTS**

4.1 Owners who do not reside in their Units, or who expect to be away for a substantial period of time (more than two (2) weeks) should provide the Manager with contact information, including the address and phone number(s) at which they can be contacted if the need arises.

4.2 Each Resident must give the Manager his or her telephone number at the Unit (whether listed or unlisted), the Resident's phone number at work and the name, address and telephone number of at least one relative or other person to contact in case of emergency.

#### **ARTICLE V**

##### **MOVING IN OR OUT**

5.1 Residents planning to sell, buy or lease a Unit should notify the Manager so it can provide a moving permit, elevator lock-out key and elevator mats. This is required for both outgoing and incoming Residents.

5.2 The Resident is responsible for payment of all damages to carpeting, doors, elevators, walls and other common areas. The cost of repairing such damages



may be assessed as a Special Assessment against the Unit with respect to which the move-in or move-out takes place.

5.3 The Resident must furnish the name, address and telephone number of the moving company and sign the permit acknowledging receipt of instructions, the elevator lock-out key and protective elevator mats.

5.4 Any Resident moving in or moving out (except for the first move-in following the sale of the Unit by the Declarant) shall pay a fee in the amount of Five Hundred Dollars (\$500.00), which shall be non-refundable, and shall cover the estimated expenses of the Association such as wear and tear on the Common Elements, additional costs of trash removal, administrative expenses and the like. Such fee shall apply to both a Resident moving in and a Resident moving out (except for the first Resident moving in after the sale of the Unit by the Declarant).

5.5 In addition to the fee set forth above, a security deposit of Five Hundred Dollars (\$500.00) is required by any Resident moving in or out to cover any damage caused by moving. This deposit must be paid to the Manager or Executive Board before the moving permit is issued. The deposit will be refunded if there are no damages, or applied to the repair of damages, in which case any remaining security deposit will be refunded. If the cost of such damages exceeds the deposit, the Resident shall be liable for the additional costs.

5.6 The moving Resident must remove all temporary floor coverings, empty packaging boxes and other debris resulting from the move, collapse boxes and place in the trash receptacles in the garage level. No trash or debris shall be kept or placed, temporarily or otherwise, in the hallways, corridors, stairwells or other Common Elements, and shall be removed promptly and placed in trash receptacles provided for Residents of the Condominium.

## **ARTICLE VI**

### **INDIVIDUAL WATER SOURCE HEAT PUMP UNITS**

Each Unit is heated and cooled by means of one or more water source heat pump units. These units are served by a common water source that regulates the temperature and provides water to the Units in the Condominium.

Because water used in the heat pump units recirculates throughout the Building, it is very important that the water source heat pump units be properly maintained. Maintenance and repairs of the heat pump units in the Units are the responsibility of the residents. However, maintenance and repairs must be provided through a company or contractor approved by the Association. The Association will provide a list of the companies and contractors approved by the Association to perform maintenance and repairs on your heat pump units.

## **ARTICLE VII**

### **DECORATIONS OUTSIDE (OR VISIBLE FROM OUTSIDE) UNITS**

7.1 Reasonable holiday or seasonal decorations may be hung only on the hallway-side of the entrance door to your Unit. Residents may not hang decorations on the walls of the hallway. Residents are not permitted to place any decorations or other items on the outside of their windows, balconies or exterior walls, or on the walls of the hallways or elsewhere in the common areas, unless approved by Executive Board.

7.2 Decorative wreaths, menorah or electronic or battery operated candles may be displayed in windows in the Units to celebrate holidays or festive occasions, provided that lights are white or colorless.

7.3 The Executive Board may authorize holiday or seasonal decorations in the lobby or other common areas. Residents are not permitted to place decorations or other items in these areas.

## **ARTICLE VIII**

### **ALTERATIONS WITHIN YOUR UNIT**

8.1 Most changes, alterations or improvements that you may want to make in your Unit, including alteration or replacement of floor coverings, electrical systems, ductwork, plumbing and partition walls, requires the prior approval of the Executive Board and a construction permit issued by the Executive Board. Certain work does not require approval of the Executive Board or a construction permit, such as repainting and other cosmetic changes. If there is any question about whether a construction permit from the Association is required, you should contact the Manager. The Association requirement of a permit does not replace any approvals or permits that may be required by governmental authorities.

8.2 All work performed on Units, whether requiring consent from the Association or not, shall be performed by properly licensed (where applicable) contractors. All contractors performing work shall carry liability and property damage insurance with minimum limits of \$500,000.00, as well as workers' compensation insurance. Certificates of insurance must be filed with the Executive Board before the work starts.

8.3 Construction consent shall be obtained from the Executive Board before work is begun. The application shall state the nature of the work and, where applicable, the plans and specifications relating to the work, including a description of the materials to be used and incorporated into the work, the name and contact information for the contractor(s) that will perform the work, and the insurance certificates required by Section 8.2 above. No work may be done that affects Common Elements of the

Condominium, including any common electrical, plumbing or other facilities, or that would in any way affect any structural component of the Condominium without the express prior written approval of the Executive Board, and such work (if permitted) shall be done only by a contractor expressly approved in writing by the Executive Board. The Executive Board may withhold its consent to alterations that affect the Common Elements or structural components of the Condominium in its sole discretion.

8.4 In addition to obtaining a construction consent from the Executive Board (where required), no work shall take place unless the Resident has obtained from the local municipality or other governmental agency having jurisdiction, all necessary permits and approvals permitting such work to take place. Copies of such permits shall be provided to the Manager before work begins.

8.5 Residents and contractors must become familiar with the location of existing wiring, water and sewer lines and air ducts before doing any work that may affect these facilities.

8.6 No radio, television or other type of antenna or reception device shall be installed on the outside of the building or otherwise on the common facilities unless approved by the Executive Board.

8.7 If a resident wants to replace carpeting or other padded floor surfaces with a hard surface such as tile, stone or wood, sound dampening material must be applied in a manner approved by the Executive Board before the new floor covering is installed. Such sound dampening material must comply with the following specifications, at a minimum: 6 millimeter thickness of Regupol-QT (or equivalent).

8.8 Only a licensed plumber shall be permitted to disconnect plumbing within any Unit, even for such purposes as replacing dishwashers or other water-using appliances, and even where a construction permit from the Executive Board may not otherwise be required.

8.9 Notwithstanding the requirements set forth herein regarding the insurance required of contractors, Residents are responsible and liable to the Association for any damages resulting from alterations or changes to the improvements or facilities within their Units, and the cost incurred by the Association in correcting such damage may be assessed as a Special Assessment against such Units.

## ARTICLE IX

### SHADES AND DRAPERIES

Windows must feature some style or type of drapery or shades that are white or off-white on the side visible from outside the Unit.

## ARTICLE X

### BALCONIES

10.1 Residents are not permitted to resurface or change the surface of the floor of outdoor balconies or to place any floor coverings (e.g., carpeting, astro turf, tile, etc.) thereon without the prior approval of the Executive Board.

10.2 No nails, screws or other fasteners may be affixed to or inserted into the exterior walls of the building for any purpose.

10.3 Residents are not permitted to enclose balconies with walls, sides or screens, or to place awnings or roofs covering their balconies unless provided as part of the original construction.

10.4 Flower planters are permitted if secured by brackets inside of the top railings.

10.5 The following are prohibited on balconies:

- (a) Wind socks, chimes or other wind activated devices.
- (b) Hanging baskets;
- (c) Displays of any kind deemed inappropriate, offensive, immoral or otherwise of poor appearance by the Manager or by the Executive Board.
- (d) Barbecue grills, open flame lamps or torches, and outdoor cooking;
- (e) Outdoor seasonal decorations, such as lights;
- (f) Furniture and furnishings other than normal patio or seasonal chairs and tables, etc.
- (g) Bird houses and feeders.
- (h) Storage of bicycles or other personal property.

## ARTICLE XI

### FIRE AND SAFETY REGULATIONS

11.1 All stairwells are constructed to act as fire towers and to contain fire for a period of one (1) hour when all doors and windows are closed.

11.2 It is a violation of fire codes to prop open any of the exterior or interior fire doors or to open any of the windows at any level within the fire towers.

11.3 Smoking is prohibited in all common areas.

11.4 Storage of flammable fluid, including propane or other liquid petroleum gases and hazardous paints, thinners and oils is also prohibited unless in small metal containers tightly sealed.

11.5 Water valves supplying water to clothes washers should be turned off when washer is not in use and especially when the Unit will be unoccupied for more than twenty-four (24) hours.

11.6 If a Resident will be away for more than three (3) days, it is recommended that that all water valves within the Unit be shut off.

11.7 If a Resident has a pest problem of any kind they should contact a pest control contractor at their own expense and notify the Manager.

11.8 There are smoke detectors in common hallways, lower level storage areas and utility rooms of Common Elements. Activation of any one of these will result in activation of the alarm system in the entrance foyer.

11.9 Fire alarm "pull" stations are located on the walls of all hallways to permit fire system activation.

11.10

All rooms and hallways of living and Common Elements are protected by fire sprinkler heads, mounted in the ceiling. In the event of activation of a sprinkler head by heat or by accidental breakage, the system is designed to spray continuous stream of water under high pressure to contain a fire and summon the fire department.

11.11 In the event of discharge of water from an open sprinkler head, the adjacent Units and those on the floor levels below should be inspected for possible water damage and the Unit Owner notified. The Executive Board must be notified and in the absence of a Resident will arrange to enter the Unit to inspect for damage.

## **ARTICLE XII**

### **REGISTRATION AND CONTROL OF PETS**

12.1 You can have one dog and one cat, or two cats in your Unit, and one bird. All other pets or animals of any kind are prohibited without the written consent of the Manager or the Executive Board.

12.2 Pets are further regulated by Article VIII of the Declaration.

12.3 All pets shall be registered, and the Resident must provide such information about the pet as reasonably required.

12.4 Pet owners are responsible for the immediate removal and proper disposal of solid waste by use of "pooper" scoopers or "baggies."

12.5 Pets causing or creating a nuisance or disturbance may be required to be permanently removed from the property upon ten (10) days prior written notice from the Executive Board (or such shorter period as is reasonable if the pet poses a danger to persons).

12.6 Pet owners will be responsible for the cost of all damage from pets, including damage to carpeting in hallways, elevators or foyers, and to all trees and shrubbery, and will be billed for costs of such cleaning or replacement that may be required.

### **ARTICLE XIII**

#### **TRASH AND RECYCLING**

13.1 Put all trash in properly marked containers. Ordinary household trash and garbage shall be placed in secure plastic trash bags. Trash disposal chutes are located on each floor. Normal household trash, properly and securely bagged, should be disposed of in the trash chutes. Do not place loose items down the trash chutes or any bags or other containers that are oversized or may clog the trash chutes. Any bulk items, boxes, etc., must be disposed of in the trash receptacles or compactors provided in the service area of the Condominium.

13.2 Residents disposing of larger bulk items, such as TV sets, chairs, mattresses or springs, must arrange to have them removed and disposed of by a contractor at the Resident's expense.

13.3 Put medical waste in double plastic bags sealed to prevent leakage.

13.4 Flatten cardboard containers before placing in the designated area in the service area of the Condominium.

### **ARTICLE XIV**

#### **VEHICLE REGISTRATION, PARKING AND TRAFFIC CONTROL**

14.1 All motor vehicles that are kept or operated by Residents on the Condominium property must be registered with the Executive Board.

14.2 A limited number of handicapped spaces are available, and their availability is not guaranteed.

14.3 No unlicensed, unregistered or inoperable motor vehicle may be kept on or about the Condominium, and no recreational vehicles, campers, trailers, boats or boat trailers shall be kept, stored or parked on or about any of the parking spaces in the Condominium.

14.4 Oversized vehicles (except delivery vehicles parked temporarily) may not be parked in the parking spaces. An oversized vehicle generally includes any vehicle that is longer than 17 feet 2 inches, wider than 6 feet 6 inches or higher than clearance in the parking garage permits.

## **ARTICLE XV**

### **PENALTIES; ENFORCEMENT**

15.1 Violation of these rules may be enforced in any manner permitted by the Declaration.

15.2 Any Resident who causes, or whose guests cause, any damage to any of the Common Elements of the Condominium is responsible for the costs of repairing such damage. The Association may recover such costs in any manner permitted by law, together with interest on such costs at the rate of the lower of (a) eighteen percent (18%) per annum and (b) the maximum rate permitted under applicable law until paid in full. In addition, such costs, with interest, may be assessed as a Special Assessment by the Executive Board against the Unit occupied by the Residents causing such damages.

15.3 Except for damages to the Common Elements, any violation of these rules shall be subject to the following:

(a) The Resident shall be given written notice of violation by the Executive Board (a "Violation Notice").

(b) If the Resident fails to cure such violation or discontinue the conduct constituting such violation within five (5) days after such Violation Notice, such Resident shall be liable to pay a fine in the amount of Twenty-Five Dollars (\$25.00).

(c) If the violation continues and/or is not cured within fourteen (14) days after written notice of the violation was given, such Resident shall be liable for a fine in the amount of One Hundred Dollars (\$100.00) per day for each day thereafter that the violation remains uncured or unabated, as the case may be.

The preceding is without prejudice to, and does not waive, any other rights or remedies of the Association, including the right of the Association to seek or obtain injunctive or other legal relief to prevent a violation or continued violation of these rules, or of any provision of the Declaration.





# PORTLAND MAINE

*Strengthening a Remarkable City. Building a Community for Life* [www.portlandmaine.gov](http://www.portlandmaine.gov)

**Planning and Development Department**

Lee D. Urban, Director

**Planning Division**

Alexander Jaegerman, Director

December 20, 2006

Daniel Riley, Senior Project Manager  
Sebago Technics  
One Chabot Street  
PO Box 1339  
Westbrook, Maine 04098-1339

RE: Extension of Approvals  
Westin Hotel and Residences, 70 Middle Street, 38 India Street  
CBL: 029-L-001

Dear Mr. Riley,

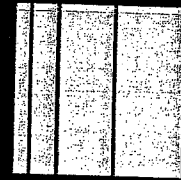
Thank you for your November 6, 2006 letter requesting an extension to your site plan and subdivision for the Westin Hotel and Residences located at the former Jordan's Meats plant at 38 Middle Street.

In my capacity as Planning Division Director for the City of Portland, I am granting your request to extend your approval to December 13, 2007. If you have any questions, please contact Bill Needelman, Senior Planner at 874-8722.

Sincerely,

Alexander Jaegerman  
Planning Division Director

cc: Lee D. Urban, Planning and Development Department Director  
Alexander Jaegerman, Planning Division Director  
Barbara Barhydt, Acting Development Review Services Manager  
Bill Needelman, Senior Planner  
Jay Reynolds, Development Review Coordinator  
Marge Schmuckal, Zoning Administrator



May 16, 2006  
05090

Ms. Sarah Hopkins  
City of Portland Planning Department  
389 Congress Street  
Portland, ME 04101

**Conditions of Approval**  
**Westin Hotel and Residences, 70 Middle Street**  
**ID #2005-0089, CBL #029-L-001**

Dear Sarah:

On behalf of PME I Limited Partnership, I am pleased to submit the enclosed information in response to the Conditions of Approval outlined in the Planning Board's approval letter dated December 14, 2005 for the Westin Hotel and Residences at 70 Middle Street in Portland. As you may recall we made a condition compliance submission to your office on March 28, 2006.

That submittal addressed all of the project's conditions of approval with the exception of Condition iv which states. *"That the developer obtain all necessary overhang licenses from the City prior to issuance of a building permit."*

Please find enclosed proposed agreement language and exhibits for the proposed overhang licenses. The agreement addresses overhangs associated with:

- Canopies over the condominium and retail entrances on Middle Street
- Building mounted lighting fixtures.
- Landscape planters/seat walls along Fore Street and Franklin Street.

I have enclosed seven (7) copies of the proposed agreement and exhibits for your use.

I believe that this response letter and supporting documentation addresses the last of the project's Conditions of Approval. Please notify me if you have any questions or comments regarding the enclosed materials.

To date we have not received any comments on our March 28, 2006 submittal. If that material is satisfactory, we are prepared to submit mylar copies of the approved site/subdivision plan for signature by the Planning Board. Please contact me at your earliest convenience to coordinate submittal of the mylar and signatures by the Planning Board

Ms. Hopkins

-2-

May 16, 2006

If you have any questions or require additional information, please contact me.

Sincerely,

SEBAGO TECHNICS, INC.

A handwritten signature in black ink, appearing to read "Daniel Riley". The signature is written in a cursive style with a large initial "D" and "R".

Daniel L. Riley  
Senior Project Manager

DLR:dlr/df

Enc.

cc: Gretchen McGill, TPG Development

## LICENSE AGREEMENT

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, the CITY OF PORTLAND, a Maine body corporate and politic, with a mailing address of City Hall, 389 Congress Street, Portland, Maine 04101 (the "City"), hereby GRANTS to PME I, Limited Partnership, a Delaware limited partnership with a place of business in Portland, Maine and mailing address of 1140 Reservoir Avenue, Cranston, Rhode Island 02920 (hereinafter the "Licensee"), a revocable license to occupy portions on or over land owned by the City on Fore Street, Middle Street and Franklin Street in Portland, Cumberland County, Maine, which land abuts the property of Licensee now known as 38 India Street, Portland, Maine, for the purpose of allowing encroachments by certain portions of the buildings and improvements constructed by or on behalf of Licensee onto the City's property as shown on Exhibit A attached hereto and made a part hereof: (i) encroachments of awnings and related appurtenances; (ii) encroachments of lighting fixtures and related appurtenances; and (iii) encroachment of a planter seat walls. The license granted in this agreement is subject to the following conditions:

1. Licensee, its successors and assigns shall indemnify the City, its officers, agents, and employees from any and all claims which arise out of its use of the City's property encroached upon as described above.
2. Licensee shall procure and maintain liability insurance in an amount of not less than Four Hundred Thousand Dollars (\$400,000) combined single limit, covering claims for bodily injury, death and property damage and shall either name the City of Portland as an additional insured with respect to such coverage or shall obtain a contractual liability endorsement covering the obligations of Licensee under the terms of this license.
3. This license is assignable to any subsequent owners of the buildings located on the land described on the approved subdivision plan for The Westin Hotel and Residences, Portland, Portland, Maine and depicted on Exhibit B attached hereto.
4. This license may be revoked upon six (6) months written notice by the City in the event that: 1) the buildings shown on the attached plans (Exhibit B) fail to be constructed substantially in accordance with such plans or any amendments thereto; 2) the buildings as shown on such plans or any amendments thereto are destroyed, removed or otherwise thereafter cease to exist on the site at 38 India Street, Portland, Maine for a period of one year or more.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed this \_\_\_ day of May, 2006.

**CITY OF PORTLAND**

By: \_\_\_\_\_  
Joseph E. Gray, Jr.  
City Manager

PME I, LIMITED PARTNERSHIP  
By: PMEGP, its General Partner

By: \_\_\_\_\_  
Print: \_\_\_\_\_  
Its: \_\_\_\_\_

- Exhibit A Encroachment Sketches
- Exhibit B Approved Site Plan

STATE OF MAINE  
CUMBERLAND, ss.

May \_\_, 2006

PERSONALLY APPEARED the above named Joseph E. Gray, Jr., City Manager of the City of Portland as aforesaid, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of the City of Portland.

Before me,

\_\_\_\_\_  
Notary Public/Attorney at Law  
Print name:  
My commission expires:

STATE OF MAINE  
CUMBERLAND, ss.

May \_\_, 2006

PERSONALLY APPEARED the above named \_\_\_\_\_ as aforesaid, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said \_\_\_\_\_.

Before me,

\_\_\_\_\_  
Notary Public/Attorney at Law  
Print name:  
My commission expires:

March 29, 2006  
05090

Ms. Sarah Hopkins  
City of Portland Planning Department  
389 Congress Street  
Portland, ME 04101

DUPLICATE

**Conditions of Approval**  
**Westin Hotel and Residences, 70 Middle Street**  
**ID #2005-0089, CBL #029-L-001**

Dear Sarah:

On behalf of PME I Limited Partnership, I am pleased to submit the enclosed information in response to the Conditions of Approval outlined in the Planning Board's approval letter dated December 14, 2005 for the Westin Hotel and Residences at 70 Middle Street in Portland.

The text of each condition is provided for reference followed by our response. Supporting documentation is attached as indicated.

- i. *that the applicant address the Traffic Engineer's memo dated December 8, 2005, in regards to crosswalk re-striping, pedestrian "countdown" signal heads, traffic signal coordination plan for Franklin Arterial between Commercial and Cumberland and radius changes proposed on the northwest corner of the Franklin Arterial/Middle Street intersection, to be reviewed and approved by the Traffic Engineer.*

The following are specific items referenced from the City traffic Engineer's memorandum with the response noted.

- *The project should re-stripe all crosswalks at the Franklin Arterial/Middle Street, Franklin Arterial/Fore Street, India Street/Fore Street, and India Street/Middle Street intersections. The crosswalk paint design should be reviewed by the City Crosswalk Committee for a final recommendation. I'll coordinate with the Crosswalk Committee and I would suggest that the final design be a condition of approval.*

The final site plans show cross walk re-striping at all four intersections abutting the project site. The construction plan for the Franklin Street turn lane improvements (Sheet C2.1) provides pavement marking plans and details for the turn lane improvements and includes a crosswalk striping detail for use at all intersections.

- *I concur with the recommendation to add a southbound left-turn lane on Franklin Arterial at Middle Street. In conjunction with this improvement the applicant shall be responsible for the installation of pedestrian "countdown" signal heads for all pedestrian crossings at the intersection.*

Plan Sheet C2.1 details the turn lane construction and indicates installation of countdown signal heads at the Franklin Street/Middle Street Intersection as required.

- ii. *that the applicant conduct post-development monitoring studies at the intersection of Franklin Arterial at Middle Street and the Franklin Arterial/Congress Street intersection. The intent of the studies will be to identify traffic signal phasing, timing and equipment modifications necessary and required for safe operation of the intersections. Monitoring data shall occur during one year after completion and traffic improvements shall be determined within 6 months of the monitoring, to be implemented by the applicant.*

The monitoring studies will be conducted 12 months after completion of construction, and improvements will be implemented as necessary.

- iii. *that the developer shall provide a document acceptable to staff for the mid-block pedestrian access through the building and for the alleyway behind the Hugo's Building, between Franklin Arterial and Middle Street. Such document shall be reviewed and approved by staff, prior to issuance of a building permit. Note 14 on the subdivision plan, discussing the use of the owner's private property by the public, shall be revised on the subdivision plan, prior to recording of the subdivision plat.*

Note 14 on the subdivision plan have been revised to read "The use of the Owner's private property by the public is by permission from the Owner. This permissive use shall be subject to the reasonable rules and regulations promulgated in an agreement between the Owner and the City of Portland to be recorded in the Cumberland County Registry of Deeds. The Owner shall not revoke its consent to the permissive use of its property as contemplated by the Conditional Zone Agreement, dated November 9, 2005, and recorded in the Cumberland County Registry of Deeds in Book 23386, Page 211, so long as the property is being used and occupied pursuant to such Agreement."

A copy of the proposed Access Agreement is included herein as Attachment 1.

- iv. *that the developer obtains all necessary overhang licenses from the City prior to issuance of a building permit.*

Overhang licenses and documentation required to address this condition will be submitted under separate cover.

- v. *that the revised plans be reviewed and approved by the Development Review Coordinator prior to issuance of a building permit.*

Comments from the Development Review Coordinator (Stephen Bushey, P.E. of Deluca-Hoffman Associates, Inc.) were received on December 22, 2005. A separated response letter addressing these comments is included as Attachment 2. Copies of the response letter and final plan set have been forwarded directly to Mr. Bushey.

- vi. *that the building design be revised to address the Urban Designer's memo dated December 8, 2005 in regards to the Fore Street elevation and the final design and landscaping of the entry plaza and courtyard, to be reviewed and approved by the Urban Designer prior to issuance of a building permit. If not resolved between the applicant and the Urban Designer, then the plan shall return to the Planning Board for review and approval.*

Final design and landscaping of the entry plaza and courtyard were included as part of the site/civil package submitted on December 12, 2005. We have not received any additional comments on the courtyard design. Final site and landscape plans are attached.

- vii. *the development shall provide 324 on-site parking spaces and the applicant's parking management plan dated December 8, 2005 shall be implemented in regards to valet parking.*

Noted.

- viii. *that a tree well detail be submitted to staff for review and approval.*

A tree well detail is included on Sheet C4.0

- ix. *that a lighting photometric plan be submitted for review and approval by staff, prior to issuance of a building permit. The proposed lighting fixture shall be installed with a fixed top reflector panel, to maintain the "cut-off" classification of the fixture.*

A lighting photometric plan and cut sheets for the proposed lighting fixture with fixed top reflector are included as Attachment 3.

- x. *that corporation counsel review and approve the condominium documents, prior to issuance of a building permit.*

The draft condominium documents were submitted on November 22, 2005. No comments have been received to date. Final condominium documents will be forwarded to Penny Littel and the Planning Office under a separate cover by the owner's attorneys.

- xi. *that the parking garage structure shall comply with NFPA 88A requirements and a fire protection plan shall be submitted for review and approval by the Fire Department.*

Noted. The building will be designed to all applicable building codes fire protection and life safety plans will be submitted for the fire department's review as part of the building permit application submissions.



- xii. *that a signage plan shall be submitted for review and approval by staff, prior to issuance of a building permit.*

The signage plan is currently being reviewed for compliance with Westin standards. We request that approval of the signage plan become a condition of occupancy in order to prevent the delay of initial construction permits.

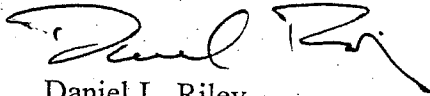
- xiii. *that the developer shall provide a location for covered bike parking, to be reviewed and approved by the Traffic Engineer, prior to issuance of a building permit.*

Proposed bicycle racks for 22 bicycles are to be located within the parking garage as shown on attached Plan Sheet A1.0C.

We believe that this response letter and supporting documentation address all of the conditions of approval. If you have any questions or require additional information, please contact me.

Sincerely,

SEBAGO TECHNICS, INC.



Daniel L. Riley  
Senior Project Manager

DLR:dlr/df  
Enc.

cc: Thomas Niles  
Andrew Bedard

---

# Attachment 1

AGREEMENT

THIS AGREEMENT, dated as of March \_\_\_, 2006 (this “Agreement”), is made by and between PME I, Limited Partnership, a Delaware limited partnership (together with its successors and assigns, “PME”), and the City of Portland, a municipal corporation (the “City”);

WITNESSETH

WHEREAS, PME is the owner of certain property described in that instrument recorded in the Cumberland County Registry of Deeds (the “Registry”) in Book \_\_\_, Page \_\_\_ (the “Property”); and

WHEREAS, PME entered into that certain Conditional Zone Agreement, dated November 9, 2005 (the “Conditional Zone Agreement”), recorded in the Registry in Book \_\_\_, Page \_\_\_\_\_, and re-recorded with exhibits in Book \_\_\_, Page \_\_\_; and

WHEREAS, as a condition to the City’s Planning Board approval for the development of the Property by PME, PME has agreed to enter into this Agreement with the City regarding public access to certain limited portions of the Property once developed;

NOW, THEREFORE, the parties hereby agree as follows:

1. Access to Hotel Lobby. The general public shall have the right to use the portion of the Property designated as the “Hotel Lobby” in Exhibit A attached hereto (the “Hotel Lobby”) for purposes of pedestrian access between Middle Street and Fore Street (the “Access Right”), and for no other purpose. The size, shape and location of the Hotel Lobby may be changed from time to time by PME with the consent of the City Manager (the “Manager”), which consent shall not be unreasonably withheld, delayed or conditions, and any such change shall be memorialized in a document which shall be recorded by PME in the Registry.

2. Term. The Access Right shall become effective upon the commencement of the operation of a hotel on the Property and shall continue in effect until the earlier to occur of (i) PME no longer operating a hotel on the Property; (ii) the termination of the Conditional Rezone Agreement; (iii) the Manager consenting to the termination of this Agreement, which consent shall not be unreasonably withheld, delayed or conditioned, or (iv) the termination of this Agreement as permitted pursuant to Section 3(b) below, at which time this Agreement, including without limitation, the Access Right shall automatically terminate and shall be of no force or effect, and the recordation by PME of the occurrence of any such terminating event shall be conclusive evidence of such event and the termination of this Agreement, including the Access Right.

3. Rules and Regulations. (a) Exercise by the general public of the Access Right is subject to the rules and regulations promulgated by PME and approved by the Manager (as amended from time to time in accordance with this Agreement, the "Rules") PME shall have the right to amend the Rules, with the consent of the Manager, which consent shall not be unreasonably withheld, delayed or denied, provided, however, that if the Manager fails to object to any PME proposed amendment to the Rules within twenty (20) days of mailing of the same by PME to the Manager, such amendment shall be deemed to have been approved by the Manager.

(b) PME, or its designated agent, shall have the right to (i) enforce the Rules, provided, however, this right shall not relieve the City from its law enforcement obligations with respect to the Property at no additional charge to PME and (ii) terminate this Agreement and the Access Right by giving the City not less than thirty (30) days notice thereof if the general public consistently abuses the Access Right or otherwise fails to materially comply with the terms and conditions of this Agreement, including without limitation, the Rules, together with the right to record notice of such termination in the Registry.

4. No Permanent Rights. Access by the general public to the Hotel Lobby is with the consent of PME and does not and shall not be construed to create any license, easement or other right in favor of the City or the general public. PME has the right to post signs on the Property in accordance with 14 M.R.S.A. § 812 or any other similar law or otherwise to prevent the acquisition of any prescriptive, easement or license rights by the City or the general public. In addition to any other right of PME to deny the exercise of the Access Right, PME may deny the general public access to the Hotel Lobby for one full day once in any five (5) year period. Failure of PME to either post any signs pursuant to 14 M.R.S.A. § 812 or to otherwise deny access to the general public shall not adversely affect the fact that the general public's access to the Hotel Lobby is with the consent of PME and may be terminated in accordance with this Agreement.

5. Compliance with Agreement. Any member of the general public exercising the Access Right will be deemed to have agreed to abide by the terms and conditions of this Agreement and the Rules.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

CITY OF PORTLAND

By: \_\_\_\_\_  
Name:  
Title:

PME I, LIMITED PARTNERSHIP

By PMEGP, LLC, its General Partner

By: \_\_\_\_\_

Name:

Title:

[ADD ACKNOWLEDGEMENTS]

RULES  
REGARDING ACCESS  
TO HOTEL LOBBY

Reference is made to that certain Agreement, dated March \_\_\_\_, 2006 (as amended from time to time, the "Agreement"), recorded in Book \_\_\_\_, Page \_\_\_\_ of the Cumberland County Registry of Deeds. Capitalized terms used in these Rules shall have the meaning set forth in the Agreement.

Exercise of the Access Right shall be governed by the following rules:

A. The access to the Hotel Lobby shall be for pedestrian through-fare purposes only between Middle Street and Fore Street in the City of Portland, Maine (the "City"), and shall not consist of or permit any loitering, lounging, use of hotel amenities or any other use or purpose.

B. Absolutely no skateboarding, roller skating, rollerblading or similar activity is permitted in the Hotel Lobby, and no motorized means of transport shall be permitted.

C. PME or its designated agent shall have the right from time to time to limit or deny the access contemplated by the Agreement for limited periods of time for purposes of:

(a) securing the safety of hotel guests;

(b) hosting or being the site of an event for which the access contemplated by the Agreement would interfere with or create a security or safety issue therefor;

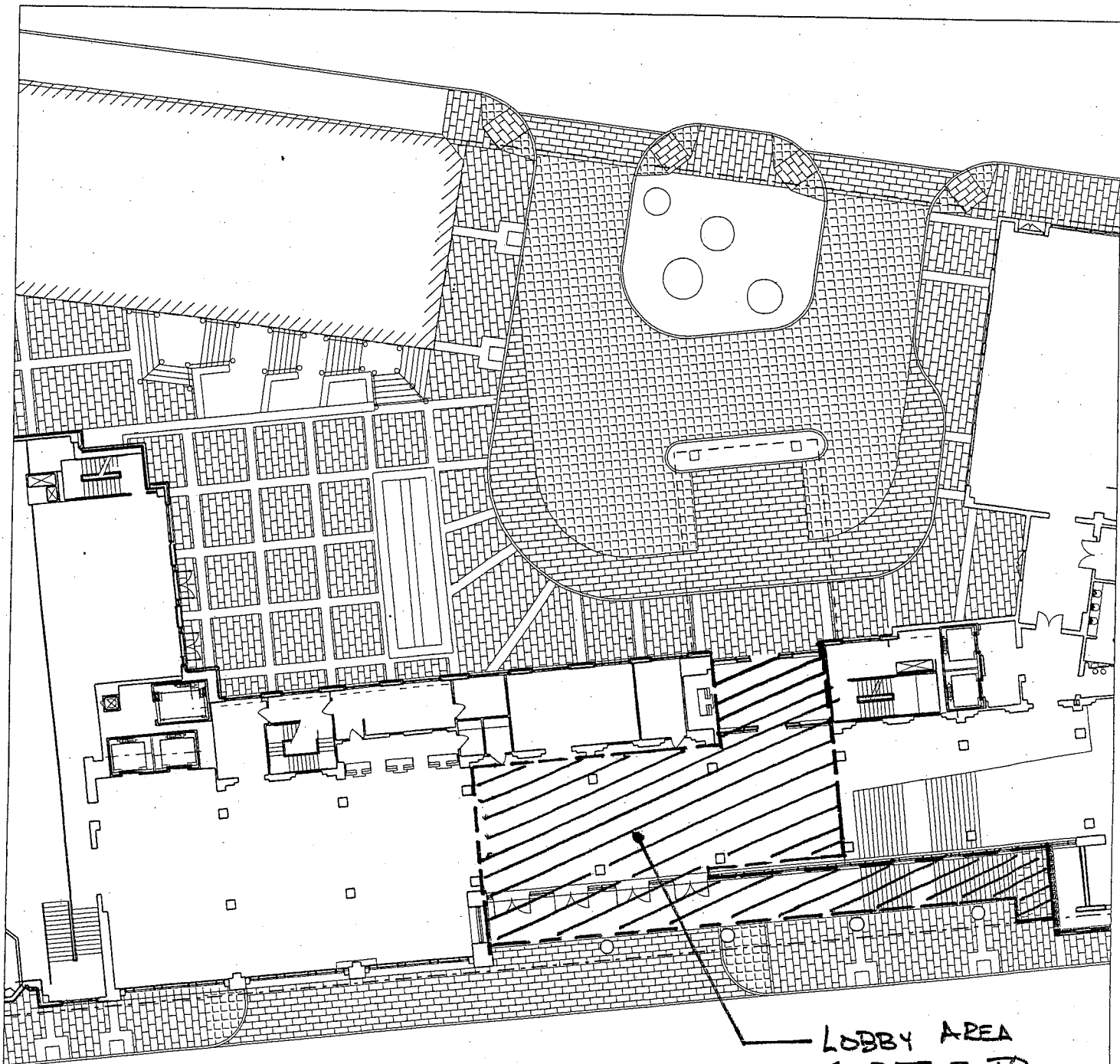
(c) construction or repair of the hotel operated on the Property or any of its components which would create an unsafe condition or situation to anyone traveling through the Hotel Lobby; or

(d) any other purpose reasonably determined by PME to be necessary or desirable for the safety of any person or property.

D. Any rules and other conditions applicable to guests of the hotel operated on the Property.

EXHIBIT A

[DIAGRAM OF HOTEL LOBBY]



LOBBY AREA  
SUBJECT TO  
AGREEMENT

EXHIBIT A  
ACCESS TO HOTEL LOBBY  
MARCH 28, 2006



---

# Attachment 2



March 29, 2006  
05090

Mr. Stephen R. Bushey, P.E.  
Deluca-Hoffman Associates, Inc.  
778 Main Street  
Suite 8  
South Portland, ME 04106

**Response to Final Review Comments**  
**Westin Hotel and Residences, 70 Middle Street**

Dear Steve:

On behalf of PME I Limited Partnership, I am pleased to submit the enclosed information in response to your final review comments regarding the Westin Hotel and Residences that I received by Memorandum dated December 21, 2005.

The text of each comment is provided for reference, followed by our response. Supporting documentation is attached as indicated.

1. *The engineer has provided responses to each of our earlier comments and has included a revised plan submission that addresses the technical comments from both the Public Works Dept. and our review. In general the plans are well prepared and contain sufficient information regarding the project layout, grading and drainage, and utilities to comply with the City's Technical Standards. We did not however, receive a copy of the demolition plan referred to in the letter.*

A copy of the site demolition plan (Sheet C1.0) is included in the attached plan set.

2. *We recommend that prior to the issuance of a building permit that the applicant provides Final Site drawings that have been stamped by the engineer. The Final drawings should include any currently missing information such as the sewer invert information on Sheet 5 of 10.*

Final site plans stamped by the engineer are attached. The inverts noted are included on the plans

3. *The Public Works Dept. should review the limits of trenching work required in the street and outline any additional limits of pavement overlay that may be required. The Engineer should review the City's Rules and Regulations for Excavation Activity within the City Right-of-Way, since these rules may require additional pavement resurfacing limits than currently shown on the drawings. The engineer should also review with these plans with the utility companies to ascertain any improvements that they may want in the streets while the project is underway. The Portland Water District will often replace water mains when the street is opened, recognizing moratorium conditions may persist after construction completion.*

The plans have been reviewed by Central Maine Power, Verizon, Northern Utilities, and the Portland Water District for review and comment. No additional comments have been received to date.

4. *We assume that the site lighting has previously been reviewed by the Planning Staff.*

A lighting photometric plan and cut sheets for the proposed lighting fixtures are attached and have been forwarded to the Planning Staff for review.

5. *We recommend that the demolition plan include notes and references to construction lay down areas, staging etc. that are expected during the work. A discussion of construction phasing and temporary work zone requirements and measures may be beneficial for City Staff, including the Public Works Dept., to understand how temporary conditions may affect the adjacent streets and pedestrian routes. When, for example, will there need to be temporary street or sidewalk closures or interruptions to utility service? If this type of information is on the drawing then this comment may be disregarded.*

To date, no general contractor or site contractors have been selected for the project. The owner's representative has contacted the Public Works department to initiate the street opening permits and to coordinate temporary street closings. Logistic plans will be prepared as required by Public Works and copies will be forwarded to the Planning Department as they are developed.

6. *The Engineer has stated that a Building and Site Signage plan be submitted for staff approval. We trust this can be accomplished prior to the issuance of a certificate of occupancy.*

The signage plan is being reviewed for compliance with Westin standards. We will forward the signage plan to the Planning Staff when complete. We concur with the recommendation that a signage plan approval be a condition of the project's certificate of occupancy.

Mr. Bushey

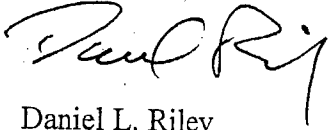
-3-

March 29, 2006

We believe that this response letter and supporting documentation address all of the conditions of approval that may be addressed at this time. If you have any questions or require additional information, please contact me.

Sincerely,

SEBAGO TECHNICS, INC.



Daniel L. Riley  
Senior Project Manager

DLR:dlr/df

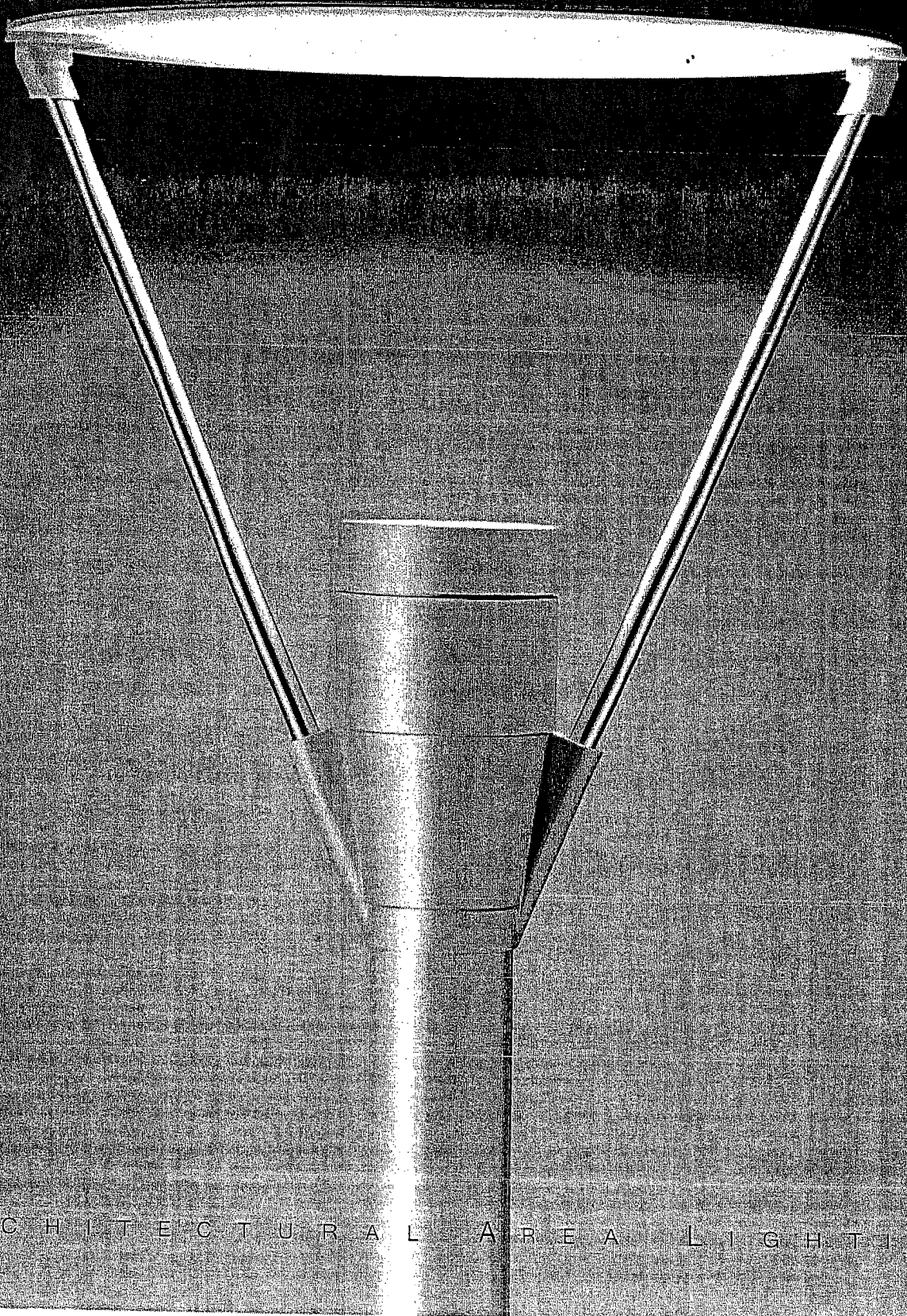
Enc.

cc: Thomas Niles  
Andrew Bedard

---

# Attachment 3

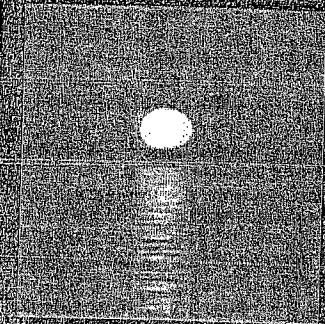
# INDIRECT



ARCHITECTURAL AREA LIGHTING

# INDIRECT

"To create, inspire and nurture excellence in each other"



## Energy Efficiency

The Indirect is designed to use electrical energy in the most efficient possible way. The reflectors are designed to direct the illumination on the ground with no stray light which translates into wasted energy. The result is more light with less energy consumption.

AAL is a registered continuing education provider.



## Light Pollution

The Indirect is designated as a cutoff fixture which means less than 1% of light is emitted above 90 degrees horizontal. This insures no light is beamed into the sky which contributes to light pollution and wastes energy.

## Longevity

We manufacture all our products to have a life span as long as the building or space they illuminate. The primary material used for both our luminaire and pole products is aluminum to resist corrosion and the need for maintenance. Aluminum will not need the periodic refinishing required of steel products that will eventually rust and corrode. All our internal parts and fasteners are made of aluminum or stainless steel. Our reflector enclosures are kept dust free and dry with the use of silicone gaskets to prevent light degradation from contaminants.

## Sustainability

Our products are developed with recycling and resource management in mind. We recycle all incoming packaging materials. Our products are shipped in easy to recycle packaging materials. Our state of the art finishing system uses eco friendly cleansing and preparation chemicals that are harmless enough to send to the drain without further processing. Our powder coating process eliminates the release of volatile chemicals into the atmosphere. The Indirect, like all AAL products is produced with renewable materials such as aluminum and stainless steel.

## Index

Models	4
Elevated Scale	5
Indirect Optical System	6
Reflector Adjustment	8
Construction	9
Applications	10
Ordering Information	12
Specifications	14

Printed on recycled paper

Copyright © 2005

INDIRECT

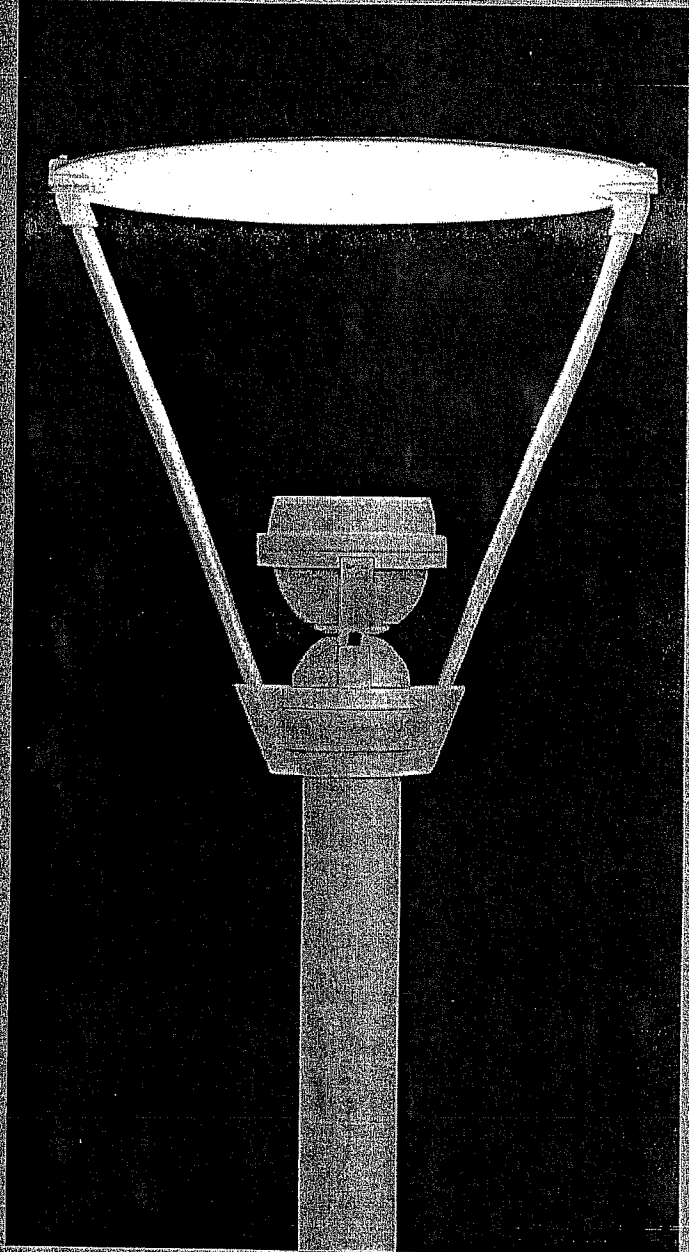
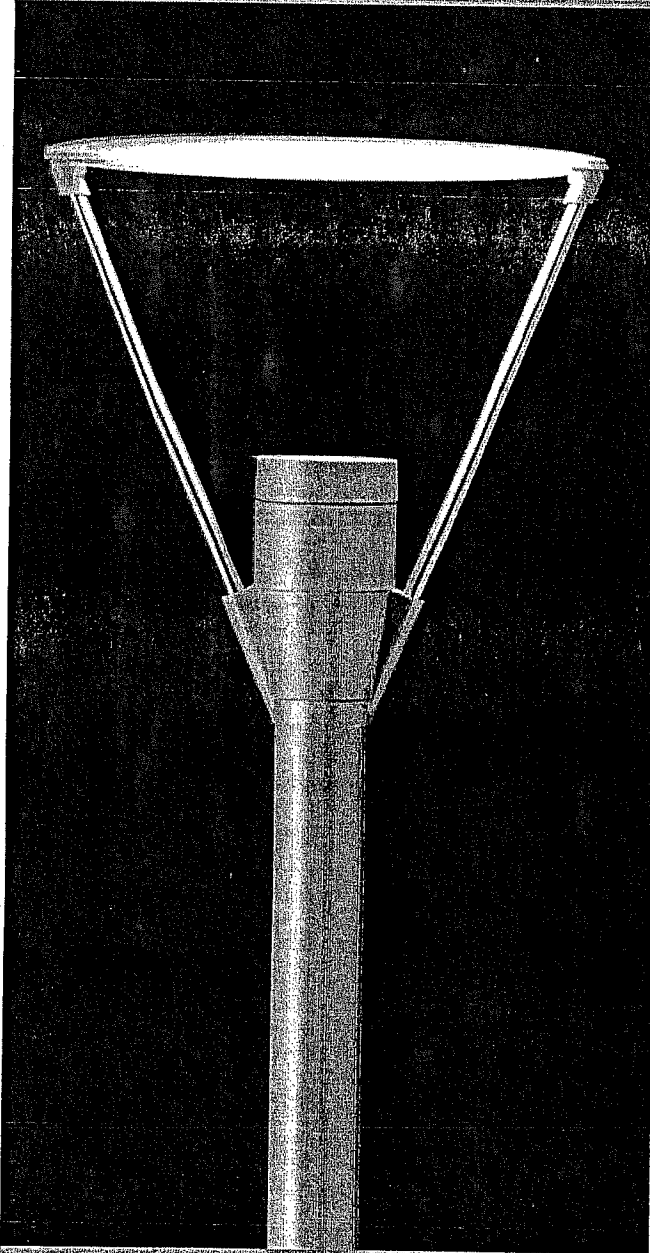


An indirect luminaire with high efficiency, cutoff optics designed for dark sky sensitive applications. The Indirect is perfect for projects that require a sense of mood as much as a sense of light.



# INDIRECT

The Indirect is available in two distinct head designs. The INDA has an adjustable head for aiming when the upper reflector is tilted. Both models can be configured with a round or square upper reflector.

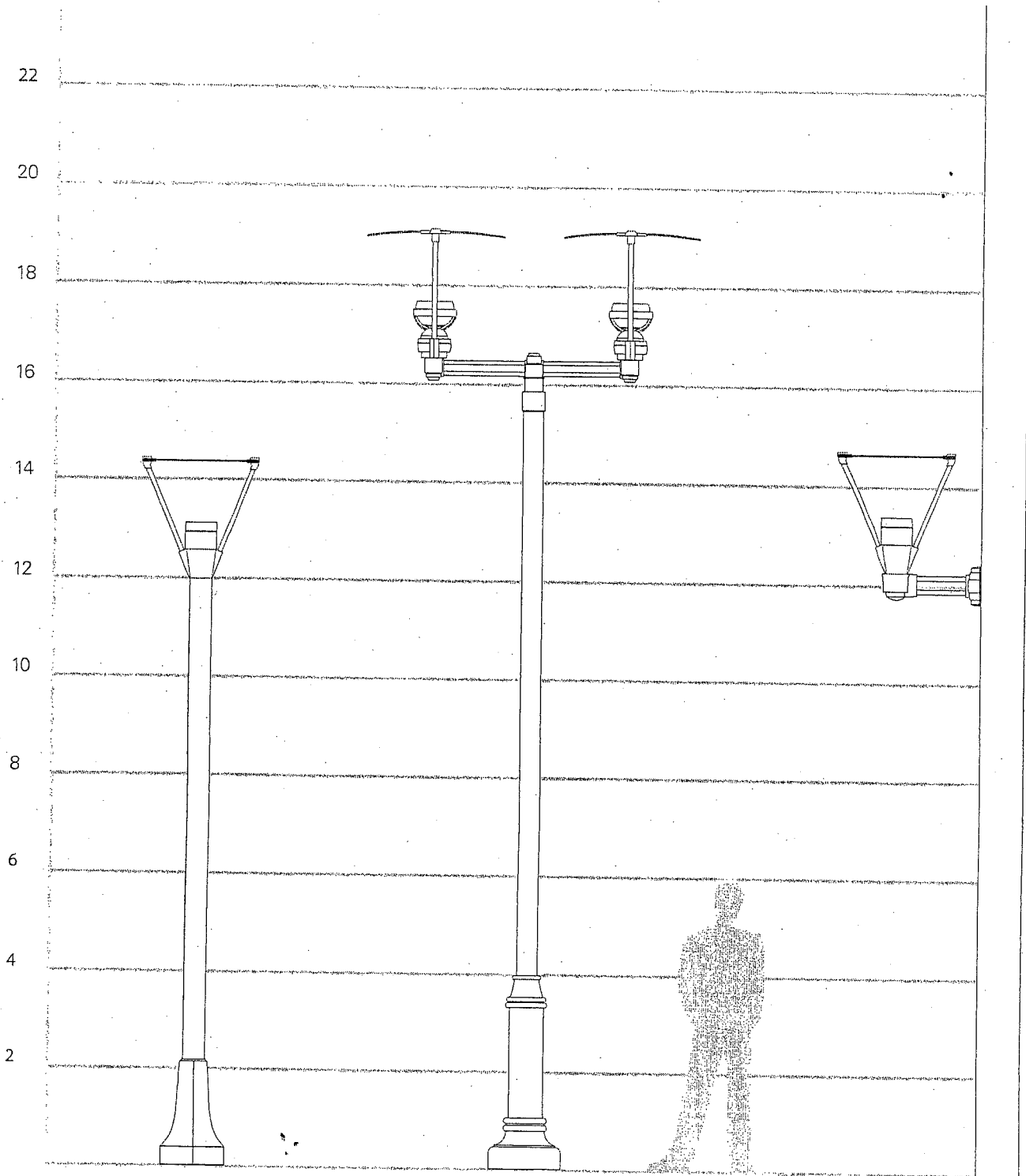


INDF  
Fixed head

INDA  
Adjustable head

PROPOSED HEAD DESIGN

# INDIRECT



FIXTURE	INDF	2-INDA	INDF
REFLECTOR	SQ	RD	RD
ARM	•	PMAT	WMA
POLE	PR5-5R12, BC5-5	DB10-5R16	•

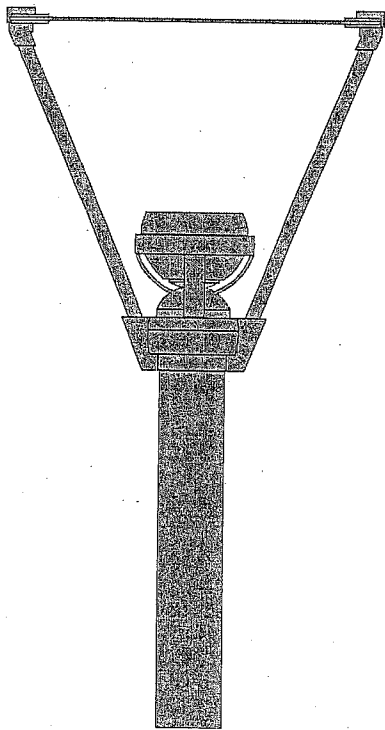
# INDIRECT

## Dark Sky Friendly

Other indirect luminaires typically throw 40 to 50 percent of their light output upwards into the sky. The result is poor efficiency as well as light pollution. The Indirect's specially designed lower reflector precisely focuses the light energy onto the upper reflector with virtually no stray, uplight. The Indirect emits less than one half of one percent upward. This has earned an IES "cutoff luminaire" classification from the independent photometric testing lab.

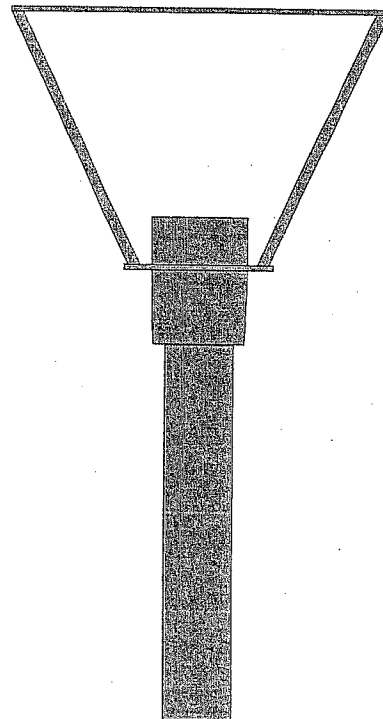
### AAL Indirect

- less than 1/2% uplight
- IES cutoff luminaire
- high efficiency



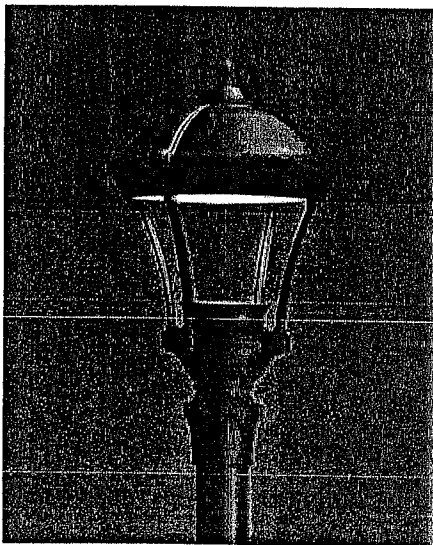
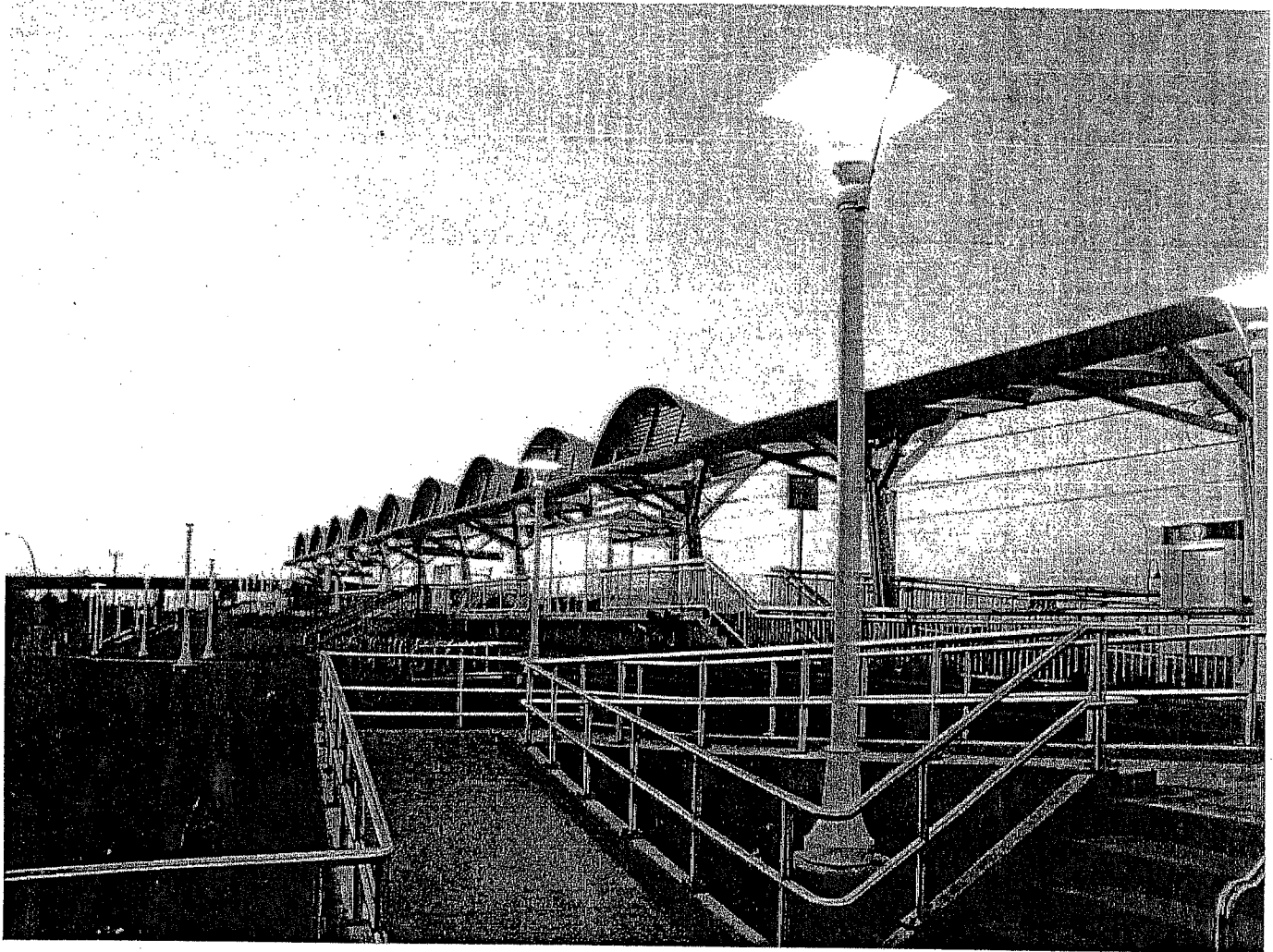
### others

- 40 to 50% uplight
- IES non-cutoff luminaire
- low efficiency



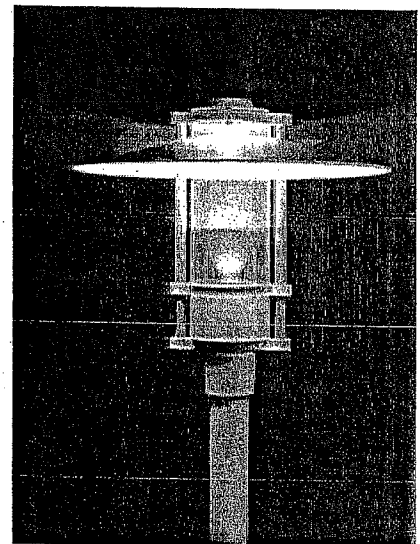
# INDIRECT

The Indirect produces soft, low brightness illumination similar to moonlight.



Other indirect fixtures from AAL include the Providence Indirect (left) which utilizes the same high performance cutoff optical system as the Indirect.

The Spectra Indirect is available with a small uplight component to illuminate the shade. A full cutoff version is also available.

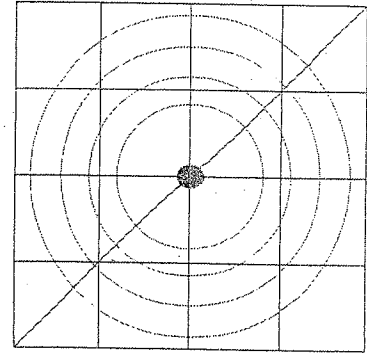
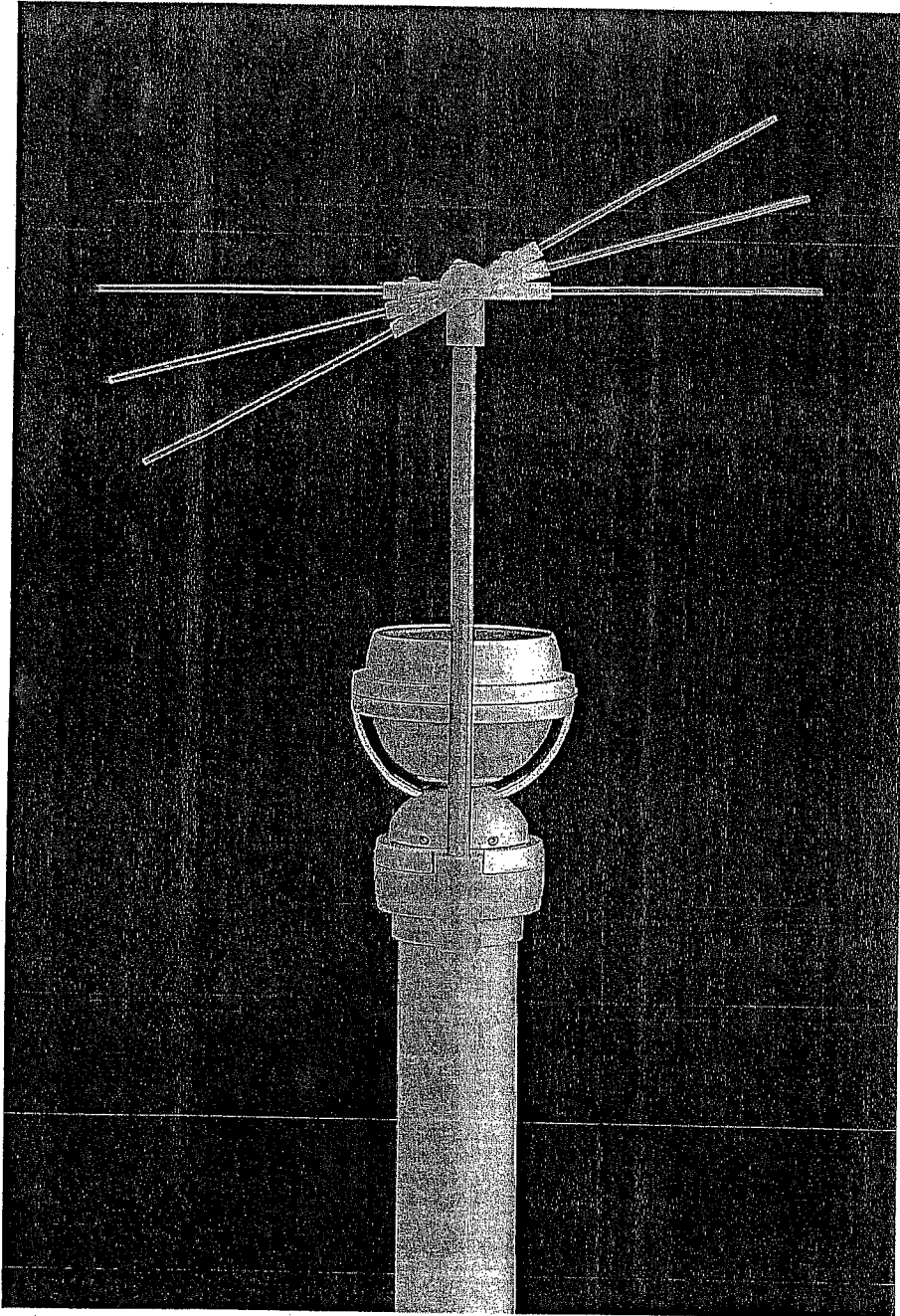


# INDIRECT

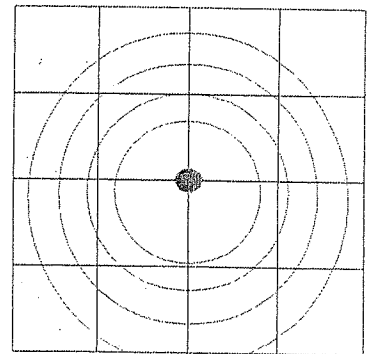
## Reflector Adjustment

The Indirect upper reflector can be tilted 15 or 30 degrees for an asymmetrical light distribution. The locking clamp design insures a consistent tilt angle on all fixtures.

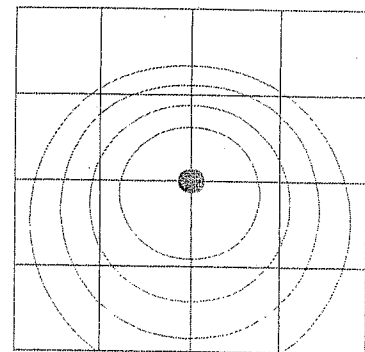
The Indirect model INDA has an adjustable lamp head to focus the light beam onto the center of the shade, when the shade is tilted. This improves efficiency and minimizes any stray light beyond the reflector.



Horizontal position  
type 5 symmetric light pattern



15° tilt position  
asymmetric light pattern

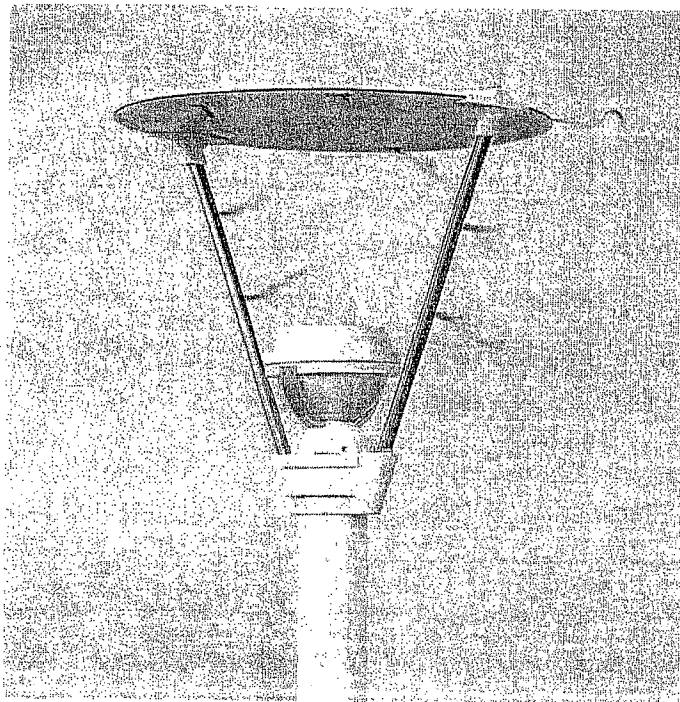
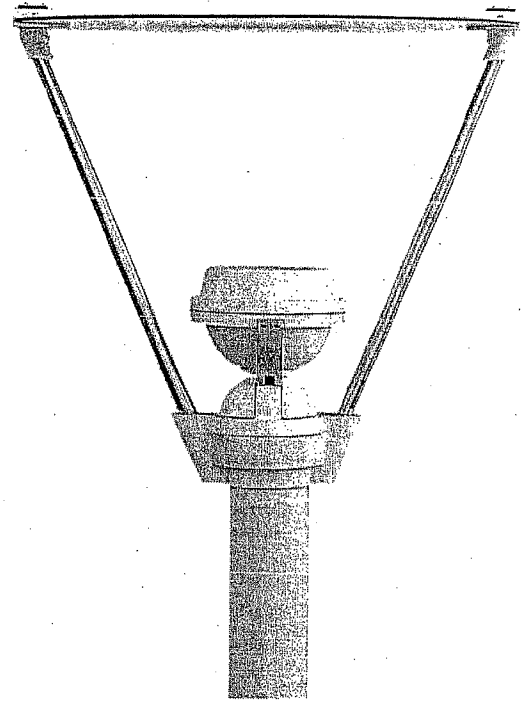


30° tilt position  
asymmetric light pattern

# INDIREC

## Construction

- Cast aluminum construction for corrosion resistance.
- Integral ballast assembly in fixture for easy installation.
- Lightweight aluminum composite reflector reduces pole stress.
- Stainless steel vertical struts.
- Reflector tilts and locks at 15 or 30 degrees.
- The INDA lamp head tilts to center the beam onto the reflector. The parabolic reflector focuses the light beam into the upper reflector for maximum efficiency.
- The INDF lamp has a straight fixed head.
- Lamp choices include:
  - 70 or 150 watt T-6 CDM metal halide for excellent color rendering with the efficiency of metal halide lamps.
  - 250 watt T-4 halogen allows dimming.
  - 26 watt compact fluorescent for efficient, instant on illumination.

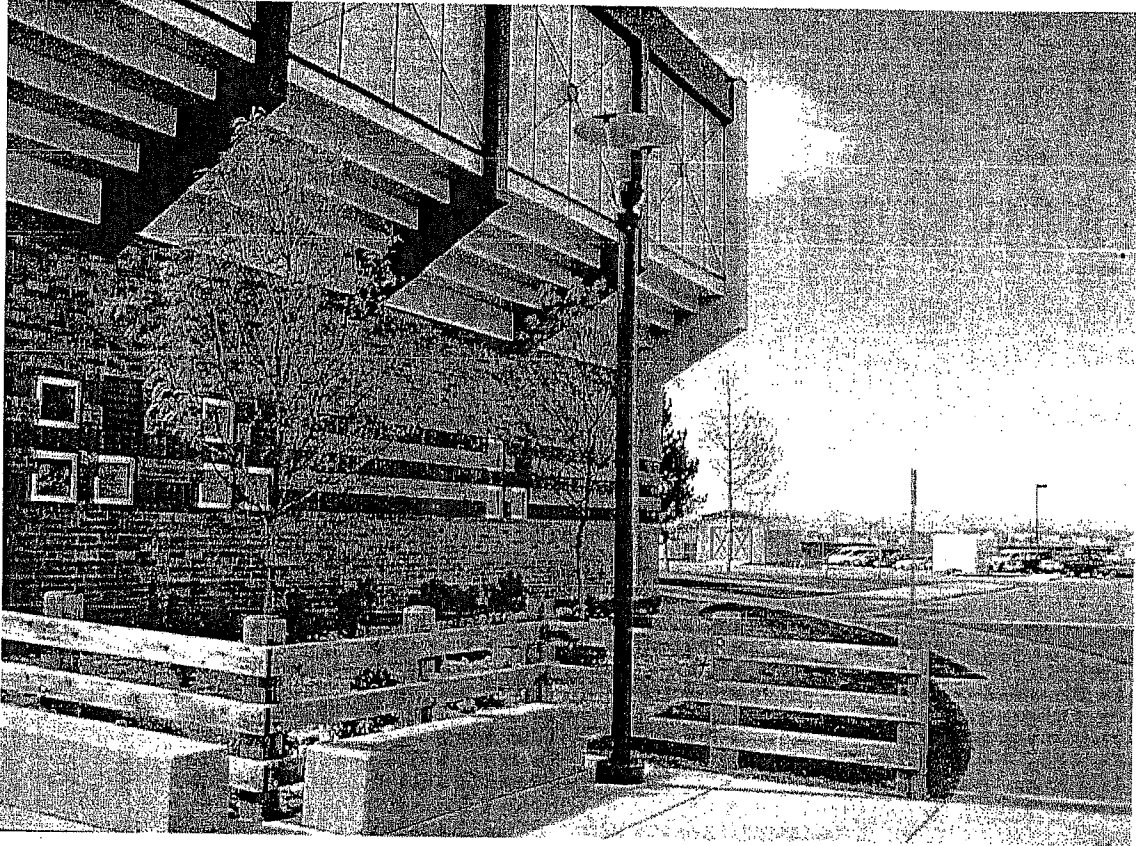


## Wind Tunnel Tested

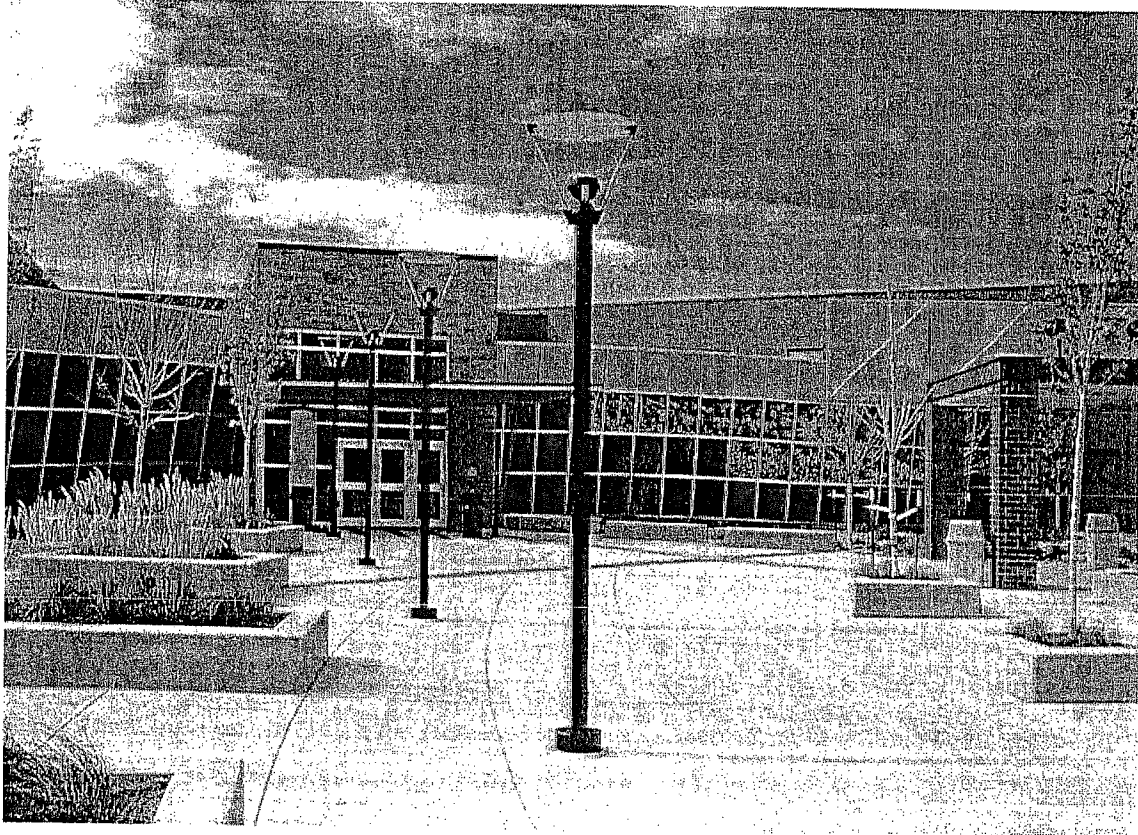
The Indirect was laboratory tested at wind speeds of 140MPH/225KPH, (which was the maximum speed of the test equipment). The Indirect's robust, mechanical design exhibited no shaking or twisting during the extreme test conditions.

# INDIRECT

DA-RD-BLK

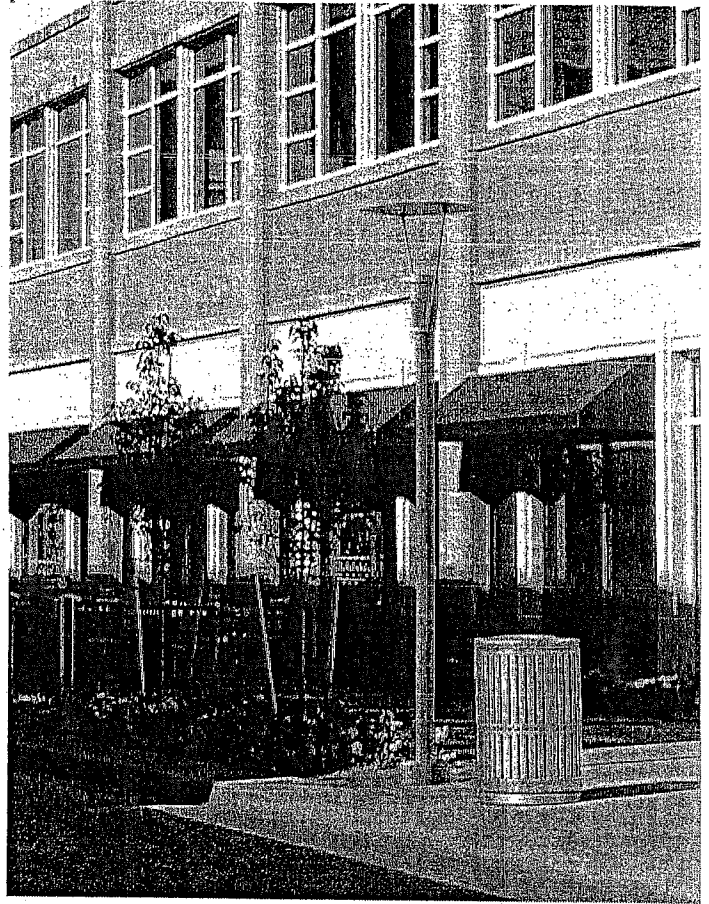
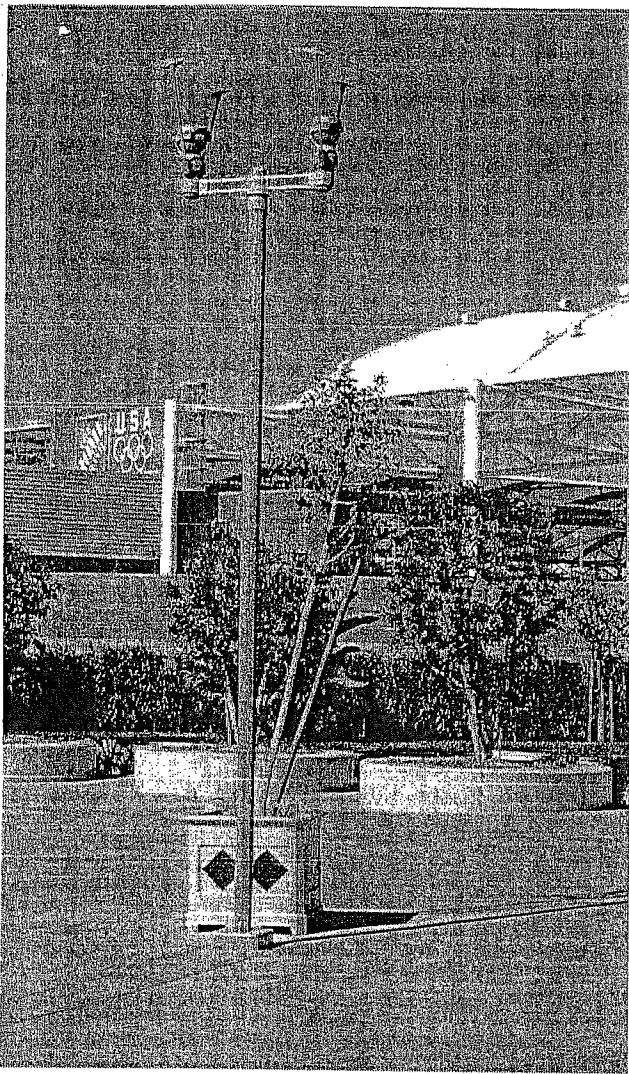


DA-RD-BLK

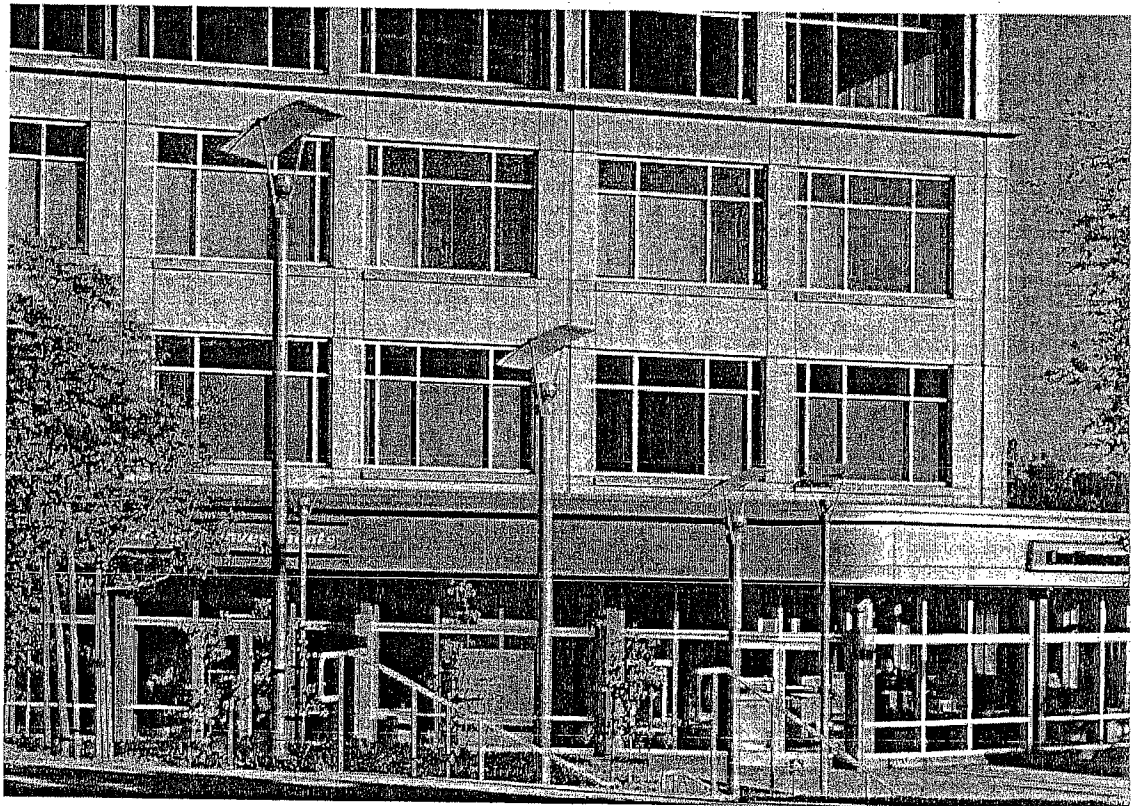


# INDIRECT

INDF-RD-MAL



A-RD-PMAT  
for angled 30°



INDA-SQ (reflector angled 30°)



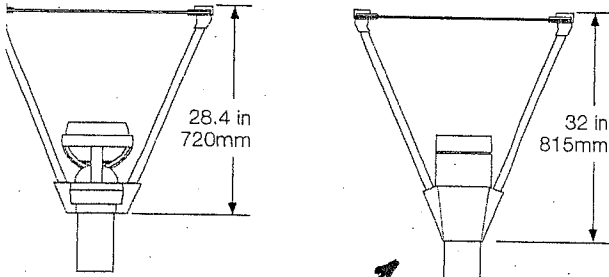
# INDIRECT

## Ordering information

	FIXTURE 1	REFLECTOR 2	BALLAST 3	OPTIONS 4	COLOR 5	ARM 6	POLE 7
EXAMPLES	INDF	RD	70MH	•	MAL	•	PR5 5R10-188
	INDA	SQ	150MH	•	BLK	•	PR5 5R14-188

**1** Choose a head style

IDA	INDF
Adjustable head	Straight, fixed head

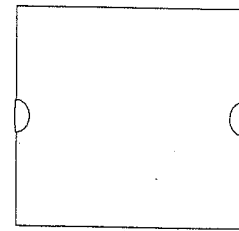
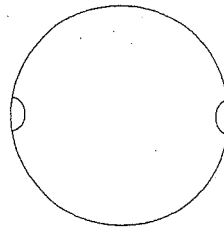


**3** Choose a ballast

- IC**  
Use with mini cand base, incandescent lamps up to 50 watts, 120 volts.
- F**  
Compact Fluorescent, electronic ballast 120 thru 277 volt. 3° C starting temperature. Use 4-pin 26, 32 or 42 watt lamp. (for INDA - 26 watts only)
- 70MH**  
70 watt metal halide 120/208/240/277 volt ballast. Use a medium base, clear ED-17 lamps. (for INDF models only)
- 70MHEB**  
70 watt electronic metal halide ballast 120 thru 277 volt. Use medium base, clear ED-17 lamp. (for INDF models only)
- 70MHT6**  
70 watt metal halide magnetic, multitap ballast 120/277 volt. Use a G12 base, clear T-6 ceramic MH lamp.
- 70MHT6EB**  
70 watt electronic metal halide ballast 120 thru 277 volt. G12 base, use a clear T-6 ceramic metal halide lamp.
- 100MH**  
100 watt metal halide 120/208/240/277 volt ballast. Use a medium base, clear ED-17 lamps. (for INDF models only)
- 100MHEB**  
100 watt electronic metal halide ballast 120 thru 277 volt. Use a medium base, clear ED-17 lamp. (for INDF models only)
- 100MHT6**  
100 watt metal halide magnetic multitap ballast 120/208/240/277 volt. G12 base, use a clear T-6 ceramic metal halide lamp.
- 150MH**  
150 watt, Phillips Induction Lamp system with transformer. Specify 120, 208, 240 or 277 volt. (for INDF models only)
- 150MHEB**  
150 watt, Phillips Induction Lamp system with transformer. Specify 120, 208, 240 or 277 volt. (for INDF models only)

**2** Choose a reflector shape

RD	SQ
30" Round upper reflector	30" Square upper reflector



**5** Choose a color

Standard AAL colors are provided at no extra charge. RAL and custom matched colors are available upon request.

WHT	WHITE	LGY	LIGHT GREY
MAL	MATTE ALUMINUM	MDG	MEDIUM GREY
ATG	ANTIQUE GREEN	VGR	VERDE GREEN
WRZ	WEATHERED BRONZE	DGN	DARK GREEN
CRT	CORTEN	BRM	METALLIC BRONZE
DBZ	DARK BRONZE	BLK	BLACK
MTB	MATTE BLACK		

**FIXED HEAD**

**SQUARE REFLECTOR**

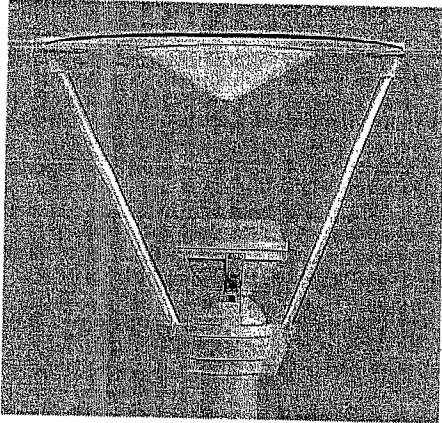
# Ordering information

# INDIRECT

## 4 Options

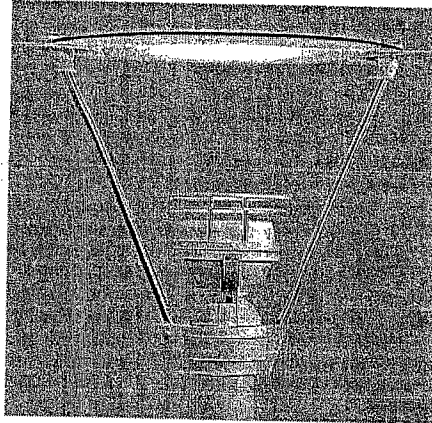
### CDC

Center deflector cone for round reflector (RD). Provides a wider light distribution.



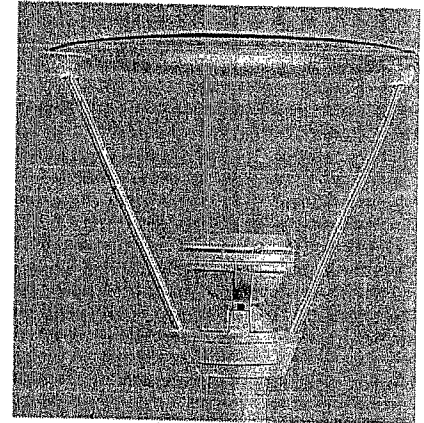
### SR

Two aluminum rings attached to the fixture, for INDA (adjustable model) only. Factory installed.



### CFH

Color filter holder attached to the fixture, for INDA (adjustable model) only. Factory installed.



### LAMP70

Philips® 70 watt clear T-6 ceramic metal halide lamp, CDM70/T6/830

### LAMP150

Philips® 150 watt clear T-6 ceramic metal halide lamp, CDM70/T6/830

### 347

120/277/347 magnetic ballast for the 150 watt metal halide lamp.

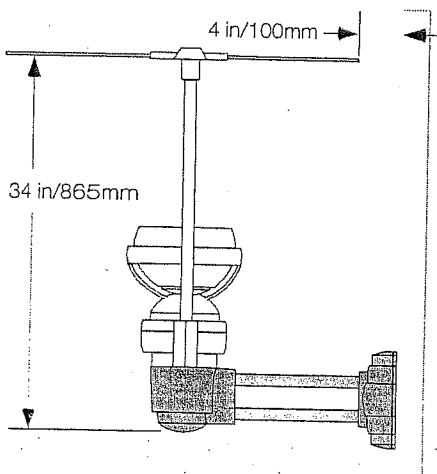
### AD5

Cast aluminum adapter for the PMAT arm to slip over a 5"/127mm pole

## 6 Choose a wall mounted bracket or double pole mount

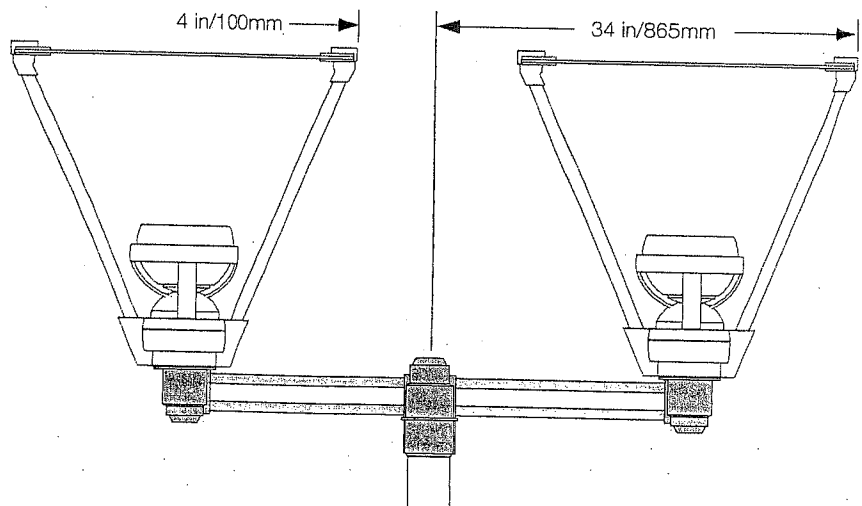
### WMA

Wall mounted arm, 10 lbs, EPA: .68



### PMAT

Twin arm pole mount arm, slips over a 4"/100mm pole or tenon. 14 lbs, EPA: .8



# INDIRECT

## Specifications

### UPPER REFLECTOR

The upper reflector shall be a light weight aluminum composite. The reflector shall be finished in a white, fluoropolymer finish. The reflector shall be attached to the cast aluminum pivot joints and secured with four stainless steel bolts. Two cast aluminum, adjustable knuckles shall connect the reflector assembly to the vertical, stainless steel struts. The struts are #316 stainless steel with a minimum .250" wall thickness. The struts shall have threaded connections for attachment to the upper reflector and the lamp module.

### LAMP MODULE

The reflector shall be enclosed in die cast aluminum housing. The front cover is secured with four cap screws for relamping and internal access. The front glass element is clear, tempered glass. The front cover and electrical module are sealed with memory retentive, molded silicone gaskets.

The parabolic reflector shall be prefocused to illuminate the upper reflector with no stray light beyond the reflector. The fixture shall be IES rated as a cutoff luminaire with less than 1% upright. The INDA model lamp module swivels, to center the beam on a tilted reflector, by loosening two stainless steel cap screws. All internal and external hardware is stainless steel.

### ELECTRICAL MODULE

The ballast is mounted on a prewired plate with a quick disconnect plug. Magnetic metal halide ballasts are high power factor, rated for -30°F starting. Electronic

metal halide ballasts are rated for -30°F starting, sound rating A, 120 thru 277 volt. Sockets are pulse rated porcelain, bi-pin, G12 for T-6 lamps. A porcelain screw base for the mini-cand T-4 halogen lamp. The compact fluorescent shall have an electronic transformer, 120 thru 277 volt.

### FINISH

Fixture finish consists of a five stage pretreatment regimen with a polymer primer sealer, oven dry off and top coated with a thermoset super TGIC polyester powder coat finish. The finish shall meet the AAMA 605.2 performance specification which includes passing a 3000 hour salt spray test for corrosion resistance.

The reflector shall be painted white. The vertical struts are #4 brushed stainless steel. All other fixture parts shall be finished in the same specified color.

### CERTIFICATION

The fixture shall be listed with ETL and U.L. for outdoor, wet location use, UL1598 and Canadian CSA Std. C22.2 NO.250. IP=66

#### **EPA: INDA or INDF**

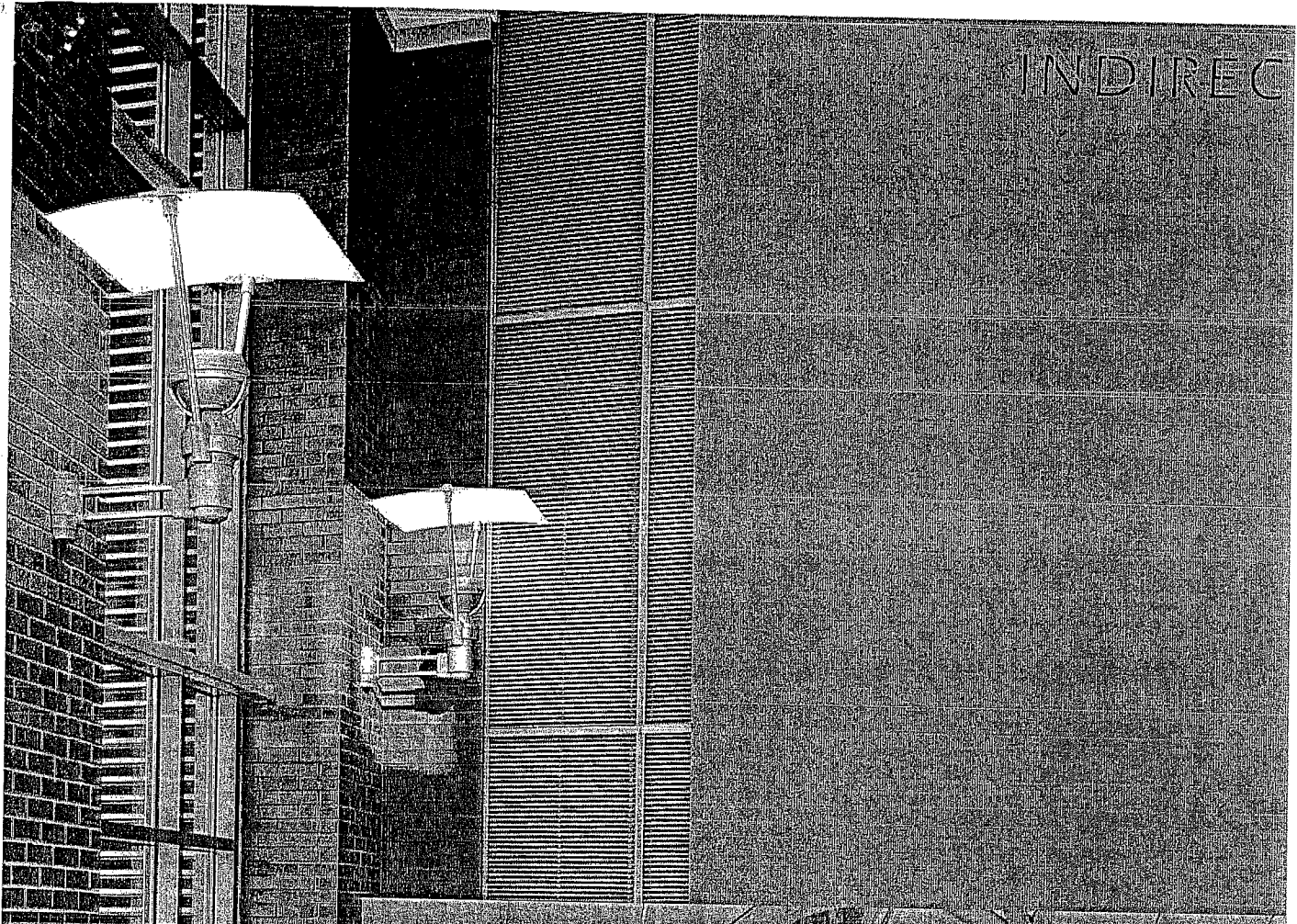
**with round upper reflector: 3.65**

**with square upper reflector: 4.40**

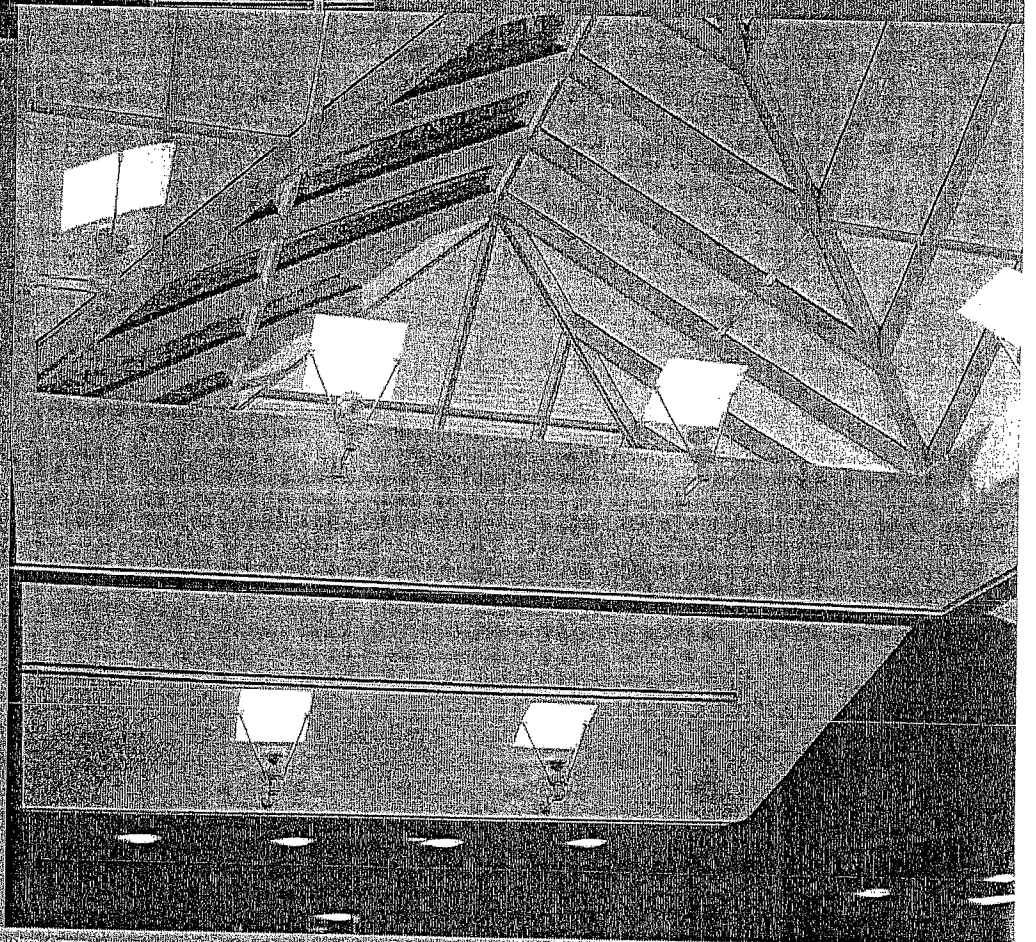
### WARRANTY

Fixture shall be warranted for three years. Ballast components carry the ballast manufacturer's limited warranty.

INDIRECT

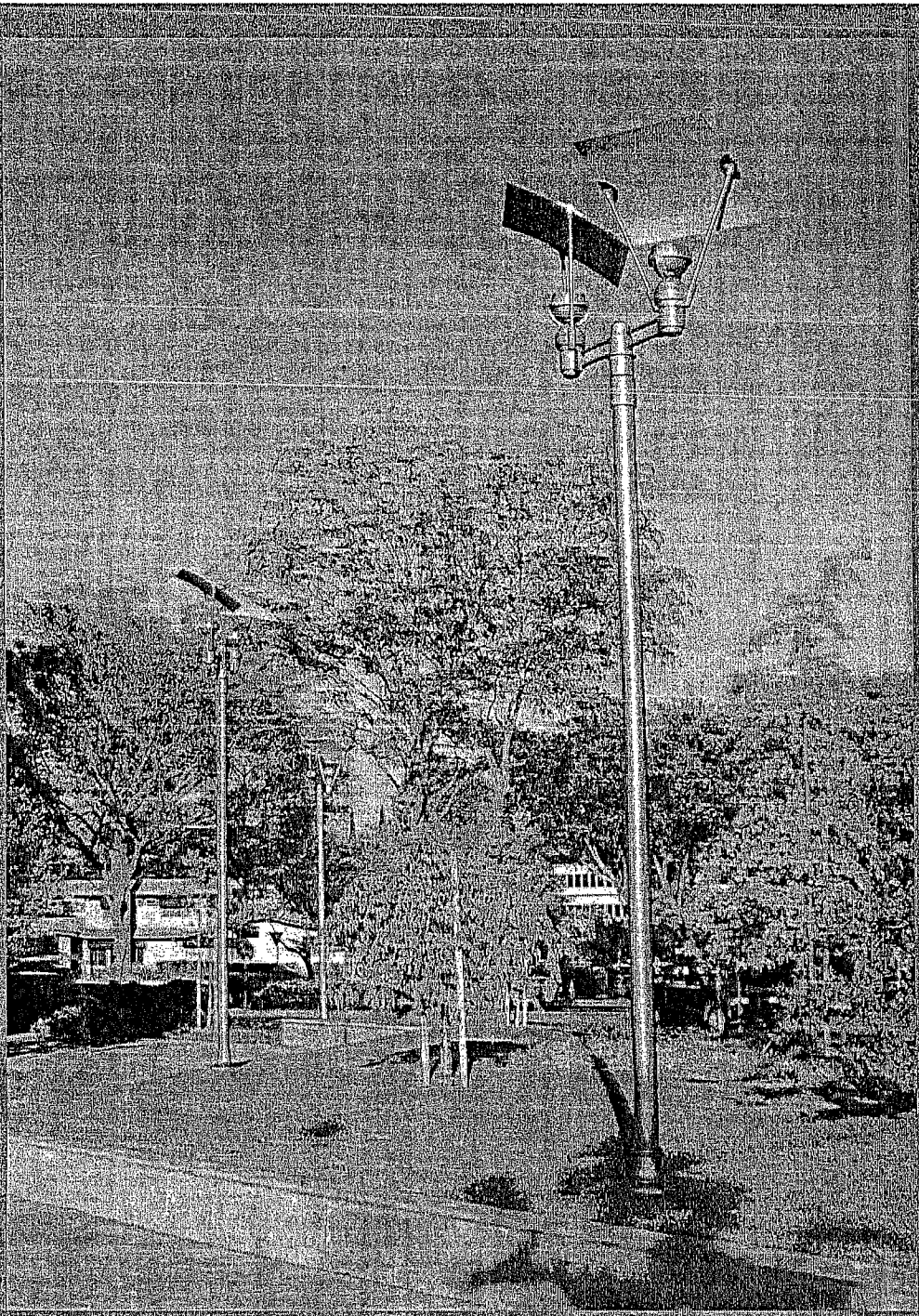


INDA-SQ-WMA



INDA-SQ-WMA

ARCHITECTURAL AREA LIGHTING



ARCHITECTURAL  
AREA  
LIGHTING

1829 ATTESA BLVD  
LAWRENCE, MA 01840-1369  
781-694-2700 \*FAX 781-694-0322  
www.aal.net



Hubbell Lighting, Inc.

Ms. Hopkins

-2-

May 16, 2006

If you have any questions or require additional information, please contact me.

Sincerely,

SEBAGO TECHNICS, INC.

A handwritten signature in black ink that reads "Daniel Riley". The signature is written in a cursive style with a large, stylized "D" and "R".

Daniel L. Riley  
Senior Project Manager

DLR:dlr/df  
Enc.

cc: Gretchen McGill, TPG Development

## LICENSE AGREEMENT

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, the CITY OF PORTLAND, a Maine body corporate and politic, with a mailing address of City Hall, 389 Congress Street, Portland, Maine 04101 (the "City"), hereby GRANTS to PME I, Limited Partnership, a Delaware limited partnership with a place of business in Portland, Maine and mailing address of 1140 Reservoir Avenue, Cranston, Rhode Island 02920 (hereinafter the "Licensee"), a revocable license to occupy portions on or over land owned by the City on Fore Street, Middle Street and Franklin Street in Portland, Cumberland County, Maine, which land abuts the property of Licensee now known as 38 India Street, Portland, Maine, for the purpose of allowing encroachments by certain portions of the buildings and improvements constructed by or on behalf of Licensee onto the City's property as shown on Exhibit A attached hereto and made a part hereof: (i) encroachments of awnings and related appurtenances; (ii) encroachments of lighting fixtures and related appurtenances; and (iii) encroachment of a planter seat walls. The license granted in this agreement is subject to the following conditions:

1. Licensee, its successors and assigns shall indemnify the City, its officers, agents, and employees from any and all claims which arise out of its use of the City's property encroached upon as described above.
2. Licensee shall procure and maintain liability insurance in an amount of not less than Four Hundred Thousand Dollars (\$400,000) combined single limit, covering claims for bodily injury, death and property damage and shall either name the City of Portland as an additional insured with respect to such coverage or shall obtain a contractual liability endorsement covering the obligations of Licensee under the terms of this license.
3. This license is assignable to any subsequent owners of the buildings located on the land described on the approved subdivision plan for The Westin Hotel and Residences, Portland, Portland, Maine and depicted on Exhibit B attached hereto.
4. This license may be revoked upon six (6) months written notice by the City in the event that: 1) the buildings shown on the attached plans (Exhibit B) fail to be constructed substantially in accordance with such plans or any amendments thereto; 2) the buildings as shown on such plans or any amendments thereto are destroyed, removed or otherwise thereafter cease to exist on the site at 38 India Street, Portland, Maine for a period of one year or more.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed this \_\_\_ day of May, 2006.

**CITY OF PORTLAND**

By: \_\_\_\_\_  
Joseph E. Gray, Jr.  
City Manager

PME I, LIMITED PARTNERSHIP  
By: PMEGP, its General Partner

By: \_\_\_\_\_  
Print: \_\_\_\_\_  
Its: \_\_\_\_\_

- Exhibit A     Encroachment Sketches
- Exhibit B     Approved Site Plan

STATE OF MAINE  
CUMBERLAND, ss.

May \_\_, 2006

PERSONALLY APPEARED the above named Joseph E. Gray, Jr., City Manager of the City of Portland as aforesaid, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of the City of Portland.

Before me,

\_\_\_\_\_  
Notary Public/Attorney at Law  
Print name:  
My commission expires:

STATE OF MAINE  
CUMBERLAND, ss.

May \_\_\_\_, 2006

PERSONALLY APPEARED the above named \_\_\_\_\_ as aforesaid, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said \_\_\_\_\_.

Before me,

\_\_\_\_\_  
Notary Public/Attorney at Law  
Print name:  
My commission expires:



**SEBAGO TECHNICS, INC.**  
 One Chabot Street  
 P.O. Box 1339  
 WESTBROOK, ME 04098-1339

**LETTER OF TRANSMITTAL**  
 14744

Phone (207) 856-0277 FAX (207) 856-2206

TO \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

DATE	5/17/09	JOB NO.	05090
ATTENTION	Sue Hopkins		
RE:	Westin		
HAND DELIVER			

WE ARE SENDING YOU  Attached  Under separate cover via \_\_\_\_\_ the following items:

- Shop drawings     Prints     Plans     Samples     Specifications  
 Copy of letter     Change order     \_\_\_\_\_

COPIES	DATE	NO.	DESCRIPTION
17	5/16/09		Response re Conditions of Approval

THESE ARE TRANSMITTED as checked below:

- For approval     Approved as submitted     Resubmit \_\_\_\_\_ copies for approval  
 For your use     Approved as noted     Submit \_\_\_\_\_ copies for distribution  
 As requested     Returned for corrections     Return \_\_\_\_\_ corrected prints  
 For review and comment     \_\_\_\_\_  
 FOR BIDS DUE \_\_\_\_\_     PRINTS RETURNED AFTER LOAN TO US

REMARKS \_\_\_\_\_

Please contact Dan Riley  
 with any questions  
 Thank you.

COPY TO file

SIGNED: K.B. Stephenson