

DECLARATION OF CONDOMINIUM
FOR THE
321 COMMERCIAL STREET CONDOMINIUM
PORTLAND, CUMBERLAND COUNTY, MAINE

DECLARANT:
J.B. BROWN & SONS

**DECLARATION OF CONDOMINIUM
FOR THE
321 COMMERCIAL STREET CONDOMINIUM**

THIS DECLARATION OF CONDOMINIUM is made as of the ___ day of _____, 201_, by J.B. BROWN & SONS, a Maine corporation, with a business address of 36 Danforth Street, Portland, Maine 04101 (the "Declarant"), for itself, its successors and assigns.

BACKGROUND

Declarant is the owner of that certain real property consisting of a parcel of land situated at or near 321 Commercial Street in Portland, Cumberland County, Maine, and more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Real Estate"). Declarant intends to develop the Real Estate as shown on the Plats and Plans (as hereinafter defined) as a mixed-use condominium to be known as the "321 Commercial Street Condominium". Declarant is recording this Declaration to create a condominium with respect to the Real Estate and the improvements constructed and to be constructed thereon pursuant to the Maine Condominium Act, 33 M.R.S.A. §§ 1601-101, *et seq.* (the "Act"), subject to all the terms and conditions hereof.

WITNESSETH:

NOW, THEREFORE, the Declarant hereby declares and covenants, for itself and its successors and assigns, that the Real Estate and all buildings and improvements now or hereafter constructed thereon are and shall be held, transferred, sold, conveyed, divided, subdivided, used, occupied, improved, and encumbered under and subject to the covenants, restrictions, charges, liabilities, liens, easements and conditions set forth in this Declaration, all of which shall run with the Real Estate and each of the Units (as hereinafter defined), and all buildings and other improvements now or hereafter constructed thereon, as follows:

ARTICLE I - DEFINITIONS; CONSTRUCTION AND INTERPRETATION

1.01 Act Definitions and Section References. Capitalized terms used herein that are defined in the Act shall have the meanings ascribed to them in the Act. Terms that are defined in the Act and that are also defined herein shall have the general meanings ascribed to them in the Act and, in addition, the specific meanings ascribed to them in this Declaration.

1.02 Defined Terms. Supplementing the terms defined in the Act and elsewhere in this Declaration, the following terms, when used herein, shall have the meanings ascribed to them in this Section 1.02:

“Act” - the Maine Condominium Act, 33 M.R.S.A. §§ 1601-101, *et seq.*, as amended from time to time, or any successor statute governing condominiums in the State of Maine.

“Assessments” - amounts levied or assessed by the Association against the Units from time to time, pursuant to this Declaration and the Act, including (without limitation) Assessments for General Common Expenses, Limited Common Expenses (to the extent provided herein), Special Assessments and amounts assessed as a special allocation of Common Expenses pursuant to the Act. The term “Assessments” also includes amounts levied and assessed as fines, late charges, collection costs and attorneys’ fees pursuant to any of the Condominium Documents.

“Association” - the “321 Commercial Street Condominium Owners Association”, which shall be a Maine non-profit corporation and shall be organized on or before the date the first Unit is transferred to a Unit Owner other than Declarant.

“Board” or “Executive Board” - the Executive Board of the Association to be appointed by the Unit Owners pursuant to Article 3 of the Act, this Declaration and the Bylaws.

“Building” - the building to be built on the Real Estate that will contain the Units, as well as certain Common Elements.

“Bylaws” - the Bylaws of the Association as amended from time to time. The Bylaws shall bind the Association and all Unit Owners whether or not they are recorded.

“Common Elements” - the Common Elements of the Condominium, as defined in the Act, this Declaration and on the Plats and Plans.

“Common Expense Liability” - the liability appurtenant to each Unit to pay the share of the Common Expenses and Assessments that is allocated to such Unit under this Declaration and the Act.

“Common Expenses” - either General Common Expenses or Limited Common Expenses, as applicable under the circumstances.

“Condominium” - the condominium created hereby, known as the “321 Commercial Street Condominium”.

“Condominium Documents” - this Declaration, the Plats and Plans, the Bylaws, and the Regulations (each as the same may be amended from time to time) or whichever of them apply to a particular circumstance, as the context requires.

“Declarant” - the Declarant originally named herein and any successor to Special Declarant Rights (as hereinafter defined).

“Declaration” - this Declaration together with the Plats and Plans, as amended from time to time. The Plats and Plans are a part of this Declaration, and any reference to this Declaration shall be deemed to include reference to any applicable part of the Plats and Plans, as they may be amended from time to time. Words such as “herein”, “hereof” and “hereto” refer to this Declaration in its entirety unless the context otherwise clearly requires.

“Director” - a member of the Executive Board.

“Executive Board” or “Board” - the Executive Board of the Association to be appointed by the Unit Owners pursuant to Article 3 of the Act, this Declaration and the Bylaws.

“General Common Expenses” - the actual and estimated expenses incurred from time to time for the general benefit of the Association and all Unit Owners, including but not limited to (i) general overhead, administrative and operating expenses of the Association including common utility expenses, if any, (ii) taxes or other governmental charges levied or assessed against the Association or its property under any federal, state, local or municipal tax law, regulation or ordinance, (iii) premiums for insurance and bonds carried by the Association, (iv) the costs of maintaining, managing, insuring and repairing the Common Elements, including the Limited Common Elements, and making any necessary replacements thereto or thereof (except to the extent this Declaration specifies that such costs are the responsibility of one or more of the Unit Owners), (v) amounts set aside or budgeted to be set aside as operating and capital reserves, (vi) expenses of prosecuting or defending any litigation or other proceedings by, against or affecting the Association, the Unit Owners, the Real Estate or any of the Units which the Association may bring, defend or otherwise participate in pursuant to this Declaration, including (without limitation) the expenses of enforcing or attempting to enforce the Condominium Documents, (vii) the fees or other compensation payable to any manager or management company that may be engaged by the Association to assist the Association in managing, operating or administering the Association or the Common Elements, (viii) the compensation, benefits and other expense of employees of the Association, and (ix) all other expenses and liabilities incurred or that may be incurred by the Association in carrying out or performing its rights, duties and functions, other than those expenses (if any) associated with the maintenance, repair or replacement of Limited Common Elements that are required to be separately accounted for and charged as Limited Common Expenses pursuant to this Declaration.

“HVAC Systems” – the heating, ventilating, air-conditioning systems and the external mechanical equipment for the heating, ventilating and air-conditioning systems.

“Limited Common Element” - a part of the Common Elements that is allocated for the exclusive use or benefit of one or more, but fewer than all, of the Units, pursuant to the Act or this Declaration.

“Limited Common Expenses” - the expenses of maintaining, repairing, insuring and/or replacing any Limited Common Element, to the extent this Declaration specifies that such expenses will be segregated from General Common Expenses and charged as Limited Common Expenses.

“Member”- a Unit Owner in his, her or its capacity as a member of the Association.

“Owner” - the owner(s) of a Unit (including the Declarant with respect to Units that it owns) other than a Person holding such title solely as security for an obligation.

“Percentage Interest” - the undivided percentage interest in Common Elements appurtenant to each Unit, as shown on Exhibit “D” attached hereto and made a part hereof. A Unit’s Percentage Interest is the same as the percentage of Common Expense Liability allocated to that Unit. The Percentage Interest for each Unit is calculated based on the following formula: a ratio of the percentage of the approximate gross floor area square footage of one Unit compared to the approximate gross floor area square footage of all Units (i.e., a 1,000 square foot Unit out of a total of 100,000 square feet of units equals a 1% Percentage Interest allocated to that Unit). If any Unit should be added to or withdrawn from the Condominium, then the Percentage Interest of each Unit shall be recalculated based on the foregoing formula. Additionally, the Percentage Interests shown on Exhibit “D” may be revised by the Declarant subsequent to construction based upon as-built measurements, provided that in the absence of manifest error in such revisions and/or measurements, no Unit Owner shall have the right to compel or require as-built measurements and all such determinations of Percentage Interest by the Declarant shall be conclusive upon all Unit Owners.

“Person” - a natural person, corporation, limited liability company, partnership, trust or any other legal entity, existing by statute, contract or common law.

“Plats and Plans” - the site plans depicting the Condominium and the development of the Real Estate, and the buildings and improvements constructed or proposed to be constructed thereon pursuant to Section 1602-109 of the Act, attached hereto as, or identified on, Exhibit “C” attached hereto and made a part hereof, as they may be amended from time to time.

“Real Estate” - the land described on Exhibit “A” attached hereto and made a part hereof and on the Plats, together with all improvements now or hereafter constructed thereon, and all easements, rights and privileges appurtenant thereto, except for any such easements, rights and privileges appurtenant thereto as may be specifically excluded therefrom in said Exhibit A.

“Regulations” - the rules, regulations and policies adopted by the Executive Board from time to time regulating the Unit Owners’ use and enjoyment of the Common Elements and the Units.

“Special Assessment” - an Assessment levied by the Executive Board, in excess of the regular Common Expense Assessment, against some or all of the Units for any purpose permitted by this Declaration, including without limitation (i) an Assessment to pay the costs of unanticipated repairs to or replacement of any Common Elements, and (ii) an assessment levied against one or more (but less than all) Units to recover the costs of repairing damages to the Common Elements caused by the resident(s) or occupants of such Units.

“Special Declarant Rights” - has the meaning given to such term in the Act and includes, without limitation, any rights reserved by Declarant hereunder to (i) complete the improvements shown on the Plats and Plans, (ii) maintain offices, signs and models, (iii) use easements through the Common Elements for the purpose of making improvements within the Real Estate, (iv) convert a Unit into Common Elements, or into two (2) or more Units and Common Elements, or change the boundary lines between Units and/or between Units and Common Elements, and (v) exercise any other rights of the Declarant constituting “Special Declarant Rights” under the Act, whether or not expressly designated as such in this Declaration.

“Sub-Association” - the unit owners’ association of a Sub-Condominium. A Sub-Association shall be considered to be the agent of the Sub-Unit Owners within any Sub-Condominium with respect to matters under this Declaration and the Association and the other Unit Owners are authorized to deal with such Sub-Association as if it were the Unit Owner of the Unit in which the Sub-Condominium is created.

“Stormwater Management Plan” - the Stormwater Management and Stormwater Pollution Prevention Plans dated October 22, 2012, updated January 2, 2013 and the plans associated therewith approved by the City of Portland, and when amended or supplemented, the Stormwater Management Plan, as amended or supplemented.

“Sub-Association Board” - the Executive Board of a Sub-Association.

“Sub-Condominium” - any Unit of this Condominium that is itself declared a condominium. It is anticipated that the Declarant or a subsequent Owner of the Residence Unit may, in its sole discretion, declare a Sub-Condominium of the Residence Unit.

“Sub-Unit” – a Unit in a Sub-Condominium.

“Sub-Unit Owner” – the owner of a Sub-Unit.

“Supplemental Declaration” - a supplement or amendment to this Declaration recorded pursuant to the Act and Article X of this Declaration by the Declarant for the purpose of exercising the Declarant’s right to subdivide Units owned by the Declarant, or for any other purpose in order for the Declarant to exercise any of the rights described in Section 1601-103(25), Section 1602-105(a)(7) and (8), Section 1602-109(f), Section 1602-110, Section 1602-108 and Section 1602-113 of the Act, to the extent such rights have been reserved hereby.

“TDM Plan” – the Transportation Demand Management plan as set forth in the October 22, 2012 plan submitted to the City and the response to comments letter prepared by John Adams dated January 9, 2013, which includes a Post-Development Monitoring Phase, and when amended or supplemented, the TDM Plan, as amended or supplemented.

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“Unit” - a physical portion of the Condominium designated for separate ownership or occupancy, as described on the Plats and Plans, together with the Unit’s appurtenant Percentage Interest in Common Elements, Limited Common Elements, voting rights and Common Expense Liability.

“Unit Owner” - the owner(s) of a Unit (including the Declarant with respect to Units that it owns) other than a Person holding such title solely as security for an obligation. If a Sub-Condominium is created within a Unit as permitted under this Declaration, the Sub-Association for that Sub-Condominium may be treated as the Unit Owner of the Unit for all purposes under this Declaration and the Bylaws.

1.03 Number and Gender. Wherever any provision of this Declaration refers to the singular, it shall be deemed to include the plural whenever necessary or appropriate to give effect to such provision; and the use of any gender includes any other gender.

1.04 Construction. If there is a conflict or inconsistency between this Declaration and the Bylaws, this Declaration shall control (unless contrary to the Act). If there is a conflict or inconsistency between the Declaration or the Bylaws, on the one hand, and the Regulations, on the other hand, the Declaration or the Bylaws, as applicable, shall control (unless contrary to the Act). If there is any conflict between the Condominium Documents and the Act, the Condominium Documents shall control to the maximum extent allowed by law.

ARTICLE II - SUBMISSION OF REAL ESTATE
TO ACT; UNIT BOUNDARIES; APPLICABILITY OF DECLARATION

2.01 Name and Location of Condominium. The Condominium shall be known as the “321 Commercial Street Condominium”. The Condominium is located in Portland, Cumberland County, Maine. The Condominium consists of the Real Estate, together with the improvements constructed and to be constructed thereon, subject to the Act and the terms and conditions of this Declaration.

2.02 Submission to Act; Applicability of Condominium Documents. The Declarant hereby creates a condominium with respect to the Real Estate pursuant to the Act, subject to this Declaration. All present and future Unit Owners, and their respective tenants, subtenants, family members, invitees, agents, servants, employees and any other Persons occupying or using any Unit or the Common Elements, shall be bound by the Condominium Documents. Any mortgage or other lien encumbering a Unit that is recorded after the recording of this Declaration shall be under and subject to this Declaration.

All present and future Unit Owners, Sub-Unit Owners, tenants and occupants of Units shall be subject to and shall comply with the provisions of the Act, this Declaration, the Bylaws, and the Regulations, as these instruments and statutes may be amended and/or restated from time to time. The acceptance of a deed or conveyance, or the entering into of a lease, or the entering into occupancy of any Unit shall constitute an acceptance by such owner, tenant or occupant of the provisions of such instruments as they may from time to time be amended and/or restated. The provisions contained in such instruments shall be covenants running with the land and shall bind any person having at any time any interest or estate in such Unit, as though such provisions were recited and fully stipulated in each deed, conveyance or lease thereof.

2.03 Easements, Etc. The Condominium is on the date hereof subject to and benefitted by those recorded easements and other matters of record identified on Exhibits "A" and/or "B" attached hereto and made a part hereof, and to those other easements, notes, conditions and restrictions as are set forth herein, on the Plats and Plans, and on the approved and recorded subdivision plan of the Real Estate.

ARTICLE III - THE UNITS

3.01 Number of Units. The Condominium consists of three (3) Units comprising: (i) the Hotel Unit; (ii) the Retail Unit, and (iii) the Residence Unit, which Units are hereby created by the Declarant by the recordation of this Declaration.

3.02 Unit Boundaries. The boundaries of each Unit are shown on the Plats and Plans and generally consist of the space(s) within the following boundaries:

(a) Upper and Lower Horizontal Boundaries. The upper and lower boundaries of each Unit shall be the following, extended to an intersection with the lateral boundaries of such Unit:

(i) The upper boundary shall be the ceiling of the Unit (as further set forth in Section 1602-102(1) of the Act); and

(ii) The lower boundary shall be the floor of the Unit (as further set forth in Section 1602-102(1) of the Act).

(b) Lateral Boundaries. The lateral or vertical boundaries shall be (i) the perimeter walls of the Unit (as further set forth in Section 1602-102(1) of the Act), extended to intersections with each other, and with the upper and lower boundaries as described in Section 3.02(a) above, which do not separate the Unit from any other Unit, and (ii) the center line of party walls which separate the Unit from any other Unit(s), and (iii) the exterior surface of windows and doors that enclose such space and separate the interior space of the Unit from any adjoining Unit or Common Elements or any space outside of the Building, including such windows and doors, window and door frames and window and door hardware.

(c) Included Spaces. Each Unit shall include the items within the boundaries as described in Sections 1602-102(1) and (3) of the Act and shall have the benefit of the use of all Limited Common Elements described in Section 1602-102 of the Act, or designated on the Plats and Plans or herein as being allocated to such Unit.

3.03 Contents of Unit; Noncontiguous Parts of a Unit.

(a) Each Unit shall include all spaces and improvements lying within its boundaries described in Section 3.02 hereof and on the Plats and Plans, including (i) all walls, partitions and dividers wholly within such boundary lines (but excluding any wires, ducts, cables, conduits or other facilities contained within such walls or partitions that do not serve that Unit exclusively), (ii) all wall board, plaster board, paneling, wallpaper, paint, tile, carpeting, wood flooring and other materials constituting the finished surfaces of walls, floors or ceilings, (iii) all plumbing and plumbing fixtures, kitchen equipment, exhaust fans, and all lighting fixtures, electrical outlets and receptacles and wiring systems that are located wholly within the Unit boundaries to the extent they serve only that Unit, as well as the heating and cooling systems that serve that Unit exclusively, and the grilles and registers covering air ducts, (iv) all doors and passages located wholly within the Unit boundaries or that form such boundaries, and all windows and window glass, frames, assemblies, handles, locks and hardware associated therewith. In addition, each Unit includes the following, even though located partly or entirely outside the boundaries of the Unit as described in Section 3.02 hereof: (1) any heat pump, heating/ventilation/air-conditioning ("HVAC") unit, hot water tank or similar appliance or equipment, and its accessory components, wiring, plumbing, ductwork and piping, that serve only that Unit, and (2) the spaces (and improvements and facilities within the spaces) containing electrical switches, wiring, pipes, ducts, conduits, smoke detector or security systems and communications, telephone, television, computer and electrical receptacles and boxes serving that Unit exclusively, the surface of the foregoing being the boundaries of such Unit whether or not such spaces are contiguous.

(b) Unless specifically included by other provisions hereof, the following are excluded from each Unit: (i) the spaces and improvements lying outside the Unit boundaries described in Section 3.02 hereof, (ii) all chutes, pipes, flues, ducts, wires, conduits, plumbing, electrical and other facilities running through, along or within any interior wall or partition, or otherwise within the space(s) defined by the boundaries

described in Section 3.02, that serve other Units and/or the Common Elements, and (iii) any foundations, structural supports, structural columns or any other parts of systems, services or utilities serving multiple Units or other parts of the Real Estate.

3.04 Maintenance of Units. Each Unit Owner is solely responsible for the maintenance, repair or replacement of his, her or its Unit, the improvements within and components and equipment that are part of the Unit, and all contents thereof, whether real property, personal property or mixed including, but not limited to, all appliances, doors, windows, interior partitions and walls, HVAC ~~Systems~~, hot water heater, heat pump, ducts, lighting fixtures, floor coverings, wall coverings, wall board and plumbing, kitchen and bathroom fixtures and appliances.

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3.05 Identifying Names. The identifying names of the Units are as shown on the Plats and Plans and on Exhibit "D" attached hereto and made a part hereof.

3.06 Ownership Interest in Common Elements; Conveyance of Unit. In addition to owning his, her or its Unit, each Unit Owner shall also own that Unit's undivided Percentage Interest in Common Elements and the interest in Limited Common Elements allocated to such Unit. Except as otherwise provided by the Act, each Unit, together with its undivided interest in Common Elements and allocated Limited Common Elements, constitutes a separate parcel of real estate for all purposes. Conveyance of a Unit automatically includes the Percentage Interest in Common Elements, voting rights, Common Expense Liability and the right to any Limited Common Elements allocated to that Unit hereunder. Neither membership in the Association nor the Percentage Interest in Common Elements and the Limited Common Elements allocated to a Unit may be conveyed, encumbered, assigned or otherwise transferred in any manner except by conveyance of the Unit to which such rights are appurtenant. Any other transfer or attempted transfer thereof by a Unit Owner is void.

3.07 Subdivision of the Units.

(a) The Hotel Unit Owner shall have the right, without the consent or approval of the Executive Board or the other Unit Owners, to subdivide the Hotel Unit into two or more Units and associated Common Elements or Limited Common Elements. In the event of such subdivision, the Hotel Unit Owner shall, at its expense, execute and record an amendment to this Declaration, including an amendment to the Plats and Plans, as necessary. In connection therewith, the Hotel Unit Owner shall allocate the Percentage Interest, Common Expense Liability, Limited Common Elements, voting rights (as set forth in Section 5.03(a) hereof) and right to designate a Director (as set forth in Section 5.04(b) hereof) allocable to the Hotel Unit (provided that the aggregate Percentage Interest in Common Elements and Common Expense Liability appurtenant to the Units resulting from the subdivision is not less than the Percentage Interest and Common Expense Liability appurtenant to the Hotel Unit before such subdivision; and provided that the voting rights and right to designate a Director appurtenant to the Units resulting from the subdivision is not more than the

voting rights and right to designate a Director appurtenant to the Hotel Unit before such subdivision). Such reallocation shall be made by the amendment to the Declaration recorded by the Hotel Unit Owner pursuant to this Section.

(b) The Retail Unit Owner shall have the right, without the consent or approval of the Executive Board or the other Unit Owners, to subdivide the Retail Unit into two or more Units and associated Common Elements or Limited Common Elements. In the event of such subdivision, the Retail Unit Owner shall, at its expense, execute and record an amendment to this Declaration, including an amendment to the Plats and Plans, as necessary. In connection therewith, the Retail Unit Owner shall allocate the Percentage Interest, Common Expense Liability, Limited Common Elements, voting rights (as set forth in Section 5.03(a) hereof) and right to designate a Director (as set forth in Section 5.04(b) hereof) allocable to the Retail Unit (provided that the aggregate Percentage Interest in Common Elements and Common Expense Liability appurtenant to the Units resulting from the subdivision is not less than the Percentage Interest and Common Expense Liability appurtenant to the Retail Unit before such subdivision; and provided that the voting rights and right to designate a Director appurtenant to the Units resulting from the subdivision is not more than the voting rights and right to designate a Director appurtenant to the Retail Unit before such subdivision). Such reallocation shall be made by the amendment to the Declaration recorded by the Retail Unit Owner pursuant to this Section.

(c) A Unit Owner other than the Hotel Unit Owner or the Retail Unit Owner may not subdivide Units without the approval of the Executive Board, which may be granted or withheld in its sole and unfettered discretion. Provided, however, that this limitation shall not be deemed to prohibit or limit the right of the Residence Unit Owner to declare the Residence Unit a Sub-Condominium comprised of not more than twelve (12) Sub-Units as permitted under this Declaration.

3.08 Relocation of Boundaries Between Adjoining Units. Any Unit Owner shall have the right, without the consent of the Executive Board or the other Unit Owners, to relocate boundaries between adjoining Units that it owns. If a Unit Owner does so, the Unit Owner shall execute and record, at its expense, an amendment to this Declaration and an amendment to the Plats and Plans. In connection therewith, the Unit Owner shall reallocate the Percentage Interest, Common Expense Liability and Limited Common Elements allocable to those Units (provided that the aggregate Percentage Interest in Common Elements and Common Expense Liability after such relocation is not less than the sum of the Percentage Interests and Common Expense Liability appurtenant to the affected Units before such relocation). Such reallocation shall be made by the amendment to the Declaration recorded by the Unit Owner pursuant to this Section.

3.09 Sub-Condominiums. No Unit Owner other than the Owner of the Residence Unit and the Owner of the Hotel Unit may declare such Unit Owner's Unit to be a Sub-Condominium. It is anticipated that the Declarant, or a successor to the Declarant, will initially create a Sub-Condominium of the Residence Unit to comprise not more than twelve (12) Sub-Units (hereinafter referred to as the "Residence Unit Sub-

Condominium”) provided, however, that the Declarant, or any successor to the Declarant, shall not be obligated to do so.

ARTICLE IV - DESCRIPTION OF COMMON ELEMENTS AND LIMITED COMMON ELEMENTS

4.01 Common Elements. The Common Elements consist of all parts of the Real Estate and improvements thereon other than the Units and those improvements or facilities (if any) conveyed to or owned by any public or private utilities or other entities furnishing utility service to the Condominium. Without limiting the generality of the preceding, unless otherwise provided in this Declaration or designated on the Plat and Plans, Common Elements include, without limitation, any and all exterior portions of the Building, including the roof, structural components and common utility systems of or serving the Building and not included within the boundaries of Units, any and all portions of the Real Estate that are dedicated to or made available for public access, and otherwise all portions of the Real Estate not included within the boundaries of the Units themselves. The Common Elements shall also include the Stormwater Management Plan, the TDM Plan, the HVAC Systems, the Foundry Lane access area, solid waste collection for the Real Estate, and the maintenance, inspection and reporting requirements as set forth in subdivision approval for the Real Estate by the City of Portland Planning Board dated January 22, 2013, and when amended or supplemented, the subdivision approval, as amended or supplemented.

4.02 Limited Common Elements-Generally. In addition to Limited Common Elements elsewhere described in this Declaration, including on the Plats and Plans, and/or those designated as Limited Common Elements pursuant to the Act, the following are Limited Common Elements, assigned and allocated to the Units as provided below:

(a) Pipes, ducts, wires, cables, conduits or other installations for services and utilities located outside the boundaries of, but serving only a particular Unit, are Limited Common Elements allocated only to that Unit (except for such that are part of the Unit as defined in Section 3.03(a)).

(b) Individual utility meters located outside the boundaries of a Unit but serving only a single Unit are Limited Common Elements allocated only to such Unit, unless owned by the applicable utility service provider.

(a) Limited Common Elements of the type described in this Section 4.02 shall automatically be allocated as Limited Common Elements for the exclusive use and benefits of the Unit(s) they are designed and constructed to serve, or to which they are allocated as provided herein, without any further action or document required, whether or not such Limited Common Elements are expressly so designated on the Plats and Plans.

4.03 Other Limited Common Elements.

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(a) Retail Patio Area. The area designated "Patio Retail Unit LCE" on the Plats and Plans shall be allocated as a Limited Common Element appurtenant to the Retail Unit. The owner of the Retail Unit shall be responsible for obtaining any and all City of Portland and State of Maine permits and approvals that may be necessary for its use of said Retail Patio Area.

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(b) Sign Areas. The areas located on the exterior façade of the Building designated "Hotel Unit Signage" and "Retail Unit Signage" as shown on the Plats and Plans shall be allocated as Limited Common Elements appurtenant to the Hotel Unit and the Retail Unit, respectively, for the limited purpose of installing signage in compliance with applicable ordinances and regulations relating to the hotel, restaurant, and retail businesses occupying said Units. All signage installed in the Retail Unit Signage area shall be subject to prior review by and written approval of the Owner of the Hotel Unit, which shall not be unreasonably withheld, conditioned or delayed.

(c) Porte-Cochere Area. The open, covered area on the westerly side of the Hotel Unit that is designated "Porte-Cochere Hotel Unit LCE" on the Plat and Plans shall be allocated as a Limited Common Element appurtenant to the Hotel Unit, provided, however, that the Retail Unit and the Residence Unit shall have the right to cross and re-cross through the Porte-Cochere Area for purposes of pedestrian and vehicular access from Commercial Street to the rear of the Building and to any parking area located on land adjacent to the Condominium on which there may be located any parking facility utilized by any Unit Owner or Sub-Unit Owner, as the case may be, in accordance with reasonable rules and regulations that may be established by the Hotel Unit Owner.

4.04 On-Site Parking. The paved areas of the Real Estate shall be leased to J.B. Brown & Sons, a Maine corporation and owner or lessee of nearby or adjacent parking lots (the "Parking Space Landlord") pursuant to a long term lease with the Association at a nominal annual fee (the "Surface Area Lease"). The Parking Space Landlord shall lease at market rates to the Hotel Unit Owner not fewer than twenty-four (24) valet parking spaces located on the Real Estate. The Parking Space Landlord may also, based on availability, lease at market rates, parking spaces to the other Unit Owners. Pursuant to the terms of the Surface Area Lease, the Parking Space Landlord may relocate said parking spaces and driveways on the Real Estate from time to time in its sole discretion so long as it maintains the ingress and egress access right and number of parking spaces leased on site.

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4.05 Off-Site Parking. Pursuant to one or more parking leases or subleases with the Parking Space Landlord, Memoranda of which shall be recorded in the Cumberland County Registry of Deeds subsequent to the recording of this Declaration (collectively herein called the "Parking Agreement") the Declarant has the right, as appurtenant to and for the benefit of the Unit Owners at fair market rental rates

to perpetually use eighty-six (86) surface parking spaces on adjacent or nearby parking lots owned or leased by the Parking Space Landlord, and which further provides that the Parking Space Landlord may relocate said parking spaces from time to time so long as the distance from the Building remains substantially the same.

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4.06 Use and Enjoyment of Common Elements. Subject to Regulations in effect from time to time, the Common Elements (except the Limited Common Elements) shall be for the exclusive use, enjoyment and benefit of the Unit Owners, their tenants and members of their households and invitees (including without limitation the registered guests of the Hotel Unit Owner); provided, however, that the Association may suspend the right of any Unit Owner to use Common Elements that are not necessary for the use of the Unit as contemplated by this Declaration if such Unit Owner is delinquent in the payment of Assessments or in material violation of the Condominium Documents after notice and opportunity to cure or contest as provided herein or in the Bylaws. The Limited Common Elements shall be for the exclusive use, enjoyment and benefit of the Unit Owners owning the Unit(s) to which such Limited Common Elements are allocated hereunder and their respective tenants and members of their households and invitees (including without limitation the registered guests of the Hotel Unit Owner). In addition to the use of common facilities for waste disposal and recycling, the Retail Unit Owner shall have the right to place in the Service Area (as defined in Section 4.09(b)(iii) below) equipment and containers for recycling and reuse of bottles and containers for beverages and one or more grease and/or food waste containers in accordance with such reasonable rules and regulations that may be established by the Hotel Unit Owner consistent with usual and customary practice in the industry and in properties of this type.

4.07 Alteration of Common Elements. Except as otherwise set forth herein, no Unit Owner (other than the Declarant) may alter the appearance or character of any Common Elements, or perform any construction or work on any Common Elements. The foregoing does not limit the power of the Association to alter the appearance or character of the Common Elements, in accordance with the terms of the Act, this Declaration, and the Bylaws. Until the Declarant has completed all Units and Common Elements, the Declarant reserves the right to modify the appearance and structural character of the Common Elements, other than Limited Common Elements allocated to specific Units, from time to time, without the permission of the Executive Board.

4.08 Declarant's Rights and Obligations With Respect to Common Elements.

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(a) Declarant reserves the right to construct all improvements planned or contemplated for construction within the Condominium, including, without limitation, any interior streets or drives, parking areas, sidewalks, curbing, street lighting, utilities, storm water management facilities, paths and all other improvements shown on the Plats and Plans, the Building and all improvements and Common Elements therein,

and Units planned for construction as depicted either generally or specifically on the Plats and Plans or herein.

(b) No provision hereof shall require the Declarant to construct or provide to the Association any facilities or improvements not shown on the Plats and Plans.

4.09 Maintenance, Repair and Replacement of Common Elements.

(a) Except as otherwise set forth herein, the Association shall be responsible for the maintenance, repair and replacement of the Common Elements, including the Limited Common Elements and any and all portions of the Real Estate that are dedicated to or made available for public access, and shall include in its budget (and, if necessary, amend the then-current budget and increase the then-current Common Expense Assessment) such amounts as necessary to pay the estimated costs of maintaining, repairing and insuring the same. In addition, the Association shall be responsible for trash removal from the Real Estate, the lighting fixtures located on any Common Elements, including the Limited Common Elements, snow removal on the public sidewalks abutting the Real Estate, and the maintenance, including annual inspections and reporting requirements, of the HVAC Systems, the Stormwater Management Plan and the TDM Plan. It is specifically noted that the City of Portland will not provide trash removal services to the Condominium or to any Unit Owner, as set forth in the terms of the Site Plan and Subdivision approvals of the Condominium.

Deleted: of any on-site stormwater management facilities.

(b) Notwithstanding the foregoing or anything to the contrary otherwise set forth herein, in the Bylaws or in the Act:

(i) the Retail Unit Owner shall be responsible for, and shall pay all costs and expenses relating to, the maintenance, repair and replacement of the Patio Retail Unit LCE (including any fence or other improvements, furniture or fixtures located within or upon the boundary thereof);

(ii) the Hotel Unit Owner shall have the exclusive right but not the obligation, at its election to be made by notice in writing given to the Association (as it may be amended by a supplemental notice by the Hotel Unit Owner to the Association), to undertake all such maintenance and repair of such Common Elements and Limited Common Elements, including the Building exterior, the exterior landscaped areas and any parking areas that are Common Elements available for use by all Unit Owners, as shall be provided by the Hotel Unit Owner in such notice, at the Hotel Unit Owner's sole cost and expense and not as an Association or Unit Owners' expense (however, notwithstanding the foregoing, the Hotel Unit Owner may allocate and charge to the Retail Unit Owner and to the Residence Unit Sub-Association -that percentage of the actual cost of snow removal and salting/sanding and sweeping of the sidewalks and paved areas including any such parking areas that are Common Elements available for use by all Unit Owners), that is equal to their percentage of Common Expense Liability. Such right shall include the right to alter the appearance of

such Common Elements so long as such alteration is consistent in quality and style with the appearance being altered and is not in violation of any permits and approvals or any other applicable local, State or federal ordinances and regulations applicable to the Condominium; such arrangement to continue until such time as the Hotel Unit Owner provides the Association with not less than three (3) months' notice of the Hotel Unit Owner's decision to terminate such election at which time such matters shall thereafter be undertaken by the Association in accordance with the terms and provisions hereof, provided, however, that this election shall not be deemed to require the Hotel Unit Owner to assume responsibility for undertaking any capital repairs and improvements to the Condominium such as, for example, repaving of exterior areas or the replacement of the roof of the Building or to pay any costs and expenses relating thereto beyond its Percentage Interest provided herein, which capital repairs and improvements shall remain the responsibility of the Association in accordance with the terms and provisions hereof; and

(iii) the Hotel Unit Owner shall have the exclusive right but not the obligation, at its election to be made by notice in writing given to the Association (as it may be amended by an supplemental notice by the Hotel Unit Owner to the Association) in accordance with reasonable business practices and at a reasonable cost to purchase and replace such dumpsters, containers, compactors and the like as are usual and customary for buildings used for the purposes for which the Units are to be used as contemplated by this Declaration (collectively, the "Waste Facilities") for the handling, disposal, and/or recycling of trash, grease, and other waste produced from the Units ("Waste"), which Waste Facilities shall be located in the Refuse Enclosure as shown on the Plats and Plans (the "Service Area"). Such right shall include the right to enter reasonable contracts with one or more trash handlers and to pay the reasonable costs for the removal and disposal or recycling of Waste, and to bill the Retail and Residence Unit for their share of the actual costs thereof in accordance with such allocation as shall be reasonably determined by the Hotel Unit Owner in good faith on a monthly basis based upon the amount and type of Waste produced by said Units, which shares shall be paid by the Retail Unit and Residence Unit Owners within thirty (30) days of receipt of the bills therefor, such arrangement to continue until such time as the Hotel Unit Owner provides the Association with not less than one (1) year's notice of the Hotel Unit Owner's decision to terminate such election at which time such matters shall thereafter be undertaken by the Association in accordance with the terms and provisions hereof. The Retail Unit Owner and the Residence Unit Owner (or the Sub-Association of Residence Sub-Unit Owners) shall have the right to challenge such allocation, and if the dispute cannot be resolved, to demand dispute resolution for Covered Claims under Article XI of this Declaration.

4.10 Conveyance and Encumbrance by the Association. Except as hereinafter expressly provided, the Association shall not convey, mortgage, pledge or encumber the Common Elements without the approval of (i) Members entitled to cast one hundred percent (100%) of the votes that all Members are entitled to cast, including one hundred percent (100%) of the votes allocated to Units not owned by the Declarant,

and (ii) the Declarant, during the Declarant Control Period. Proceeds of any such conveyance, mortgage, pledge or encumbrance shall be assets of the Association.

4.11 Demolition. If any Common Element (other than the Common Elements that are integral to the structural or mechanical integrity of the Building as a complete architectural unit) is determined by the Executive Board to be obsolete or in such state of disrepair so that it is not economically feasible or desirable to repair or replace the same, the Executive Board may call a meeting for the purpose of determining whether such Common Element should be demolished, removed and/or replaced. The determination thereof shall be made by the vote of Unit Owners entitled to cast one hundred percent (100%) of the votes that all Unit Owners are entitled to cast, including one hundred percent (100%) of the votes allocated to Units not owned by the Declarant. The costs of such demolition, removal, and/or replacement shall be assessed as a General Common Expense.

4.12 Disposition of Common Elements Upon Termination. Upon any termination of the Condominium, the Common Elements shall be disposed of in the manner described in Section 1602-118 of the Act.

4.13 Warranty. **DECLARANT MAKES NO WARRANTIES, EXPRESS OR IMPLIED, OTHER THAN THOSE PROVIDED BY SECTIONS 1604-112 AND 1604-113 OF THE ACT (AS SUCH WARRANTIES ARE AFFECTED BY THE TERMS OF THE LIMITED WARRANTY CONTAINED IN THE AGREEMENT OF SALE ENTERED INTO BETWEEN DECLARANT AND EACH UNIT OWNER) AND SUCH WARRANTIES ARE GIVEN IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, OR ANY IMPLIED WARRANTY OF HABITABILITY. NOTWITHSTANDING THE FOREGOING, WITH RESPECT TO THE HOTEL UNIT AND THE RESTAURANT UNIT, DECLARANT EXCLUDES ALL IMPLIED WARRANTIES OF QUALITY INCLUDING BUT NOT LIMITED TO THOSE SET FORTH IN SECTION 1604-113, SUCH THAT THE ONLY WARRANTIES ARE THOSE EXPRESS WARRANTIES MADE BY THE DECLARANT IN ACCORDANCE WITH SECTION 1604-112.**

ARTICLE V - ASSOCIATION; MEMBERSHIP; VOTING; RIGHTS OF MORTGAGEES

5.01 The Association; Powers. The Association shall be an association of and among all Unit Owners and shall have all duties, rights, privileges, functions and responsibilities set forth in the Act and the Condominium Documents, including, without limitation all powers enumerated in Section 1603-102 of the Act, and the right and power to do all other things necessary or expedient in order to carry out all such powers, rights, privileges, duties and functions of the Association, and all powers incidental thereto.

5.02 Membership. Every Unit Owner is a Member of the Association. If two (2) or more Persons own a Unit, each of them is a Member of the Association, but

regardless of the number of Unit Owners, each Unit shall be allocated only that number of votes as are specified herein. In the event that two (2) or more Persons own a Unit, one (1) such Person may cast the applicable vote for that Unit on behalf of all the Persons owning that Unit. Membership in the Association is appurtenant to and cannot be severed from ownership of a Unit, and transfers automatically upon conveyance of title to a Unit, and by no other means. No Unit Owner may disclaim, decline, resign from or transfer membership in the Association (except by conveyance of his Unit).

5.03 Voting Rights of Unit Owners; Rights of Mortgagees.

(a) There shall be one (1) vote in the Association allocated to the Retail Unit, one (1) vote in the Association allocated to the Hotel Unit, and one (1) vote in the Association allocated to the Residence Unit. The Executive Board shall have the right to suspend the voting rights of any Unit Owner who is not in good standing. A Unit Owner is not in good standing if (i) the Unit Owner has not paid all Assessments or installments thereof levied against the Unit Owner or against his Units and such sums are overdue by more than thirty (30) days and are not paid in full at least five (5) days before the date of any meeting at which Members are entitled to vote, or (ii) the Unit Owner is otherwise in material violation of this Declaration or any of the other Condominium Documents and has not cured such violation to the reasonable satisfaction of the Executive Board at least five (5) days prior to the date set for any meeting of Members and so long as the Unit Owner is not contesting in good faith the matter that is the subject of the alleged material violation in accordance with the procedures outlined in this Declaration or in the Bylaws.

(b) Any first mortgagee of a Unit may file with the Association a request identifying itself as a first mortgage holder and identifying the Unit encumbered by its mortgage and the Unit Owner's name and address, by certified or registered first-class mail, return receipt requested, or by delivery in hand securing receipt therefore, and thereby shall become an "Eligible Mortgage Holder." The Secretary of the Association shall maintain such information. After the filing of a request by the Eligible Mortgage Holder, the Association shall cause notice to be sent to the Eligible Mortgage Holder as provided under Section 1602-119 of the Act, and the Eligible Mortgage Holder shall have the voting and other rights provided under Section 1602-119 of the Act.

(c) In the event the Association adopts any right of first refusal or purchase option arising in the event of the sale or transfer of a Unit, it shall not impair the right of an institutional mortgage lender to foreclose its mortgage, to accept a deed in lieu of foreclosure after written notice of default, which deed identifies the circumstances classifying it as such a deed, or to dispose of, advertise, sell or lease a unit acquired under the procedures set forth above, and any such foreclosure or deed shall convey title free and clear of any such right of first refusal or purchase option with respect to such conveyance, but only with respect to such conveyance.

5.04 Appointment of Board Members.

(a) Subject to the other provisions of this Declaration and the Bylaws, the Board shall have the full power and authority to act on behalf of the Association, and except as otherwise expressly required by the Condominium Documents or the Act, actions and decisions of the Board need not be submitted to or approved by the Members.

(b) Upon the creation of the Condominium by the recordation of this Declaration, the Owner of the Hotel Unit shall appoint one (1) Director, the Declarant as Owner of the Retail Unit shall appoint one (1) Director, and the Declarant as Owner of the Residence Unit shall appoint one (1) Director. Upon the conveyance of any such Unit, the Director appointed by the Declarant for such Unit shall resign and the subsequent Owner of such Unit shall appoint a replacement Director provided, however, that the Association of any Sub-Condominium created within the Residence Unit or the Hotel Unit shall have the right to appoint such Director on behalf of the owners of Sub-Units in and such Sub-Condominium.

(c) The Board of the Sub-Association of any Unit that is a Sub-Condominium may act on behalf of the Sub-Unit Owners in connection with the appointment and removal of Directors of the Association.

5.05 Number and Qualification of Directors.

(a) The Board shall consist of three (3) Directors appointed by the Unit Owners as hereinabove provided.

(b) In addition to such other qualifications as may be set forth from time to time in the Bylaws, Directors shall be natural persons of full legal age and shall be Unit Owners, spouses of Unit Owners or, a duly authorized representative of an entity or trust that is a Unit Owner.

5.06 Election of Officers. Officers of the Association shall consist of such officers and subordinate officers as may be specified in or provided for in the Bylaws, and shall be elected by the Board in the manner specified in the Bylaws.

5.07 Voting by Ballot or Proxy. To the fullest extent permitted by the Act, the Unit Owners may vote on any matter on which Unit Owners are entitled to vote (including, but not limited to, approving amendments to the Condominium Documents) by proxy, in the manner specified in or provided for in the Bylaws. Notwithstanding the foregoing, no proxy may be voted by a Person who is not another Unit Owner or designated representative of a Unit Owner that is not a natural person (and even another Unit Owner may not vote a proxy if that other Unit Owner has lost the privilege of casting its own vote, relative to its own Unit).

5.08 Standard of Conduct.

(a) In the performance of their duties, the officers and Directors of the Executive Board shall stand in a fiduciary relation to the Association, and all officers and Directors shall perform their duties, including duties as members of any committee of the Board upon which they may serve, in good faith, in a manner they reasonably believe to be in the best interests of the Association and with such care, including reasonable inquiry, skill and diligence, as a person of ordinary prudence would use under similar circumstances.

(b) In discharging the duties of their respective positions, Directors and officers shall be entitled to rely in good faith on information, opinions, reports or statements (including financial statements and other financial data) in each case prepared or presented by any of the following:

(i) One or more other officers or employees of the Association whom the officer or Director reasonably believes to be reliable and competent in the matters presented;

(ii) Counsel, public accountants or other persons as to matters which the officer or Director reasonably believes to be within the professional or expert competence of such person; and

(iii) A committee of the Executive Board upon which he does not serve, duly designated in accordance with law, as to matters within its designated authority, which committee the officer or Director reasonably believes to merit confidence.

An officer or Director shall not be considered to be acting in good faith if he has knowledge concerning the matter in question that would cause his reliance on any of the preceding to be unwarranted.

(c) Absent breach of fiduciary duty (if applicable), lack of good faith or self-dealing, actions taken as a Director or officer or any failure to take any action shall be presumed to be in the best interest of the Association.

5.09 Limited Liability. No Director or officer, in his capacity as such, shall be personally liable for monetary damages for any action taken, or any failure to take any action, unless he has breached or failed to perform the duties of his office under the standards described above; provided, however, that the provisions of this Section 5.09 shall not apply to the responsibility or liability of a Director or officer pursuant to any criminal statute, or to the liability of a Director or officer for the payment of taxes pursuant to local, state or federal law.

5.10 Indemnification. To the extent permitted under Maine law, each present and former Director or officer, in his capacity as a Director, officer or both, shall

be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon him in connection with any proceeding in which he may become involved by reason of his being, or having been, a Director and/or officer of the Executive Board, or any settlement of any such proceeding, whether or not he is a Director, officer or both at the time such expenses are incurred, except in such cases where such Director and/or officer is adjudged to have engaged in willful misconduct, recklessness, breach of fiduciary duty (if applicable) or self-dealing; provided that, in the event of a settlement, this indemnification shall apply only if and when the Executive Board (with the affected Director abstaining if he is then a Director) approves such settlement and reimbursement as being in the best interests of the Association; and provided further that indemnification hereunder with respect to any criminal action or proceeding is permitted only if such Director and/or officer had no reasonable cause to believe his conduct was unlawful. The indemnification by the Unit Owners set forth in this Section 5.10 shall be paid by the Association on behalf of the Unit Owners and shall constitute a Common Expense and shall be assessed and collectible as such. Such right of indemnification shall not be deemed exclusive of any other rights to which such Director and/or officer may be entitled under the Bylaws as a matter of law or agreement or by vote of the Unit Owners or otherwise. Subject to the approval of the Executive Board, the Association may advance expenses incurred by a present or former officer or Director in connection with any suit or proceeding with respect to which he may be entitled to indemnity hereunder, subject to such conditions and limits as Executive Board may prescribe including, but not limited to, the execution of an agreement by which he agrees to reimburse the Association for such expenses advanced if it is ultimately determined that he is not entitled to indemnity hereunder, which may be secured or unsecured at the discretion of the Executive Board.

ARTICLE VI - COVENANT FOR ASSESSMENTS;
LIENS; COLLECTION

6.01 Assessments; Allocation of Common Expense Liability.

(a) The Common Expense Liability allocated to each Unit shall be as set forth on Exhibit "D" attached hereto and made a part hereof. If two or more Units are combined into a single Unit, a Unit is subdivided, or Unit boundaries are relocated, the affected Unit Owners shall execute and record an amendment to this Declaration and Exhibit "D" setting forth the reallocation of Common Expense Liability and Percentage Interests with respect to the affected Units (as well as making any necessary allocation of Limited Common Elements) and a copy of such amendment shall be furnished to the Association. In the case of a combination of Units, the Common Expense Liability associated with the resulting Unit shall be the sum of the Common Expense Liability appurtenant to the Units so combined, and in the case of a subdivision of Units, the aggregate Common Expense Liability and Percentage Interest allocated to the resulting Units shall not be less than the Common Expense Liability and Percentage Interest of the Unit being subdivided. Additionally, the Percentage Interests

shown on Exhibit "D" may be revised subsequent to construction based upon as-built measurements as provided above.

(b) Each Unit Owner is obligated to pay all Assessments levied against his Unit including, to the extent provided herein, Assessments with respect to Limited Common Elements allocated to his Unit. In the event that two (2) or more Persons own a Unit, an Assessment against that Unit shall be the joint and several personal obligations of such Persons.

(c) Except as may otherwise be required by applicable law, the obligation to pay Assessments is not subject to deduction or set-off and may not otherwise be diminished, discharged, suspended or abated because of: (i) any claim which such Unit Owner(s) may have against the Association or the Declarant; (ii) the failure or purported failure of the Association to provide services required hereunder; (iii) the fact that the Unit has been destroyed, in whole or in part, or is unoccupied or uninhabitable for any reason; or (iv) the failure or refusal of any other Unit Owners(s) to pay Assessments.

(d) The Unit Owner of a leased Unit shall remain personally liable, jointly and severally with the tenants of the Unit, for Assessments against the Unit, notwithstanding any contrary terms or provisions of the applicable lease. If a lease imposes the obligation to pay such Assessments or any part thereof on the tenant, the Association shall be a third party beneficiary of such covenant and shall have the right (but not the obligation) to enforce such obligation directly against the tenant, or against the tenant and the Unit Owner, jointly and severally.

6.02 Damages. Each Unit Owner shall reimburse and indemnify the Association upon demand for any losses, expenses, costs or damages incurred by the Association as a result of any damage to Common Elements caused by the act, omission or negligence of such Unit Owner or his tenants, agents, invitees, family members, licensees, contractors or subcontractors. Such damages may be assessed and collected as a Special Assessment against such Unit Owner.

6.03 Time for Payment. The due date for payment of Assessments or installments thereof by each Unit Owner shall be determined by the Board, but shall not be more frequent than monthly. Unless otherwise determined by the Board, the Assessment for each fiscal year shall be due and payable in monthly installments, in advance, on the first day of each calendar month.

6.04 Non-Payment; Late Charges; Interest; Lien.

(a) Any Assessment (or installment thereof) that is not paid within ten (10) days after it is due shall be considered delinquent and shall be subject to a late charge as determined by the Executive Board from time to time. Interest on any Assessment (or installment thereof) not paid within thirty (30) days after it is due shall accrue from the due date at the rate of eighteen percent (18%) per annum (or such

other rate, not to exceed the highest rate permitted by law, as the Board may from time to time determine). Interest at said rate shall continue to accrue until the delinquent amount is paid in full, both before and after any judgment is entered in favor of the Association, notwithstanding any otherwise applicable "legal rate of interest".

(b) Any costs of collection, including reasonable attorney's fees (whether incurred before trial, at trial, or on appeal), incurred by the Association in collecting or attempting to collect delinquent Assessments may be assessed and collected in the same manner as any other Assessments hereunder against the delinquent Unit Owner and shall be secured by the Association's lien therefor.

(c) If any Assessment or installment or part thereof remains unpaid for more than forty-five (45) days after it is due, the Board may accelerate all future installments of such Assessments with respect to the delinquent Unit Owner (if Assessments are payable in installments). Notice of acceleration shall be given to the delinquent Unit Owner and shall be effective unless the delinquent Unit Owner pays the Association, within ten (10) days after the date of such notice, all delinquent Assessments or installments thereof, all interest thereon, and all accrued late charges and collection costs.

(d) THERE SHALL BE A LIEN IN FAVOR OF THE ASSOCIATION AGAINST EACH UNIT FOR THE FULL AMOUNT OF ALL ASSESSMENTS LEVIED AGAINST SUCH UNIT FROM TIME TO TIME, TOGETHER WITH ALL LATE CHARGES, INTEREST AND COLLECTION COSTS (INCLUDING ATTORNEY'S FEES AND EXPENSES AS PROVIDED HEREIN) INCURRED OR CHARGED BY THE ASSOCIATION WITH RESPECT TO DELINQUENT ASSESSMENTS HEREUNDER. SUCH LIEN SHALL HAVE THE PRIORITY AND MAY BE ENFORCED IN THE MANNER PROVIDED FOR IN THE ACT, PROVIDED THAT IN NO EVENT SHALL ANY ENFORCEMENT OF A LIEN AGAINST THE OWNER OF THE HOTEL UNIT DISTURB THE HOTEL UNIT OPERATOR'S RIGHTS UNDER ANY HOTEL FRANCHISE OR OPERATING AGREEMENT FOR THE HOTEL UNIT. THE RECORDING OF THIS DECLARATION CONSTITUTES NOTICE AND PERFECTION OF THE ASSOCIATION'S LIEN. THE ASSOCIATION SHALL HAVE THE RIGHT TO COLLECT FROM A UNIT OWNER, AND THE ASSOCIATION'S LIEN SHALL ALSO SECURE, ALL AMOUNTS PAID OR EXPENDED BY THE ASSOCIATION IN ORDER TO PROTECT OR PRESERVE THE UNIT OR THE PRIORITY OF THE ASSOCIATION'S CLAIM OR LIEN INCLUDING, WITHOUT LIMITATION, AMOUNTS PAID OR INCURRED TO DISCHARGE REAL ESTATE TAXES OR OTHER LIENS SENIOR IN PRIORITY TO THE ASSOCIATION'S LIEN, AND INTEREST ON SAID SUMS AT THE RATE SPECIFIED HEREIN. PROVIDED, HOWEVER, THAT THE OWNER OF ANY SUB-UNIT IN ANY SUB-CONDOMINIUM SHALL BE ENTITLED TO A RELEASE FROM THE ASSOCIATION OF SUCH SUB-UNIT FROM SAID LIEN UPON PAYMENT TO THE ASSOCIATION OF SUCH SUB-UNIT'S SHARE OF THE ASSESSMENTS SECURED BY SAID LIEN BASED UPON SUCH SUB-UNIT'S COMMON EXPENSE LIABILITY UNDER THE DECLARATION OF SAID SUB-CONDOMINIUM.

6.05 Other Remedies. Assessments and other amounts payable by any Unit Owner may also be recovered by a lawsuit brought by the Association against the Unit Owner and any other person personally obligated to pay the same. The Association shall have all other rights and remedies available at law or in equity. All rights and remedies of the Association shall be cumulative.

6.06 Resale Certificates. Within ten (10) business days after a written request by a Unit Owner or the holder of a mortgage of first priority granted with respect to such Unit Owner's Unit, the Association shall furnish to the Unit Owner a certificate containing the information and copies of documents necessary to enable the Unit Owner to comply with Section 1603-116(h) of the Act. A purchaser of a Unit shall not be liable for any unpaid Assessment or fee greater than the amount set forth in the certificate prepared by the Association, except for Assessments and charges accruing or coming due after the date the Association prepared such information.

6.07 Discretion of Executive Board. In connection with the collection of delinquent Assessments, the Board shall have the power, in its discretion, to waive or compromise the obligation of an Unit Owner to pay interest, late charges and/or costs of collection, and to compromise or settle the obligation of one or more Unit Owners to pay delinquent Assessments or other sums payable by them hereunder, if the Board reasonably determines that it is in the best interests of the Association to do so based upon such factors as the Board deems relevant, including, without limitation, the likelihood of collecting the full amount due and the expense and delay associated therewith.

6.08 Basis and Computation of General Common Expense Assessments.

(a) No later than one hundred twenty (120) days after the beginning of each fiscal year of the Association, the Board shall adopt a budget for such fiscal year setting forth estimated Common Expenses, segregating (but only to the extent required by this Declaration or by law), General Common Expenses and Limited Common Expenses and otherwise in accordance with the terms of the Bylaws. The total regular Common Expense Assessments to be levied on all Units for that fiscal year shall be computed based on the total estimated Common Expenses set forth in such budget, after deducting therefrom (i) any surplus from a prior year or years not allocated to or set aside as reserves by the Board, and (ii) an estimate of any other income the Association expects to receive that will be available to pay Common Expenses.

(b) The regular Assessment for General Common Expenses against each Unit shall then be determined by multiplying the total Assessment for General Common Expenses by the Percentage Interest allocated to such Unit. In determining Assessments for any year, the Board shall have the right to include in the Budget for such year a reasonable allowance for delinquent or uncollectible Assessments, as well as such allocations to reserves as the Board deems appropriate.

(c) The budget of the Association may be modified from time to time by the Board to reflect any material change in the Common Expenses incurred or expected to be incurred by the Association for such fiscal year, and the Board shall have the power to increase or decrease the Assessments for Common Expenses accordingly. Such increase or decrease will be effective not earlier than thirty (30) days after the date of the notice thereof been given to the Unit Owners.

(d) Within thirty (30) days after adoption of the proposed budget for a fiscal year, the Board shall provide a summary of the budget to all the Unit Owners, and shall set a date for a meeting of the Unit Owners to consider ratification of the budget, such date to be not less than fourteen (14) nor more than thirty (30) days after the mailing of the summary. Unless at that meeting Members entitled to cast at least two-thirds (2/3) of the votes that all Members are entitled to cast reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the periodic budget last ratified by the Unit Owners shall be continued until such time as the Unit Owners ratify a subsequent budget proposed by the Executive Board. The failure of the Board to adopt a Budget or to adopt a new Common Expense Assessment shall not excuse the Unit Owners from paying Assessments or installments thereof based upon the Budget and Assessment in effect for the preceding year. Once an Assessment has been made by the Board, it shall automatically continue in force for the fiscal year for which it was initially adopted, and during each subsequent fiscal year, until the amount of Assessments is changed by the Board.

(e) Any capital expenditure approved by the Board (other than as part of the annual budget setting process described in the grammatical paragraph above) may be rejected only with the affirmative vote of two-thirds (2/3) the votes that all Unit Owners are entitled to cast. Such vote shall take place within thirty (30) days after notice of approval of the capital expenditures has been mailed to the Unit Owners.

(f) Any surpluses resulting from Assessments in excess of the actual expenses incurred may be set aside by the Executive Board as reserves including, but not limited to, operating, reserves, repair or replacement reserves, and reserves for future capital expenses or improvements. Nothing herein shall prohibit the Board from appropriating any surplus attributable to Assessments for General Common Expenses to the making of any capital improvement, addition, repair or replacement of any of the Common Elements.

6.09 Special Assessments. The Board shall have the power to levy Special Assessments for such purpose or purposes as the Board from time to time deems necessary or appropriate, including, but not limited to, paying the costs of unanticipated maintenance, repairs or replacements of the Common Elements. Unless otherwise provided herein, Special Assessments benefiting all Unit Owners shall be levied on all Units in proportion to their respective Common Expense Liabilities, and

shall be due and payable in a lump sum or in such installments as the Board shall determine.

6.10 Commencement of Assessments. The first Common Expense Assessment shall be made as and when determined by the Executive Board. Each Unit in existence as of the date on which the first Common Expense Assessment is made shall be subject to Assessments automatically and shall be subject to Assessments at all times thereafter until the Condominium is terminated as provided in the Act. A Unit shall be deemed to exist and subject to Common Expense Assessments after substantial completion thereof. For purposes hereof, a Unit shall be "substantially completed" at such time as the Unit, excluding interior improvements to be completed by the Unit Owner, is completed. At the time of conveyance of a Unit by the Declarant, the purchaser thereof shall reimburse the Declarant for the prorated amount of the then-current Assessment applicable to that Unit, representing the amount of such Assessments attributable to periods following such conveyance.

6.11 Reserves for Replacement. The Association shall establish and maintain a reasonable reserve fund for the repair and replacement of improvements comprising the Common Elements and any Limited Common Elements it is obligated to repair or replace, in such amount as the Executive Board deems prudent; provided that no allocation to repair or replacement reserves need be made until the second full fiscal year of the Association following the conveyance of the first Unit to a Unit Owner other than a Declarant.

ARTICLE VII - INSURANCE; CONDEMNATION; TERMINATION

7.01 Property Casualty Insurance. Beginning no later than the first conveyance of a Unit to a Unit Owner other than a Declarant, the Association shall maintain, to the extent reasonably available, all of the following:

(a) "all risk" property and casualty insurance insuring the Common Elements and Units (exclusive of improvements and betterments installed in the Units, and exclusive of personal property and other contents therein) against all common risks of direct physical loss commonly insured against, covering the interests of the Association, the Board and the Unit Owners, as their interest may appear. The total amount of insurance shall be one hundred percent (100%) of the replacement cost of the insured property (exclusive of land, excavations, foundations and other items normally excluded from such casualty policies), subject to such reasonable deductibles as the Board may determine.

(b) Comprehensive general public liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$5,000,000.00 for bodily injury or death arising from a single occurrence, insurance for liability for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements, and any property owned or leased by the Association.

(c) Workers' compensation insurance covering employees and agents of the Association as required by law.

(d) Builder's Risk Insurance during any period in which activities are being carried on in or about the Condominium which will, or might, in the reasonable opinion of the Board, render standard all risk insurance inapplicable, or fall within any exclusion from standard all risk insurance or impair the ability of the insured to recover thereunder (a "Builder's Risk Situation"), in an amount equal to any amount by which the all risk insurance provided under clause (a) above is or might be reduced or recovery of which impaired as a result of such activities (the "Builder's Risk Amount").

(e) Notwithstanding any provision hereof or of the Act to the contrary, the expense of all insurance carried by the Association, including insurance on the Units as herein required, shall be assessed as part of the Assessment for Common Expenses in accordance with the Unit's respective Common Expense Liability, unless the Association can reasonably establish that the use of one or more of the Units results in greater cost of such insurance in proportion to the value of or the risk associated with such Unit(s) (including, without limitation, in accordance with Section 7.04 below) in which case the Association shall have the right to allocate the expense of insurance accordingly.

7.02 Other Insurance. The Association may carry any other insurance including, but not limited to, directors and officers liability insurance, fidelity bonds, and the like, as the Board may determine from time to time.

7.03 Policy Terms; Waiver of Claims.

(a) Property, casualty and liability insurance carried by the Association pursuant to Section 7.01 hereof shall contain any policy terms required by the Act. Each Unit Owner shall be an insured person under the Association's liability insurance with respect to liability arising out of his ownership of an undivided interest in the Common Elements or membership in the Association. Each policy shall provide that (i) the insurer waives its right of subrogation under the policy against any Unit Owner, (ii) no act or omission by a Unit Owner (unless acting within the scope of his authority on behalf of the Association) will void the policy or be a condition of recovery under the policy, and (iii) if at the time of a loss under a policy maintained by the Association there is other insurance in the name of Unit Owner covering the same property covered by the Association's policy, the Association's policy shall be primary insurance not contributing with or secondary to the other insurance.

(b) Each Unit Owner hereby waives any claims the Unit Owner may have against the Association or against any other Unit Owner arising out of any damage to or destruction of his Unit, and any claims for personal injury or property damage, to the extent such damages are covered by insurance maintained by the Association hereunder.

7.04 Insurance Obligations of Unit Owners. Each Unit Owner shall be individually and solely responsible for maintaining (a) liability insurance with respect to its Unit, providing coverage in amounts of not less than a combined single limit of \$2,000,000.00, or such other amounts as the Executive Board may from time to time reasonably require, and (b) casualty insurance insuring the improvements and betterments in the Unit not covered by insurance maintained by the Association, and insuring the contents thereof and any personal property therein, such coverage to be in an amount sufficient to prevent the Unit Owner from becoming a co-insurer under such policy. The Association shall have no insurance responsibility with respect to any Unit or the contents thereof except as expressly provided herein. The Association and the other Unit Owners shall be named as additional insureds with respect to such Unit Owner liability insurance and the Unit Owners shall provide the Association with current certificates or similar evidence that the foregoing coverages are in force with an insurer licensed in the State of Maine. During any period in which activities are being carried on by or on behalf of a Unit Owner in or about such Owner's Unit or the Condominium which create a Builder's Risk Situation, such Unit Owner (a) with respect to the property insurance otherwise required to be maintained by the Unit Owner hereunder, will maintain Builder's Risk Insurance in the Builder's Risk Amount, at such Unit Owner's sole cost, or (b) with respect to property insurance which the Association would otherwise be required to maintain under Section 7.01(a) above, will, as the Association elects, either (i) maintain Builder's Risk Insurance in the Builder's Risk Amount at such Unit Owner's sole cost, or (ii) pay to the Association on demand, as a Common Expense, the cost of such insurance maintained by the Association. If a Unit Owner is required to maintain Builder's Risk insurance hereunder, such Unit Owner shall provide to the Association, prior to commencing the activities which render such insurance necessary, a certificate or other evidence, in form and substance satisfactory to the Board, that such insurance is in effect with an insurer licensed in the State of Maine.

7.05 Insurance Deductibles. In the event of the damage or destruction of a Unit, the amount of any deductible or co-insurance payment that applies under any insurance on such Unit carried by the Association shall be the responsibility of the Unit Owner.

7.06 Adjustment of Losses. Any losses covered by any casualty insurance policy maintained by the Association shall be adjusted solely by and with the approval of the Association and proceeds thereof shall be payable to the Association and not to any mortgagee or Unit Owner. The Board shall have full and exclusive power and authority to negotiate, adjust and compromise all claims for insurance coverages, and to execute and deliver releases therefor upon payment of the agreed settlement for such claims. The Association shall hold such proceeds in trust for the benefit of the Association, the Unit Owners and lien holders, as their interests may appear. Subject to Section 7.07 below, such proceeds shall be disbursed first for the repair or restoration of the damaged Common Elements and Units, and no Unit Owners or lien holders shall be entitled to receive payment of any portion of the proceeds unless

there is a surplus of proceeds after the Common Elements and Units have been completely repaired or restored, or the Condominium is terminated.

7.07 Use of Proceeds.

(a) Any part of the Common Elements for which the Association maintains property insurance which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) the Condominium is terminated in the manner provided under the Act, (ii) repair or replacement would be illegal under any state or local health or safety statute, law, regulation or ordinance, or (iii) Unit Owners entitled to cast at least two-thirds (2/3) of the votes that all Unit Owners are entitled to cast (including every Unit Owner to whose Unit any Limited Common Element which will not be rebuilt is allocated) vote not to rebuild, unless insurance proceeds are adequate to rebuild. The cost of the repair or replacement in excess of available insurance proceeds and reserves shall be a General Common Expense or, with respect to Limited Common Elements repaired or replaced, a Limited Common Expense.

(b) Any part of a Unit for which insurance is required to be maintained and which is damaged or destroyed shall be repaired or replaced promptly except in the case of events described in subsection (a)(i), (ii) or (iii) above and any cost of repair or replacement in excess of available insurance proceeds shall be borne by the Unit Owner. Any cost of repair or replacement in excess of available insurance proceeds shall be a General Common Expense.

(c) If the entire Condominium is not repaired or replaced, the insurance proceeds shall be distributed and disbursed pursuant to the requirements of the Act.

7.08 Other Insurance. The Board may increase insurance coverages and obtain additional insurance coverages not specifically stated herein as the Board determines from time to time, in its discretion, the premiums for which shall be Common Expenses. Policies of insurance shall be deposited with and shall be maintained by the Board. Nothing herein shall be deemed to preclude the Board from obtaining one or more insurance policies that include the improvements and betterments constructed inside and/or personal property contained within the Units if the Board determines that is in the financial best interests of the Unit Owners to do so, and the Association may allocate the costs thereof among the Unit Owners as it deems fair and appropriate.

7.09 Condemnation. If all or any part of the Common Elements or Units are taken through condemnation or eminent domain proceedings, the proceeds of such condemnation shall be paid and applied as provided in Section 1601-107 of the Act. Any award attributable to a taking of all or a part of the Common Elements, including Limited Common Elements, shall be paid to the Association, as trustee for the benefit of the Unit Owners and their respective mortgagees, for distribution pursuant to Section 1601-107 of the Act.

7.10 Termination. Except for a termination resulting from the taking of all the Units by eminent domain, the Condominium may be terminated only by the agreement of Unit Owners of Units to which one hundred percent (100%) of all votes in the Association are allocated. If the Condominium is terminated by the Unit Owners, and if the real estate comprising the Condominium is sold, the proceeds shall be distributed as provided in Section 1602-118 of the Act.

ARTICLE VIII - USE AND OCCUPANCY RESTRICTIONS; ARCHITECTURAL CONTROLS

8.01 Permitted Uses.

(a) Hotel Unit. The Hotel Unit shall be used for hotel, retail, restaurant use or any other use permitted by law, provided, however, that the Hotel Unit shall be operated primarily as a hotel facility.

(b) Retail Unit. The Owner of the Retail Unit may operate or cause an independent third-party to operate a restaurant and/or retail space, or any combination thereof, in the Retail Unit ("Retail Space") subject to the following conditions:

(1) The Owner of the Retail Unit agrees that the Retail Space shall be used solely for a restaurant and/or high-quality permitted stores and offices. Except as specifically provided in Section 8.01(b)(2) below, the use of the Retail Space shall be subject to the Hotel Unit Owner's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Without limiting the generality of the foregoing, in no event shall Hotel Unit Owner allow the Retail Space to be utilized in whole or in part for: (i) the storage of explosives or any hazardous material, (ii) any laundry, dry cleaning establishment or laundromat, (iii) any medical emergency facilities, (iv) any funeral parlor or mortuary or similar services, (v) any thrift store, pawn shop, liquidation outlet, flea market, or other store selling used, damaged, discontinued, or surplus merchandise, (vi) the sale of pornographic or other sexually explicit material or massage parlors or other uses that may offend the prevailing standards of decency and morality, (vii) off-track betting or other gambling establishment, (viii) a convenience store (such as a 7-Eleven), or (ix) any other use or operation which is not in keeping with the operation of the Hotel at the Real Estate.

(2) The following uses for the Retail Space are pre-approved and shall not require the prior written consent of Hotel Unit Owner: (i) a casual dining or fine dining restaurant; (ii) high-end clothing stores and a gifts shop provided that such stores do not specialize in discounted merchandise; (iii) financial institutions, such as banks or insurance agencies provided such financial institutions do not specialize in check cashing or similar services; (iv) retail service businesses, such as travel agencies; and (v) professional offices, such as a dentist or law firm.

(3) The Owner of the Retail Unit shall ensure that the construction, renovation and operation of the Retail Space do not conflict with Hotel Unit Owner's operation of the Hotel or any provision of this Declaration or adversely affect or pose a threat to public health or safety and shall use best efforts so as to minimize guest complaints related to such construction, renovation and operation of the Retail Space.

(4) The Owner of the Retail Unit shall cause the Retail Space to be operated and maintained at all times in a first class safe condition in compliance with all applicable law and regulations. The Hotel Unit Owner agrees to cause such Retail Space to be operated in a way that does not interfere with the operation of, or detract from the goodwill of the proprietary marks utilized in connection with, the Hotel.

(5) The Retail Unit Owner shall ensure that any lease or other agreement permitting any third party to use the Retail Space shall include a provision in its lease with such third-party that prevents the use of any trademark, service mark, name, copyright, logo, trade dress, trade secret or other intellectual property of the Hotel's franchisor.

(c) Residence Unit. The Residence Unit shall be used exclusively for residential purposes. In the event the Residence Unit is declared a Sub-Condominium, it shall not contain more than twelve (12) Sub-Units to be used as single-family residences, provided that persons providing assistance to the Sub-Unit Owners or tenants of a Sub-Unit shall be permitted to reside in such Sub-Unit (e.g., live-in housekeeper, nurse or other personal care assistant). Residents living in one or more of the Sub-Units of the Residence Unit will have no right to use the Hotel, other than Common Elements, merely because it is the owner of the Residence Unit or a Sub-Unit (or the guests or lessees of the owner of the Residence Unit or a Sub-Unit) but rather, the Unit Owner, its guests or lessees will have no more right to the use of the Hotel (or the services provided therein) than any member of the general public. The Unit Owners shall ensure that use of the Hotel by the owner of the Residence Unit or a Sub-Unit (or the guests or lessees of the owner of the Residence Unit or a Sub-Unit) will not interfere with the use of the Hotel by Hotel guests. Further, if the owner of the Residence Unit or a Sub-Unit (or the guests or lessees of the owner of the Residence Unit or a Sub-Unit) desires to use the Hotel (or the services provided therein), such use will be subject to the same terms and conditions, including payment for services, as those applicable to the general public. Without limiting the generality of the foregoing, the elevators providing access to the Residence Unit will not provide access to the Hotel, and the elevators providing access to the Hotel will not provide access to the Residence Unit.

(d) Right of First Refusal for Hotel Unit Owner. Notwithstanding anything to the contrary set forth herein, but subject to Section 5.03(c) hereof, If the Owner of the Residence Unit shall decide or desire to sell the entire Residence Unit, said Owner shall first give written notice to the Hotel Unit Owner of such decision or desire and of the terms and conditions on which the Owner of the Residence Unit

proposes to sell the Residence Unit, which notice shall constitute an offer by the Owner of the Residence Unit to sell the Residence Unit to the Owner of the Hotel Unit on the terms and conditions set forth in the written notice. The Owner of the Hotel Unit may then accept such offer by giving written notice of such acceptance to the Owner of the Residence Unit within seven (7) days after receipt of the written offer from the Owner of the Residence Unit. The acceptance by the Owner of the Hotel Unit of such offer shall be deemed to create a binding agreement between the Owner of the Residence Unit and the Owner of the Hotel Unit for the sale of the Owner of the Residence Unit on the terms and conditions set forth in the offer without need for any further instrument or agreement, which sale shall be consummated within sixty (60) days after acceptance of the offer. If the Owner of the Hotel Unit shall fail to accept any offer from the Owner of the Residence Unit as provided herein or, without fault on the part of the Owner of the Residence Unit, shall fail to complete the purchase of the Owner of the Residence Unit within sixty (60) days after acceptance of the offer, time being of the essence hereof, the Owner of the Residence Unit may then sell the Owner of the Residence Unit to any other party; provided, however, that the Owner of the Residence Unit shall not sell the Owner of the Residence Unit to another party on more favorable conditions to such party than the terms and conditions offered to the Owner of the Hotel Unit without first re-offering the Owner of the Residence Unit to the Owner of the Hotel Unit on the same more favorable conditions, which reoffer shall remain open for a period of seven (7) days and may be accepted by the Owner of the Hotel Unit in the manner provided herein with respect to the original offer. For purposes of this Section 8.01(d), the phrase "sell, convey, transfer or assign" shall not include, and the Owner of the Hotel Unit's right to purchase the Owner of the Residence Unit shall not be exercisable upon any of the following:

(i) a bona fide mortgage to a financial institution or any sales or other proceedings for the foreclosure thereof, including but not limited to deeds in lieu of foreclosure, but this instrument shall continue in full force and effect and shall be binding upon any persons, including any mortgagees, and its successors and assigns, who obtain title to the Owner of the Residence Unit through such methods, provided that the Owner of the Residence Unit sold at a public foreclosure sale to a person not affiliated with the foreclosing mortgagee shall thereafter be permanently released from this instrument; or

(ii) a conveyance to a trust, partnership, limited partnership, limited liability company or corporation wherein the Owner of the Residence Unit holds all the legal or beneficial interest, in which case this instrument is binding upon the grantee entity.

In addition to the termination described in above, the rights granted to Owner of the Hotel Unit in this Section 8.01(d) shall automatically and immediately terminate if the Owner of the Residence Unit converts the Residence Unit into a Sub-Condominium and closes on the sale of a Sub-Unit to be used as single-family residence by a Sub-Unit Owner or tenant of a Sub-Unit Owner.

8.02 Appearance; Nuisances; Maintenance. Each Unit Owner shall keep his or its Unit in a clean, neat, sanitary and safe condition. Each Unit Owner shall refrain from any activity, including unreasonable noise or other disturbance that unreasonably interferes with the quiet and peaceful enjoyment of other Units and other Unit Owners, residents or occupants; provided, however, that the typical noise associated with the use of the Retail Unit as a restaurant use and the Hotel as a Hotel facility shall not be considered an unreasonable interference with the quiet and peaceful enjoyment of other Units and Unit Owners. Operation of a restaurant, including storage, holding and provision of alcoholic beverages, and related retail uses as contemplated by Section 8.01(b) in a manner comparable to other restaurants of similar types, and operation of a hotel facility as contemplated by Section 8.01(a) in a manner comparable to other hotel facilities of similar types, shall not be considered to impair or unreasonably interfere with the quiet and peaceful enjoyment of other Unit Owners, residents or occupants. The Board shall have the power to adopt and amend reasonable Regulations relating to the use and occupancy of the Units and prohibiting activities that impair or interfere with the quiet and peaceful enjoyment of the Condominium by the residents or occupants and/or threaten the health, safety and welfare of the residents or occupants, provided, however, that such Regulations may not impose restrictions upon the use of the Retail Unit or the Hotel Unit without the written consent of the Retail Unit Owner or the Hotel Unit Owner, as the case may be, (regardless of whether the Retail Unit Owner or the Hotel Unit Owner are in good standing or not), if the Retail Unit Owner or the Hotel Unit Owner, as the case may be, reasonably determine that such restrictions would have a material adverse effect on the operation of their respective businesses at their Units. By way of example, and not by way of limitation, restrictions on hours of operation, serving of alcohol or menu options in the case of the Retail Unit, would be considered to be restrictions that would have such a material adverse effect. No Unit Owner may place any garbage, trash or rubbish anywhere on the Real Estate other than in his, her or its own Unit or the Service Area, or as otherwise designated by the Executive Board.

8.03 Leasing.

(a)(i) Subject to the other provisions of this Section 8.03(a)(i) and unless otherwise consented to by the Declarant of the Residence Unit Sub-Condominium or, after the termination of the Declarant Control Period under the Residence Unit Sub-Condominium, the Executive Board of the Residence Unit Sub-Association, a unit owner in the Residence Unit Sub-Condominium may lease his unit (but not less than his entire Unit) at any time and from time to time provided that the following conditions are satisfied (which shall not be applicable to leases entered into by the Declarant with respect to Units owned by the Declarant): (x) such lease is in writing and for a period of not less than six (6) months, (y) a true copy thereof (and any subsequent amendments or modifications thereto) is delivered to the Association within ten (10) days after it is signed by all parties thereto, and (z) the lease shall expressly obligate the lessee(s) to comply with the Act, this Declaration and the Regulations, as the same may be amended from time to time (which shall be binding on the lessee

whether or not the lease so states). Notwithstanding anything contained herein to the contrary, no more than thirty (30%) percent of the total number of units in the Residence Unit Sub-Condominium shall be leased at any given time. Accordingly, unit owners in the Residence Unit Sub-Condominium seeking to lease their Unit must first obtain written confirmation and approval from the Association that no more than the maximum allowed number of units within the Residence Unit Sub-Condominium are then actively under lease and that the unit owner may only then enter into a lease for his or her unit. Provided, however, that the above-described limitation on the total number of units in the Residence Unit Sub-Condominium that may be leased at any given time shall not be applicable to an institutional mortgage lender that acquires title in its own name, or in the name of subsidiary entity, to the Residence Unit or any Sub-Units therein by foreclosure or deed in lieu of foreclosure during such time as such institutional mortgage lender or such subsidiary entity retains title to said Residence Unit or any Sub-Unit therein.

(ii) The Owners of the Hotel Unit and the Retail Unit may lease all or any portion of their Units.

(b) Whether or not so stated in any lease, all tenants and occupants of a Unit shall be bound by the Act, this Declaration and the Regulations, and the Association shall be entitled to enforce the provisions hereof and thereof against such persons directly, provided further that the Unit Owner leasing such Unit shall at all times be responsible to ensure that the tenants and occupants of its Unit comply with this Declaration and the Regulations. The Association shall be entitled to demand payment directly from the lessee of any Assessments, fines or other sums payable by the Unit Owner which are delinquent and the lessee shall pay such sums to the Association (not in excess of amounts due to the Unit Owner) and shall have the right to deduct sums so paid to the Association from amounts due the Unit Owner under the lease. Nothing in the foregoing shall be construed as relieving the Unit Owner from his obligation to make all payments and perform all actions required under this Declaration, and the Unit Owner shall remain directly and primarily liable for such obligations. The Association shall have the right to require that the Unit Owner take all necessary steps to terminate such lease and evict such tenant(s) within thirty (30) days after written notice from the Association as a result of violations by the lessee (or his family, invitees or invitees) of the Act, this Declaration or the Regulations which continue or recur after written notice thereof is given by the Association to the Unit Owner or the lessee.

8.04 Signs and Displays.

(a) With respect to the Residence Unit, nothing shall be hung or displayed on or from the outside of the Unit, or out of or from the exterior windows or placed on the outside walls. No awnings, canopies or shutters (except for those installed by Declarant or the Association) shall be affixed or placed upon the exterior walls or roofs of the Units or any part thereof, nor relocated, replaced or extended, without the prior approval of the Hotel Unit Owner. No awning, screen, antenna, sign, banner, or other device, and no exterior change, addition, structure, projection,

decoration, or other feature shall be erected or placed upon or attached to the Residence Unit or any part thereof except as set forth below, no addition to or change or replacement of any exterior light or other exterior hardware shall be made; and no painting, attaching of decalcomania, or other decoration shall be done on any exterior part of the surface of the Residence Unit nor on the interior or exterior surface of any window or door of the Residence Unit.

(b) With respect to the Hotel Unit and Retail Unit, the Owners of such Units may install signage in their Limited Common Element Signage areas shown on the Plat and Plans, and canopies, awnings, screens and banners, and painted or attached decalcomania, signs, and decorations on the interior surfaces or windows and doors so long as such installation complies with all applicable laws and provided that such Retail Unit signage installation shall be subject to the prior review and written approval by the Hotel Unit Owner, which shall not be unreasonably withheld, conditioned or delayed.

8.05 Modifications of Units. The architectural integrity of the Units shall be preserved without modification, and therefore, except as may otherwise be expressly and specifically allowed by this Declaration or the Regulations: (a) no Unit shall be structurally modified, altered or changed (either laterally or vertically or any other manner) nor shall any common area or surface be penetrated in any manner; and (b) all maintenance and use by Unit Owners of all Units shall be done so as to preserve the appearance and character of the same, without modifications. Notwithstanding the foregoing, Declarant reserves the right to make changes and alterations to any Units it may own consistent with preserving the architectural and structural integrity of the Building.

8.06 Animals and Pets. No animals, livestock, fowl, or poultry of any kind shall be raised, bred or kept in any Unit or in the Common Elements. Notwithstanding the foregoing, domesticated animals such as dogs, cats and birds are permissible within the Residence Unit, subject to rules and regulations that may be established by the Executive Board.

8.07 Personal Property on Common Elements. No benches, chairs, or other personal property shall be placed or left on any part of the Common Elements without the prior consent of the Executive Board provided, however, that this limitation shall not apply to the Patio Retail Unit LCE and any Limited Common Element areas allocated to the Hotel Unit as shown on the Plats and Plans.

8.08 Electric Service; HVAC Systems. No Unit Owner shall overload the electric wiring in the Building, or operate any machines, appliances, accessories, or equipment in such manner as to cause, in the reasonable judgment of the Executive Board, an unreasonable disturbance to others (provided that the operation of the Retail Unit as contemplated by this Declaration shall not be deemed to cause an unreasonable disturbance to others), nor shall any Unit Owner connect any machine, appliance, accessory, or equipment to the heating system or plumbing system in a manner not

Deleted: Equipment

contemplated by the original construction and fit-up of the Units without the prior written consent of the Executive Board. Installation, removal, reconstruction, or repair of any electrical lighting and power circuits, or electrical outlet box, or terminal device included in such outlet box, or any item of heating, air conditioning or heat pump equipment, any of which is located within the boundaries of a Unit, may be undertaken by the Unit Owner of such Unit only after application has been made to and written consent has been received from the Executive Board, which consent shall not be unreasonably withheld, conditioned or delayed and which consent shall not be necessary in case such installation, removal, reconstruction or repair is necessitated by a failure or other malfunction that prevents the Unit from being operated in the manner contemplated by this Declaration or results in an unsafe condition. Such consent shall be granted only if the work performed shall be of similar or superior quality to that present throughout the Building and shall be performed by qualified personnel. The cost of installation, removal, reconstruction or repair whether undertaken by a Unit Owner, or by the Executive Board, (under the same procedures utilized for Common Elements), shall be borne by the Unit Owner of the Unit benefited thereby.

8.09 Regulations. Reasonable Regulations, not in conflict with the provisions of this Declaration, concerning the use and enjoyment of the Condominium, may be promulgated from time to time by the Executive Board, subject to the right of the Association to change such Regulations. No Regulation shall be adopted by the Executive Board except by resolution of the Executive Board made at a meeting open to all Unit Owners following written notice to all Unit Owners, which notice shall have set forth the substance of the Regulation(s) proposed for adoption. Copies of the then current Regulations shall be furnished to all Unit Owners by the Executive Board promptly after adoption of such Regulations or any amendments thereto. Any such Regulations shall, however, be subject to and not in conflict with the provisions and limitations of Section 8.02 hereof.

8.10 Improvements on Common Elements. Except as otherwise provided herein, no Unit Owner shall construct or cause to be constructed any improvements on or to any of the Common Elements, or alter or cause to be altered any Common Element, without the prior approval of the Executive Board, which approval may be granted or withheld by the Executive Board in its sole and absolute discretion, or approved subject to such conditions as the Executive Board may impose.

8.11 Building Roof. No Unit Owner may enter upon the roof areas of the Building or place or store anything on or about said roof, except (i) for installation, maintenance, repair, upgrade and replacement of heating, ventilation and air conditioning systems and such other equipment and mechanical systems subject to such reasonable rules and regulations regarding size, height, placement and visibility thereof as adopted by the Executive Board, or (ii) for maintenance in accordance with Regulations adopted by the Executive Board.

8.12 Mechanical Systems. The Unit Owners (and the Sub-Unit Owners in the case of any Unit that is declared a Sub-Condominium) shall be responsible for the

maintenance, repair, upkeep and replacement of the HVAC Systems and other mechanical units and related components that exclusively serve their Units. Because improper maintenance of or repairs to such equipment may adversely affect common components of the HVAC Systems and other mechanical system serving the Building, maintenance and repair of such systems and components shall be done only by a contractor or company approved by the Executive Board, and the Executive Board shall have the authority by Regulation or otherwise to publish from time to time a list of companies and contractors approved to perform such maintenance or repairs. The Executive Board's approval of a company or contractor shall not create any liability on the part of the Executive Board of the Association for any defect or deficiency in the services performed by any such company or contractor. The Executive Board shall ensure that all HVAC Systems and the external mechanical equipment for the HVAC Systems meet the maximum allowable noise requirements for the zoning district. The Executive Board shall submit documentation of the decibel output to confirm compliance of the HVAC Systems in respect of the rated noise levels and cumulative noise levels to the City of Portland's Zoning Administrator.

8.13 Duration of Restrictions; Breach. Except as may be otherwise provided herein regarding limitations on the duration of restrictions and the Units benefited by any such restrictions, the restrictions relating to the use of the Units set forth in this Section 8 that are imposed by virtue of this Declaration shall be for the benefit of the owners of all the Units, and shall remain in full force and effect until the twentieth (20th) anniversary of the date of this Declaration, and thereafter shall be automatically extended for successive periods of twenty (20) years, unless by unanimous vote of the Executive Board and vote of one hundred percent (100%) of the then owners of all the Condominium Units, as aforesaid, it is agreed to terminate said restrictions, in whole or in part. No Unit Owner shall be liable for any breach of the provisions of this section except as such occur during such Unit Owner's ownership thereof.

8.14 Architectural Controls.

(a) After the completion of construction by the Declarant, and except as otherwise provided herein, no modification, decoration, change or other improvement of any kind shall be commenced, erected or maintained upon the Common Elements, including without limitation, the Limited Common Elements, without the prior written approval of the Executive Board.

(b) Such modification, decoration, change or other improvement shall not be considered for approval until a written request for approval accompanied by plans and specifications showing the nature, kind, materials and location of the proposed improvement shall have been submitted to the Executive Board in sufficient detail to assure its structural and maintenance soundness and its compliance with the architectural scheme and harmony in relation to the surrounding area, structures and topography of the complex, and compliance with any hotel franchise agreement or other similar hotel operating agreement to which the Hotel Unit Owner is a party.

(c) The Executive Board shall approve or disapprove such request within ninety (90) days of receipt by the persons designated by the Association to receive such requests, or in the event of no designation, the President of the Association. If the Executive Board has not called a special meeting as provided in paragraph (d) of this Section 8.14, or if the Executive Board fails to approve or disapprove said request in writing within ninety (90) days after said plans and specifications have been received by the designated representative of the Association, approval will be automatically deemed given and this Article shall be deemed to have been fully complied with. The managing agent, if any, may convene a quorum of the Executive Board via telephone conference to approve or disapprove the request within the ninety (90) day period referenced above, and shall deliver the Executive Board's decision to the Unit owner, which will have the same force and effect as if delivered by the Executive Board.

(d) The Executive Board reserves the right to submit any request made pursuant to this Article to the members of the Association at a special meeting called pursuant to the Bylaws. Such meeting shall be called within ninety (90) days from receiving the request in accordance with this Section 8.14 and the request shall be considered denied until a vote of the membership has been completed at such meeting, which vote shall be final.

(e) Notice of default in compliance with this Section 8.14 can be given or legal action to enjoin any modification, decoration, change or improvement can be commenced in accordance with Article XI of this Declaration. Approval will be automatically given and this Article shall be deemed to have been fully complied with if action is not taken by the Association within the applicable time frames set forth in Article XI below.

(f) The Association shall be entitled to enforce this Section 8.14, and the provisions of Article XI of this Declaration shall apply.

8.15 Occupancy Plan. No Unit may be used in fact or in effect as part of, or in furtherance of, an Occupancy Plan (as defined below). For purposes of the foregoing requirement, an "Occupancy Plan" means a plan for the use, occupancy, marketing, advertising or promotion of one or more Units under any timeshare or fractional plan, residence, destination or luxury club, equity or non-equity program, interval exchange (whether the program is based on direct exchange of occupancy rights, cash payments, reward programs or other point or accrual systems) or other membership plans or arrangements through which a participant in the plan or arrangement acquires the right to use or occupy such Unit(s) or a portfolio of accommodations including such Unit(s). The foregoing prohibitions shall not apply to Units that are owned by, or any Occupancy Plan that is operated by, the Declarant, or the owner of the Hotel Unit.

ARTICLE IX - EASEMENTS

9.01 Statutory Easements. Declarant expressly reserves, and the Real Estate and the Condominium are expressly subject to, the easements provided for by Sections 1602-114 (easement for encroachments), 1602-115 (easement for use for sale purposes) and 1602-116 (easement to facilitate completion, conversion and expansion) of the Act, and the express easements set forth herein supplement such statutory easements and are not in lieu thereof.

9.02 Easement to Construct and to Dedicate Improvements. Declarant hereby reserves for itself, its successors and assigns, and the Association, the following easements, rights and privileges:

(a) All easements, whether general or specific, shown on the Plats and Plans, and in the recorded subdivision plan relating to the development of the Real Estate;

(b) An easement for the construction, installation, repair, inspection, alteration and maintenance of surface and subsurface utilities and utility facilities including, without limitation, electrical, telecommunications, cable television, water, sewer and similar facilities to serve the Condominium and all Units the Declarant reserves the right to construct hereunder, provided that such easements shall be located only in the Common Elements and in such a manner as to not interfere with the use, occupancy or enjoyment of the Units and the Limited Common Elements as contemplated by this Declaration;

(c) The right to grant easements through, over, across and under the Common Elements to public or private entities furnishing electric, telecommunications, cable television, public water, sanitary sewer, storm sewer, natural gas or other utility services, whether such services are being provided to this Condominium or to other property, provided that such easements shall be located in such a manner as to not interfere with the use, occupancy or enjoyment of the Units and the Limited Common Elements as contemplated by this Declaration;

(d) The right to dedicate or offer for dedication to the City of Portland or other appropriate municipal or quasi-governmental entity (i) all roads (and related road rights-of-way) constructed within the Condominium pursuant to the Plan, (ii) all drainage easements and other easements necessary or appropriate to provide access to and from any stormwater management facilities or other Common Elements, and (iii) any other facilities, arrangements, agreements or easements in or with regard to the Common Elements required or that may hereafter be required to be dedicated or offered for dedication to, or for use by, the public, provided that such easements shall be located in such a manner as to not interfere with the use, occupancy or enjoyment of the Units and the Limited Common Elements as contemplated by this Declaration;

(e) An easement in favor of the appropriate utility companies for such services as are desirable or necessary to adequately serve the Real Estate and all appurtenances thereto; including (by way of illustration and not limitation) the right to install, lay, maintain, repair, relocate and replace water mains and pipes, steam lines, gas mains and pipes, sewer and drain lines, telephone and other communication wires, cables and equipment, electrical wires and conduits and association equipment, over, under, through, in, along and on the Real Estate (including, without limitation, one or more Units therein, but only in the location existing at the time the Unit is first conveyed to a purchaser other than the Declarant and provided that such easements shall be located in such a manner as to not interfere with the use, occupancy or enjoyment of the Units and the Limited Common Elements as contemplated by this Declaration); and

(f) The right to grant such easements over, under and through the Common Elements (including the Limited Common Elements) as shall be reasonably necessary to facilitate ingress and egress rights between the Condominium and any parking facility that may be located on the adjacent property that is utilized for vehicular parking by any Unit Owners, provided that such easements shall be located in such a manner as to not interfere with the use, occupancy or enjoyment of the Units and the Limited Common Elements as contemplated by this Declaration.

9.03 Easement for Proper Maintenance and Operation of the Condominium. The Common Elements (including, but not limited to the Limited Common Elements) shall be and hereby are made subject to an easement in favor of the Declarant, the Association and the agents, employees and independent contractors thereof for the purpose of the inspection, upkeep, maintenance, repair and replacement of the Common Elements (including, but not limited to, the Limited Common Elements), and in connection therewith, the Declarant and the Association may grant easements, licenses or permits over the Common Elements for utilities, roads or other purposes reasonably necessary or useful for the proper maintenance and operation of the Condominium, provided that such easements shall not be located or exercised in a manner that shall interfere with the use of the Units as contemplated by this Declaration.

9.04 Easement for Inspection and Abatement. The Declarant and the Association, and their officers and agents, shall have the right and easement to have access to each Unit at reasonable times and upon reasonable notice in order to inspect, maintain, repair or replace any Common Elements therein or accessible therefrom, or to inspect for or abate any violation of the Condominium Documents. The rights and easements reserved under this Section 9.04 shall be exercised in a manner that shall not interfere with the use of the Units contemplated by this Declaration.

9.05 No Obstruction. No Unit Owner shall conduct any activities on or about his Unit or the Common Elements, or construct or place on his Unit or on any Common Elements any building, structure or obstruction which may interfere with or obstruct the Declarant's, the Association's or any other persons' right of use or enjoyment of the Common Elements or any of the easements affecting the Condominium or any part thereof.

9.06 Easement for Encroachments. If any part of the Common Elements now or hereafter encroaches on any Unit, or if any Unit hereafter encroaches upon any Common Elements (other than as a result of the intentional or negligent act or omission of a Unit Owner other than the Declarant), a valid easement appurtenant for such encroachment shall exist.

9.07 Easements and other Matters of Record. The Condominium is on the date hereof subject to those recorded easements and other matters of record identified on Exhibit "B" attached hereto and made a part hereof, and to those other easements, notes, conditions and restrictions as are set forth herein, on the Plats and Plans, or on the approved and recorded subdivision of the Real Estate. In addition to such recorded easements, Declarant hereby grants to the general public a right of way pedestrian easement (including wheelchairs and similar mobility assistance equipment for the disabled) on, over and across any sidewalks located on the Real Estate for the sole purpose of ingress and egress over and across the Real Estate.

9.08 Additional Easements in favor of Units. The following easements are hereby created in favor of the designated Units:

(a) The Retail Unit shall have an easement through the Hotel Unit and the Residence Unit at reasonable times following prior notice to the Hotel Unit Owner and the Residence Unit Owner, except in the case of an emergency situation, for access to the roof for the purpose of installing, maintaining, repairing, upgrading and replacing the heating, ventilation and air conditioning systems and such other equipment and mechanical systems located on said roof and serving the Retail Unit; and

(b) The Retail Unit and the Hotel Unit shall have an easement through the Residence Unit at reasonable times following prior notice to the Residence Unit Owner, or to the Sub-Association following the declaration of the Residence Unit as a Sub-Condominium, except in the case of an emergency situation, for the following purposes:

(i) for installing, maintaining, repairing, upgrading and replacing any systems and other facilities such as, by way of example and not by way of limitation, the elevator shafts, various HVAC Systems and other ducts and chases, serving the Hotel Unit or the Retail Unit, as applicable, that extend from the Hotel Unit or the Retail Unit, as applicable, into the Residence Unit; and

(ii) for access to the roof for the purpose of installing, maintaining, repairing, upgrading and replacing the heating, ventilation and air conditioning systems and such other equipment and mechanical systems located on said roof and serving the Hotel Unit or the Retail Unit, as applicable ; and

(c) The Residence Unit shall have an easement to utilize the stairways within the Retail Unit on the southerly and northerly sides thereof as shown on the Plats and Plans for emergency ingress to and egress from the Residence Unit.

(d) Each Unit Owner, and the clients, customers, guests, employees, tenants, subtenants, invitees, agents, contractors and licensees of the Unit Owners shall have an easement, subject to any rules and regulations established by the Executive Board, in common with all other Unit Owners to use the entrances, exits, corridors and other paved Common Elements on the Real Estate as a means of ingress, egress and regress to and from the Condominium and the adjoining parking areas and public streets. The Executive Board shall not and cannot establish any rules and regulations depriving any Owner of reasonable ingress, egress and regress to and from Condominium and the adjoining public streets.

ARTICLE X - SPECIAL DECLARANT RIGHTS

10.01 Reservation of Special Declarant Rights. Declarant hereby reserves for itself, and any successor Declarant, the following rights:

(a) While Declarant owns any Units, the right to maintain and relocate, from time to time, one (1) or more (but not more than two (2) at any one time) construction, management, and/or sales offices (without limitation as to size or location, so long as such is not located in or within a Unit no longer owned by Declarant);

(b) The right to maintain signs on Units owned by the Declarant and on the Common Elements advertising Units or any Sub-Units owned by the Declarant for sale or lease, and such other signs, including directional signs, as the Declarant may desire to place on its Units or on the Common Elements in connection with the marketing and/or sale of Units or any Sub-Units and the construction of Units and other Improvements on the Condominium, or to provide traffic direction or to announce the name of the Condominium, or for such other purposes as Declarant may determine;

(c) The right to complete all Common Elements and Units planned or contemplated for construction within the Condominium; and

(d) The right to transfer, in the manner set forth in the Act, any or all of the Special Declarant Rights reserved unto the Declarant herein.

The time limit for Declarant's exercise of any of the foregoing Special Declarant Rights is ten (10) years or such shorter time as may be otherwise provided herein or required under the Act.

10.02 Models; Sales Offices, Etc. While Declarant owns any Units, Declarant shall be entitled to maintain one (1) or more model homes, sales offices and construction offices (including mobile offices) and to maintain on or about the Common

Elements such construction offices, construction equipment, vehicles, lumber and building materials as are necessary from time to time in connection with the development of the Condominium and the construction of Units and Common Elements.

10.03 Execution of Supplemental Declarations. The Declarant shall have the right, without the consent, approval or joinder of the Association or the other Unit Owners, to make, execute and record supplemental declarations, and make such amendments to the Plats and Plans, as may be necessary in order to exercise any of the Special Declarant Rights reserved to the Declarant herein, to the fullest extent permitted by the Act.

ARTICLE XI - COMPLIANCE AND ENFORCEMENT

11.01 Compliance and Breach. The Board shall have the authority to exercise any and all remedies provided in this Declaration, or as otherwise may be provided by law, to enforce compliance with or remedy any violation of this Declaration, including the right to bring a suit at law or in equity to compel compliance with this Declaration, to restrain or abate any violation of this Declaration, or to recover damages for such violation. The Association shall be entitled to recover the reasonable costs of enforcement, including attorney's fees, from any Unit Owner or other person violating this Declaration or the Regulations. For purposes hereof, violation of any Regulations or Bylaws adopted by the Association shall be considered a violation of this Declaration.

11.02 Enforcement by Unit Owners; Procedures.

(a) The Association shall have the right and authority to enforce all provisions of this Declaration, including without limitation the covenants in this Declaration relating to the payment of Assessments by Unit Owners.

(b) If the Board (or a committee thereof, as the case may be), approves the construction, alteration or modification of any structure or improvement hereunder, such decision shall be final, binding and conclusive on all Unit Owners, and no Unit Owner shall have the right to bring any action at law or in equity to contest such approval or to compel the removal, modification or alteration of any structure or improvement built, made or altered in accordance with the terms of such approval.

(c) No Unit Owner shall have the right to bring any action at law or in equity to enforce any of the other terms, covenants, restrictions or provisions of this Declaration, or of the Bylaws or the Regulations, unless such Unit Owner shall have first complied with the procedures in Section 11.03 hereof, provided that this provision shall not preclude a Unit Owner from commencing an action if necessary in order to toll any statute of limitations pending compliance with the procedures set forth in Section 11.03 hereof.

11.03 Grievance Procedure.

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(a) If any Unit Owner alleges that one or more other Unit Owners or occupants of any Unit have violated or are violating the Condominium Documents (other than the use restrictions set forth in Section 8.01), before commencing any action relating thereto such Unit Owner shall first give written notice thereof to the Board and the affected Unit Owner(s) specifying with reasonable particularity the name and address of the alleged violator and the nature of the activities constituting a violation of the Condominium Documents. Notwithstanding the preceding, nothing herein shall be deemed to (i) preclude a Unit Owner from commencing an action prior to compliance with the grievance procedures set forth herein if reasonably necessary in order to toll any applicable statute of limitations, provided that the Unit Owner bringing such action promptly thereafter complies with the procedures set forth herein or (ii) preclude a Unit Owner from commencing an action without compliance with the grievance procedures set forth herein if such action relates to or arising out of an alleged violation of the use restrictions set forth in Section 8.01.

(b) Within forty-five (45) days after the receipt of such notice, the Board, or a Committee of the Board, shall hold a hearing with respect to such complaint. Notice of the time, date and place of such hearing shall be given to the complainant and the person or persons against whom such complaint is made. Within fifteen (15) days after the date of such hearing, the Board or a Committee thereof, as the case may be, shall render a decision as to whether or not the actions complained of constituted a violation of the Condominium Documents and, if a violation has been determined to exist, a determination of what, if any, relief or remedies the Board deems appropriate under the circumstances. The Board shall have the authority from time to time to promulgate Regulations relating to the procedure to be followed in cases where a Unit Owner complains of the acts or omissions of other Unit Owners or occupants, and to govern procedures that shall apply at any hearing or hearings. If deemed necessary by the Board, any hearing with respect to an alleged violation of the Condominium Documents may be continued from time to time until the Executive Board has obtained all information and/or testimony necessary in order to render its decision.

(c) In all hearings before the Board or any Committee thereof, all parties are entitled to be represented by legal counsel of their choice. The Board or an applicable committee of the Board shall determine all matters of procedure with respect to hearings before the Board under this Section 11.03, and shall not be bound by the formal rules of evidence.

(d) In connection with any claim at law or in equity by one or more Unit Owners against one or more other Unit Owner(s) or occupants of any Unit alleging any violation hereof, the Association, to the extent not otherwise prohibited by law, shall have right to intervene in such proceedings if deemed to be in the best interests of the Association, including without limitation any proceeding calling into question the validity, enforceability or interpretation of any covenants, restrictions or provisions of the Condominium Documents.

11.04 Remedies Cumulative; No Waiver. All rights and remedies provided for herein, or as otherwise may be available at law or in equity, shall be cumulative and may be pursued individually, together, at one time or from time to time, as the Board of the Association deems appropriate in its sole discretion. No delay or forbearance in the enforcement of any provisions of this Declaration shall be construed as or constitute a waiver of the right to do so. Neither the Association nor any Unit Owner shall be deemed to have waived any right of enforcement or any breach or default of the provisions of this Declaration on the part of any Unit Owner or occupant unless such waiver shall be in writing, and then only to the extent expressly set forth in such writing.

11.05 Costs and Attorney's Fees. In any action at law or in equity by the Association to enforce the Condominium Documents, the Association shall have the right to recover all costs and expenses and including reasonable attorney's fees (before trial, at trial and on appeal) incurred by it in enforcing or attempting to enforce the Condominium Documents, and such amounts may be assessed against the Unit Owner and shall constitute a lien on his Unit as provided herein.

11.06 Alternative Dispute Resolution - Mediation and Binding Arbitration. In recognition of the high cost and delays of litigation in state and federal courts, all Parties (as hereinafter defined) to a Covered Claim (as hereinafter defined) shall be obligated to comply with the following procedures:

(a) Mediation. Upon notice given by any Party (whether before or after any arbitration or other legal proceedings are commenced), all Covered Parties shall submit to non-binding mediation before a single mediator selected pursuant to the applicable mediation rules of the American Arbitration Association ("AAA"), or such other rules or procedures as the parties may mutually agree. The mediation shall be held in Portland, Maine, at a neutral location approved by the Parties or, if they are unable to agree within a reasonable time, as selected by the mediator. In such mediation, the Parties shall endeavor in good faith to mediate and settle such Covered Claim. The expenses of the mediation, including the fees of the mediator and the costs (if any) of the facility at which the mediation is held, shall be borne equally by the Parties. Each Party shall bear its own costs and attorney's fees incurred in attending and participating in the mediation.

(b) Arbitration. If the Parties are unable to resolve and settle all Covered Claims through mediation as provided above, then such Covered Claim shall be submitted to binding arbitration in accordance with the rules of AAA, before a single arbitrator, selected and appointed in accordance with the rules of AAA, or such other rules or procedures as the parties may mutually agree. The decision of the arbitrator shall be binding, final and conclusive, shall be unappealable (except as permitted by law) and may be entered as a final judgment in any court of competent jurisdiction, and shall be enforceable as such. All expenses of the arbitration, including the fees of the arbitrators, shall be borne equally by the Parties unless the arbitrators award or impose

such costs in some other manner by unanimous agreement. The obligation to arbitrate Covered Claims shall be an absolute bar to the bringing of any action, suit or other proceeding in any state or federal court otherwise having jurisdiction thereof.

(c) Covered Claims. Claims subject to mediation and binding arbitration pursuant to this Declaration ("Covered Claims") shall include all claims, actions, causes of action, suits, counterclaims and disputes to which two (2) or more Parties are parties (whether or not persons or entities other than Parties are also parties), whether arising in contract, in tort (except for such tort claims as are covered by insurance), by statute or otherwise, and that arise directly or indirectly out of the following (unless the same constitute Excluded Claims):

(i) Any claim against the Declarant or any Affiliate of the Declarant by the Association (or any member thereof), by any one or more Unit Owners on behalf of themselves or on behalf of or in the right of the Association, the Executive Board (or any member thereof) and/or any other person claiming by, through or under the Association or any Unit Owner, arising directly or indirectly out of (A) any defect or alleged defect in the Units and/or Common Elements, (B) any breach or alleged breach of any statutory, express or implied warranty relating to the Common Elements, Units and/or the Condominium generally, (C) any violation or alleged violation of law (including without limitation the Act) on the part of the Declarant, or any Affiliate of the Declarant, in any way related to or arising out of the creation, organization, development, construction and sale of the Condominium and/or the organization, operation or finances of the Association, or (D) any alleged breach by the Declarant of any of its obligations under this Declaration or the other Condominium Documents;

(ii) Any claim, directly or indirectly, arising out of any act or omission or alleged act or omission on the part of the Executive Board (or any member thereof) any committee of the Executive Board (or any member thereof), or any officer of the Association, including any claim arising out of any alleged violation of this Declaration or breach of duty, but excluding any claim for unemployment compensation, workers' compensation, employment benefits or other statutory benefits of any kind;

(iii) Any claim for indemnity and/or advancement of expenses by a current or former member of the Executive Board, current or former officer of the Association or other person claiming such entitlement pursuant to the terms of this Declaration, the Act or other applicable law, as a result of any action, suit or proceeding to which he is a party or threatened to be made a party, by reason of having acted or served as a member of the Executive Board, officer or agent of the Association, or in any other capacity, and any claim by a Unit Owner against the Association or the Executive Board (or any present or former member thereof), in either case arising out of or in any way related to the Condominium Documents or the Condominium; and

(iv) Except as provided below, any claim by the Association or the Executive Board against a Unit Owner, or a resident or tenant of a Unit, and any claim by one or more Unit Owners, tenants or residents of the Condominium against the Association, the Executive Board (or any member thereof), or any officer or agent of the Association, arising out of any violation or alleged violation of the Act or the Condominium Documents, or any other matter related to the operation, management, maintenance, repair or replacement of the Association, Condominium, the Units or the Common Elements.

(d) Excluded Claims. Notwithstanding the preceding, the following claims, actions, disputes, suits and proceedings ("Excluded Claims") shall not be subject to mandatory mediation and binding arbitration:

(i) Unless the Executive Board so elects, in its sole and exclusive discretion, any suit or action by or on behalf of the Association or the Executive Board to collect Common Expense Assessments from a Unit Owner (including but not limited to, the Declarant), and/or interest, late charges, costs of collection and attorney's fees associated therewith, and any proceedings to foreclose or realize on the Association's lien for such Assessments;

(ii) Any equitable claim by the Association against a Unit Owner or any tenant or resident of the Condominium to restrain or abate a violation or continued violation of the Condominium Documents, to compel compliance with the Condominium Documents, or to abate any nuisance allegedly committed by such person, and to collect costs of suit and reasonable attorney's fees in connection therewith; provided that any claim for monetary damages arising out of such matter shall be subject to mediation and binding arbitration as a Covered Claim;

(iii) Any claim against the Association or the Executive Board, or any member or former member thereof, to the extent that the terms of any insurance policy maintained by the Association or the Executive Board that would otherwise cover all or a part of any liability on such claim would or may, in the judgment of the Executive Board, cause such coverage to be unavailable or limited by reason of the fact that such claim were required to be submitted to mediation or arbitration as provided hereby;

(iv) Any dispute or claim between the Declarant (and/or an Affiliate of the Declarant) and a person who has signed a contract to purchase a Unit or who has purchased a Unit from the Declarant to the extent that the written agreement between the Declarant and such purchaser expressly makes such dispute or claim subject to a different means of dispute resolution and such alternative means of dispute resolution applies to the dispute or claim; and

(v) Any claims between Unit Owners, or claims between a Unit Owner and his or her tenant, other than claims arising out of an alleged violation of the Condominium Documents, unless the Association, the Executive Board (or any

committee or member or former member thereof) and/or a present or former officer or agent of the Association or Executive Board is or are named or added as parties to such claim, suit or proceeding.

(e) Party(ies). A Party means, as the case may be, the Association, the Declarant, any Affiliate of the Declarant, any Unit Owner, any resident or tenant of the Condominium, the Executive Board (and each individual former and present member thereof), any committee of the Executive Board (and each individual former and present member thereof), and any Eligible Mortgagee.

(f) Affiliate. With respect to the Declarant, (i) any general partner or limited partner thereof, and their respective officers, directors, agents, managers, partners, members and shareholders, (ii) any company or entity directly or indirectly controlled by or under common control with, the Declarant or any person described in clause (i), and , (iii) any company or entity of which the Declarant, or any person described in clauses (i) and/or (ii), alone or in combination with one or more other such persons, owns a controlling interest.

ARTICLE XII - MISCELLANEOUS

12.01 Assignment of Declarant's Rights and Obligations. The Declarant or any successor Declarant shall have the right, in its sole discretion, to assign its rights, privileges and obligations hereunder to a successor by a written instrument executed by the Declarant and such successor, in compliance with the Act.

12.02 Amendment - Generally. Subject to the other provisions of this Declaration and the Act, this Declaration may be amended in the following manner:

(a) Any amendment to this Declaration may be proposed by the Declarant, the Board or by Unit Owners entitled to cast at least two-thirds (2/3) of the votes which all Unit Owners are entitled to cast. The manner of proposing any amendments to this Declaration and giving notice to Unit Owners shall be as set forth in the Bylaws.

(b) Except as otherwise provided herein or in the Act, the Declaration may be amended only with the affirmative vote or agreement of Unit Owners entitled to cast at least two-thirds (2/3) of the votes that all Unit Owners are entitled to cast.

(c) No amendment to this Declaration shall make any change that would in any way alter, modify or affect any of the rights, easements or privileges of the Declarant, including Special Declarant Rights, without the consent of the Declarant, and no amendment that affects the particularized rights that are unique to a particular Unit shall be effective without the prior written consent of the Unit Owner of such Unit, regardless of whether such Unit Owner is in good standing.

(d) Each amendment to the Declaration shall be recorded and is effective upon recording.

(e) No Person may bring any action challenging any amendment to this Declaration more than one (1) year after the amendment is recorded.

12.03 Amendments by Declarant or Association. The Declarant or the Association, as the case may be, may amend this Declaration without the approval of the Unit Owners, and make any corresponding amendment or correction to the Plats and Plans, for any reason for which such amendments are permitted without approval of the Unit Owners by the Act including, without limitation, any Supplemental Declarations that may be prepared and recorded by the Declarant in connection with the exercise of any Special Declarant Rights hereunder.

12.04 Corrective Amendments. If any amendment to the Declaration is necessary in the judgment of the Association to cure any ambiguity, or to correct or supplement any provision of this Declaration that is defective, missing or inconsistent with any other provision of this Declaration or with the Act, then the Association may, from time to time, effect appropriate corrective amendments without the approval of the Unit Owners provided that the Association receives an opinion from independent legal counsel to the Association to the effect that such proposed amendment is permitted by the terms of this Section.

12.05 Unit Owner Consent Required on Certain Matters. Notwithstanding anything to the contrary contained in this Declaration or in the Bylaws, no actions or decisions of the other two Unit Owners acting in concert and/or actions or decisions of the Executive Board relating to the operation or management of the Condominium or any other aspects of the Condominium, and no amendments to this Declaration or to the Bylaws, that a commercially reasonable operator of a similar business establishment would determine would adversely affect or impair the operation of either the Hotel Unit or the Retail Unit for the purposes contemplated by the Condominium Documents shall be effective without the express written consent of the Unit Owner affected.

12.06 Severability. If any provisions of this Declaration are determined by a court to be invalid or unenforceable, such invalid or unenforceable provisions of this Declaration shall be deemed stricken therefrom and shall not affect the validity or enforceability of any other provisions of this Declaration. In the event that any provisions of this Declaration are unenforceable or invalid as written, but may be reformed so as to make the same valid and enforceable in accordance with the reasonable intent of the Declarant as specified herein, it is the intent of the Declarant that any court interpreting such provisions shall to the extent permitted by law, reform the same so as to make the same valid and enforceable in accordance with the reasonable intent of the Declarant expressed therein.

12.07 Governing Law; Incorporation of Condominium Act. This Declaration shall be governed and construed in accordance with laws of the State of Maine. All applicable provisions of the Act not already expressed herein are deemed incorporated herein by this reference.

12.08 Covenants, Restrictions and Easements Running with the Land. This Declaration, and all covenants, restrictions and easements set forth herein, shall constitute covenants, restrictions and easements running with the Real Estate, in perpetuity (except as otherwise provided herein), whether or not any deed conveying a Unit shall expressly refer to this Declaration, and all such covenants, restrictions and easements, shall, except as otherwise expressly provided herein, be binding and benefit the Declarant, all Unit Owners, and their respective heirs, executors, administrators, successors and assigns.

(Signatures on next page)

IN WITNESS WHEREOF, the Declarant has executed this Declaration this as of the day and year first above written.

WITNESS:

DECLARANT:

J.B. BROWN & SONS

By: _____
Vincent P. Veroneau
Its President

STATE OF MAINE
COUNTY OF CUMBERLAND

_____, 201_

Then personally appeared before me the above-named Vincent P. Veroneau, President of J.B. Brown & Sons, and acknowledged the foregoing instrument to be his free act and deed in said capacity, and the free act and deed of J. B. Brown & Sons.

Notary Public/Attorney-at-Law
Print Name: _____
My Commission Expires: _____

EXHIBIT "A"

LEGAL DESCRIPTION OF REAL ESTATE

A certain lot or parcel of land situated on the westerly side of Commercial Street in the City of Portland, County of Cumberland, and State of Maine, and being bounded and described as follows:

Beginning at the northeast corner of the property, at a point on the west side of Commercial Street at the southerly intersection with the former Foundry lane, land now or formerly owned by Baxter Place, LLC; thence South 22° 04' 28" West along the west side of Commercial Street a distance of 238.08' to a point; thence along a curve to the right having a radius of 11.21' a distance of 21.58' to a point; thence North 47° 39' 05" West along the north side of Maple Street a distance of 155.08' to a 5/8-inch iron rod found 6" below grade, having a cap stamped "HP GRAY PLS 387"; thence North 42° 17' 26" East along land now or formerly owned by J B Brown & Sons a distance of 73.09' to a 5/8-inch iron rod found 6" below grade, having a cap stamped "HP GRAY PLS 387"; thence North 8° 30' 56" East along land now or formerly owned by J B Brown & Sons a distance of 186.34' to a point; thence South 61° 19' 32" East along the former Foundry Lane, land now or formerly owned by J B Brown & Sons a distance of 21.40' to a PK spike found in pavement; thence South 49° 32' 32" East along the former Foundry Lane, land now or formerly owned by Baxter Place, LLC a distance of 166.23' to the point of beginning.

Together with the appurtenant rights and easements set forth in an Access Easement Agreement by and between Baxter Place, LLC and J.B. Brown & Sons, dated January 23, 2013 and recorded in the Cumberland County Registry of Deeds in Book 30325, Page 220.

EXHIBIT "B"

LIST OF TITLE EXCEPTIONS

EXHIBIT "C"

PLATS AND PLANS

See "Condominium Plat of the 321 Commercial Street Condominium" prepared by _____, dated _____, 201_, consisting of Sheet 1 of 1, and recorded in the Cumberland County Registry of Deeds in Plan Book _____, Page _____, and the "Condominium Plan of the 321 Commercial Street Condominium" prepared by _____, dated _____, 201_, consisting of Sheet 1 of ___ through Sheet ___ of __, and recorded in the Cumberland County Registry of Deeds in Plan Book _____, Pages _____.

EXHIBIT "D"

SCHEDULE OF UNITS, SQUARE FOOTAGE, PERCENTAGE INTEREST,
AND COMMON EXPENSE LIABILITY

Unit Name	Square Footage	Percentage Interest	Common Expense Liability
Hotel Unit	<u>86,608</u>	<u>0.7642715</u>	<u>0.7642715</u>
Retail Unit	<u>7,185</u>	<u>0.0634039</u>	<u>0.0634039</u>
Residence Unit	<u>19,528</u>	<u>0.1723246</u>	<u>0.1723246</u>
Total	<u>113,321</u>	100.0%	100.0%