

**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.

"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.

“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.

“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

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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.

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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 equipment, hot water heater, heat pump, ducts, lighting fixtures, floor coverings, wall coverings, wall board and plumbing, kitchen and bathroom fixtures and appliances.

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.

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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

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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.

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.

(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.

(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.

4.05 Off-Site Parking. Pursuant to on 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 to perpetually use _____ (_____) 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.

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.

(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 of any on-site stormwater management facilities. 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.

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(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

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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**

(pages 16-52 available on request - cover standard Condo clauses + incomplete Schedules J)