

DRAFT 073117

**DECLARATION OF
ONEJOY CONDOMINIUM**
Portland, Maine

LOCATION: 1 Joy Place Street
Portland, Maine
04102

DECLARANT: Onejoy Place LLC
2 Union Street, 5th Floor
Portland, Maine 04101

ATTORNEY
FOR
DECLARANT: Richard A. Shinay, Esq.
Drummond Woodsum
84 Marginal Way, suite 600
Portland, Maine 04101-2480

SURVEYOR: Owen Haskell, Inc.
390 U.S. Route 1, Unit 10
Falmouth, Maine 04105

ARCHITECT: Archetype, P.A.
48 Union Wharf
Portland, Maine 04101

Table of Contents

ARTICLE 1.	SUBMISSION; DEFINED TERMS
Section 1.1	Submission of Property
Section 1.2	Defined Terms
Section 1.3	Name and Address of Condominium Association
Section 1.4	Successor Declarants
ARTICLE 2.	BUILDING ON THE LAND; UNIT BOUNDARIES; ALLOCATION OF PERCENTAGE INTERESTS, COMMON EXPENSES AND VOTING RIGHTS
Section 2.1	Location and Dimension of Building
Section 2.2	Units
Section 2.3	Unit Boundaries
Section 2.4	Relocation of Unit Boundaries and Subdivision of Units
Section 2.5	Percentage Interests, Common Expenses and Voting Rights
ARTICLE 3.	COMMON ELEMENTS AND LIMITED COMMON ELEMENTS
Section 3.1	Common and Limited Elements Generally
Section 3.2	Alteration of Common Elements by the Declarant
Section 3.3	Alteration of Unit, Limited Common Element or Common Element by Unit Owner
Section 3.4	Rental Operation
ARTICLE 4.	SPECIAL DECLARANT RIGHTS, DEVELOPMENT RIGHTS, AND DECLARANT CONTROL
Section 4.1	Special Declarant Rights
Section 4.2	Unsold Units
Section 4.3	Development Rights; Phasing
Section 4.4	Amendment, Waiver, Etc.
ARTICLE 5.	EASEMENTS
Section 5.1	Easement to Facilitate Sales and Construction
Section 5.2	Easement for Access and Support
Section 5.3	Easement to Facilitate Discharge of Declarant's Obligations
Section 5.4	Easement for Service and Utility Companies
Section 5.5	Easement for Attachments

ARTICLE 6. AMENDMENT

- Section 6.1 General
- Section 6.2 Certain Amendments
- Section 6.3 Notice, Execution & Recording
- Section 6.4 Challenge
- Section 6.5 Secondary Mortgage Market Requirement

ARTICLE 7. RESTRICTIONS ON USE, OCCUPANCY AND ALIENATION

- Section 7.1 Use and Occupancy Restrictions on Units
- Section 7.2 Interval Ownership Prohibited
- Section 7.3 Leasing Restrictions
- Section 7.4 Household Pets
- Section 7.5 Outdoor Facilities
- Section 7.6 Compliance with Condominium Documents; Violations
- Section 7.7 No Action to Increase Rate or Result in Cancellation of Insurance
- Section 7.8 Miscellaneous Use Restrictions
- Section 7.9 Covenants
- Section 7.10 Restrictions Regarding Joy Place

ARTICLE 8. COMMON CHARGES AND ASSESSMENTS

- Section 8.1 Common Expense Assessments
- Section 8.2 Service Charges
- Section 8.3 Payment of and Lien for Assessments, Service Charges, Etc.
- Section 8.4 Liability
- Section 8.5 Budget
- Section 8.6 Working Capital Fund

ARTICLE 9. MAINTENANCE AND REPAIR

- Section 9.1 General Maintenance Responsibility
- Section 9.2 Maintenance of Common Elements
- Section 9.3 Maintenance of Limited Common Elements
- Section 9.4 Maintenance of Unit/Repair Responsibility
- Section 9.5 Liability of Owner
- Section 9.6 Management Contracts
- Section 9.7 Exterior Appearance

ARTICLE 10. CONDOMINIUM ASSOCIATION

- Section 10.1 The Association
- Section 10.2 Board of Directors Powers; Declarant Control Period
- Section 10.3 Rules and Regulations

ARTICLE 11. INSURANCE

- Section 11.1 General
- Section 11.2 Institutional Mortgage Programs

ARTICLE 12. MORTGAGES OF UNITS; RIGHTS OF ELIGIBLE MORTGAGE HOLDERS AND OTHER HOLDERS, INSURERS OR GUARANTORS OF MORTGAGES

- Section 12.1 Right to Mortgage
- Section 12.2 Mortgage Foreclosure
- Section 12.3 Eligible Mortgage Holder, Notice
- Section 12.4 Approval Rights of Eligible Mortgage Holders
- Section 12.5 Mortgagee Priority
- Section 12.6 Records

ARTICLE 13. DAMAGE, DESTRUCTION, TERMINATION, REMOVAL

- Section 13.1 Repair
- Section 13.2 Application of Insurance Proceeds
- Section 13.3 Termination of Condominium
- Section 13.4 Removal

ARTICLE 14. EMINENT DOMAIN

- Section 14.1 General
- Section 14.2 Power of Attorney

ARTICLE 15. GENERAL PROVISIONS

- Section 15.1 Conflict of Laws
- Section 15.2 Severability
- Section 15.3 Waiver
- Section 15.4 Dispute between Unit Owner(s), Association and/or Declarant
- Section 15.5 Headings
- Section 15.6 Interpretation
- Section 15.7 Effective Date
- Section 15.8 Schedules
- Section 15.9 Notice

SCHEDULE A LEGAL DESCRIPTION

SCHEDULE B UNIT NUMBERS; COMMON ELEMENT INTEREST; COMMON EXPENSE LIABILITY; VOTE; PARKING SPACES

SCHEDULE C REDUCED COPIES OF PLAT AND PLANS

DECLARATION OF ONEJOY CONDOMINIUM

ARTICLE 1

SUBMISSION; DEFINED TERMS

Section 1.1. Submission of Property. Onejoy Place, LLC, a Maine limited liability company, whose mailing address is 2 Union Street, 5th Floor, Portland, Maine 04101 (the “Declarant”), owner in fee simple of the land described in Schedule A annexed hereto, located in the City of Portland, County of Cumberland and State of Maine (the “Land”), hereby submits the Land, together with all improvements, easements, rights and appurtenances thereunto belonging (the “Property”) to the provisions of Chapter 31 of Title 33 of the Maine Revised Statutes Annotated, as amended, known as the Maine Condominium Act (the “Condominium Act”) and hereby creates with respect to the Property a condominium, to be known as “Onejoy Condominium” (the “Condominium”). The Property is shown on the condominium plat and plans recorded herewith in the Cumberland County Registry of Deeds in Plan Book _____, Pages _____ through _____, and identified as follows (the “Plat and Plans”):

[Insert titles of Plat and Plans]

Section 12 Defined Terms. Terms not otherwise defined herein, as the same may be amended from time to time, or in the Plat and Plans, shall have the meanings specified in Section 1601-103 of the Condominium Act. “Condominium Instruments” shall mean this Declaration, as it may be amended from time to time, and all schedules attached hereto.

Section 1.3. Name and Address of Condominium and Association. The name of the Condominium is “Onejoy Condominium.” The address of the Condominium is 1 Joy Place, Portland, Maine 04102. The name of the Unit Owners association is Onejoy Condominium Owners’ Association (the “Association”) and its address is 1 Joy Place, Portland, Maine 04102.

Section 1.4. Successor Declarants. For the purposes of this Declaration or of the Condominium Act, a conveyance of one or more Units to a successor to any special declarant rights (See Section 1603-104 of the Condominium Act) shall not be considered a sale to a person other than Declarant.

ARTICLE 2

BUILDING ON THE LAND; UNIT BOUNDARIES; ALLOCATION OF PERCENTAGE INTERESTS, COMMON EXPENSES AND VOTING RIGHTS

Section 2.1. Location and Dimension of Building. The location and dimensions of the building constructed or to be constructed on the Land which will contain the Units created hereunder (the “Building”) is depicted on the Plat recorded with this Declaration, reduced copies of which are attached as Schedule C hereto.

Section 2.2. Units. This Declaration creates twelve (12) Units (the “Units”) on the Land. The Declarant does not reserve the right to create any further Units in the Condominium. The location of Units and their dimensions are shown on the Plat and Plans recorded with this Declaration, reduced copies of which are attached hereto as Schedule C.

Section 2.3. Unit Boundaries. The boundary lines of each Unit are as shown on the Plat and Plans and are formed by the following planes:

A. The Unit-side surface of the walls and partitions of the Building which enclose such Unit and separate it from adjoining Units or Common Elements, the Unit to include the thickness of the finish material such as plaster or drywall;

B. The Unit-side surface of furring around utility shafts, and other Common Elements within or passing through such Unit, the Unit to include the thickness of the finish material such as plaster or drywall;

C. The Unit-side surface of the ceiling of the uppermost story of the Unit and furring under and around (i) wood members and (ii) utility lines, ducts and cables, the Unit to include the thickness of the finish material such as plaster or drywall;

D. The Unit-side surface of the bottom floor of the lowest story of such Unit, the Unit to include the thickness of the finish material such as carpet, ceramic or resilient tile or hardwood;

E. The exterior surface of the sash of windows which are set in the exterior walls of such Unit, the exterior surface of the panes of such windows and the exterior surface of window sills, moldings, trim, jambs and mullions for such windows, the Unit to include the thickness of the finish material such as glass, wood, and paint or other finish material on the wood, and the exterior surface of storm windows, if any, associated with such windows; and

F. The exterior surface of doors, and their sills and hardware, and the Unit-side surface of the door frames in which such doors are set, the Unit to include the thickness of the finish material such as paint, plaster or drywall.

Each Unit consists of all portions of the Building in which it is located within the aforesaid boundary lines, except the air space displaced by (i) structural members, firewalls including gypsum drywall finish, and load bearing partitions within or passing through such Unit which are deemed to be Common Elements, and (ii) other Common Elements within such Unit including, without limitation, chutes, flues, ducts, wires, conduits and pipe runs which serve more than one Unit. By way of illustration and not limitation, there is included within a Unit: (1) the air space enclosed by such boundary lines, (2) all non-load bearing partitions which are wholly contained within such boundary lines including, but not limited to, all doors, door frames, hardware, electrical outlets and wiring, telephone outlets and conduits and other equipment and devices in such partitions serving only such Unit, (3) all fixtures located within such boundary lines and serving only such Unit, and their water and waste connections, (4) all items of kitchen

equipment located within such boundary lines and serving only such Unit, and such equipment's water, waste and electrical connections, (5) heat pumps, furnaces, exhaust fans and the grilles, registers, ventilation ducts, and related fixtures, and screens and storm windows, which serve only such Unit, whether or not any of the foregoing is located in any portion of the Common Elements, (6) lighting devices (including by way of illustration and not limitation, lamps and bulbs which are surface mounted on, recessed in or suspended from, ceilings, walls and partitions within or around the perimeter of such Unit) serving only such Unit, whether or not such lighting devices are themselves located entirely within the boundary lines of such Unit, (7) outlets, wires, cables, conduits, circuits and related equipment transmitting electricity for lighting and power or transmitting electrical impulses and signals (including, but not limited to, impulses and signals for telephone, telegraph, internet and television transmission, except to the extent otherwise specifically provided herein) which serve only such Unit and which are located entirely within the boundary lines of such Unit, (8) surface mounted and recessed medicine cabinets including, by way of illustration and not limitation, all associated lighting fixtures and accessories, and (9) refrigerators, ranges, dishwashers and other appliances and the portions of their water, waste, electrical and exhaust connections located within such boundary lines and serving only such Unit.

Notwithstanding subsections E and F above, no Owner shall alter the exterior appearance of windows and doors providing access to the Common Elements, Limited Common Elements or exterior of the Building, including without limitation any grills or mullions on the doors and windows and the window sashes without prior written approval of the Board of Directors.

Section 2.4. Relocation or Unit Boundaries and Subdivision of Units. Relocation of boundaries between Units is permitted subject to compliance with the provisions therefor in Section 1602-112 of the Condominium Act and subject to compliance with any applicable City of Portland ordinances and regulations. Subdivision of Units is not permitted.

Section 2.5. Percentage Interests, Common Expenses, and Voting Rights. Attached as Schedule B hereto is a list of all twelve (12) created Units by their identifying number and the Percentage Interest appurtenant to each Unit, with the Percentage Interest assigned in equal shares to each of the twelve (12) Units. The liability of each Unit for the Common Expenses of the Condominium shall be the same percentage share as the Percentage Interest set forth on Schedule B. The Owner(s) of each Unit shall be entitled to one (1) vote for each Unit owned.

ARTICLE 3 COMMON ELEMENTS AND LIMITED COMMON ELEMENTS

Section 3.1. Common and Limited Common Elements Generally. Common Elements shall mean those portions of the Building defined as such pursuant to Sections 1601-103(4) and 1602-102(1) of the Act, except as provided otherwise herein, or as identified and designated as Common Elements in the Plat and Plans, including but not limited to

the trees, shrubbery and other plantings already existing on the Property or planted by or on behalf of the Declarant. Limited Common Elements shall mean those portions of the Building defined as such pursuant to Section 1602-102(2) and (4) of the Act or as identified and designated as Limited Common Elements on the Plat and Plans or by this section. Those portions of the Limited Common Elements serving only the Unit above, below or adjacent to such Limited Common Element, as the case may be, are Limited Common Elements allocated only to the Unit which they serve. Pursuant to Section 1602-102(2) of the Condominium Act, any chute, flue, duct, wire, conduit, bearing wall, bearing column or other fixture which lies partially within and partially outside a Unit's boundaries may be a Limited Common Element or Common Element, depending on whether it serves only one Unit or more than one Unit. Pursuant to Section 1602-102(4) of the Condominium Act, shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, and patios, if any, and all exterior doors and other fixtures which are designed to serve only a single Unit, but are located outside the Unit's boundaries, are Limited Common Elements allocated exclusively to that Unit.

The Common Elements consist of all of the Property except the individual Units, and shall include the land, building, foundation, roof, outside walls, pipes, ducts, electrical wiring and conduits, public utility lines, floors and ceilings (other than the interior finish material and finished surfaces thereof located within the Units), perimeter walls of Units (other than the interior finish material and finished surfaces thereof located within the Units); structural parts of the Building, including structural columns, girders, beams and supports, easements for access and utilities and any other appurtenant easements, if any, trees, shrubbery and other landscaping, and in addition, all other parts of the Property necessary and convenient to its existence, maintenance and safety, and normally in common use as defined in the Condominium Act, except such parts of the Property as may be specifically excepted or reserved herein or in any schedule attached hereto. Each Unit Owner shall have the right to use the Common Elements (but excluding the Limited Common Elements, which are located to one or more Units) in common with all other Unit Owners, as may be required for the purposes of ingress and egress to and use, occupancy and enjoyment of the respective Unit owned by such Unit Owner. Such rights shall extend to the Unit Owners and the members of the immediate family, guests and other authorized occupants, licensees, and visitors of the Unit Owner.

The Common Elements shall also include (a) common bike storage area and a common laundry area in the basement of the building, and (b) an exterior common kayak/surf board storage area.

The Limited Common Elements shall also include one designated storage locker for each Unit, which lockers shall be located in the basement of the building.

The use of the Common Elements, including the Limited Common Elements, and the rights of the Unit Owners with respect thereto shall be subject to and governed by the provisions of the Condominium Act, this Declaration, the Bylaws of the Association (the "Bylaws") and Rules and Regulations of the Association (the "Rules and Regulations"), as they may hereafter be amended from time to time. Any conveyance, encumbrance, judicial sale, or other transfer (voluntary or involuntary) of an individual interest in the

Common Elements will be void unless the unit to which that interest is allocated is also transferred.

Two tandem parking blocks designated on the Plat as “Tandem Parking Block A” and “Tandem Parking Block B” may be sold as Limited Common Elements appurtenant to one or more Units at the initial sale of said Units and so designated in the Deeds of said Units. Regardless of the designation of said parking spaces as Limited Common Elements to the designated Units, said parking spaces shall, nevertheless, be maintained by the Association provided, however, that costs associated with such maintenance shall be allocated to the Units to which said parking spaces are appurtenant as Limited Common Elements. Said parking spaces, as approved by the City of Portland, may not be full regulation-sized spaces, and that cooperation and moderately sized vehicles will be required to facilitate access to and egress from the designated parking spaces.

[Further language will be added here as appropriate regarding arrangements for additional off-site vehicular parking spaces to be made by the Declarant]

Each Unit is served by an individual air-source electric heat pump for heating and air-conditioning serving only that Unit. Portions of the air-source electric heat pump heating and air-conditioning system, and associated ducts, pipes, registers, and other elements which constitute part of the Unit.. Each Unit Owner is solely responsible for arranging for and paying all costs associated with maintenance, service, repair and replacement of the air-source electric heat pump system serving that the Unit Owner’s Unit.

No Unit Owner may use any portion of the roof as inhabited space or as dwelling space for that Unit or for a skylight or similar opening through the roof, nor may the roof be used by any Unit Owner for purposes of a deck, porch, or similar recreational space.

Section 3.2. Alteration of Common Elements by the Declarant. The Declarant reserves the right to modify, alter, or improve portions of the Common Elements, including without limitation any equipment, fixtures and appurtenances, when in the Declarant’s judgment it is necessary or desirable to do so, until the expiration of the applicable warranty period.

Section 3.3 Alteration of Unit, Limited Common Element or Common Element by Unit Owner. Relocation of Unit Boundaries may only be accomplished pursuant to Section 2.4. above. No Unit Owner may make any alteration or improvement to a Unit which would impair the structural, thermal or acoustical integrity or mechanical systems of the Unit or the Property, lessen the support of any portion of the Condominium, jeopardize the soundness or safety of the Property, nor may any Unit Owner make any alteration or improvement which involves any change to a Common Element or Limited Common Element without prior written Board approval. Specifically, but not by way of limiting the generality of the foregoing, a Unit Owner may not make changes in the exterior appearance of the Unit including exterior doors, windows, roofs, foundations, chimneys, or walls (including drilling of new holes and exterior mounting of equipment) unless pursuant to procedure established in the Rules and Regulations a majority of the members of the Board of Directors vote to allow the Unit Owner to make the proposed change. The

Board shall determine whether to grant approval based on a review of written, detailed proposals submitted by the Unit Owner, and if necessary, inspection of the property, and review of an engineer's report (prepared by an engineer engaged by a Unit Owner at the Unit Owner's expense) for any matter that might affect structural integrity. In the event a Unit Owner obtains approval to make changes to a Common Element, the Unit Owner shall be solely responsible for permitting, design, construction, and requisite insurance, shall use only contractors who provide proof of adequate liability insurance and Workers' Compensation insurance as required by Maine law, and shall comply with such other conditions as may be imposed by the Board. If a Unit Owner takes action to make an alteration which involves a change in structural, thermal or acoustical integrity, removal or relocation of an interior wall, or change to a Common Element without prior Board approval, the Unit Owner may be required, at the Unit Owner's expense, to remove all unapproved changes or additions and to restore the building, Common Element or Limited Common Element to its original condition.

Section 3.4. Rental Operation. The Declarant shall have the right to operate any Units owned by the Declarant as rental units. The Declarant may establish and maintain all signs and other accoutrements normally used in the operation of such rental properties in the sole discretion of the Declarant. Such operations shall be for the benefit of the Declarant and neither the Association nor any Unit Owner (other than the Declarant) shall have any right or interest in the profits or losses thereof.

ARTICLE 4 SPECIAL DECLARANT RIGHTS, DEVELOPMENT RIGHTS, AND DECLARANT CONTROL

Section 4.1 Special Declarant Rights. The Declarant reserves, in favor of itself and any successor Declarant, the following rights with respect to the Property until the construction, marketing and sale of all Units and the Common Elements are completed:

- A. To locate and relocate in the Common Elements, Limited Common Elements and Units of the Property, even though not depicted on the Plat and Plans, and grant and reserve easements and rights-of-way for the installation, maintenance, repair, replacement and inspection of utility lines, wires, pipes, conduits and facilities servicing the Property including but not limited to water, electric, telephone, cable television, natural gas, and sewer and transformers, meters and other equipment related thereto, provided that no such easement shall be effective until of record, that no such easements may be granted through Units sold by Declarant to third parties without such Owner's consent and that the Common Elements shall be promptly restored upon installation and repair of such utility lines;
- B. To connect with and make use of utility lines, wires, pipes and conduits located on the Property for construction and sales purposes, provided that the Declarant shall be responsible for the cost of services so used;

- C. To use the Common Elements and Limited Common Elements for ingress and egress and construction activities and for the storage of construction materials and equipment used in the completion of the Units and Common Elements. This right shall continue until the Declarant has conveyed all Units which are or may be created hereunder to Unit Owners other than the Declarant;
- D. To appoint and remove members of the Board and Officers of the Association until sixty (60) days after the sale of 75% of the Units to Owners other than a successor Declarant, but in any event until expiration of the Declarant Control Period;
- E. Those Special Declarant Rights established under the Condominium Act;
- F. Notwithstanding anything to the contrary above, until the expiration of any applicable warranty established by law or agreement, upon reasonable prior notice, the Declarant, its contractors, agents and employees shall have the right of entry into a Unit, a Common Element and a Limited Common Element to perform warranty-related work, whether for the benefit of that Unit or any other Unit; and
- G. Pursuant to Section 1602-116 of the Condominium Act, Declarant shall have an easement through the Common Elements as may be reasonably necessary for the purpose of discharging Declarant's obligations or exercising Declarant's rights under this Declaration or pursuant to the Condominium Act.

Section 4.2 Unsold Units. Except as provided in this Declaration and/or in the Condominium Act, the Declarant shall have the same rights and be subject to the same obligations with respect to unsold Units as the owners of individual Units after initial conveyance thereof by the Declarant.

Section 4.3 Development Rights; Phasing. The Declarant does not reserve any right to add real estate to the Condominium nor does Declarant reserve any right to create additional Units.

Section 4.4 Amendment, Waiver, Etc. This Article 4 shall not be amended or waived without the consent of the Declarant duly recorded in said Registry of Deeds. The rights and benefits of Article 4 and all other rights of Declarant set forth in this Declaration, the Bylaws or otherwise, as amended from time to time, may be transferred in whole or part by recorded instrument specifically referring to this Section and executed by Declarant and its successor or assignee. The Declarant shall have the right to waive the Development and Special Declarant Rights reserved hereunder in whole or part by written instrument provided that such waiver shall only be effective upon recording in said Registry of Deeds and such waiver shall be subject to the limitations of Section 1603-103(d) of the Act regarding Declarant Control of the Association.

ARTICLE 5 EASEMENTS

In addition to the easement for encroachments with respect to Units and Common Elements created by Section 1602-114 of the Condominium Act and any other easements provided for by the Act, the following easements are hereby created:

Section 5.1. Easement to Facilitate Sales and Construction. The Property shall be subject to an easement in favor of the Declarant pursuant to Section 1602-115 of the Condominium Act. The Declarant reserves the right to use any Units owned or leased by the Declarant as models. The Declarant reserves the right to relocate the same from time to time within the Property; upon relocation, the furnishings thereof may be removed. The Declarant further reserves the right to maintain on the Property such advertising signs as may comply with applicable governmental regulations, which may be placed in any location on the Property and may be relocated or removed, all at the sole discretion of the Declarant. This easement shall continue until the Declarant has conveyed all Units which are or may be created hereunder to Unit Owners other than the Declarant.

The Declarant further reserves an easement to connect with and make use of utility lines, wires, pipes and conduits located on the Property for construction purposes, provided that Declarant shall be responsible for the cost of service so used, and to use the Common Elements for ingress and egress and construction activities and for the storage of construction materials and equipment used in the completion of the Units and Common Elements. This easement shall continue until the Declarant has conveyed all Units which are or may be created hereunder to Unit Owners other than the Declarant.

Section 5.2. Easement for Access and Support. The Declarant reserves in favor of the Declarant and the management agent, if any, and/or any other person authorized by the Board of Directors, upon reasonable prior notice, the right of access to any Unit as provided in Section 1603-107(a) of the Condominium Act for purposes of maintenance, repair and replacement of Common Elements and Limited Common Elements, and for purposes of inspection of the Units and Limited Common Elements to verify the performance by Unit Owners of all items of maintenance and repair for which they are responsible. In case of emergency, such entry shall be immediate whether or not the Unit Owner is present at the time, for the purpose of making emergency repairs therein necessary to prevent damage to the Common Elements, or to other Units. Further, until the expiration of the warranty period such entry shall be permitted to perform warranty-related work whether or not the Unit Owner consents or is present at the time. Declarant, its agents, officers, servants, and its successors and assigns, shall have the reasonable right of access to all Common Elements as long as it or they may own Units or shall have obligations or rights with respect to such Common Elements. The Association or its authorized representatives shall have the irrevocable right, to be exercised by the Manager or Board of Directors, to have access to each Unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Elements therein, or for making emergency repairs therein necessary to prevent damage to the Common Elements, or to other Units.

- A. Each Unit and Common Element shall have an easement for lateral and subjacent support from every other Unit and Common Element. In addition, the

Declarant reserves in favor of the Declarant and other Unit Owners an easement for the encroachment of Common Elements on any Unit, or a Unit encroaching on the Common Elements or on another Unit, and its maintenance for whatever period the encroachment exists in the situation in which the construction, repair, shifting, settlement, or other movement of any portion of the improvements results in an encroachment as aforesaid, as long as the physical boundaries of the Units after the construction, reconstruction or repairs will be in substantial accord with the description of those boundaries contained herein and in attachments hereto.

- B. Each Unit Owner shall have a perpetual, unrestricted right of ingress and egress to his or her Unit, which passes with the Unit as transfers of ownership of the Unit occur.

Section 5.3. Easement to Facilitate Discharge of Declarant's Obligations. Pursuant to Section 1602-116 of the Condominium Act, Declarant shall have an easement through the Common Elements as may be reasonably necessary for the purpose of discharging Declarant's obligations or exercising Declarant's rights.

Section 5.4. Easement for Utility and Service Companies. The Units and Common Elements shall be, and hereby are, made subject to easements in favor of the Declarant, other Unit Owners, appropriate utility and service companies, internet companies, cable television companies and governmental agencies or authorities for such utility and service lines and equipment as may be necessary or desirable to serve any portion of the Property, including, without limitation, the right to install, maintain, and replace utility and service lines. Notwithstanding the foregoing, any such easement through a Unit shall be located either in substantially the same location as such facilities or similar facilities existed at the time of first conveyance of the Unit by the Declarant or so as not to materially interfere with the use or occupancy of the Unit. With respect to any utility lines or equipment serving only the Condominium and located upon the Common Elements, the Association shall have the right and power to dedicate and convey title to the same to any private or public utility company. The Association shall also have the right and power to convey permits, licenses and easements over the Common Elements for the installation, maintenance, repair and replacement of utility poles, lines, wires and other equipment to any private or public utility company.

Section 5.5. Easement for Attachments. Provided that any such action will not unreasonably interfere with the common use of any part of the Common Elements, adversely affect either the thermal or acoustical character of the Building, or impair or structurally weaken the Building, each Unit shall have an easement for driving and removing nails, screws, bolts and other attachment devices into the Unit side surface of the studs which support the perimeter walls bounding the Unit, the bottom surface of floor/ceiling joists above the Unit and the top surface of the floor joists or cement slab below the Unit to the extent such nails, screws, bolts and other attachment devices may encroach into a part of a Common Elements adjacent to such Unit.

AMENDMENT

Section 6.1. General. Except in cases of amendments to this Declaration that may be unilaterally executed and recorded by the Association as described in Sections 1601-107, Eminent Domain; 1602-108(c), Limited Common Elements; 1602-112(a), Relocation of Boundaries between Adjoining Units; or 1602-113, Subdivision of Units; and except in cases, where permitted, of amendments to this Declaration by certain Unit Owners, as described in Sections 1602-108(b), Reallocation of Limited Common Elements; 1602-112(a), Relocation of Boundaries Between Adjoining Units, 1602-113(b); or 1602-118(b), Termination of Condominium; and except in cases, if any, of amendments to the Declaration that may be executed by the Declarant under Section 1602-109(f) Plat and Plans, or under Section 1602-110, Exercise of Development Rights, of the Condominium Act, and subject to the other provisions of this Declaration and of the Condominium Act, this Declaration, and the Plat and Plans may be amended as follows:

A. Before Any Conveyance. Prior to the conveyance of any Unit by the Declarant to a Unit Owner other than as security for an obligation, the Declarant shall in any manner which the Declarant may deem appropriate have the right to amend and re-amend this Declaration.

B. After First Conveyance. After the first conveyance of a Unit by a Declarant, the terms of the following subparagraphs shall apply to the amendment of this Declaration:

(1) Notice. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting of the Board of Directors in which a proposed amendment is considered, and shall be served upon all Unit Owners in the manner provided for service of notices and upon Eligible Mortgage Holders in the manner provided.

(2) Resolution. An amendment may be proposed by either by the Board of Directors or by Unit Owners holding in the aggregate no less than sixty percent (60%) of the votes in the Association. No resolution of the Board of Directors adopting a proposed amendment shall be effective unless it has been adopted at a meeting of the Association duly called and held in accordance with the Bylaws by the affirmative vote of at least eighty percent (80%) in voting interest of the Unit Owners and then executed and recorded as provided in Paragraph (e) of this Article. In addition, approval of amendments of a material nature must be obtained from Eligible Mortgage Holders representing at least fifty-one (51%) of the votes of Units that are subject to mortgages held by Eligible Mortgage Holders, as further defined and described in Section 12.4, below.

C. Agreement. In the alternative, an amendment may be made by an agreement signed by the record owners of the Units to which at least one hundred percent (100%) of the votes in the Association are allocated in the manner required for the execution of a deed and acknowledged by at least one of them, and such

amendment shall be effective when recorded in the Cumberland County Registry of Deeds.

Section 6.2 Certain Amendments. Notwithstanding the foregoing provisions of this Article, except as otherwise permitted by the Condominium Act and provided in this Declaration, no amendment may increase the number of Units or change the boundaries of any Unit, the Allocated Interests allocated to a Unit, or the uses to which any Unit is restricted, without the unanimous consent of the Unit Owners. No amendment of this Declaration shall make any change which would in any way affect any of the rights, privileges, powers and options of the Declarant, its successors or assigns, unless the Declarant, or its successors or assigns shall join in the execution of such amendment.

Section 6.3. Notice, Execution and Recording. A copy of each amendment adopted pursuant to the provisions of this Article 6 shall be attached to or included with a certificate, certifying that the amendment was duly adopted, which certificate shall be executed and acknowledged by such officer(s) or director(s) of the Association as are designated for that purpose in the Bylaws. The amendment shall be effective when such certificate and copy of the amendment are recorded in the Cumberland County Registry of Deeds. After each amendment has been recorded, notice thereof shall be sent to all Unit Owners and to all Eligible Mortgage Holders, but failure to send such notices shall not affect the validity of such amendment.

Section 6.4. Challenge. No action to challenge the validity of an amendment to this Declaration adopted by the Association may be brought more than one (1) year after such amendment is recorded in the Cumberland County Registry of Deeds.

Section 6.5. Secondary Mortgage Market Requirements. It is Declarant's intent that this Declaration complies with the underwriting requirements of Federal Home Loan Mortgage Corporation (Freddie Mac), the Federal National Mortgage Association (Fannie Mae), the Veterans' Administration, the Federal Housing Administration or other recognized institutional mortgage programs. In the event that this Declaration does not comply with such underwriting requirements, Declarant, in Declarant's sole discretion, shall have the right to amend this Declaration to make this Declaration conform to such underwriting requirements.

ARTICLE 7 RESTRICTIONS ON USE, OCCUPANCY AND ALIENATION

Section 7.1. Use and Occupancy Restrictions on Units: The Declarant shall own in fee simple each Unit to which legal title is not conveyed or otherwise transferred to another person. The Declarant retains the right to enter into leases with any persons for the occupancy of any of the Units owned by the Declarant.

Each Unit is intended to serve as a self-contained, residential living Unit and shall be subject to the Rules and Regulations and Bylaws of the Association. Units shall be used for residential purposes only, except that (i) the Declarant may use the Property in the exercise of Special Declarant Rights and (ii) a Unit Owner may also use the Unit for a

home occupation which is incidental and secondary to the use of the dwelling for residential purposes if it meets all of the following requirements: (1) it is in compliance with all applicable local, state and federal codes, laws and regulations and obtains any necessary City permits or approvals; (2) the home occupation does not occupy more than twenty-five percent (25%) of the total floor area of such Unit; (3) the home occupation does not employ or otherwise engage more than one person who does not reside in the Unit to work within the Unit in furtherance of the home occupation; (4) except for such signage as may be allowed by the City of Portland and the Association, there is no other exterior indication of the home occupation or any other variation or deviation from the residential character of the neighborhood; specifically, there shall be no exterior display, no display of goods visible from the outside, and no exterior storage of materials related to the home occupation; (5) activities conducted as part of the home occupation shall not create a nuisance, nor shall they generate unreasonable offensive noise, vibration, smoke, dust, other particulate matter, odors, heat, humidity, glare, electrical disturbance, or other unreasonable external effects; and (6) no traffic may be generated by the home occupation in greater volumes than would normally be expected in a residential neighborhood.

Each Unit shall be subject to the Rules and Regulations and Bylaws of the Association, in addition to this Declaration, all as amended from time to time.

Section 7.2. Interval Ownership Prohibited. No ownership interest in any Unit in the Condominium shall or may be subdivided to permit “time sharing” or other devices to effect interval ownership. For purposes of this paragraph, “devices” to effect interval ownership shall include but not be limited to ownership arrangements, including uses of corporations, trusts, partnerships or tenancies in common, in which four or more persons not members of a single household have acquired, by means other than will, descent, inheritance or operation of law, an ownership interest (directly or indirectly, equitable or legal) in the same Unit and such owners have a formal or informal right-to-use agreement.

Section 7.3. Leasing Restrictions. No Unit may be leased for transient purposes and no Unit may be leased to any lessee for a period of less than four (4) consecutive months. No portion of any Unit (other than the entire Unit) shall be leased for any period. No Unit may be used for short-term rental purposes in which only a portion of the Unit is made available to a boarder, guest or tenant, nor may the entire Unit be made available to a boarder, guest or tenant, such as through Airbnb, HomeAway, VRBO or similar short-term rentals or vacation rentals, for a period of less than four (4) consecutive months for each boarder, guest or tenant.

No Unit Owner shall rent or lease a Unit other than in accordance with a written form of lease which contains the following provisions:

- A. requiring the tenant to comply with the Declaration, the Bylaws and Rules and Regulations; providing that failure to comply constitutes a default under the lease; and
- B. providing that the Board of Directors has the power, but not the obligation, to

terminate the lease or to bring summary proceedings to evict the tenant in the name of the Unit Owner after thirty (30) days prior written notice to the Unit Owner, in the event of a default by the lessee in the performance of the lease; and

- C. in the event that the payment of Common charges and/or service charges or other amounts due to the Association becomes more than thirty (30) days past due, authorizing the Association to require the tenant to pay directly to the Association the rent on the Unit in an amount of up to the balance of current and delinquent Common charges and other unpaid amounts outstanding, subject to the rights of any recorded first mortgage or eligible mortgage holder which has exercised an assignment of rents. The Association's notice to the tenant shall be conclusive and binding on the Tenant as to the Tenant's obligation to pay the rent directly to the Association and as to the amount of Common charges and other fees due. The Unit Owner shall have ten (10) days after such notice is sent to file any objection, which objection must be in writing and signed under oath under the pains and penalties of perjury, must contain a short and plain statement of any alleged errors by the Association, and shall include copies of canceled checks or other written evidence of objection or miscalculation of the amounts due. The Unit Owner must state what amounts, if any, which the Owner admits is owed to the Association.

Any lease or tenancy shall be in writing. The foregoing provisions shall be deemed to be automatically incorporated into any lease and into the terms of any tenancy or other agreement for the occupancy of a Unit.

The Unit Owner must not suspend his or her own condominium owner's insurance policy during the period of rental. Regardless of the terms of rental, timely payments of the Unit's monthly fees and assessments and any special assessments during the rental period remain the responsibility of the Unit Owner.

Each Unit Owner of a Unit shall, promptly following the execution of any written lease of a Unit, forward a true copy thereof to the Board of Directors together with information about the tenant(s) including the home and work telephone numbers, mailing address, e-mail address if any, and emergency contact information.

The foregoing provisions of this paragraph shall not apply to an institutional lender in possession of a Unit as a result of foreclosure, judicial sale or a proceeding in lieu of foreclosure.

Section 7.4 Household Pets. The following use restrictions apply to household pets:

- A. No animals, birds or reptiles of any kind shall be raised, bred or kept in any Unit or upon the Common Elements or Limited Common Elements, except that orderly dogs, cats or other household pets, not to exceed an aggregate total of two per Unit (except aquarium fish which are not so limited in number), may be kept in a Unit, subject to the regulation of the Board.

Additional numbers of such pets may be kept only with the prior written approval of the Board, subject to compliance with this Section 7.4, the By-laws and the Rules and Regulations.

- B. A pet permitted pursuant to A. above may be maintained in a Unit only so long as it is not a nuisance. Actions which will constitute a nuisance include but are not limited to abnormal or unreasonable crying, barking, meowing, or scratching such that it disturbs another Unit Owner's rest or quiet enjoyment of his or her Unit; unhygienic offensiveness; causing repeated damage to the landscaping or other Common Elements; or a pet owner's repeated failure to comply with these pet rules.
- C. All pets must be registered and inoculated as required by law.
- D. Pet owners are fully responsible for personal injuries and/or property damage caused by their pets.
- E. No pets shall be allowed to run freely on the Property. When upon the Common Elements of the Property, pets must be confined in a container or leashed on a leash which does not exceed six feet in length, and, in either case, under the immediate supervision of a responsible person.
- F. The Owner of any pet which enters upon the Common Elements must promptly clean up any excrement left by that pet upon any Common Element.
- G. Unless otherwise authorized in advance in writing by the Board of Directors, no animal may be tied or leashed outside the Unit at any time, and exterior pet runs of any type are not allowed at the Condominium.

The Association shall have the power to further regulate pets and animals under the By-laws or Rules and Regulations of the Association as promulgated or amended from time to time, including without limitation the express power to regulate the size and species of pet, to establish additional behavior requirements and to expel any offending pets and animals from the Property.

Section 7.5. Outdoor Facilities. Owners, and their families, guests and invitees, shall comply with all rules and regulations issued by the Association with respect to use of any outdoor facilities, including but not limited to outdoor decks and balconies, garden and yard areas. The Association shall have the power to further regulate use of outdoor Common Elements, including Limited Common Elements, under the Bylaws or Rules and Regulations of the Association as promulgated or amended from time to time.

Section 7.6. Compliance with Condominium Documents; Violations. For the mutual benefit of all Unit Owners, each Unit Owner shall comply strictly with the Bylaws and with the Rules and Regulations adopted pursuant thereto, and with the covenants, conditions and restrictions set forth or incorporated by reference in this Declaration or in

the deed to his or her Unit (the "Condominium Documents"). By way of direction but not by way of limitation, as this is a twelve (12) Unit condominium, it is hoped that the Unit Owners will be able to resolve issues by discussion among themselves. However, if a dispute arise which is not resolved in this manner, the Board of Directors, by majority vote, may opt to refer a matter to mediation as provided in Section 15.4. Moreover, if, in the opinion of a majority of the Board of Directors, a Unit Owner's failure to comply with the Condominium Documents as aforesaid is serious and intractable (which may be evidenced by failure to reach a resolution through mediation and/or refusal to participate in mediation in good faith and/or such other evidence as the majority of the Board deems compelling), the Board of Directors, by majority vote, on behalf of the Association, after notice and opportunity for the Owner alleged to be in violation to be heard, shall have the right to take any one or more of the following actions: (i) to assess the expense of maintenance, repair or replacement of any damage to the Common Elements, Limited Common Elements or any Unit caused by any violation; (ii) to authorize officers of the Association to commence appropriate legal proceedings, at law or in equity, necessary to enjoin, abate or remedy the continuance of any violations, or to compel compliance with these Rules and Regulations and the Condominium Documents, and/or to recover damages for any violation or for injunctive relief, or both; (iii) to assess all costs incurred by the Association, including mediation fees, court costs and attorneys' fees, in the process of rectifying any violation; to enter the Unit to abate the violation; (v) to assess fines and penalties in the amount of ten percent (10%) of the then monthly assessment of the Unit for each violation (with each day during which a violation is found to exist or continue to be considered a separate violation); and (vi) to take such other or further action as it deems appropriate, all as may be further outlined in the Rules and Regulations.

Section 7.7 No Action to Increase Rate or Result in Cancellation of Insurance.

Notwithstanding anything in this Article 7 to the contrary, nothing shall be done or kept in any Unit or in the Limited Common Elements that will increase the rate of insurance for the Property or any part thereof without the prior written consent of the Board. No Owner shall permit anything to be done or kept in this Unit or in the Limited Common Elements that will result in the cancellation of insurance on the Property or any part thereof, or that would be in violation of any law, regulation or administrative ruling.

Section 7.8. Miscellaneous Use Restrictions. The following additional restrictions apply to use:

- A. **No Smoking in Common Elements or Units:** No Unit Owner, Tenant, resident or guest or invitee of a Unit Owner, Tenant or resident shall smoke any tobacco product anywhere upon the Property; without limiting the generality of the foregoing, smoking is prohibited within each Unit, and upon the Common Elements and Limited Common Elements of the Property, including but not limited to the halls, stairs, garage/parking, storage areas, entrances, driveway, lawn, porches, decks and within fifty (50) feet of any entrance to the Building.
- B. No articles of personal property shall be left unattended in common areas of the Building or passageways, sidewalks or lawns or elsewhere on the Common

Elements. Nothing shall be stored upon or obstruct any of the Common Elements, including stairways and hallways, except in those areas, if any, designated for storage by the Declaration or the Board. Neither the Board, the Association, any other Unit Owner, nor the Declarant shall be responsible for the security of such personal property or for any loss or damage thereto, whether or not exclusive possession of the particular area is given to a Unit Owner for storage purposes, and whether or not due to negligence, except to the extent covered by insurance in excess of any applicable deductible.

- C. Unit Owners may not install any fireplace or stove in the Unit which is designed to burn coal, wood, pellets, gas or any other material.
- D. No signs, window displays or advertising shall be erected, posted or displayed upon, in, from or about any Common Element or Limited Common Element or any Unit window or door without the prior written approval of the Board; provided however, subject to such reasonable rules which the Board, from time to time, may adopt on sign placement and manner of affixing signs to the Building, Unit Owners, including the Declarant and any Mortgagee who may become the Owner of any Unit, shall have the right to place one (1) non-illuminated "for sale" sign not exceeding a total area of six (6) square feet on the Condominium property.
- E. Without the prior written approval of the Board, no Unit Owner shall cause or permit anything to be hung, installed, or displayed on the exterior of a Unit or upon a Common Element. This prohibition includes, without limitation, works of art, laundry, clothing, rugs, awnings, canopies, shutters, radio or television antenna, or any other items. No television or radio antennas or other items may be installed by the Unit Owner beyond the boundaries of his or her unit except with the prior written permission of the Board of Directors.
- F. Trash, garbage and other waste shall be kept only in sanitary containers in such location as designated on the Plat and Plan and shall be disposed of in such manner as may be prescribed in Rules and Regulations established by the Board.
- G. The Limited Common Element parking areas may not be used for any purpose other than parking passenger automobiles and trucks with a gross vehicle weight of less than 6,000 pounds. No buses, trucks with a gross vehicle weight in excess of 6,000 pounds, trailers, boats or recreational vehicles shall be parked in the Limited Common Element parking area. All vehicles must have current license plates and be in operating condition. Vehicle repairs shall not be done on any portion of the Property.

Section 7.9. Covenants. The provisions of this Declaration and the rights and obligations established hereby shall be deemed to be covenants, running with the land, so long as the Property remains subject to the provisions of the Condominium Act as amended, replaced or revised, and shall inure to the benefit of and be binding upon each and all of the Unit

Owners and their respective heirs, representatives, successors, assigns, purchasers, lessees, grantees and mortgagees. By the recording of or by the acceptance of a deed or other document of conveyance, which deed or document transfers a Unit or any interest therein, the grantee, his heirs, personal representatives and assigns shall be deemed to accept and agree to be bound by and subject to all of the provisions of the Condominium Act and this Declaration.

Section 7.10 Restrictions Regarding Joy Place. The property comprising the Condominium includes a right of passageway, in common with others, over Joy Place, so-called, as depicted on the Plat. No temporary or permanent parking of any vehicles or other conveyances shall be permitted within Joy Place, except on a temporary basis in the event of an emergency, and Joy Place is to be kept open and unobstructed.

ARTICLE 8 COMMON CHARGES AND ASSESSMENTS

Section 8.1 Common Expense Assessments. Common expense assessments shall be made as follows:

- A. Each Unit Owner shall pay to the Association, or its authorized representative, monthly, or as otherwise required by the Association, the Unit Owner's proportionate share, as assessed by the Board of Directors, of the expenses of maintenance, repair, replacement, insurance, administration and operation of the Common Elements and of any reserves for operation, maintenance or replacement established by the Board of Directors. Such proportionate share shall be equivalent to the Common Expense Liability as set forth in Schedule B attached hereto:
 - (1) any other Common expense associated with the maintenance, repair or replacement of a Limited Common Element shall be assessed against the Unit(s) to which that Limited Common Element is assigned equally,
 - (2) any Common expense which, in the judgment of the Board of Directors of the Association, benefits fewer than all of the Units shall be assessed exclusively against the benefited Unit(s), and
 - (3) notwithstanding anything to the contrary, if any Common expense is caused by the misconduct of any Unit Owner, the Board of Directors may assess that expense exclusively against that unit owner.

Payment thereof shall be in such amount and at such times as may be provided by the By-laws or the Rules and Regulations of the Association and shall be subject to annual review. Provided, however, with regard to (1) and (2) above, if all Units have similar Limited Common Elements, then all Units shall pay such expenses in accordance with their Common Expense Liabilities.

In the event of the failure of a Unit Owner to pay such assessments when due, the amount

thereof shall constitute a lien on the Unit, as provided by the Condominium Act. Such assessments shall be the personal obligation of the Unit Owner who owns the Unit at the time such assessments become due and such personal liability shall not pass to successor Owners of the Unit unless such successor Owner agrees to assume the obligation. Any lien for delinquent Common expense assessments or other charges that the Association has on a Unit will be subordinate to a first mortgage on the Unit if the mortgage was recorded either before or after the date on which the assessment sought to be enforced becomes delinquent. A lien against the Unit so purchased for assessments imposed pursuant to this Declaration or the Act shall not be affected by such sale, conveyance or other transfer of the Unit, unless a foreclosure of a first mortgage is involved, in which case the foreclosure will extinguish any lien for any assessments that were payable before the foreclosure sale, but will not relieve any subsequent unit owner from paying further assessments. Assessments will begin as to all existing Units including Units owned by the Declarant, upon the first Unit sale by the Declarant.

- B. Electricity, gas, cable television and telephone services shall be supplied by the public utility company serving the area directly to each Unit through a separate meter and each Owner shall be required to pay the bills for such services consumed or used in his Unit. The electricity serving the Common Elements shall be separately metered, and the Association shall pay all bills for such services consumed in the Common Elements as a Common Expense assessable to all the owners of the Units. At the time of initial installation, water and sewer services will be supplied to the structure without being separately metered. Heat for the Common Elements, and hot water, cold water and sewer expenses shall be assessed to each Unit as a Common Expense, in accordance with their Common Expense Liabilities; provided, however that the Association reserves the right to submeter and then separately charge for hot water, cold water and sewer services supplied to the Units as Service Charges. Unit Owners shall take reasonable steps to conserve such utilities as are not separately metered. If a Unit Owner fails to take reasonable steps to conserve such utilities and/or wastes such utilities, the Board of Directors may assess that Unit Owner for that Unit Owner's disproportionate use of such utilities.
- C. No adjustment to the Common Expense Assessments against Unit(s) shall be allowed or made based on the frequency or intensity of use of Common Elements or Limited Common Elements, except as expressly provided in this Declaration.
- D. In the event of the failure of a Unit owner to pay such assessments when due, the amount thereof shall constitute a lien on the Unit, as provided by the Condominium Act. Each Unit is subject to a lien in favor of the Association for the unpaid Common Expense Assessments, interest and costs of collection as provided in the Condominium Act, which lien may be foreclosed in like manner as a mortgage on real estate. No foreclosure of the Association's lien shall release the Owner from any personal liability for any unpaid portion of the lien. The recordation of this Declaration constitutes record notice of the

lien. Such lien for Common Expense Assessments shall not have priority over a first mortgage securing a loan to purchase a Unit, and upon foreclosure of such first mortgage, any liens for then-existing Common Expense Assessments automatically shall be released but without releasing the responsible Unit owner from any personal liability for the liability secured by the released lien.

- E. No Owner shall be liable for Common Expense Assessments until the later to occur of (i) sixty (60) days after the first conveyance of any Unit to a purchaser or (ii) until the Association makes its first Common Expense Assessment or (iii) a certificate of occupancy is first issued for the Unit.
- F. Real estate taxes are to be separately taxed to each Unit Owner for such owner's Unit and the corresponding percentage of ownership in the Common elements, as provided in the Act. However, in the event that for any year such taxes are not separately assessed to each Unit Owner, but are taxed on the Property as a whole, then each Unit Owner shall pay a proportionate share thereof in accordance with such owner's relative percentage of ownership interest in the Common elements, excluding units already assessed by the City directly to purchasers of such units. Unit Owners, including Declarant if Declarant then owns one or more Units, shall pay full property taxes, both real estate and personal property taxes, if any, assessed on the Property.
- G. If pickup of trash and recycled materials is not provided by the City of Portland, periodic trash pickup for ordinary household waste and any pickup of recycled materials shall be the responsibility of the Association, and the cost of thereof shall be assessed as a Common Expense liability. The Association may make reasonable rules concerning waste disposal, and may restrict disposal of and/or separately assess individual owners for the costs of disposing of waste which in volume, composition and/or any other characteristic exceeds or deviates from ordinary household waste.

Section 8.2 Service Charges. The Association shall have the express power, but not the obligation, to separately charge a Unit and the Owner for services rendered to that Unit, and interest and costs of collection in connection with service charges. Such charges shall be a lien on the Unit with the same status as a lien for Common Expense Assessments under the Condominium Act, this Declaration and Bylaws, which lien for service charges may be foreclosed in like manner as a mortgage on real estate. The recordation of this Declaration constitutes record notice of the lien. The Board may assess service charges, which may include without limitation: (i) the cost of reimbursement if an Owner damages the Common Elements or fails to perform maintenance and repair work required; (ii) fees, if any, established by the Board for the use and maintenance of water, sewer and/or other utility services and equipment; (iii) insurance premiums on permanent improvements to Units installed by Owners and insured by the request of the Owner with the Association's hazard insurance carrier.

Section 8.3. Payment of and Lien for Assessments, Service Charges, Etc.

- A. Each Unit Owner shall pay to the Association the following amounts: (i) on the first day of each month or on such other date that the Board may determine, one-twelfth (1/12th) of the annual Common charges for Common Expenses (including Limited Common Expenses, and Service Charges and revised Common Expenses including revised Limited Common Expenses) assessed against his Unit; (ii) all special assessments and any other sums duly levied against the Unit pursuant to this Declaration, the Bylaws, the Rules and Regulations or the Condominium Act which are assessed against Unit Owners; and (iii) fines, penalties and fees as provided by this Declaration, the Bylaws, or the Condominium Act, all interest and late charges and legal fees and other costs of collection thereof.

If for any reason the Association shall revise its annual budget and as a result the Common Expenses or Limited Common Expenses are increased, then commencing on the next day assessments are due each Unit Owner shall pay to the Association or its authorized representative such revised annual Common Expenses, including Limited Common Expenses, assessed against his Unit.

- B. The total annual assessment levied against each Unit for Common Expenses, Limited Common Expenses, Service Charges, any special assessments, other sums duly levied against the Unit pursuant to this Declaration, the Bylaws, the Rules and Regulations, or the Act, all interest and late charges, all legal fees and other costs of collection thereof, and all fines, penalties and fees as provided in this Declaration or the Bylaws: (i) shall constitute the personal liability of the Owner of the Unit so assessed; and (ii) shall, until fully paid, constitute a lien against the Unit in favor of the Association as provided in Section 1603-116 of the Condominium Act.

Such lien is prior to all other liens and encumbrances on a Unit except (a) liens and encumbrances recorded before the recordation of this Declaration, (b) a first priority mortgage recorded before or after the date on which the assessment sought to be enforced becomes delinquent, and (c) statutory liens for real estate taxes and other governmental assessments or charges against the Units; provided, however, that such lien is not subject to the provisions of 14 M.R.S.A. Section 4651 and 18-A M.R.S.A. Section 2-201, et seq. as they or their equivalents may be amended or modified from time to time.

If any assessment is payable in installments, upon a default by such Unit Owner in the timely payment of any two (2) installments in any fiscal year, the maturity of the remaining total of the unpaid installments may be accelerated at the option of the Board, and the entire balance of the assessment may be declared due and payable in full.

- C. The lien for assessments described in subparagraph B. may be enforced and foreclosed by the Association in like manner as a mortgage on real estate as provided in the Condominium Act, or by any other means presently or hereafter provided by law or in equity. A suit to recover a money judgment for unpaid

assessments, interest, fines, penalties, and costs of collection may be maintained against the Unit Owner personally without foreclosing or waiving the lien securing such assessments, and a foreclosure may be maintained notwithstanding the pendency of any suit to recover a money judgment.

Section 8.4. Liability. Multiple Owners of a Unit shall each be jointly and severally liable with one another for all unpaid Common Expense Assessments, Limited Common Expenses, special assessments, Service Charges, interest, fees, penalties and costs of collection during their period of Unit ownership up to the time of the grant or conveyance. A grantee shall not be prevented from exercising any right to recover from the grantor such amounts paid for those Common Expenses Assessments, service charges, etc. arising prior to the conveyance. A grantee or proposed purchaser under a purchase and sale contract for a Unit may obtain, upon request and the payment of such fee as may be established from time to time by the Board, a statement from the Association setting forth the amount of unpaid Common Expense Assessments and service charges, interest, penalties and costs of collection against the Unit as of the date of grant or conveyance and such other information required by the Condominium Act. The grantee shall not be liable for, and the Unit conveyed shall not be subject to a lien for any unpaid amounts due from the grantor before the statement date in excess of the amount set forth in the statement except interest and costs of collection accruing thereafter.

Section 8.5. Budget. The proposed budget approved by the Association's Board shall be adopted unless rejected by a sixty-six percent (66%) or greater vote of all Owners. After the first conveyance of an individual Unit (as distinguished from the conveyance of the entire project), the budget must contain funding for an adequate reserve for replacements of improvements to the Common Elements and to those Limited Common Elements that the Association is obligated to maintain.

Section 8.6. Working Capital Fund. Contemporaneous with the initial conveyance of each Unit by Declarant to a party other than a successor Declarant, the Unit purchaser shall pay to Declarant an amount equal to two (2) months' estimated Common Expense charges for each such Unit, and Declarant shall contribute such payment from the Unit purchaser to a working capital fund established by the Declarant as provided below. Such working capital fund shall be established by Declarant, prior to the conveyance of the first Unit, as a segregated account, owned by and in the name of the Association, established at a Maine financial institution insured by the Federal Deposit Insurance Corporation or other equivalent federally sponsored insurance. The Declarant may reimburse itself from such payments collected at closing from Unit purchasers if the Declarant has made the working capital fund payment for the Units in advance of the closing on the initial conveyance of such Units. Working capital fund payments from Unit purchasers shall not be credited against or deemed to be prepayment of any Assessments against Units by the Association. During the Declarant Control Period, the Declarant shall not use the working capital fund described above in this paragraph to offset its expenses, to make the required capital reserve contributions for Units owned by the Declarant (except to reimburse itself as provided above), to fund initial construction costs or to mitigate a budget shortfall.

ARTICLE 9
MAINTENANCE AND REPAIR

Section 9.1. General Maintenance Responsibilities. The Units and Common Elements shall be maintained and repaired by each Unit Owner and the Association in accordance with the provisions of Section 1602-107(a) of the Condominium Act.

Section 9.2. Maintenance of Common Elements. Generally the Association shall be responsible for the maintenance, repair and replacement of the Common Elements, including but not limited to exterior lighting, sidewalk snow removal, parking area snow removal and yard maintenance, all as determined by the Board; provided, however, that regardless of any other Common element maintenance decisions, it is the non-delegable responsibility of the Association to ensure that: (1) snow removal from sidewalks and parking areas is undertaken in a timely fashion; (2) snow may only be stored within the temporary snow storage areas as shown on the subdivision recording plat; (3) any snow that cannot be stored on site shall be physically removed and transported offsite within 24 to 48 hours following a snow storm; (4) snow transported offsite shall be brought to a Maine DEP-approved “snow dump” or meet the exemption requirements specified within Chapter 573 when the above requirements cannot be met due to an abundance of snow; the snow contractor shall be responsible for any damage to vegetation, landscaping, curbing, lighting, fencing etc. resulting from their activities; and (6) the snow contractor shall use salt or chloride substitute to deice the parking lot.

It is possible that the Unit Owners will opt to be self-managed (managing themselves and volunteering to take on certain maintenance tasks to minimize expenses) rather than hiring a professional to manage condominium affairs and to provide workers to perform necessary tasks. However, in either case, to facilitate coordinated management and sound fiscal stewardship, no Owner shall undertake any maintenance, repair or replacement activities which will alter the appearance of any Common Element or undertake activities which will involve the expenditure of Association funds without prior authorization from the Board. If repair or replacement of a Common Element shall be necessitated by the negligence, neglect or misconduct of fewer than all of the Unit Owners, such cost shall be assessed to the Unit Owner(s) responsible as a Service Charge.

Section 9.3. Maintenance of Limited Common Elements. Generally, the Association shall maintain, repair and replace the Limited Common Elements, all as determined by the Board of Directors; provided however that each Unit Owner shall maintain the interior and exterior surfaces of door and window glass, but the Association may elect to wash exterior windows and assess the Unit as a Service Charge or as part of the Common Charges. Except as specifically provided to the contrary in this Declaration, the Association may assess Limited Common Expenses applicable to particular Unit(s) to such Unit(s) if the item giving rise to the expense shall be uniquely for the benefit of such Unit(s) only. If such repair or replacement of the Limited Common Elements shall be necessitated by the negligence, neglect or misconduct of fewer than all of the Unit Owners, such cost shall be assessed to the Unit Owners responsible as a Service Charge.

Section 9.4. Maintenance of Unit/Repair Responsibility. Each Unit Owner shall keep and

maintain his or her Unit and its equipment, appliances and appurtenances in good order, condition and repair and in a clean and sanitary condition, whether such maintenance and repair shall be structural or non-structural, ordinary or extraordinary. Each Unit Owner shall perform promptly all maintenance and repair work within his own Unit which, if omitted, would affect the Condominium in its entirety (or any part thereof) or would affect a part belonging to one or more other Unit Owners, and each Unit Owner shall be expressly responsible for any damages or liabilities resulting from his failure to do so. If any Unit Owner fails to perform such maintenance or repair after reasonable notice from the Association, in the event of an emergency negatively affecting a Common Element or another Unit, the Association through its officers or managing agent, if any, shall have the right, but not the obligation, to enter the Unit and perform such emergency mitigation in the name of the Unit Owner. The Association, after notice to the owner and opportunity to be heard before the Board, shall be entitled to assess the expense thereof as a Service Charge due in full at the time of the next regular monthly payment.

Each Unit Owner shall maintain the interior surface of windows in the Unit, including periodic washing. No Unit Owner shall deposit any trash, dirt, debris or other substance from the Unit onto the Common Elements or Limited Common Elements, except in designated trash disposal areas.

No person shall impair nor remove any acoustical, sound-deadening, or fire-resistant material from the walls, floors or ceilings of a Unit without replacing the same with materials of equal or greater such qualities. No Unit Owner shall overload the electrical wiring of the Condominium. Each Unit shall deposit only food waste in any garbage disposal system and only toilet tissue and human waste in the toilets. No Unit Owner shall operate any machinery, appliances, accessories or equipment in such a manner as to cause, in the judgment of the Board, as appropriate, an unreasonable disturbance or make any alterations, repairs or modifications to or connection with the electrical or plumbing systems without the prior written consent of the Board. Additional major appliances may not be installed in a Unit without the prior written consent of the Board.

Unit Owners shall maintain the interior of their Units during the heating season at a temperature of at least 55 degrees Fahrenheit at all times. All maintenance, repair, and replacement of internal installations of the Unit such as water, light, power, sewerage, telephones, sanitary installations, exterior surfaces of doors, window glass, lamps, and all other accessories belonging to the Unit area shall be performed at the Unit Owner's expense.

Each Unit Owner shall be responsible for all damage to any other Units or to the Common Elements resulting from his or her failure or negligence to make any of the repairs required by this Article or if the Unit Owner otherwise fails to maintain the Unit in the condition required by this Article. Each Unit Owner shall perform his or her responsibility in such manner as shall not unreasonably disturb or interfere with the other Unit Owners. Each Unit Owner shall promptly report to the Board or any managing agent any defect or need for repairs for which the Association is responsible.

To the extent that any damage to a Unit is covered by the Association's insurance, the Unit

Owner shall be responsible for (i) payment of the first \$250 of the insurance deductible, if any (or such other amount established by the Rules and Regulations) and for (ii) uninsured damage to any Common Element or Unit for which the Unit Owner is otherwise responsible due to the fault or negligence of the Owner.

Section 9.5. Liability of Owner. Each Unit Owner shall be liable, and the Association shall have a lien against his or her Unit, for all costs of maintaining, repairing or replacing any portion of another Unit or of the Common Elements including Limited Common Elements to the extent that such costs are caused by or attributable to such Unit Owner's act, neglect or carelessness or by that of such Unit Owner's guests, employees, agents, lessees, invitees, or their pets. The Association shall have the right to repair any damage so caused, to cure or correct the cause of the damage and to maintain or replace such damaged Unit or Common Element to the extent the Association deems necessary and appropriate. Such liability shall include any increase in insurance rates occasioned by uses, misuse, occupancy, or abandonment of any Unit or its appurtenances. Nothing herein contained, however, shall be construed to modify any waiver by insurance companies of rights or subrogation against such Unit Owner.

Section 9.6. Management Contracts. It is yet to be determined whether this twelve (12) Unit condominium will opt to enter into a management contract. However, if the Board opts to enter into such a contract, no management contract may be for a term exceeding three (3) years and any such contract shall be terminable for cause upon 30 days' notice. Any professional management contract entered into by the Association prior to the expiration of the Declarant Control Period may be terminated without cause and without penalty at any time after the expiration of such control upon written notice.

Section 9.7. Exterior Appearance. The Association may adopt reasonable rules and regulations regulating antennas, satellite dishes, window shades and blinds, or any other structures or things that affect the appearance of the exterior of the Building. Without prior approval of the Board, Owners shall not erect fences, signs, structures, plant or remove trees, shrubs or flowers or materially alter the landscape or grading in the Common Elements, or do anything to alter the exterior or outside appearance of the structure.

ARTICLE 10 CONDOMINIUM ASSOCIATION

Section 10.1. The Association. The Association is an association of Unit Owners organized pursuant to Section 1603-101 of the Condominium Act as a nonprofit corporation under the Maine Non-Profit Corporation Act. The membership of the Association at all times shall consist exclusively of all Unit Owners, or in the event of a termination of the Condominium as provided in the Condominium Act, of all former Unit Owners entitled to distributions of proceeds, or their heirs, successors or assigns. Persons having an interest in a Unit solely as security for an obligation shall not be considered members. Each Unit Owner shall automatically become a member of the Association, which membership shall continue as long as she or he continues as a Unit Owner, and upon the termination of the interest in the Condominium, his or her membership and any

interest in the assets of the Association shall be automatically transferred and inure to the next Unit Owner or Owners succeeding in interest. The Association shall have all the powers granted pursuant to the Bylaws, the Condominium Act and the Maine Non-Profit Corporation Act.

Section 10.2. Board of Directors Powers; Declarant Control Period. Except as otherwise provided in Section 1603-103(b) of the Condominium Act, the Board of Directors may act on behalf of the Association and shall have all of the powers necessary or appropriate for the administration of the Association.

- A. During the Declarant Control Period, the Board of Directors shall be composed of three (3) natural persons. The Declarant shall have the right during the Declarant Control Period to appoint, remove and replace from time to time any and all members of the Board of Directors, and officers of the Association, without the necessity of obtaining resignations. The directors appointed by the Declarant need not be Unit Owners.
- B. The Declarant Control Period shall expire sixty (60) days after the closing of sales of seventy-five percent (75%) of the Units by the Declarant, or three (3) years from the date of the first Unit sale by Declarant, whichever occurs first. Following the expiration of the Declarant Control Period, the affairs of the Association shall be governed by a Board of Directors composed of three (3) persons, each of whom shall be a Unit Owner or, in the case of a Unit Owner which is a corporation, partnership, trust or estate, a designated agent thereof. The Directors shall be elected in accordance with the Bylaws. No Unit may have more than one Unit Owner or designated agent serving on the Board at one time. The Directors so elected shall serve until their successors are elected, in accordance with the Bylaws.
- C. The transition from Declarant-appointed members of the Board to the Unit Owners generally shall occur at expiration of the Declarant Control Period or at such earlier date as the Declarant in its sole discretion shall specify. By written notice duly recorded in said Registry of Deeds specifically referring to this Section, the Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board of Directors prior to the termination of the Declarant Control Period, but in that event the Declarant may require, for the duration of the Declarant Control Period that specified actions of the Association or Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before such action can become effective.

Section 10.3. Rules and Regulations. The Board of Directors shall have the power from time to time to adopt, amend and enforce Rules and Regulations relative to the operation, use and occupancy of the Units and the Common Elements, consistent with the provisions of this Declaration, Bylaws and the Condominium Act including, but not limited to, the appointment of such committees and the enactment and enforcement of such enforcement procedures and penalties for violations as the Board shall deem appropriate.

Any such Rules and Regulations shall be adopted or amended, by means of appropriate resolutions duly approved by the Board. Notice of such Rules and Regulations and any amendment thereto shall be sent to each Owner or occupant of a Unit promptly after the adoption thereof, and shall bind all Owners, their heirs and assigns, any residents, tenants, invitees, guests and other persons entering upon the Property.

ARTICLE 11 INSURANCE

Section 11.1. General. No later than the date of the first conveyance of a Unit to a person other than the Declarant, the Association shall obtain and maintain as a Common Expense the policies of insurance for the Condominium as are required by the Condominium Act and the Bylaws, to the extent such policies shall be reasonably available. If such insurance is not maintained, then the Association shall give written notice thereof to the Unit Owners and the eligible Mortgage Holders. To the extent that such insurance subsequently becomes unavailable, the Association shall obtain as a substitution the most comparable insurance available. The Board is hereby irrevocably appointed as attorney-in-fact for each Unit Owner and for each Mortgagee and Eligible Mortgage Holder and for each owner of any other interest in the Property, for purchasing and maintaining the insurance, for the collection and disposition of any insurance, including distribution pursuant to Section 1603-113(c) of the Condominium Act, for the negotiation of losses and execution of releases of liability, and for the execution of all documents, and performance of all other acts necessary to accomplish these purposes.

Section 11.2. Institutional Mortgage Programs. If in a request to the Association forwarded by an Eligible Mortgage Holder (as defined in Section 12.3 below), a mortgage is identified as being subject to the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Veterans' Administration, the Federal Housing Administration or other recognized institutional mortgage programs, then the Association shall maintain such hazard and other insurance policies and coverage required under said mortgage programs and identified in said notice from the institutional mortgage holder, to the extent such insurance is available to the Association at a commercially reasonable cost.

ARTICLE 12 MORTGAGES OF UNITS; RIGHTS OF ELIGIBLE MORTGAGE HOLDERS AND OTHER HOLDERS, INSURERS OR GUARANTORS OF MORTGAGES

Section 12.1. Right to Mortgage. Each Unit Owner shall have the right to mortgage or encumber his own respective Unit together with the Common Element Interest, Common Expense Liability and voting rights (the "Allocated Interests") appurtenant to such Unit.

Except as otherwise permitted by Section 1603-112 of the Condominium Act and subject to this Declaration, no Unit Owner shall have the right or authority to mortgage or otherwise encumber in any manner whatsoever the Common Elements or any part thereof

except his own Unit and his own respective Allocated Interests appurtenant to his Unit.

Section 12.2. Mortgage Foreclosure. Any mortgagee of a Unit holding a recorded first mortgage on a Unit that obtains title to the Unit pursuant to the remedies provided in the mortgage, or through a completed foreclosure of the mortgage, or through deed (or assignment) in lieu of foreclosure, shall take the Unit with the Allocated Interests appurtenant thereto free of such claims and liens for unpaid assessments for Common expenses, interest and costs levied against such Unit which accrue prior to the acquisition of title to such Unit by the mortgagee, other than the proportionate share of the Common expenses which become due and payable from and after the date on which the mortgagee shall acquire title to the Unit through a completed foreclosure or deed (or assignment) in lieu of foreclosure.

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 or lease a Unit so acquired.

Section 12.3. Eligible Mortgage Holder, Notice. "Eligible Mortgage Holder" means the holder of record of a recorded first Mortgage encumbering a Unit (a "Mortgage") which has delivered written notice to the Association, by prepaid United States Mail, return receipt requested, or by delivery in hand securing a receipt therefore, stating: (1) the name and address of the holder of the Mortgage, (2) the name and address of the owner of the Unit encumbered by such Mortgage, (3) the identifying number of such Unit, and (4) containing a statement that such Mortgage is a recorded first mortgage. The Secretary or manager of the Association shall maintain such information.

Eligible Mortgage Holders shall have all rights specified in the Condominium Act. Furthermore, after the filing of a request by the Eligible Mortgage Holder, the Board shall cause notice to be sent to the Eligible Mortgage Holders (and any insurers or guarantors of such mortgages identified in the request) of any one or more of the following events affecting the mortgaged Unit(s), if so requested.

- A. Default by the owner of a mortgaged Unit in the payment of monthly Common Expenses, assessments, service charges, or other amounts due the Association that continues for sixty (60) days or as required by the Condominium Act;
- B. The lapse, cancellation, expiration or material modification of insurance required to be maintained under this Declaration or Bylaws of the Association;
- C. A material amendment to this Declaration requiring the consent of Eligible Mortgage Holders as provided in Section 12A below;
- D. Termination of the Condominium pursuant to Section 1602-118 of the Condominium Act or any condemnation proceeding against any of the Property;

- E. Change in the Allocated Interests of a Unit, voting rights, a change in Unit boundaries or the subdivision of a Unit;
- F. Default or violation of the condominium Documents, or any proceedings by the Association relating thereto;
- G. The merger or consolidation of the Condominium with another condominium; or
- H. Such other events specified in the Condominium Act.

Section 12.4. Approval Rights of Eligible Mortgage Holders. For a material amendment to this Declaration or any of the actions specified below but subject in any event to the provisions of the Condominium Act, approval must be obtained from Eligible Mortgage Holders representing in the aggregate at least Fifty-One percent (51%) of the votes of Units subject to mortgages held by Eligible Mortgage Holders. An amendment affecting any of the following shall be deemed material:

- A. Voting rights in the Association;
- B. Change in percentage liability for Common expenses, assessment liens for Common expenses, or the subordination of liens for Common expenses Assessments;
- C. Reduction in reserves for maintenance, repair and replacement of Common Elements;
- D. Responsibility for maintenance and repairs;
- E. Reallocation of Allocated Interests or rights to the use of Common Elements or Limited Common Elements;
- F. Alteration of the definitions of the boundaries of any Unit, including the partition or subdivision of a Unit;
- G. Convertibility of Units into Common Elements or vice versa;
- H. Expansion or contraction of the Condominium, or the addition, annexation or withdrawal of property to or from the Condominium;
- I. Hazard insurance or fidelity bond requirements;
- J. Imposition of any restrictions on the leasing of Units;
- K. Imposition of any restrictions on an Owner's right to sell or transfer his or her Unit;

- L. Restoration or repair of the Property (after damage or destruction, partial taking by eminent domain or condemnation) in a manner other than that specified in the Declaration;
- M. Any action to terminate the Condominium after substantial damage, destruction or condemnation occurs;
- N. Any provisions of this Article or any other provision of this Declaration that expressly benefits mortgage holders, insurers or guarantors;
- O. The merger or consolidation of the Condominium with another condominium or the subjection of the Condominium to a master association;
- P. Any change in the Association's right to lien a Unit for unpaid Common Expense Assessments or a change in the priority of such liens;
- Q. Any one-time increase in monthly Common Expense Assessments by more than twenty-five percent (25%);
- R. Any material reduction in the funding of reserves for maintenance, repair and replacement of Common Elements and Limited Common Elements; or
- S. Any provisions of this Article.

When Owners are considering termination of the Condominium for reasons other than substantial damage, destruction or taking by eminent domain of the Condominium, the Eligible Mortgage Holders representing at least sixty-seven percent (67%) of the votes of Units subject to mortgages held by Eligible Holders must consent to such termination.

The approval of any Eligible Mortgage Holder to such a material amendment to this Declaration shall be presumed when an Eligible Mortgage Holder is sent a written request for approval of a proposed amendment by registered or certified mail, return receipt requested, and then fails to submit a response within 30 calendar days after the notice is received.

Section 12.5. Mortgagee Priority. No provision of the Condominium Documents shall be deemed or construed to give a Unit Owner, or any other person, priority over the rights of any Eligible Mortgage Holder under its mortgage in the case of a distribution of insurance proceeds or condemnation awards for losses to or taking of Units, Common Elements, or both.

Section 12.6. Records. An Eligible Mortgage Holder may examine the books, records and accounts of the Association at reasonable times with reasonable advance notice to the Treasurer of the Association; provided, however, that Declarant shall have the right to withhold information in the books, records and accounts of the Association relating primarily to the construction and Unit sale activities of Declarant. The Association shall maintain current copies of this Declaration, the Association's articles of incorporation,

Bylaws, and other Rules and Regulations concerning the Condominium as well as its own books, records, and financial statements available for inspection by Unit Owners or by any eligible Mortgage Holder, insurers, and guarantors of first mortgages that are secured by Units available during normal business hours. Upon written request, any eligible Mortgage Holder may obtain an audited statement of the Association's fiscal affairs prepared by an independent certified public accountant once the Condominium has been established for a full fiscal year, which statement shall be prepared at the Eligible Mortgage Holder's expense.

ARTICLE 13
DAMAGE, DESTRUCTION, TERMINATION, REMOVAL

Section 13.1. Repair. Any portion of the Property damaged or destroyed shall be repaired or replaced promptly by the Association unless:

- A. The Condominium is terminated under Section 13.3;
- B. Repair or replacement would be illegal under any state or local health or safety statute or ordinance; or
- C. One hundred percent (100%) in interest of the Unit Owners vote not to rebuild, including every owner of a Unit or Limited Common Element which would not be rebuilt, and including the consent of the Eligible Mortgage Holders as required herein.

Insurance deductibles and the cost of repair or replacement in excess of insurance proceeds and reserves or not covered by any insurance shall be a Common Expense.

Section 13.2. Application of Insurance Proceeds. If the entire Condominium is not completely repaired or replaced:

- A. The insurance proceeds attributable to the damaged Units and Common Elements shall be used to restore the damaged areas to a condition compatible with the remainder of the Condominium;
- B. The insurance proceeds actually received by the Association and attributable to Units that are not rebuilt, including without limitation the interest in the Common Elements and in Limited Common Elements, shall be distributed to such Owners and their mortgagees; and
- C. The remainder of the proceeds shall be held in trust to be distributed to the Owners and their mortgagees in accordance with the Condominium Act.

Any loss covered by such insurance shall be adjusted by the Association, which shall exclusively represent all Owners in any proceedings, negotiations, settlements or agreements in connection therewith. As such, each Owner, except the Declarant (or its successors and assigns) with respect to Unsold Units, hereby irrevocably constitutes and

appoints the Association its true and lawful attorney, with full power of substitution, to represent such Owner in any proceedings, negotiations, settlements, or agreements in connection with adjusting a loss covered by such insurance. The foregoing power of attorney conferred upon the Association by this Declaration, being coupled with an interest, shall be irrevocable so long as any such person (other than the Declarant) owns a Unit. This power of attorney shall not be affected by the disability or incompetence of such an Owner. The insurance proceeds shall be paid to the Association as trustee for the Owners and lien holders as their interests may appear. Mortgagees' liens shall transfer in order of priority to the insurance proceeds. Notwithstanding the provisions of this Section 13.2, Section 13.3 of this Declaration governs the distribution of insurance proceeds if the Condominium is terminated. If the members vote not to rebuild any Unit, that Unit's percentage interest in the Common Elements shall be automatically reallocated to the then-remaining Units in proportion to their percentage interests prior to the reallocation, and the Association shall promptly prepare, execute and record an amendment to this Declaration reflecting the reallocation. Unless an Owner has requested and received written confirmation from both the Association and the Association's hazard insurance carrier of optional insurance coverage for the owner's fixtures, permanent improvements and betterments within the Unit, the Owner shall be responsible for the expense of repair or replacement thereof.

Section 13.3. Termination of Condominium. Except in the case of taking of all the Units by eminent domain, the submission of the Property to the Condominium Act herein shall not be terminated unless (i) eighty percent (80%) in voting interest of all of the then Owners in accordance with the Condominium Act and (ii) the percentage of the Eligible Mortgage Holders required by Article 12 shall agree to such revocation or removal of the Property from the provisions of the Condominium Act, their agreement to be established by written instrument duly recorded.

Section 13.4. Removal. Upon removal of the Property from the Condominium Act pursuant to Section 13.3, the provisions of Section 1602-118 of the Condominium Act shall govern. Removal shall not bar the subsequent re-submission of the Property to the Condominium Act.

ARTICLE 14 EMINENT DOMAIN

Section 14.1. General. In the event a unit, part of a Unit, or Common Element is proposed to be acquired or acquired by eminent domain, it shall be handled in accordance with 1601-108 of the Condominium Act.

Section 14.2. Power of Attorney. In the event of a proposed acquisition by eminent domain, the Association shall have the right, but not the obligation, to act and intervene on behalf of Owners. As such, each Owner, except the Declarant (or its successors or assigns) with respect to unsold Units, hereby irrevocably constitutes and appoints the Association its true and lawful attorney, with full power of substitution, to represent such Owner in any proceedings, negotiations, settlements, or agreements in connection with a proposed acquisition by eminent domain. The foregoing power of attorney conferred upon the Association by this Declaration, being coupled with an

interest, shall be irrevocable so long as any such person (other than the Declarant) owns a Unit. This power of attorney shall not be affected by the disability or incompetence of such an Owner. Nothing contained in this Section or this Declaration, however, shall entitle any Owner or other person to priority over a first mortgagee of a Unit pursuant to its mortgage instrument in the right to receive eminent domain awards for the taking of Units and/or Common Elements.

ARTICLE 15 GENERAL PROVISIONS

Section 15.1. Conflict of Laws. This Declaration shall be governed and construed according to the laws of the State of Maine. If any provision of this Declaration, the Bylaws, or the Rules and Regulations, or any section, sentence, clause, phrase, or word therein, or the application thereof in any circumstances be judicially held in conflict with any applicable laws, including, but not limited to, the Condominium Act, then the laws shall be deemed controlling; but the validity of the remainder of this Declaration, the Bylaws and Rules and Regulations, and the application of any such provision, section, clause, phrase, or word in other circumstances shall not be affected thereby.

Section 15.2. Severability. The provisions of this Declaration shall be deemed independent and severable. If any term, covenant, provision, phrase or other element of this Declaration, the Bylaws, any deed to a Unit, or the Rules and Regulations is held to be invalid or unenforceable for any reason whatsoever, such holdings shall not affect, alter, modify, or impair in any manner, any other term, covenant or provision, phrase or other element of such documents.

Section 15.3. Waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same irrespective of the number of violations or breaches which may occur.

Section 15.4. Dispute between Unit Owner(s), Association and/or Declarant. In any dispute between one or more Unit Owners and the Declarant regarding the Common Elements, the Board of Directors shall act for the Unit Owners, and any agreement with respect thereto by the Board shall be conclusive and binding upon the Unit Owners. All claims, disputes and other matters in question between (i) the Declarant, on the one hand, and the Association or any Unit Owner(s) on the other hand, or (ii) the Association, on the one hand, and any Unit Owner on the other hand, arising out of or relating to a Unit, the Common Elements, the Limited Common Elements, this Declaration, the Bylaws, the Rules and Regulations, or the deed to any Unit or the breach thereof, or the course of dealing between any Unit Owner, the Association and/or the Declarant, except for claims which have been waived by the acceptance of a deed, shall be submitted to mediation in accordance with the Maine Residential Real Estate Mediation Rules or such other rules as they may agree upon, using the services of a mediator acceptable to all parties to the dispute (which acceptance must be made in good faith). The parties are bound to mediate in good faith and pay their respective mediation fees. If such mediation fails, the parties may have resort to available legal remedies.

Section 15.5. Headings. The headings used in this Declaration and the table of contents are inserted solely as a matter of convenience for the readers of this Declaration and shall not be relied upon or used in construing the effect or meaning of any of the provisions of this Declaration. References in this Declaration to Articles and Sections without references to the document in which they are contained are references to this Declaration.

Section 15.6. Interpretation. The provisions of this Declaration shall be liberally construed in order to effectuate Declarant's desire to create a uniform plan for development and operation of the Condominium and to permit compliance with the requirements of the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association. The use of the singular number in this Declaration shall be deemed to include the plural, the plural the singular, and the use of any one gender shall be deemed applicable to all genders.

Section 15.7. Effective Date. This Declaration shall become effective when it and the Plat and Plans have been recorded.

Section 15.8. Schedules. All schedules attached to this Declaration are hereby made a part of this Declaration.

Section 15.9. Notice. Any notice required or given pursuant to this Declaration to the Association or to any Unit owner may be delivered to any Association director or officer or such to Owner respectively either by delivering it in person, by sending it to his or her Unit by United States mail, postage prepaid, or by delivering it to the Unit by hand, or as otherwise permitted by the Bylaws. If such notification is of a default or lien, then it shall be sent by certified United States mail, return receipt requested, postage prepaid, addressed to the Unit Owner at the address which the Unit Owner shall designate in writing and file with the Secretary of the Association, or if no such address is so designated, the address of the Unit of such Unit Owner who is the record owner thereof.

IN WITNESS WHEREOF, ONEJOY PLACE LLC has caused this Declaration to be executed by West Port Development, LLC, its Manager, by Todd M. Alexander, its Manager, thereunto duly authorized, as of the _____ day of _____, 201__.

WITNESS:

ONEJOY PLACE LLC

By: West Port Development, LLC
Its: Manager

By: _____
Todd M. Alexander
Its Manager

STATE OF MAINE
COUNTY OF CUMBERLAND ss.

_____, 201__

Then personally appeared the above-named Todd M. Alexander, in his capacity as Manager of West Port Development, LLC, the Manager of ONEJOY PLACE LLC, and acknowledged the foregoing instrument to his free act and deed in his said capacity and the free act and deed of said West Port Development, LLC, in its capacity as Manager of ONEJOY PLACE LLC, and the free act and deed of said of ONEJOY PLACE LLC.

Before me,

Notary Public
Maine Attorney at Law

Print name

My commission expires_____

LIMITED JOINDER
TO
DECLARATION OF ONEJOY CONDOMINIUM

The undersigned, _____, as Mortgagee under a Mortgage and Security Agreement from Onejoy Place LLC, dated _____, 201__, and recorded in the Cumberland County Registry of Deeds in Book _____, Page _____ (the "Mortgage"), hereby submits the premises located in the City of Portland, Maine as described in Schedule A of the Declaration, being the premises subject to the Mortgage, to the provisions of the Maine Condominium Act for the sole and limited purposes of compliance with said Act and for the creation and granting of easements, licenses, uses, rights and privileges as described in the Declaration, provided that such consent shall not be construed to make said _____, as Mortgagee, the Declarant or to impose on it any obligations or liabilities whatsoever under the Declaration or otherwise, including without limitation, any obligation or liability of any kind to any purchaser of any Units, and said Mortgagee makes no warranties or covenants to any person or party as to title, merchantability, fitness for any particular purpose, physical condition or otherwise as to the premises, express or implied.

The undersigned hereby agrees that the mortgage lien and security interest under the Mortgage shall be subject to the provisions of the Maine Condominium Act, as amended, and shall attach to the Units created pursuant to the Declaration. The undersigned further agrees that in the exercise of its rights as Mortgagee under the Mortgage, it does and will recognize the establishment of a condominium by the Declaration.

IN WITNESS WHEREOF, _____ has caused this instrument to be executed by _____, its _____, as of the _____ day of _____, 201__.

WITNESS: _____

_____ By: _____

Its: _____

Print name

STATE OF MAINE
COUNTY OF CUMBERLAND ss.

_____, 201__

Then personally appeared the above-named _____, the
_____ of _____, and
acknowledged the foregoing instrument to his/her free act and deed in his/her said
capacity and the free act and deed of said _____.

Before me,

Notary Public
Maine Attorney at Law

Print name

My commission expires_____

SCHEDULE A

LEGAL DESCRIPTION

A certain lot or parcel of land, together with the buildings and improvements thereon, situated easterly of, but not adjacent to, Brackett Street in the City of Portland, County of Cumberland and State of Maine bounded and described as follows:

Commencing at a point at the intersection of the easterly sideline of Brackett Street with the northerly sideline of Spring Street;

Thence, N 35°12'30" W along the easterly sideline of said Brackett Street 402.21 feet to a drill hole and the southerly sideline of a private right of way known as Joy Place;

Thence, N 54°47'30" E along the southerly sideline of said Joy Place 92.00 feet to the true point of beginning;

Thence, from the true point of beginning, N 35°12'30" W along the easterly sideline of said Joy Place 87.90 feet to the land now or formerly of Brian R. Chick as described in Deed recorded in the Cumberland County Registry of Deeds (the "Registry") in Book 25236, Page 109;

Thence, N 54°47'30" E along land of said Chick 2.83 feet to a point;

Thence, N 25°54'27" W along land of said Chick 26.85 feet to a point;

Thence, S 54°47'30" W along land of said Chick 2.17 feet to land now or formerly of Kimberly A. Roseberry as described in Deed recorded in said Registry in Book 28025, Page 112;

Thence, N 35°12'30" W along land of said Roseberry 25.86 feet to land now or formerly of Basha LLC as described in Deed recorded in said Registry in Book 29175, Page 300;

Thence, N 55°37'30" E along land of said Basha LLC a distance of 28.71 feet to land now or formerly of David R. Shedd and Susan Shedd as described in Deed recorded in said Registry in Book 31201, Page 5;

Thence, S 35°07'44" E along land of said Shedd 24.51 feet to a point;

Thence, N 56°22'18" E along land of said Shedd 13.68 feet to land now or formerly of Nathan W. Kimble as described in Deed recorded in said Registry in Book 13439, Page 62;

Thence, S 35°02'54" E along land of said Kimble and land now or formerly of Parkside Properties, LLC as described in Deed recorded in said Registry in Book 16808, Page 29, a distance of 103.09 feet to land now or formerly of Charles L. Morris and Katherine A. Gilbert as described in Deed recorded in said Registry in Book 21909, Page 50;

Thence, S 54°56'21" W along land of said Morris and Gilbert 13.53 feet to a point;

Thence, S 35°07'44" E along land of said Morris and Gilbert 11.90 feet to land now or formerly of the City of Portland;

Thence, S 54°47'30" W along land of said City of Portland 33.51 feet to the easterly sideline of said Joy Place and the point of beginning; containing 5,851 sf.

The above described premises are hereinafter referred to as the "Premises."

Reference is made to a plan entitled "Boundary Survey at 1 Joy Place, Portland, Maine made for Onejoy Place LLC" dated August 24, 2016 by Owen Haskell, Inc., and recorded in said Registry of Deeds in Plan Book 216, Page 330 (the "Plan").

The Premises are conveyed together with a right of passageway, in common with others, over a strip of land formerly known as Tinkhams Court, so-called, being approximately twenty-four (24) feet in width and extending from Brackett Street in a northeasterly direction to the Premises, and a right of passageway, in common with others, over a twelve (12) foot wide passageway extending from the most easterly end of said Tinkhams Court in a northwesterly direction along the southwesterly side of the Premises, said Tinkhams Court and said passageway being now known as Joy Place, which Tinkhams Court and said passageway are shown on the Plan as Joy Place and being more particularly bounded and described as follows:

Beginning at a point on the easterly sideline of said Brackett Street, said point of beginning being distant 402.21 feet as measured along said easterly sideline of Brackett Street on a bearing of N 35°-12'-30" W from the northwesterly side of Spring Street;

Thence N 54°-47'-30" E along land of City of Portland 92.00 feet to a point;

Thence N 35°-12'-30" W along land now or formerly of Albert Bresette, being the Premises, 87.90 feet to a point;

Thence S 54°-47'-30" W along land now or formerly of Brian R. Chick 12.00 feet to a point;

Thence S 35°-12'-30" E along lands now or formerly of Hazel G. Boyd et al and Brett Plymale 64.00 feet to a point;

Thence S 54°-47'-30" W along said land of Plymale 80.00 feet to a point;

Thence S 35°-12'-30" E along said Brackett Street 23.90 feet to the point of beginning.

All bearings are magnetic in the year 1967.

Subject to the condition that said Tinkhams Court and said passageway, now known as

Joy Place, are to be kept open and unobstructed forever.

Also hereby conveying all other right, title and interest that the Declarant may have in and to said Joy Place as shown on the Plan.

Being the same premises conveyed to the Declarant by Deed of Albert Bressette dated August 31, 2016, and recorded in the Cumberland County Registry of Deeds in Book 33404, Page 272.

SCHEDULE B

UNIT NUMBERS; COMMON ELEMENT INTERESTS; COMMON EXPENSE
LIABILITY; VOTE

UNIT NUMBER	COMMON ELEMENT INTEREST AND COMMON EXPENSES LIABILITY	VOTE
1	1/12	1
2	1/12	1
3	1/12	1
4	1/12	1
5	1/12	1
6	1/12	1
7	1/12	1
8	1/12	1
9	1/12	1
10	1/12	1
11	1/12	1
12	1/12	1

SCHEDULE C

REDUCED COPIES OF PLAT AND PLANS

[To be attached]